

National Elder Abuse Conference

July 2019

ROCK
THE BOAT

Discussion Paper # 2

Safeguarding models through the human rights looking glass—
a legal perspective

Caxton Legal Center and our panel acknowledge
the Jagera and Turrbal people as the first nations and custodians
of the land on which we work.
We remember their ancestors with respect and strive to achieve justice
for Aboriginal and Torres Strait Islander people.

Chair:

Virginia Trioli – journalist, television anchor, radio presenter,
writer and commentator

Panellists:

Bethany Brown – Human Rights Watch

John Chesterman – Office of the Public Guardian

Paul Greenwood – former USA District Attorney

Natalie Siegel-Brown – Public Guardian

Cassie Mason – Office for Ageing Well, South Australia

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SAFEGUARDING MODELS THROUGH THE HUMAN RIGHTS LOOKING GLASS—A LEGAL PERSPECTIVE

Session outline:

This expert panel presentation will explore how a human rights framework may impact current and proposed laws that are safeguarding the rights of older Australians. The panel will be asked to describe and prioritise the critical legal components needed to safeguard in personal and financial matters. This session will also consider how the views and wishes of the older person should be included in the design and roll out of these laws.

Question 1

What are our current safeguarding models?

This morning we heard a powerful story from Maggie and David Sheehan about how they sought help from the justice system to protect them from serious and ongoing abuse at the hands of their son and daughter-in-law.

Different safeguarding models are emerging around Australia. What can we understand from each model that would have made a difference to Maggie and David’s situation? What are the rights of everyday Australians that should be safeguarded and how? In Australia, our current safeguarding landscape for older persons experiencing abuse looks like a patchwork quilt (see Figure 1) that we are trying on and adjusting for the variations in appetite for certain safeguarding options. We do not have a national cohesive framework. We do have a set of recommendations for adult safeguarding laws made by the Australian Law Reform Commission (ALRC) in its report *Elder Abuse—a National Legal Response*.

Conventions & Charters		QLD – Investigatory powers (impaired capacity)	AUS – Duty of care
NDIS	AUS - Guardianship & administration laws		AUS – Domestic violence laws
	AUS- Mental Health laws	AUS - Criminal laws	AUS – Aged Care Act
VIC - Supported decision-making		VIC, ACT & QLD – Human Rights Act	SA – adult safeguarding laws
	AUS – Aged Care Quality and Safety Commission	NSW – Investigatory Powers	

Figure 1: Safeguarding patchwork quilt

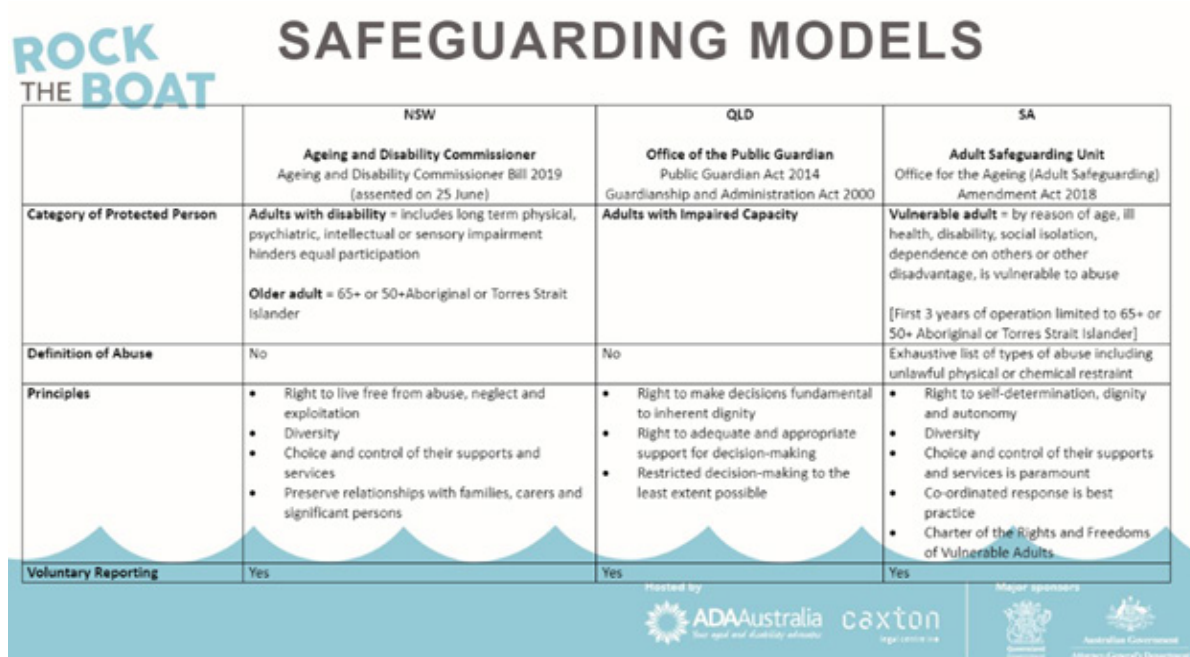
Today we are going to explore more closely three models across Queensland, New South Wales and South Australia (see Figure 2).

