

5 September 2023

Committee Secretary
Parliamentary Joint Committee on Human Rights
PO Box 6100
Parliament House
Canberra ACT 2600

[REDACTED]

Dear Committee

Inquiry into Australia's Human Rights Framework

Thank you for the opportunity appear before the Committee and assist with its Inquiry into Australia's Human Rights Framework (the **Inquiry**). Aged and Disability Advocacy Australia (ADA) appreciates being consulted on this important issue.

Response to questions on notice

ADA thanks Senator Stewart for the further questions set out below:

- One of the findings of the Aged Care Royal Commission was the lack of quality/culturally appropriate care for Elders – would a federal Human Rights Act increase the provision of culturally appropriate care for Elders? How would a Human Rights Act assist you and services like yours in advocating for this cohort (if at all)?
- What are the effective, inclusive, accessible alternatives to the dispute-focused model of resolving human rights complaints? Are there international jurisdictions that are servicing aged/disability care cohort well in this space?

Improving culturally appropriate care for Elders

ADA considers that the introduction of a federal human rights act which expressly protects cultural rights of Australia's First Nations peoples, including older persons, would have a significant impact both individually and systemically on efforts to improve the quality of care of Elders.

In Queensland, section 28 of the *Human Rights Act 2019* provides protection for the cultural rights of Aboriginal and Torres Strait Islander persons.

[REDACTED]



The section recognises the existence of distinct cultural rights held by Aboriginal and Torres Strait Islander peoples. The Act imposes a positive obligation upon relevant public entities to administer policy and decision-making that does not deny these rights to individuals, including:

- To enjoy, maintain, control, protect and develop their identity and cultural heritage, including their traditional knowledge, distinctive spiritual practices, observances, beliefs and teachings; and
- To enjoy, maintain, control, protect, develop and use their language, including traditional cultural expressions; and
- To enjoy, maintain, control, protect and develop their kinship ties; and
- To maintain and strengthen their distinctive spiritual, material and economic relationship with the land, territories, waters, coastal seas and other resources with which they have a connection under Aboriginal tradition or Island custom; and
- To conserve and protect the environment and productive capacity of their land, territories, waters, coastal seas and other resources.

The section also states that Aboriginal and Torres Strait Islander peoples have the right not to be subjected to forced assimilation or destruction of their culture.

ADA raised the urgent need for a human rights legislative framework that is applicable across all aged care services, irrespective of jurisdiction or the funding source upon which a service is provided.

This is demonstrably needed in the context of Aboriginal and Torres Strait Islander persons who seek or are receiving aged care services, as well as persons from other marginalised or culturally diverse communities.

Most people do not enter a residential aged care facility by choice. Persons entering a facility directly from hospital by decision of a substitute decision-maker are often not adequately consulted, if consulted at all, about their choice or preferences with respect to a facility or its amenities. Though there may be some exceptions, it is extremely unlikely that entities or agencies that are tasked with making an accommodation decision of this kind for an older Aboriginal or Torres Strait Islander person will have had proper regard to the cultural rights of that person in determining a residential aged care facility, including the rights described above under section 28.

The introduction of a human rights act with reference to these protections is expected to have a significant impact on decision-making in this space. Not only in relation to accommodation decision-making, but also to the quality and administering of care for older Aboriginal and Torres Strait Islander peoples. For older Aboriginal and Torres Strait Islander persons who are subject to guardianship orders, it would add to existing obligations upon state and territory public guardians and trustees in relation to accommodation and services decision-making. For facilities that are providing public programs or services, including aged care services, it would compel consideration and proper regard to the circumstances, choice, and preferences of the individual, including cultural rights for Aboriginal and Torres Strait Islander persons.

For these protections to take full effect it is critical that aged care services and facilities are identified as an entity or service carrying out a public purpose or program, and thereby attaching the application of the human rights framework and associated standards to that entity or service. Failure to address this critical aspect will result in continued rights infringements against all older persons, and the further marginalisation of Aboriginal and Torres Strait Islander older persons and people with disability.

Effective, inclusive, accessible dispute resolution for human rights complaints

Whilst ADA repeats the comments made in our submission with respect to the critical need for litigation pathways to resolve human rights complaints and to enforce systemic oversight, we also consider it equally important that a variety of dispute resolution options are available to complainants that are accessible, timely and low-cost.

This is particularly important for older persons and people with disability, who are often faced with significant challenges in accessing and obtaining advocacy services.

Internationally, the models developed by Scotland and Ireland include features that support the understanding and application of human rights at the outset. These models include significant community and sector education, as well as guidance material for decision-making that helps the decision-maker to apply a human rights approach in practice. In doing so, disputes are reduced with less reliance on formal dispute resolution mechanisms.

The Scottish Human Rights Commission has developed the FAIR approach, which guides decision-makers to consider:

- The **Facts** – the experience of the individuals and to identify the facts that are important about that person?
- **Analyse** – the decision-maker is required to develop an analysis of the human rights which may be affected by the decision.
- **Identify** responsibilities – what actions need to be done, and who will be responsible.
- **Review** – a review of actions proposed and taken must take place to evaluate the outcome.

In undertaking each of the above steps, the model guides the decision-maker to not only engage with the individual at every point, but to properly consider, identify and analyse the potential impacts to that person.

