Editorial

There is an Antipodean theme to this, the fifth issue of the Journal in its new guise. As editors, we were delighted that a paper published in the fourth issue provoked a reaction from the President of the Tribunal whose work was under scrutiny. Christopher Maylea and Christopher James Ryan's article 'Decision-Making Capacity and the Victorian Mental Health Tribunal' ([2017] *International Journal of Mental Health and Capacity Law* 87) had proposed an interpretation of how the *Mental Health Act 2014* in Victoria, Australia, should work, before turning to two empirical studies which analysed the decisions of the Statements of Reasons of the Victoria Mental Health Tribunal to gain some appreciation of how the Act was working. Maylea and Ryan argued that the Tribunal had an obligation to consider the assessment of a compulsory patient's decision-making capacity when determining whether or not to make a compulsory Treatment Order, and that the Tribunal was falling into error by not meeting this positive obligation to take this matter into consideration.

The President of the Tribunal, Matthew Carroll, in a rejoinder published in this issue, suggests that this criticism was based on: a fundamental misinterpretation of relevant law, a misunderstanding of the processes of the Tribunal, and a lack of sufficient recognition of the distinctive features of the legislation that establishes the Tribunal and its processes. Carroll further suggests that Maylea and Ryan generated a misconception that by not focusing on their decision-making capacity, the perspectives of mental health consumers are not being considered as part of Tribunal hearings in Victoria.

So as not to leave readers in suspense, this issue also contains a response by Maylea and Ryan, to the effect, broadly, that the President's understanding of the way that the Tribunal should operate is understandable, but does not, in their view, reflect the best reading of the legislation. Many may wish to follow their suggestion of returning to the analysis presented in their original paper and review it in light of Carroll's criticism. Should the President wish to continue the debate, the pages of the Journal are firmly open, and the editors would be delighted to facilitate further debate on what is undeniably a very important, yet perhaps, penumbrous topic within the Tribunal jurisdiction.

Next is a stimulating article by Bennetts, Maylea, McKenna and Makregiorgos on the 'tricky dance' of advocacy, a study of non-legal mental health advocacy in Victoria, Australia. The article serves the useful purpose both of reviewing some of the underpinning drivers and models of advocacy in the context of the Convention on the Rights of Persons with Disabilities ('CRPD'), and describing the application of the model of non-legal representational advocacy within the Victorian context, drawing on in-depth qualitative interviews with advocates and other key stakeholders. The authors state that this is not an evaluation of this model or its impact, but rather a descriptive illustration of its intent and approach. This is exactly the sort of illustration which is required to flesh out what can otherwise become sterile exchanges of slogans.

We then have a review paper by Piers Gooding on recent United Nations activity concerning Article 19 CRPD. As Gooding highlights, Article 19 produces an unusual

consensus: "*commentators across the spectrum – from those who see a role for coercion and substituted decision-making, to those who think they should be eliminated – appear to agree on the need for more resources for people with intellectual, cognitive and psychosocial disabilities to exercise their right to live independently and participate in the community*." In the personal experience of one of the editors (Ruck Keene) on the independent review of the Mental Health Act 1983 in England and Wales under way at the time of writing, this consensus is not merely shared by commentators, but also by those seeking to take forward law reforms in this area. Gooding's article, therefore, serves the invaluable purpose of placing the recent 'General Comment' No. 5 (August 2017) on Article 19 in its context, summarising its content, and critically analysing its key provisions.

Remaining focused on the CRPD, the final paper relates to an entirely different part of the world and is a valuable spotlight on a jurisdiction based on a mixture of civil law and Shari'a law. Patricia Cuenca Gómez, María del Carmen Barranco Avilés and Pablo Rodríguez del Pozo review the provisions of Qatari law relating to deprivation of liberty in the context of psychosocial disability in the light of the CRPD. They find the provisions substantially lacking, and propose reforms to ensure that persons with psychosocial disabilities enjoy the right to liberty on equal terms with others.

We are grateful to the peer reviewers for their prompt and thorough comments, the proofreading assistance provided by Hal (Zhan) Brinton of the University of Leeds, the ongoing support of the library staff of Northumbria University, and the overall guidance provided by Kris Gledhill as the IJMHCL Editor-in-Chief.

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