South Australia is leading the charge on introducing adult safeguarding laws, which most closely resemble the ALRC recommendations. After widespread consultation, the conclusion of the South Australian Government was that strengthening existing pieces of legislation was likely to be a complex, fragmented process that may only amount to incremental reform. The new safeguarding framework incorporates a mix of voluntary reporting, mandatory stepped responses, a lead agency with

investigative powers, non-age-specific focus on vulnerability, roles for partner agencies and stated to be weighted towards principles of dignity and autonomy, rather than protection.

By way of contrast, in Queensland, the Public Guardian holds unique statutory powers to investigate claims of abuse, neglect or exploitation of an adult with impaired decision-making capacity. The investigation gathers evidence to find out whether the claim can be substantiated on the balance of probabilities, and what actions are needed to best protect the adult. Their structured decision-making framework requires appointed guardians to make decisions under the rubric of supported decision making, allowing for reasonable risk in promoting a self-determined outcome, and only applying substituted judgment where there is a significant risk that outweighs the will and the preferences of the adult.

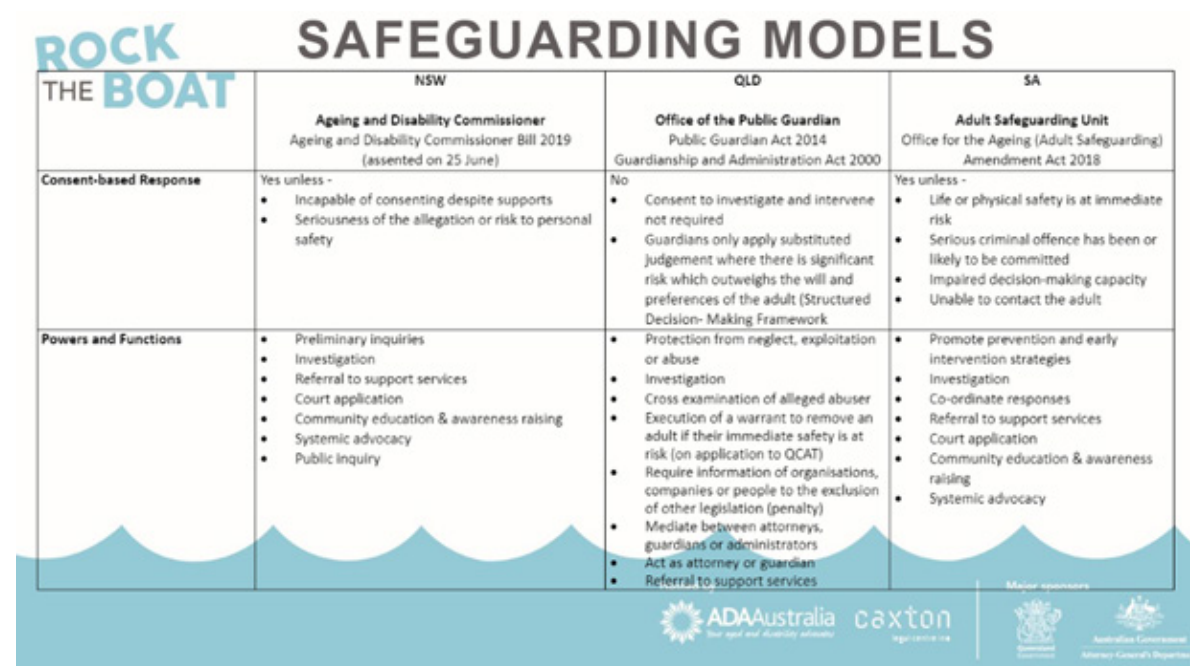
The New South Wales Government, following on from several inquiries and reports, announced the appointment of the new Ageing and Disability Commissioner Robert Fitzgerald, to investigate allegations of abuse, neglect and exploitation of adults with disability and older people in home and community settings. The commissioner will be supported by new specialist elder abuse officers in each New South Wales Police Force Command to investigate matters involving criminal behavior.