To support a human-rights based approach for people with dementia, the Cross-Party Group on Alzheimer's at the Scottish Parliament has developed a Charter of Rights that is underscored by the 'Panel' approach. This method emphasises the rights of everyone, irrespective of impaired or questioned decision-making capacity to be empowered to participate in decisions affecting their rights. The method also clarifies the accountability of those responsible to ensure the respect, protection and fulfilment of human rights for all affected persons.

The FAIR approach has been adopted in Ireland, applying to health and social care services and settings. The Irish material highlights the dignity of the individual and the need to ensure that the preferences of a person are 'being heard', understood and appropriately applied.

Please see **attached** material developed by Scotland and Ireland in the rollout of these models.

It is critical that the adoption of Commonwealth human rights act is supported by the development of comprehensive guidance materials and education which is tailored to key sectors – including aged care, health and hospital services, and guardianship and administration agencies.

As set out in our submission, we strongly support the role of the Australian Human Rights Commission as an avenue of dispute resolution should the above frameworks not provide an individual with adequate resolution, and should the individual not wish to pursue litigation.

Thank you again for the opportunity to comment. ADA would be pleased to further assist the Committee with its inquiry, and is able to assist with the development of guidance and education materials as may be required.

Should you wish to discuss this submission, please do not hesitate to contact Vanessa Krulin, Solicitor and Senior Policy and Research Officer [REDACTED]

Yours faithfully

A handwritten signature in black ink, appearing to be 'Geoff Rowe', written in a cursive style.

Geoff Rowe
Chief Executive Officer

Section Two

Thinking it through



Thinking it through FAIR flowchart

This flowchart will help you to apply a human rights based approach.

F

Facts

What is the experience of the individual? Is the individual being heard and if not, do they require support to do so?

What are the important facts to understand?



A

Analysis of right(s) at stake

What are the human rights or issues at stake? (refer to Section 1 for help)

Is the right to life or the right not to be subjected to inhuman or degrading treatment at stake? If so, these rights are absolute and cannot be restricted.

Can the right be restricted? What is the justification for restricting the right?

Is the restriction on the right 'proportionate'? i.e. is it the minimum necessary restriction to meet the aim or is a "sledgehammer being used to crack a nut"?



I

Identification of shared responsibilities

What changes are necessary?

Who has responsibilities for helping to make the necessary changes?



R

Review actions

Have the actions taken been recorded and reviewed and has the individual affected been involved?

Case Study Scenarios and Film Scenarios

For the case studies and short film scenarios we would recommend that you read or watch each in turn, discuss with others where you can, and follow the steps in the flowchart to think through a human rights based approach to the scenario.

You can find guidance for each scenario from page 107 onwards in Section 6 of the Pack.

Here is a worked example of how to do this:

