of-care testing at the bedside for immediate blood results. Intravenous (IV) cannulation and the commencement of IV antibiotics, if clinically indicated, is just one way a patient can be treated in the RACF where they feel safe and secure.

Conclusion

The GFS is an invaluable resource for the local community. Unfortunately, however, the GFS model of care is a rarity, rather than the norm. The GFS aims to raise awareness of the crucial need for rapid response geriatric services for older people in the community and RACFs to meet the needs of an ageing population with increased complexities. Our future vision is that every area will have access to a GFS model of care that supports both the community and RACFs. ■

To make a referral to the Uniting War Memorial Hospital GFS, including the after-hours service for RACF residents, or to discuss concerns regarding a client, contact 0408 855 156, seven days a week. For more information on the service, visit http://bit.ly/2W5HkBy

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Diane Gellatly holding the Team Innovation Award presented to The Geriatric Flying Squad at the 2018 HESTA Awards.
Photo: Stu Morley HESTA

A human rights response to the Royal Commission

Australia's Royal Commission into Aged Care Quality and Safety should not ignore the opportunity to address human rights violations, specifically for those living in residential aged care and people with dementia, argue **Carmelle Peisah** and **Tiffany Jessop**

On the 31 October 2019, the *Interim Report* of the Royal Commission into Aged Care Quality and Safety was published (Royal Commission into Aged Care Quality and Safety 2019). Nothing included in the report, or the Commission's conclusion that the aged care system is in a state of crisis, was news to those of us working in aged care and related fields. We have repeatedly reported the neglect, overuse of psychotropic medications in dementia, lack of autonomy and overall abandonment experienced by older people (especially those with dementia) and their families (Brodaty *et al* 2018; Peisah *et al* 2018a; Peisah *et al* 2018b; Australian Law Reform Commission 2017; NSW Legislative Council 2016).

We, and many others, have reported such to the Commission via our formal submission (http://bit.ly/35ZlEKN) bringing these issues to the fore for public scrutiny which, if nothing else, may address the current '*inertia*' in response to the failures of the Australian aged care system (Royal Commission into Aged Care Quality and Safety Vol 1 2019).

What will change this inertia?

Byrnes (2019) has argued that a more explicitly referenced, human rights-based formulation of the Commission's report in the context of rights guaranteed by the Convention on the Rights of Persons with Disabilities (CRPD) will

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enhance its implementation. Byrnes offers seven cogent advantages of applying a clear human rights framework; the provision of (i) a symbolic statement of community and government values, expectations and responsibilities; (ii) a person-centred approach; (iii) a rights-based claim of entitlement (not a discretionary claim); (iv) the identification of a duty-bearer – primarily the State – with legal and possibly political obligation to act; (v) a framework for making and critiquing policy and budgetary allocations; (vi) an analytical framework which requires a principled justification for action or inaction by government that is inconsistent with human rights; and (vii) a focus for advocacy by older persons in the development of policy that affects them.

It is not just the Royal Commission that has been, as Byrnes (p3 2019) suggests, "*human rights anaemic*". Health care is often notoriously silent about human rights issues (O'Neill & Peisah 2019). Few health care professionals have ever even heard of the CRPD, and this needs to change.

The CRPD and aged care

So what is the CRPD and how does it relate to the findings of the Commission?

The CRPD, the first binding international human rights instrument explicitly to address disability, opened for signature in March 2007 and entered into force in May 2008. Australia ratified the CRPD in July 2008 and the optional protocol in 2009. All State parties – of which Health is but one – have obligations under that treaty. There are 50 Articles from the Convention. The most salient for aged care, and accordingly relevant to the Commission's findings, are:

- Article 12: Equal recognition before the law including the right to equal legal capacity, the support in exercising that legal capacity, and the right to be safeguarded against undue influence and abuse.
- Article 14: Liberty and security of the person.
- Article 16: Freedom from exploitation, violence and abuse.
- Article 19: Living independently and being included in the community.
- Article 22: Respect for privacy.
- Article 23: Respect for home and the family, and relationships on an equal basis with others.
- Article 25: Equitable access to health.

Notably, although not couched in the explicit frame of human rights obligations, the Commission's Terms of Reference referred to key

CRPD concepts of dignity, choice, control and independence (Royal Commission into Aged Care Quality and Safety 2018). Byrnes (2019) has related this more specifically to Article 19, the human rights of older people to independence, support in living circumstances of their own choice, and the enjoyment of full rights to participation in the community.

Violations in relation to these rights were indeed recognised and articulated by the Commission, both in the context of failures to support older people generally at home, and also younger persons with disability. Steel *et al* (2019) have extended the human rights violations associated with people living with dementia in residential care facilities beyond Article 19. They argue that the current segregation of people with dementia in residential care facilities, often a culmination of the very failure of community supports described by the Commission, frequently under duress, and involving confinement, are also violations of rights to non-discrimination (Article 5), liberty and security of the person (Article 14), equality before the law (Article 12), and accessibility (Article 9).

An opportunity

While the Royal Commission is investigating the state of the aged care system in its entirety, there is an extra layer of opportunity for addressing human rights violations specifically for those living in residential aged care and people with dementia. It should not be an assumption that once someone has a diagnosis of dementia or is unable to live independently, they automatically surrender their rights to autonomy, independence, dignity and respect nor lose their sense of self and identity.

The low dementia literacy and lack of specific skills in dementia care, plus the stigma associated with a dementia diagnosis, informs the culture of care and attitudes towards residents living in aged care and removes the human side of the caring role, transforming it into a list of tasks for the day and ensuring everyone is 'behaving'.

Kate Swaffer alluded to this in her testimony at the Royal Commission regarding the use restrictive practices with people with dementia, saying: "Unfortunately chemical and physical restraint is the easiest 'care' practice for many, but it is a pathway for people with dementia that is not in line with our human rights or best practice." In particular, as articulated in Article 25 of the CRPD, people with disability, including those with dementia, have an equitable right to the *enjoyment of the highest attainable standard of health without discrimination*.

The need to raise awareness and accountability regarding the human rights of older people, and particularly people with dementia, amongst governments, lay and professional communities alike has led internationally to calls for a specific convention on the rights of older persons (Doron & Apter 2010). Notably, Biggs and Haapala (2013) refer to an implementation gap in which the problem is recognised but local legal instruments are not fully utilised and/or structures are not in place.

Much of this is attributed to social ageism, recognising the vulnerability of older persons to resource limitations and recession, which in turn has an impact on service provision, especially in aged and dementia care (Biggs & Haapala 2013).

One could speculate that the very inertia described by the Commission is a manifestation of ageism, as is anyone's surprise about the neglect and abandonment occurring in aged care.

Conclusion

It is clear from previous Royal Commissions and investigations into the aged care sector that reactive changes to standards and policies do not result in real, sustainable change for people living in or receiving aged and dementia care. Standards, policies and clinical guidelines provide a framework for practice and governance, however these must be informed by using human rights principles as a foundation and making this clear during implementation.

Save the date

Capacity Australia presents *Beyond the Royal Commission into Aged Care: The Need For A Treaty On Human Rights For Older People* on Friday 21 August, 2020, in Sydney. For more details email Tiffany Jessop at tjessop@capacity australia.org.au.

Capacity Australia is a Sydney-based not-for-profit charity that promotes autonomy of decision-making and the importance of ensuring that where a person lacks capacity to make their own decisions, the necessary safeguards are in place to prevent abuse, neglect and exploitation. Capacity Australia is based in Sydney NSW, but extends its knowledge, training and assist ance to all States and Territories and internationally. Details: https://capacity australia.org.au/.

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