ROCK THE BOAT SAFEGUARDING MODELS

	NSW	QLD	SA
	Ageing and Disability Commissioner Ageing and Disability Commissioner Bill 2019 (assented on 25 June)	Office of the Public Guardian Public Guardian Act 2014 Guardianship and Administration Act 2000	Adult Safeguarding Unit Office for the Ageing (Adult Safeguarding) Amendment Act 2018
Category of Protected Person	Adults with disability = includes long term physical, psychiatric, intellectual or sensory impairment hinders equal participation Older adult = 65+ or 50+Aboriginal or Torres Strait Islander	Adults with Impaired Capacity	Vulnerable adult = by reason of age, ill health, disability, social isolation, dependence on others or other disadvantage, is vulnerable to abuse [First 3 years of operation limited to 65+ or 50+ Aboriginal or Torres Strait Islander]
Definition of Abuse	No	No	Exhaustive list of types of abuse including unlawful physical or chemical restraint
Principles	<ul style="list-style-type: none"> Right to live free from abuse, neglect and exploitation Diversity Choice and control of their supports and services Preserve relationships with families, carers and significant persons 	<ul style="list-style-type: none"> Right to make decisions fundamental to inherent dignity Right to adequate and appropriate support for decision-making Restricted decision-making to the least extent possible 	<ul style="list-style-type: none"> Right to self-determination, dignity and autonomy Diversity Choice and control of their supports and services is paramount Co-ordinated response is best practice Charter of the Rights and Freedoms of Vulnerable Adults
Voluntary Reporting	Yes	Yes	Yes

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Consent-based Response	Yes unless - <ul style="list-style-type: none"> Incapable of consenting despite supports Seriousness of the allegation or risk to personal safety 	No <ul style="list-style-type: none"> Consent to investigate and intervene not required Guardians only apply substituted judgement where there is significant risk which outweighs the will and preferences of the adult (Structured Decision-Making Framework) 	Yes unless - <ul style="list-style-type: none"> Life or physical safety is at immediate risk Serious criminal offence has been or likely to be committed Impaired decision-making capacity Unable to contact the adult
Powers and Functions	<ul style="list-style-type: none"> Preliminary inquiries Investigation Referral to support services Court application Community education & awareness raising Systemic advocacy Public inquiry 	<ul style="list-style-type: none"> Protection from neglect, exploitation or abuse Investigation Cross examination of alleged abuser Execution of a warrant to remove an adult if their immediate safety is at risk (on application to QCAT) Require information of organisations, companies or people to the exclusion of other legislation (penalty) Mediate between attorneys, guardians or administrators Act as attorney or guardian Referral to support services 	<ul style="list-style-type: none"> Promote prevention and early intervention strategies Investigation Co-ordinate responses Referral to support services Court application Community education & awareness raising Systemic advocacy

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SAFEGUARDING MODELS

	NSW	QLD	SA
	Ageing and Disability Commissioner Ageing and Disability Commissioner Bill 2019 (assented on 25 June)	Office of the Public Guardian Public Guardian Act 2014 Guardianship and Administration Act 2000	Adult Safeguarding Unit Office for the Ageing (Adult Safeguarding) Amendment Act 2018
Trigger	Reasonable grounds to believe adult at risk of or subject to abuse, neglect and exploitation	Allegation of <ul style="list-style-type: none"> Abuse of person with impaired capacity (whether by impaired cognition or through the inability to make decisions freely and voluntarily) [Focus on whether current decision-making arrangements provide appropriate assistance or protection]	Suspicion that a vulnerable adult is at risk of abuse
Response – Voluntary/Mandatory	Voluntary Commissioner may inquire, investigate, do nothing Mandatory referral of criminal offence or aged care, health care, NDIS complaints	Mandatory	Mandatory 1 st tier response - Director must assess report of abuse Voluntary 2 nd tier response – may take certain action/do nothing after assessment
Information Sharing Provisions	Yes	N/A	Yes
Investigative Powers	Yes	Yes ++	Yes
Community Visitor Scheme	Yes	Yes	No