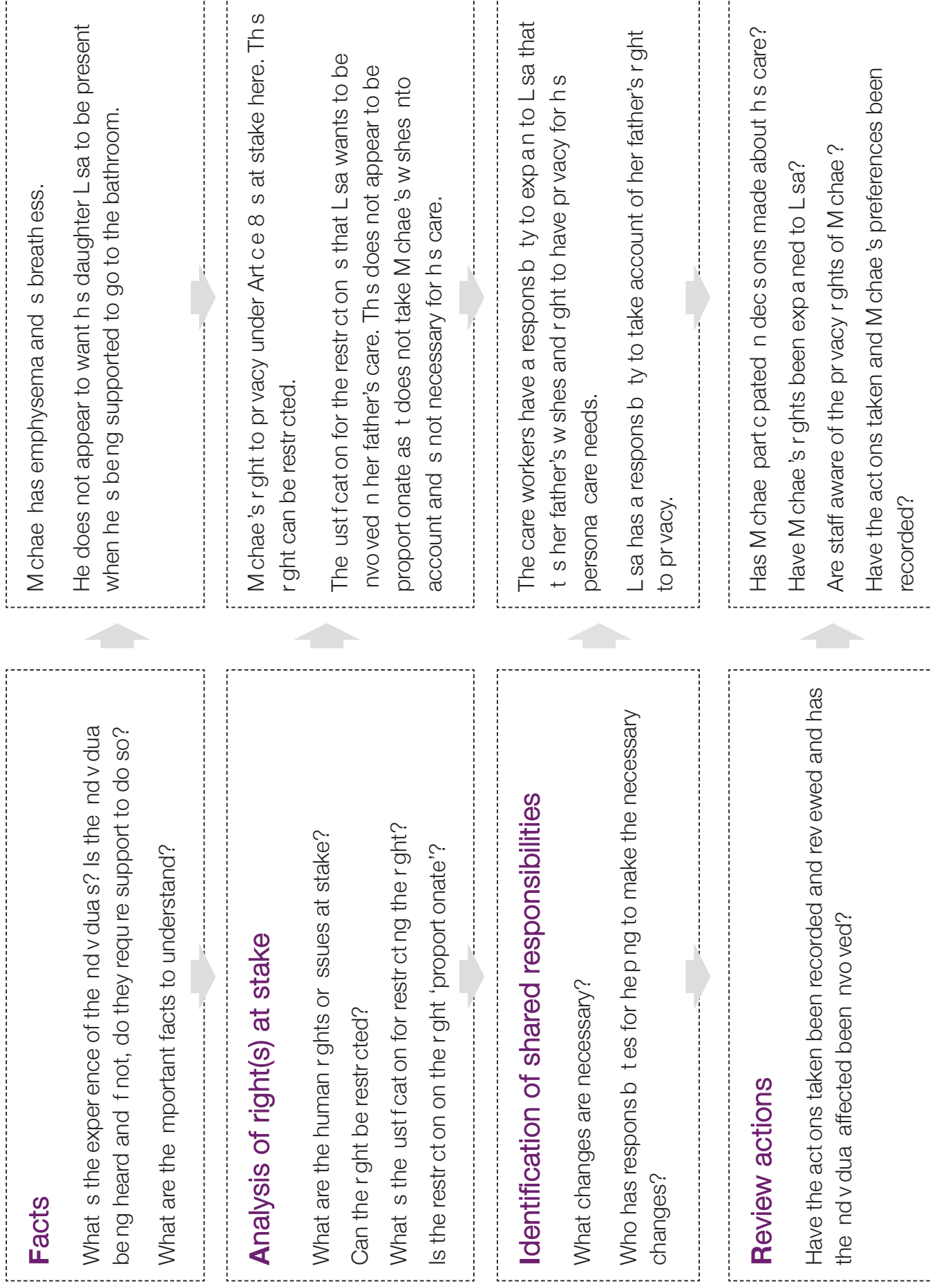
Example Case Study - Michael

Michael spent most of his life working in the mines in Lanarkshire. Well into his 80s he is now in a care home on the edge of the mining village where he was brought up. As a result Michael is well known not just to the others in the home but by many of the staff whose parents and grandparents he knew. Michael is in poor health and as a result of his work suffers from emphysema and is breathless.

Michael has a daughter, Lisa, who moved away from home when she was 18, qualified to be a nurse but has now returned back to the village after her retirement. She is a strong character and frequently takes over the tasks of the care staff and constantly inspects the work and support.

One day Michael asks to be supported to go to the toilet which the duty staff begin to respond to. Lisa insists that she will take her dad to the toilet. Michael begins to get upset and to start to breathe more heavily and to get agitated. The staff ask Lisa to leave but she refuses saying that as a professional nurse and as a daughter she has the right to stay and make sure that they are looking after her father properly.

Using the flowchart for example case study - Michael



Film Scenarios

Overview of Film Scenario One - Sheila



Sheila is a lady in her mid 70s who has recently been diagnosed with the early onset of dementia. She is fascinated with plants and loved her garden. She now lives in a care home. In this film we see Sheila looking outside at the sensory garden and struggling to try to open the door which leads out onto the garden.

Mary, the support worker, assists Sheila back to her seat and tells her that it is not possible for Sheila to go out into the garden on her own and that dinner is nearly ready. Mary reminds Sheila that her daughter was concerned that Sheila should not be allowed to go out unaided. Sheila gets increasingly frustrated and distressed at this.

In a later scene we see the care staff discussing the incident and the ways in which they can handle the situation.

Watch **Sheila's story part 1** on the DVD. Once you have watched the film you can use the flowchart at page 41 to think through the human rights issues the film raises.

After you have thought through the flowchart questions you can watch **Sheila's story part 2** to see how things worked out.

Overview of Film Scenario Two - Irene



Irene lives at home. She has recently spent a period of time in hospital as a result of a urinary tract infection, and although she is now back at home she is increasingly weak and frail. When the infection was bad, she was very confused. Irene is supported by her son, Alan. Alan has recently been made redundant and has not coped well with this additional pressure and we get the impression that he has been depressed, drinking a bit too much and smoking almost constantly. Irene gets on very well with her son, dotes on him.

Sadly, Irene's condition deteriorates over time and the rate of this decline has become faster to the extent that she is now unable to move from her bedroom and requires assistance for all aspects of her life. She never leaves her bedroom and very rarely sees anyone other than the staff who come to support and care for her.

The film clip shows two workers who know Irene well sitting in their car chatting about Irene. It becomes clear that this is to be the last day that they are going to be working with Irene. They are concerned that she doesn't know that this is the case and that she will be very upset when she learns this.

The workers also spend some time talking about Alan, and express their concerns that he has gone downhill fast since he lost his job and that his mood has changed.

Watch **Irene's story part 1** on the DVD. Once you have watched the film you can use the flowchart at page 41 to think through the human rights issues the film raises.

After you have thought through the flowchart questions you can watch **Irene's story part 2** to see how things worked out.

Overview of Film Scenario Three - Jimmy

Jimmy lives in his local care home. He is in his 70s and although increasingly frail has a positive outlook and is very well looked after and respected by other residents as well as by the staff who have a good supportive relationship with him.

Anne is Jimmy's youngest daughter. She is a working mother in her mid 30s and cares a great deal about her father. She is often very stressed and agitated trying to balance seeing her father, her job, her partner and her children. She has a positive relationship with the staff.

In the film clip we see Anne having a conversation with the manager of the care home. Anne is concerned about her dad falling over when trying to get out of bed. Anne suggests that bed sides would help her father to be safe.

In the next scene Anne is seen chatting to Jimmy's care worker about her father's diet. She reminds the worker that she had suggested a particular diet. Jimmy has his own ideas.

Watch **Jimmy's story part 1** on the DVD. Once you have watched the film you can use the flowchart at page 41 to think through the human rights issues the film raises.

After you have thought through the flowchart questions you can watch **Jimmy's story part 2** to see how things worked out.

Scenario 1: Martha

Martha is a lady in her late 70s and has Alzheimer's. She used to be a very active and vibrant and had a particular love of dancing. Nowadays she has difficulty walking and spends a lot of her time at home where she is supported by close friends and relatives as well as care workers. She used to be a dance teacher and many visitors who come to see her are her ex-pupils.

