

## EDITORIAL

This year marks the fourth consecutive year that World Elder Abuse Awareness Day has been acknowledged on the 15th June. It was the United Nations' intention that Member States take concrete measures to further protect and assist older persons. In reflecting on the introduction of such a resolution, the articles in this year's edition of the *Elder Law Review*, appropriately themed 'Rights of the Older Individual' encapsulate some of the ideas associated with the rights of the older person and means to ensure that such rights are recognised. In observance of this theme, Seniors Rights Victoria are holding the 4<sup>th</sup> National Elder Abuse Conference from 23-25 February 2016. Seniors Rights Victoria have provided a short description of what the program will entail, focusing on the rights of older people to live life free from ageism and elder abuse. The program will include suggested preventative measures, discussion of earlier interventions and collaborative approaches to tackling elder abuse.

Equality before the law is fundamental to the exercise of our core human rights and is guaranteed to all persons by the *Universal Declaration of Human Rights* and the *International Covenant on Civil and Political Rights*. A human rights approach to the assessment of legal capacity may offer improved legal protections for the older person and is advocated in the Australian Research Network on Law and Ageing's draft Charter of Rights and Freedoms for Older Persons. Susannah Sage-Jacobson and Lise Barry by analysis of current decision making models for the older person in Australia demonstrate how ad hoc capacity assessments have resulted from a legal system that has not kept pace with the complexity of an ageing population. The authors conclude that older people in Australia who experience temporary or permanent decision making disabilities would benefit from the application of a more nuanced, human rights focus to the law of decision making.

The feature article of this edition is the Honourable Justice Geoff Lindsay's treatise on management of life, death and estate administration. Lindsay J discusses the historical boundaries between the Court's Protective, Probate and Family Provision jurisdictions in protecting the individual and how they are increasingly likely to be blurred in our current environment. Lindsay J emphasises the need to focus on the purposive nature of each branch of the Court's jurisdiction and gives guidance to assist in avoiding some of the pitfalls commonly encountered in administration of the Court's business.

In discussing the rights of the older individual and how to ensure those rights are recognised and remedied John Armfield, Barrister, examines the relevant case law in relation to the interaction between equitable claims in the context of estate disputes and family provision legislation. The paper focuses on equitable estoppel and family provision legislation, in particular estoppel arising from representations which are relied upon to the detriment of a party to whom they were made and constructive trusts which arise from contracts to make wills.

In keeping with the inclusion of updates to case law and various legal services in previous editions of the journal, Mary-Ann de Mestre discusses the case of *Nicholson v Knaggs* [2009]

VSC 64 (27 February 2009) and its judicial exploration of the United Nations Convention on the Rights of Persons with Disabilities. Imelda Dodds, the CEO of the NSW Trustee & Guardian, examines the recent key findings of the Australian Research Council's report 'Having the last word? Will Making and Contestation in Australia' published in March of this year. The report gives insight into will making practices across Australia and explores a range of reasons why people may not be having the last word when it comes to distributing their assets after death. The NSW Trustee & Guardian have established channels for community education and a mandate to promote planning ahead as part of the NSW Government Ageing Strategy.

Finally, this edition of the journal is the third to contain a student contribution, written on this occasion by Lestelle Olsen, a final year LLB student in the School of Law, University of Newcastle. Lestelle looks at the current international human rights instruments in questioning whether Australia should ratify a human right to health and the consequences that may evolve from ratifying such an instrument.

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