Figure 2: Safeguarding models

Question 2

How can we view safeguarding through the human rights looking glass?

One convention that is particularly germane to this discussion is the Convention on the Rights of Persons with Disabilities as many at-risk adults have identified disabilities (Figure 3). This convention acknowledges that a range of practices undertaken in the name of protection have constituted human rights abuses, and that transfer of decision-making authority processes should rarely occur.

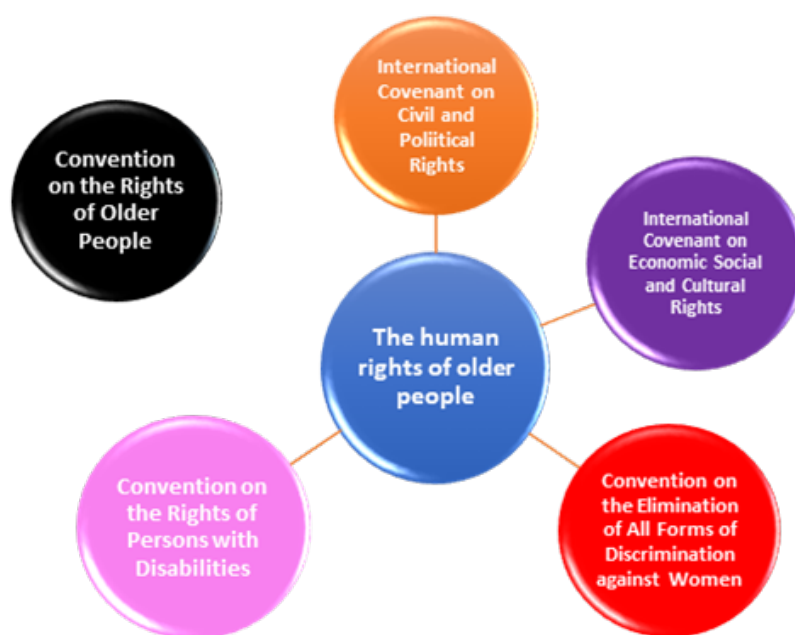


Figure 3: Conventions

Articles 12(2) and (4) (Figure 4) contain some of the key phrases in that convention. Part of the debate is about the full implications of the convention for Australian adult safeguarding laws, especially in jurisdictions progressing with human rights laws. A further part of the debate is about what we actually mean when we use the term ‘safeguarding’.