One of these visitors, Susan, notices that Martha is somewhat distressed. Susan asks her what is wrong and Martha is unable to tell her. It is then that Susan notices that there are some bruises on Martha's legs. She asks one of the care workers what had happened. The staff member tells Susan that normally when Martha is moved from her bed to a chair in the sitting room a wheelchair is used and that normally transfer straps are used to stop Martha from falling. The worker says that Martha doesn't like the straps and earlier in the day she had refused to allow the straps to be used. Unfortunately, when being moved Martha had had a slight tumble and had bruised herself as a result.

Susan attempts to say to the care worker that it is in Martha's own best interest to have the straps there when she is being moved, even if she does not want them. But she gets the distinct impression that as she is not a relative she is not being listened to.

Scenario 2: Clive and Adrian

Clive and Adrian are now in their mid 70s but have been living together for over 30 years. They both have deteriorating health and as a result have arranged to have a care at home service provided to support them.

Ben is the carer allocated to them. Ben is in his early thirties and is a evangelical Christian. His religious faith is a major element of his life and is a key motivator in his care work. Ben is uncomfortable with Clive and Adrian's relationship. Because of his religious views, he believes homosexuality to be 'wrong' and 'unnatural.' He has only been working with Clive and Adrian for a few days when he gets into a heated exchange with them over their sexual orientation. Ben declares to the couple that he believes that they are destined for hell and damnation for engaging in depraved and immoral practices. Clive and Adrian are shocked, not least because these attitudes are being expressed in their own home from someone they feel should be there to support them. When challenged, Ben says that he is allowed to express his beliefs: "It's a free country after all," he retorts.

After a few more days Ben refuses to work with Clive and Adrian, arguing that he has human rights which need to be valued. For Ben this is a matter of conscience and principle even if it means he will lose his job.

Ben's manager knows that he is an excellent worker and, as she doesn't want to lose him from the organisation, she agrees to the request and allocates another member of staff to attend and care for the couple. On doing so, she informs the newly assigned member of staff that he should be aware that the couple are gay.

Scenario 3: Callum

Jackie has been a home care worker for a number of years and has always got on very well with those who use services. Callum is one of those with whom she has a good relationship. He is a retired merchant seaman who leads a healthy and positive life in his late 70s. He has challenges with mobility and uses a wheelchair to get around. He is supported by a care at home organisation who assist him to get up and dressed in the morning. Another agency provides support to help Callum stay connected in the community.

Callum has a daughter in Australia and a son, William, who visits on average about twice a year. William has recently been made redundant and has separated from his wife. As a result he comes to live with his dad in the family home.

Over the few weeks that William has been there Jackie has noticed a change in Callum. He has become much quieter, less positive and more passive in his behaviour. When she visits William always stays in the room, even when she is washing his father. In fact she is hardly on her own with Callum these days. She is increasingly aware that William is drinking and may even be using drugs. On occasions he can be aggressive and awkward to her especially when he has had a few drinks.

On one occasion when she is visiting, Callum says he doesn't want his son in the room to see him being changed. He says this humbly. William refuses to leave and says that it is his house after all. He then tells Jackie that he is looking at cancelling the home care service and that he can look after his dad. When Jackie challenges this he gets very abusive and begins to rant and rave. Jackie is more and more convinced that the best thing for Callum is that he should be admitted to a care home. She is aware that there is one nearby specifically for retired merchant seamen and she feels Callum would love to be there. She is also, however, aware that William has let it slip that he wants dad at home in order for him to keep the house and not have the government use his inheritance.

Scenario 4: Malcolm

Suven Care is a home care organization which considers itself to be at the cutting edge of good care and the use of new innovative technology to support individuals to live independently at home.

Recently Suven introduced a new system. They call it the Peace of Mind support. This involves the use of small electronic tags which those who experience mild dementia can have attached to their belts or sewn into their clothes. If the individual goes missing they can be tracked by means of a satellite system and supported to return home. The system has the support of the local authority.

Suven's clients were asked to take part in the project. As part of this they had to agree to stay in their own home between 10.00pm and 9.00am.

Malcolm is a man in his 70s who frequently forgets to wear either the belt or the hat where the tags have been attached. His daughter, who has guardianship for Malcolm, is keen for the service to continue in order to allow Malcolm to live independently in his own home despite Malcolm's reluctance to be tagged. Over time the care provider organization has become more and more frustrated with Malcolm as he's frequently found outside and apparently lost in the neighborhood during the day without his tag. On Christmas Eve Malcolm is wearing his tagged hat and the alarm is raised when he's found outside at night. Malcolm is furious to be escorted home, as he wants to attend midnight mass at the local church.

Suven have raised the possibility that Malcolm may need full-time residential care. Malcolm continually protests that he doesn't want to be made to feel as if he's a prisoner in his own home.

Scenario 5: Marian

Marian is supported to live independently at home. Although she is married, her husband is unable to support her as he has had a number of heart failures. Marian is a larger woman and spends a great deal of her time in bed. Indeed she very rarely leaves the house, not least because the local authority has been unable to provide a properly fitted wheelchair.

It has now been four weeks since Marian had a shower or a bath. The care at home organisation had a member of staff, Donna, who had been previously helping Marian to bathe in the shower, but a few weeks ago Donna pulled a muscle in her back trying to manoeuvre Marian out of the shower. After this the care at home organisation decided, in consultation with the local authority which funded her care, that Marian should be provided with a strip wash so that staff do not have to lift her.

