

RIGHTS FIRST – EVERY TIME

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THIS SESSION

- Changing aged care landscape
  - From - institutional foundations
  - To - a human-rights based approach
- **See it.** Stop it. Prevent it. **See** through the lens of human rights
- Ensuring that human rights come first – every time.

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## INSTITUTIONAL FOUNDATIONS

### Paternalism

"Of all tyrannies, a tyranny sincerely exercised for the good of its victims may be the most oppressive...those who torment us for our own good will torment us without end for they do so with the approval of their own conscience."

C. S. Lewis

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## INSTITUTIONAL FOUNDATIONS

### Institutional-Structural Violence

This term is helpful in understanding the ways that paternalism is so normalised leading to "business as usual" discrimination and dehumanising practices that structure interactions that appear "normative or rational from the perspective of the dominant power group" but which constitute profound oppression and breaches of International Human Rights Law.

Barak, 2003, p. 135

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## INSTITUTIONAL FOUNDATIONS

### Institutional Abuse

Institutional abuse as a form of abuse—described as occurring when the 'routines, systems and regimes of an institution result in poor or inadequate standards of care and poor practice which affects the whole setting and denies, restricts or curtails the dignity, privacy, choice, independence or fulfilment of individuals'.

Australian Law Reform Commission, Elder Abuse – A National Legal Response: Final Report (ALRC Report 131, May 2017) 110.

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### HUMAN RIGHTS-BASED APPROACH

- Human rights are for all humans they are not an 'add on', an opinion, or yet another 'model of care'
- Human rights expose previously ignored and normalised violations
- Human rights sit above organisational values, model of care, staffing model and physical build
- Human rights include freedom from overt abuse and self-determination (including having appropriate accommodations and support to exercise self-determination)
- Older people do not have different or lesser rights

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### CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES

- Respect for the inherent **dignity**, individual **autonomy** including **freedom to make one's own choices**, and **independence of persons**  
(UNCRPD, art. 3(a))
- Discrimination on the basis of disability **which has the purpose or effect** of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field  
(UNCRPD, art. 2 para. 3)

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### CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES

- **State obligation** to "take all appropriate measures to **eliminate discrimination** on the basis of disability by any person, organization or private enterprise".  
(UNCRPD, art. 4(e))
- Article 12 reaffirms that persons with disabilities have the right to **make their own decisions** and to be provided with decision-making support giving effect to their current will and preferences. It includes having **control over their own finances**.  
(UNCRPD, art. 12)

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STATEMENT OF RIGHTS

(1) An individual has a right to:

- (a) exercise choice and make decisions including in relation to
- (ii) how, when and by whom, services are delivered;
- (iii) the individual's financial affairs and personal possessions; and
- (b) be supported (if necessary) to make those decisions, and have those decisions respected.

(3) An individual has a right to:

- (a) be treated with dignity and respect; and
- (b) safe, fair, equitable and non-discriminatory treatment.

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STATEMENT OF RIGHTS

(4) An individual has a right to:

- (a) be **free from** all forms of violence, degrading or inhumane treatment, exploitation, neglect, coercion, abuse or sexual misconduct; and

(3) An individual has a right to:

- (d) funded aged care services being delivered to the individual:
- (ii) in an **accessible manner**;

(7) An individual has a right to:

- (a) be informed, **in a way the individual understands**, about the funded aged care services the individual accesses;

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QUALITY STANDARDS

Aged Care Standards. Outcome Statement 1.2:

The provider delivers care and services in a way that:

- (a) is free from all forms of **discrimination**, abuse and neglect
- (b) treats older people with **dignity and respect**
- (c) respects the **personal privacy** of older people.

1.2.4 The personal privacy of older people is respected, older people have **choice about how and when they receive intimate personal care or treatment**, and this is carried out sensitively and in private.

The provider demonstrates they understand the rights of older people set out in the **Statement of Rights** and has practices in place to ensure that they deliver care and services consistent with those rights being upheld.

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### SEEING THROUGH THE LENS OF HUMAN RIGHTS

A resident with Parkinson's Disease and moderate cognitive impairment could be found each day extremely distressed and smashing on the front door of the aged care home to get out. All he wanted was to go to his local yacht club for a few hours as he had done his entire working life.

It was assessed that it was not safe for him to go on his own. External behaviour experts made some recommendations for a behaviour support plan that included offering him a drink or distracting him with personalised music or a walk around the home. PRN psychotropic medication was also approved.

Family rejected the managers suggestion that the man's own financial resources be used to hire someone to assist him to the club a few days a week. Two weeks later the man lost balance while trying to open the front door and ended up in hospital with a broken hip. He died a few weeks later.

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SEEING THROUGH THE LENS OF HUMAN RIGHTS		
Residential Aged Care	Home Care	Areas to transform policy & practice
Before moving in	Before reaching out for support at home	Advertising, brochures, information provision, phone calls, discharge planning, tour, meetings, dealing with family, contracts, communication needs.
Moving in	First meeting to discuss support	Admission procedures, interim care plan, care plan, social plan, meeting others, broader community, access to own finances
Life in residential aged care	Life at home receiving services	Personal care, clinical care, meals, routine, social & recreational, broader community, purchasing, living environment, relationships, evaluations, feedback loops, complaints
Moving out	Moving out	Social and spiritual support, transition support, information provision, contracts, relationships, planning, legacy.

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STATEMENT OF RIGHTS
<p>An individual has a right to</p> <ul style="list-style-type: none"> <li>- make decisions and have those decisions respected.</li> <li>- be provided with what they need to make a decision (support, accommodations, accessibility, in a way they understand, using their preferred form of communication)</li> <li>- dignity, respect, non-discrimination</li> </ul> <p>*Advertising, brochures, information provision, phone calls, discharge planning, tour, meetings, dealing with family, contracts, communication needs.</p>

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HUMAN RIGHTS-BASED APPROACHES
<ul style="list-style-type: none"> <li>* Human rights-based approaches are about turning human rights from purely legal instruments into effective policies, practices, and practical realities.</li> <li>* Human rights principles and standards provide guidance about <b>what</b> should be done to achieve freedom and dignity for all. A human rights-based approach emphasises <b>how</b> human rights are achieved.</li> </ul> <p>Australian Human Rights Commission. Human Rights Based Approaches. Definition (2025)  <a href="https://humanrights.gov.au/our-work/rights-and-freedoms/human-rights-based-approaches">https://humanrights.gov.au/our-work/rights-and-freedoms/human-rights-based-approaches</a></p>

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