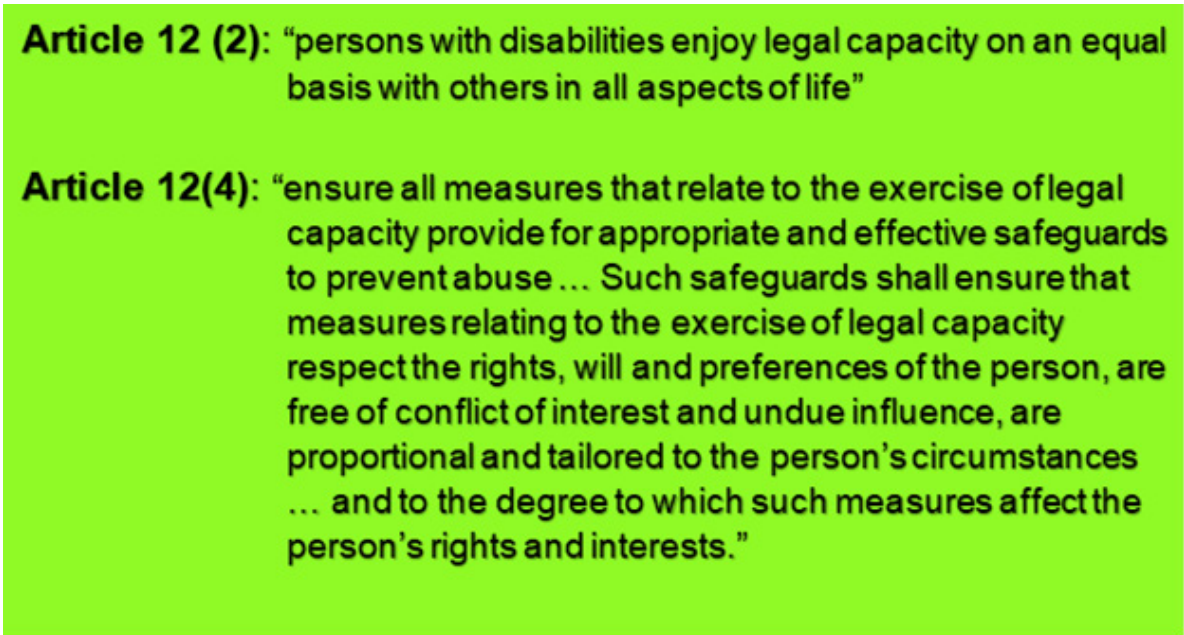


Figure 4: Convention on the Rights of People with a Disability, Article 12

Paul Greenwood has fired it up to increase laws protecting older Australians from abuse. Increased safeguarding in this way certainly addresses a policy urge to provide a form of abuse reporting with a consequent agency response. The gap in our systems (Figure 5), the pocket into which safeguarding laws should be neatly nuzzled, seems to be the space between no protection required and substitute decision-making arrangements working well.

This is a very deep pocket filled with human rights conundrums. We are not clear whether safeguarding in its current use in Australia means having measures to provide supports and mechanisms that protect against the loss of autonomy, selfhood, identity and legal capacity, or if it means having measures designed to protect rights that are commonly impacted in cases of individual or situational vulnerabilities such as freedom from violence, abuse and neglect, or both.

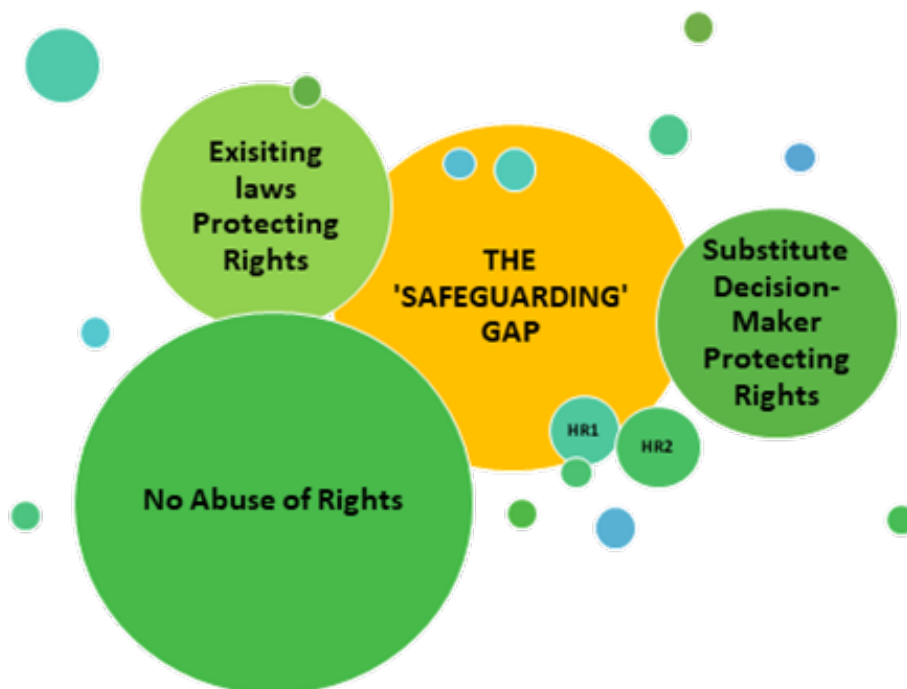


Figure 5: The safeguarding gap

Given the different jurisdictional approaches and the lack of an international cohesive strategy, is it useful to talk about either a working definition, or perhaps a set of principles or philosophical guidelines, or deeply-held conviction of what safeguarding actually is or should be in an Australian context?