As time has gone by both Marian and her husband have grown very upset at this process, especially because warmer weather has been causing her to perspire a lot more than usual. They have both become increasingly depressed and withdrawn because, despite their pleas, the care at home organisation has said that it has a duty to support their staff and cannot require them to engage in a work practice which could damage their health.

Scenario 6: Phamie

James is visiting his mother, Phamie, in her care home one afternoon. Phamie has always been very happy there, a belief that over the months and years James has seen her become frail. This particular afternoon his mum seems quiet and withdrawn and when he asks her if there is anything wrong she begins to quietly sob. Very quickly he discovers that since his last visit the staff have begun a practice of closing the doors to residents' rooms. Phamie tells him that this has meant that she can no longer see her friends or staff walking up and down the corridor and have a gossip. She says that lots of people feel that they shouldn't knock on the door if it's closed. Phamie also tells her son that she feels the room gets very stuffy and that she missed the breeze which came into the room when the door was left open.

James is annoyed at this and immediately goes to speak to a staff member. The staff member tells James that they have had to make sure that all doors are closed in order to bring the home's practices in line with fire regulations. The worker stresses to James that it is their duty to make sure that all doors are closed to prevent fire spreading and therefore keep all residents safe, and that they cannot allow residents to leave the doors ajar or to put chairs or anything else in the way which would prevent the doors from closing.

James highlights that his mother is feeling hemmed in and losing contact with her friends because she likes the peace of her own room and doesn't want to be in the sitting room all the time but equally she likes to see what is going on around her. The staff member apologises but says that her hands are tied as this is the policy of the home.

Scenario 7: Balbir

Balbir is a devout Hindu in his late 70s who has moved into a care home. Unfortunately, after a very brief period of time and before anyone has really had the chance to get to know him, Balbir's health deteriorates. His condition quickly becomes terminal and he is nearing the end of his life. He and his family have decided that they do not want him to move to the hospice but that they want him to be able to stay where he is. They feel he simply cannot cope with yet another move.

One evening his close family and relatives are at his bedside as his condition deteriorates and his breathing becomes more shallow. Just before death, his family remove him from his bed to lay him on the floor in keeping with their beliefs.

The care home support worker is shocked at what she sees and immediately raises the alarm with colleagues before returning to the room and trying to restrain the relatives and prevent them moving Balbir from his bed.

An unseemly argument follows and various other members of staff arrive and become involved. During the commotion, Balbir passes away. His family are extremely angry that he was unable to die in accordance with his beliefs.

Scenario 8: Grace

John and Mar or e are a m dd e-aged marr ed coup e who have recent y supported Mar or e's mother, Grace, aged 82, as she moved nto a care home. Mar or e's father d ed ten years ago and over that t me Grace has s ow y deter orated both n hea th and n her ab ty to ve ndependent y. Grace has dement a.

One day, care staff n the home nform John and Mar or e that they be eve Grace s hav ng a sexua reat onsh p w th a ma e res dent. Both Grace and the other res dent have ssues reat ng to the r menta hea th.

On one occas on a member of staff not ces Grace push ng the ma e res dent away and say ng "Who are you? Get away from me." However, when the staff member approaches Grace beg ns to ho d hands w th the ma e res dent and they seem to be happy w th one another aga n.

John and Mar or e are extreme y d stressed by th s, and Mar or e n part cu ar fee s that t s her respons b ty on beha f of her ate father to make sure that her mother behaves n an approp rate manner. She fee s that she s mp y cannot know what she s do ng. She s part cu ar y upset to have arr ved one afternoon and to have w tnessed her mother k ss ng the man.

They te the staff that they wou d prefer t f Grace was moved to another unt w th n the care home and that f staff w tness any contact w th the ma e res dent they shou d ntervene as a matter of pr or ty.

The staff apprec ate the concerns of the fam y and agree to mon tor the coup e cose y and restr ct the amount of t me the two res dents spent a one together. As they are ncreas ng y separated Grace and the ma e res dent become rr tated that they are not see ng each other and beg n to b ame one another.

After repeated requests from John and Mar or e, the staff agree to keep the two apart resu t ng n the ma e res dent becom ng aggress ve and abus ve towards the staff.

Scenario 9: Ayesha

Ayesha is a lady with mild learning disabilities who lives in a care home. She is the youngest resident by a considerable age and is certainly the fittest and most mobile. She has been placed there because there was no other provision for her support in what is a small and remote Scottish village.

Ayesha has a history of starting fires. She loves the bright colours of the flames. She calls fire the 'dancing lights.' Although this has not occurred for over three years, care home staff were instructed by her psychiatrist to routinely search her each time she returned from being out unsupervised, to ensure she did not have matches or a lighter.

Ayesha is increasingly annoyed at having to endure the intrusion of a personal search every time she comes back to the home and her family complain to the manager and staff on her behalf. The justification is that they are not only following medical advice but that the actions are primarily for the protection of other residents to whom they have a duty of care to ensure that Ayesha does not increase the risk of a fire starting in the home. The manager also suggests that Ayesha might not be allowed out at all if she does not consent to the search upon her return.

Scenario 10: Catriona

Catriona is a lady in her early 70s. She is a quietly spoken individual whose first language is Gaelic. Over a period of time Catriona becomes increasingly unwell and most of her family moves away. She decides that she should live in a care home.

Catriona has now been a resident in the care home for a number of years and has seen manycomings and goings, not least of staff. The care home was recently taken over by a new organisation which has brought with them their own way of doing things. There is a new manager who has introduced many 'improvements', including a reduction in the time which residents are allowed to spend in their own room, encouraging them to take meals together in the dining room, a restriction of access to food during non-meal times and a significant change in the menus at meal times. He argues that these are all undertaken to ensure proper diet, reduce obesity and to improve socialisation.

For someone like Catriona these changes are unwanted and strike her as an infringement of her own freedom to do what she wants to do within her own home. She much prefers eating in her room, having a chat with the care staff and watching her television. The staff leave Catriona with a tray of food in her room whilst they focus on the residents in the dining room. However, Catriona does not like the new food and often only nibbles at it, leaving most of it untouched. Over a few weeks Catriona begins to lose weight quite markedly.

One of the biggest changes brought about is that many of the new staff are not Gaelic speakers. Previously, Catriona loved being able to have a chat in her own tongue. One of the care workers in the home previously used to switch Catriona's television or radio over to the Gaelic channels when she was on shift, but she has now left. There is now no one who can speak to Catriona in her mother tongue and no-one who switches the radio or television over.



Linking national standards developed by HIQA to human rights as set out in the European Convention on Human Rights Act 2003 and the United Nations Convention on the Rights of Persons with Disabilities 2006

A number of national standards developed by HIQA make high-level reference to a human rights-based approach to care and support. Within the national standards emphasis is placed on protecting and promoting people’s rights and respecting their autonomy, privacy, dignity, values, preferences and diversity. This includes the *National Standards for Safer Better Healthcare* (2012) as well as standards developed in the areas of older persons, disability, maternity, and adult safeguarding.¹ These national standards emphasise the importance of actively involving people using services in their own care and promote a culture of kindness, consideration and respect. This document provides an overview of the relationship between specific human rights, as set out in the European Convention on Human Rights (ECHR) and the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), and some of the national standards developed by HIQA; this is not intended to be an exhaustive list of standards.

Human Rights	<i>National Standards for Safer Better Healthcare</i> (2012)	<i>National Standards for Residential Services for Children and Adults with Disabilities</i> (2013)	<i>National Standards for Residential Care Settings for Older People in Ireland</i> (2016)	<i>National Standards for Safer Better Maternity Services</i> (2016)	<i>National Standards for Adult Safeguarding</i> (2019)
Right to freedom from torture or inhuman or degrading treatment ECHR: Article 3 UNCRPD: Articles 15, 16	‘Service providers ensure all reasonable measures are taken to protect service users from abuse.’ (Standard 3.4)	‘Each person is protected from abuse and neglect and their safety and welfare is promoted.’ (Standard 3.1)	‘Each resident is safeguarded from abuse and neglect and their safety and welfare is promoted.’ (Standard 3.1)	‘Maternity service providers ensure all reasonable measures are taken to protect women and their babies from all types of abuse.’ (Standard 3.7)	‘The service strives to protect each person from the risk of harm and to promote their safety and welfare.’ (Standard 3.1)

¹ The National Standards for Adult Safeguarding were jointly developed by HIQA and the Mental Health Commission.

Guidance on a Human Rights-based Approach in Health and Social Care Services and the support tools can be accessed at www.hiqa.ie

Linking national standards developed by HIQA to human rights as set out in the European Convention on Human Rights Act 2003 and the United Nations Convention on the Rights of Persons with Disabilities 2006

Human Rights	<i>National Standards for Safer Better Healthcare (2012)</i>	<i>National Standards for Residential Services for Children and Adults with Disabilities (2013)</i>	<i>National Standards for Residential Care Settings for Older People in Ireland (2016)</i>	<i>National Standards for Safer Better Maternity Services (2016)</i>	<i>National Standards for Adult Safeguarding (2019)</i>
Right to liberty and security ECHR: Article 5 UNCPRD: Article 14	-	'People living in the residential service are not subjected to a restrictive procedure unless there is evidence that it has been assessed as being required due to a serious risk to their safety and welfare.' (Standard 3.3)	'Arrangements to protect residents from harm promote bodily integrity, personal liberty and a restraint-free environment in accordance with national policy.' (Standard 3.5)	-	'Staff ensure that any actions undertaken to address harm: <ul style="list-style-type: none"> - take account of the person's will and preferences, beliefs and values - are proportionate and tailored to the person's circumstances - are the least restrictive and are applied for the shortest possible time - and are subject to regular review. This is fully explained to the person at an appropriate time.' (Feature 10 of Standard 1.2)

Linking national standards developed by HIQA to human rights as set out in the European Convention on Human Rights Act 2003 and the United Nations Convention on the Rights of Persons with Disabilities 2006

Human Rights	<i>National Standards for Safer Better Healthcare (2012)</i>	<i>National Standards for Residential Services for Children and Adults with Disabilities (2013)</i>	<i>National Standards for Residential Care Settings for Older People in Ireland (2016)</i>	<i>National Standards for Safer Better Maternity Services (2016)</i>	<i>National Standards for Adult Safeguarding (2019)</i>
<p>Right to a fair trial and access to justice²</p> <p>ECHR: Article 6 UNCRPD: Article 13</p>	<p>'Clear and transparent decision-making processes, including referral pathways, to facilitate service users' access to healthcare services. The effectiveness of these processes is regularly evaluated.' (Feature 3 of Standard 1.2)</p>	<p>'The residential service demonstrates transparent and effective decision making when planning, procuring and managing the use of resources.' (Feature 4 of Standard 6.1)</p>	<p>'The residential service demonstrates transparent and effective decision-making when planning, procuring and managing the use of resources.' (Standard 6.1.4)</p>	<p>'Governance arrangements are in place to ensure the interests of women and babies using the service are taken into consideration when decisions are made about the planning, design and delivery of services, such as including former patients and service users in these processes, for example, through a maternity service liaison committee.' (Feature 4 of Standard 5.2)</p>	<p>'People are informed about and supported to access the justice system if there is a concern that a crime may have been committed. Examples of this may include contacting An Garda Síochána (Ireland's National Police Service) or employing legal representation.' (Feature 5 of Standard 1.1)</p>

² In the context of health and social care settings this goes beyond the process of a legal trial and includes decision-making processes, for example making a complaint, making a compensation claim, commencing staff disciplinary proceedings or tribunals in health and social care settings.