Response

John Chesterman: It is a variation on both definitions you gave before Virginia. What we are trying to do is balance respect for a person's autonomy and wishes, while at the same time trying to enliven society's obligation to provide for people who are unable to care for themselves. Where we sit in this continuum is something that many of us wrestle with daily and, hopefully, the Australian Law Reform Commission has wrestled with. You referred to the Convention on the Rights of Persons with Disabilities. There is quite an international debate around the extent to which that should enable any substitute-decision maker to make decisions for that person.

The Australian Law Reform Commission has weighed in on that topic in several reports, including its 2017 elder abuse report, saying that some situations of substitute decision making are required. But in those circumstances, we have to observe the will and preferences of the older person, which is a substituted judgment approach. This means, if I am making a decision for somebody, I have to make the decision that that person would have made or would likely have made. In the safeguarding realm, we are trying to get the right balance between respecting someone's autonomy and enlivening society's duties to a person.

Virginia Trioli: So are you more likely to go down the path of trying to put yourself in the mind of that older person?

John Chesterman: Yes. And guardianship legislation uses the term 'best interests'. This term used to be groundbreaking, but it has become a euphemism for overriding someone's personal wishes. The same danger exists with the term 'safeguarding'. It could become something that we do not intend it to be.

Natalie Siegel-Brown: With elder abuse, we are now at a point in the conversation we were at perhaps 20 or 30 years ago with domestic and family violence. We know that elder abuse is another form of domestic and family violence, although the remit of the investigations, and indeed, the very strong legal intervention that I can personally take when we establish, on the balance of probabilities, that there has been abuse, is based very much on whether the victim has impaired decision-making capacity. At the end of the day, that is no different to somebody who does in fact have the full ability to make their decisions. Because if you talk to the countless victims of domestic and family violence over decades, many of them will say to you, I just want the violence to stop.

We have a couple of conundrums going on, however, we have been able to leap ahead, because of the previous conversations around domestic and family violence. There is not always a tension between the older person's will, views and preferences, and what others might regard to be in the best interest for that person, but we do wrestle with many instances where the two are in great tension. However, we have established a system in Queensland, where we are able to take that independent point of view, where my office will make the decision to investigate and where we do not rely on anybody's testimony. It is an independent approach to determine what the substance of the allegations are. We then work in concert with the people so that intervention is taken, at first instance not to necessarily put somebody in jail and go through a protracted legal process, but rather to take automatic steps to, for example, take the finances out of the hands of the person who is financially abusing another. And we can initiate those steps within 60 minutes. That is how quickly we can make it occur.

So that is something we have not had before in domestic and family violence—an automatic independent quasi-inquisitorial approach that effectively safeguards against some of the problems we might have with safeguarding.

Virginia Trioli: Okay, interesting. Cassie?

Cassie Mason: In South Australia, our new legislation has really taken a rights-based approach, in that we are putting the vulnerable adult's wants, needs and preferences at the centre of all safeguarding interventions that are aimed at supporting them. So really, the aim of our new unit is to become an empowered but approachable body, because often we hear that people just want the abuse to stop, but they do not necessarily want the perpetrator prosecuted.

So our role is to do just that. And it is voluntary reporting, but a mandatory response. Once we receive a report and can work with the consent of the older person or, where appropriate, with the consent of their decision-making supporter, we can then ascertain the safeguarding measures that are in line with the older person's wants and needs. This information will then allow us to engage other agencies and achieve a multi-agency multidisciplinary response to supporting and work with that person to mitigate the abuse. We have a clearly human rights focused legislation and a whole set of guiding principles. And in fact, just because you are an older person, does not give you any less right to make a terrible decision, if you want to.

We are really working in line with the older person and if they do not want us to safeguard, we know to step out, and just provide information and resources to enable them to come back to us should they change their mind. Unless there are some really strict threshold criteria for acting without consent, we will only work in line with the older person's wishes.

Virginia Trioli: Paul, we heard from you this morning, but if you would like to go there more broadly as Cassie's view, for example, is very different from what you were speaking about this morning.