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<p>Right to respect for private and family life</p> <p>ECHR: Article 8 UNCPRD: Articles 19, 22, 23</p>	<p>'Service users' dignity, privacy and autonomy are respected and promoted.' (Standard 1.6)</p> <p>'Service providers promote a culture of kindness, consideration and respect.' (Standard 1.7)</p> <p>'Service users are supported in maintaining and improving their own health and wellbeing.' (Standard 1.9)</p>	<p>'The privacy and dignity of each person are respected.' (Standard 1.2)</p> <p>'Each person develops and maintains personal relationships and links with the community in accordance with their wishes.' (Standard 1.4)</p> <p>'The residential service is homely and accessible and promotes the privacy, dignity and safety of each person.' (Standard 2.2)</p>	<p>'The privacy and dignity of each resident are respected.' (Standard 2.2)</p> <p>'Each resident develops and maintains personal relationships and links with the community in accordance with their wishes.' (Standard 1.4)</p> <p>'Each resident continues to receive care at the end of their life which respects their dignity and autonomy and meets their physical, emotional, social and spiritual needs.' (Standard 2.5)</p> <p>'The residential service is homely and accessible and provides adequate physical space to meet each resident's assessed needs.' (Standard 2.6)</p>	<p>'Women and their babies experience maternity care which respects their diversity and protects their rights.' (Standard 1.3)</p> <p>'The dignity, privacy and autonomy of each woman and baby is respected and promoted.' (Standard 1.6)</p> <p>'Maternity service providers promote a culture of caring, kindness, compassion, consideration and respect.' (Standard 1.7)</p>	<p>'Each person's rights are recognised and promoted.' (Standard 1.1)</p> <p>'Each person is supported to develop the skills to protect and promote their own physical, mental, emotional and social health and wellbeing and protect themselves from harm.' (Standard 4.1)</p>

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Right to freedom of thought, conscience and religion ECHR: Article 9 UNCPRD: Articles 3, 21	'Facilitation of service users to exercise civil, political and religious rights as enshrined in Irish law, as far as is reasonably practicable, when they are receiving healthcare.' (Feature 1 of Standard 1.3)	'Each person exercises choice and experiences care and support in everyday life.' (Standard 1.3)	'Each resident has a right to exercise choice and to have their needs and preferences taken into account in the planning, design and delivery of services.' (Standard 1.3)	'Services are flexible, accessible and culturally sensitive and planned individually to motivate all women — including vulnerable and marginalised women — to engage with services.' (Feature 3 of Standard 1.3)	'Where a safeguarding concern arises, the person and or their nominated person, is involved in the safeguarding process and is supported to exercise choice.' (Feature 8 of Standard 1.2)
Right to freedom of expression ECHR: Article 10 UNCPRD: Articles 3, 21	'Service users are enabled to participate in making informed decisions about their care.' (Standard 1.4) 'Service users' informed consent to care and treatment is obtained in accordance with legislation and best available evidence.' (Standard 1.5)	'Each person makes decisions and has access to an advocate and consent is obtained in accordance with legislation and current best practice guidelines.' (Standard 1.6)	'Each resident, where appropriate, is facilitated to make informed decisions, has access to an advocate and their consent is obtained in accordance with legislation and current evidence-based guidelines.' (Standard 1.6)	'Women are empowered to make informed decisions about their care.' (Standard 1.4)	'Each person is supported to engage in shared decision-making about their care and support to reduce their risk of harm and promote their rights, health and wellbeing.' (Standard 1.2)

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Right to an effective remedy ECHR: Article 13 UNCPRD: Article 13	'Service users' complaints and concerns are responded to promptly, openly and effectively with clear communication and support provided throughout this process.' (Standard 1.8)	'Each person's complaints and concerns are listened to and acted upon in a timely, supportive and effective manner.' (Standard 1.7)	'Each resident's complaints and concerns are listened to and acted upon in a timely, supportive and effective manner.' (Standard 1.7)	'Women or families who make a complaint are helped with accessing support services, such as independent advocacy services.' (Feature 5 of Standard 1.9)	'The service has a process in place that facilitates people using the service and staff to provide feedback, make complaints and identify areas for improvement. Staff communicate the outcomes from complaints to people using the service.' (Feature 6 of Standard 3.1)
Prohibition of discrimination ECHR: Article 14 UNCPRD: Articles 3, 5, 17, 25	'Initial and ongoing access to healthcare for service users which is in compliance with legislation and does not discriminate according to age, gender, sexual orientation, disability, marital status, family status, race, religious belief, or membership of the Traveller Community.' (Feature 2 of Standard 1.3)	'Social, religious and cultural beliefs and values are respected and valued in the everyday activities of the residential service.' (Feature 6 of Standard 1.3)	'Each resident is treated with dignity, respect and kindness. Their equality is promoted and respected in relation to the resident's age, gender, sexual orientation, disability, family status, civil status, race, religious beliefs and membership of an ethnic group or Traveller community.' (Feature 3 of Standard 1.1)	'Initial and ongoing access to maternity care complies with legislation and does not discriminate according to age, gender, sexual orientation, disability, civil status, family status, race, religious belief, or membership of the Traveller Community.' (Feature 1 of Standard 1.3)	'Each person's rights, such as the rights to autonomy, respect, dignity, privacy and equality of opportunity and treatment, and non-discrimination are promoted and protected by staff. All staff are aware of these rights as set out in legislation, national policy and national standards.' (Feature 1 of Standard 1.1)

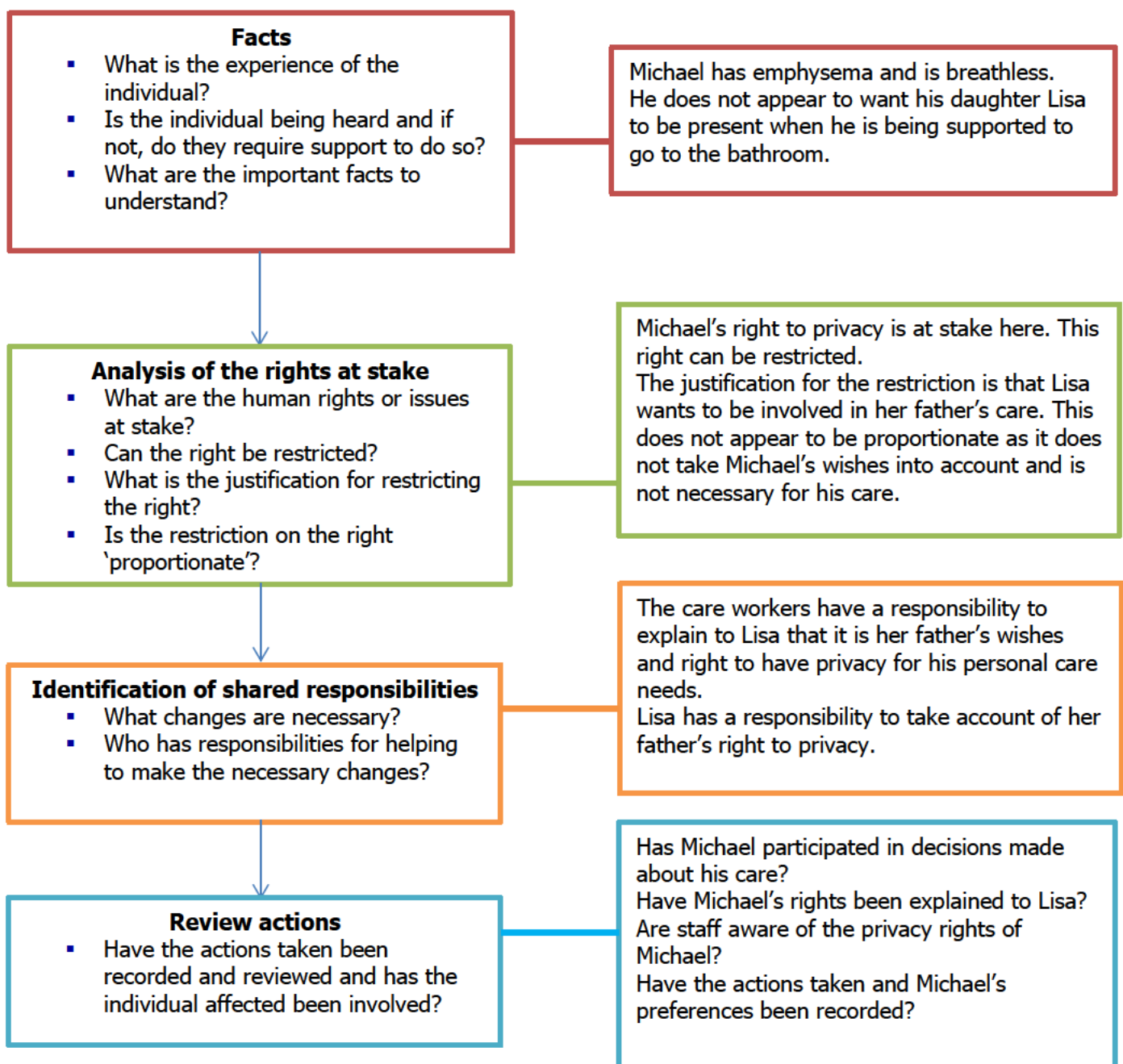
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The FAIR approach to decision making in health and social care

This document sets out the FAIR approach to decision making in health and social care services, developed by the Scottish Human Rights Commission. This resource has been designed to help staff consider their actions when faced with a decision that may restrict the rights of a person using a service.⁽¹⁾ In this approach, respecting the dignity of a person using services is central to all decisions made by staff. The below chart sets out the type of questions asked and the appropriate responses that should be undertaken by staff using this approach. The example relates specifically to a situation that can arise in a homecare setting but the process is adaptable across settings.

This document also includes a blank flow chart for staff to use when faced with such decisions.



¹ Scottish Human Rights Commission. A human rights-based approach: an introduction. Scotland. <http://careaboutrights.scottishhumanrights.com/flowchart.html>