Paul Greenwood: My role in safeguarding is twofold. I think, obviously, my first priority is to the safety of my victim, but also to the other folks in that community. So there will be times when I will take an approach which is totally opposite to what my victim wants, because my duty is to the community, to safeguard the victim and the community. That is why, for example, we have so many cases of serial predators, and they have got away with it. We have prosecuted a number of perpetrators in nursing homes, who have worked in nursing homes, sexually assaulting different patients. And we have tracked back once we have caught them and prosecuted them, and realised that they were involved in other facilities where there were complaints made, but nothing ever happened. And they simply moved on to another facility. So the danger of not taking action is so extreme.

The other aspect of safeguarding, and you might find this a little surprising, is that I have a duty, an ethical duty, to safeguard the rights of the suspect. And it is important for me, when I evaluate a case, that I make sure that I am prosecuting the right person. And there are times when there have been many allegations of elder abuse, but when you dig deeper, and you ask the right kind of questions, you realise that the complainant is the problem, not the alleged suspect. So as a prosecutor, I have a fundamental duty to make sure that the suspect's rights are not trodden on.

So it is a very precious ethical duty that I am very mindful of. But it weighs very heavily on me that if I take no action, if I listen to the victim's wishes only, I fear that I am going to get that call at 3:00 am in the morning to say come out to the next homicide scene. And that is something I have always wanted to push back against.

Virginia Trioli: Bethany, it is good to come to you last after hearing all these views, because you put your work in a human rights framework. Hearing these very nuanced and different reflections on how safeguarding works in the different jurisdictions and approaches, what is your response to these quite contrasting reflections?

Bethany Brown: It is really great to hear so much in detail about these different approaches, and here is how I would thread the needle on this. I think that we got a great overview of the basic protection versus autonomy balance that we are looking at here. And with best interpretation of the 'will and preference' model, under the Convention on the Rights of Persons with Disabilities, Article 12, we are really looking at the right to recognition before the law, the right to be a person standing on their own two feet, making decisions before the law. That is in contrast to substituted decision making, which is the 'best interests' approach, a great approach for children. And it is the approach we support in the Convention on the Rights of the Child. But it does not hold for adults.

Thinking about what Paul has said about the ethical duty that he has to the people of California—I think when we are talking about elder abuse as a crime, it then fits into the public-good model, the public-protection model. And we as a society get to decide what a crime is going to be. That is part of how we shape our societies. And when it comes to crimes, I think that we can very easily say that there is a public good there.

But when it comes to things that are not crimes, when it comes to someone who just wants to be left alone in their little shack in the woods and drink themselves to death, which, I am sure, is something that some of you have come across in your work; when it comes to someone who wants to drink a hot cup of coffee, even though it could give them aspiration pneumonia; when it comes to these other things that do not amount to a crime, then that is where we really have to be thinking carefully and looking hard at what we are really balancing out, who we are really looking to protect, and whose will and preferences are really going to be the ones that stand at the end of the day.

Virginia Trioli: That is a really interesting and good point. And it takes me back to perhaps a little reflection, I think we should even take one step further back before we plough on with the conversation. And I think it is Paul's invitation to reflect on what exactly we are safeguarding. And that maybe there are more than one or two individuals, entities, organisations, philosophies or approaches that have to be taken into account. John, I will get you and Cassie to reflect on it.

John Chesterman: We are safeguarding the person and their rights. Now, that is a vague answer. Paul and Bethany were right in saying that we need to think separately about crime. Elder abuse is under investigated and under prosecuted. This is something the Australian Law Reform Commission also wrestled with in their elder abuse report, and opted not to go down that path of recommending what particularly caused it. We know that in the area of crime, there is less activity than there should be in terms of prosecuting convictions. We also have the area of supporting people who are in need. One challenge we face here is identifying when a person is willing to accept services, which is not that hard, however, we do need to improve the services that are available. Where it becomes much more difficult is where a person is refusing all services. We then have to try and identify the reasons why the person is refusing services, with what insight. What do they associate the services with? That is very tricky terrain, which I can talk more about later.

Virginia Trioli: Yes. Cassie, would you like to reflect on this notion of all that needs to be safeguarded?

Cassie Mason: Yes, certainly. We have taken the approach of safeguarding somebody's rights, and really acknowledging the fact that just because somebody is older or vulnerable, their rights do not diminish. We focus on finding ways to work with the older person that ensure that their rights are upheld. Whether that entails working with a whole range of other different organisations to put in place services, or walking alongside the older person to go to the police if they want to prosecute. The other big aspect of our legislation is community awareness raising. Elder abuse is underreported, and we know that sometimes people who are actually committing elder abuse do not even know they are doing it.

Virginia Trioli: That is a safeguarding element in itself; it is safeguarding the knowledge of the community. Keeping the community informed.

Cassie Mason: Yes, absolutely. People actually need to know that selling mum's house without her consent is not okay. Because sometimes people are doing things without realising what they are doing. It is so important to inform the community and empower people to start a conversation around elder abuse. It is so important to allow people to age well in the community, to keep older people well connected with their communities, because we know, social isolation puts people at greater risk of elder abuse. So it is all of those wraparound, safeguarding supports that we can put in place.

Virginia Trioli: And, Natalie, if I have got it right, it would seem that the sets of safeguarding areas for you actually line up a little more with what Paul has been speaking about this morning.

Natalie Siegel-Brown: They do very much so. But I think there is still a very live tension, which you have picked up here. There are two aspects—whose rights are we protecting? And who are we protecting them from?

It is more or less indisputable that we are protecting the human rights of a person from the abuse by others. That is not so grey. But if we are protecting a person's human rights from what they are doing to themselves, that is a little bit of a struggle. And then the question comes down to what rights are more important to be protected. There is a large amount of academic discourse on do some rights matter more than others, is the person's right to decision making about themselves, their contact

with their loved one, more or less important than their right to safety. And I must say personally, in most instances, I have fallen very much on the side of the fence Paul has, which is that the right to safety is most important because you can perhaps deal with those other rights subsequently.

The three areas we both legally investigate and intervene in are abuse, neglect and exploitation, which may be the more controversial area of my jurisdiction. Neglect includes self-neglect, which is not the majority of cases that come before my investigators, we would probably say one in 10.

Virginia Trioli: And what do you do in a case of self-neglect?

Natalie Siegel-Brown: In those instances, we will appoint ourselves temporarily as the decision maker for that person to get them engaged with services. In one of our recent cases, we had one gentleman who had quite a massive tumor growing under his arm and a huge tumor growing over his eye, that was blinding him. He refused all medical service delivery and was clearly going to die had we not intervened. We did not want to force him, and we really tried to take the least forceful approach. So bear in mind, we have very strong powers in my office, including the ability to execute a warrant and remove somebody for their own safety. So we had to execute a warrant, but we did not want to do it in a forceful manner. We wanted to really encourage this gentleman to get medical help. In this case, it has been really wonderful and six months down the track, this gentleman has been telling us about how wonderful his life is.

Virginia Trioli: Okay, but I am sure some people would say that that's not okay. And I would imagine they are sitting with you on the panel. I am going to hear from John and Cassie on this, but just hold on one second, what was that tipping point to go from 'get your hands off me', 'don't you dare take me out of my home', 'leave me', 'don't you dare get a surgeon to cut me' to 'oh my goodness, I can see again'? What was that little bit?

Natalie Siegel-Brown: It was a little thing. I think it was a series of gentle persuasion. But I also think that the prospect of the warrant and being removed forcibly was a little bit scary.

Virginia Trioli: So it was a threat? There was a potential threat there. John, you are dying to say something.

John Chesterman: No, I have nothing. Here is an anecdote that has a link to supported decision making, where we were involved in a small supported decision-making trial. One of our people being supported needed cataract surgery. And her supporter, fortuitously, was able to say to the woman he was supporting, that he had it done and it is not so bad. So he managed to convince her to have it done, something she was vehemently opposed to. He suggested to try one eye and then, if that works, try the other eye. There are two extremes we are talking about here in this conference. And yesterday, we heard a lot about one extreme, which is plucking a person from the community, putting them into residential aged care, shutting them down, which is in its own way a breach of a person's human rights.

The other extreme is to leave a person in the community unsupported simply because they are saying they do not want services. Now, I saw an extreme example of this when I went to Washington state in the US. I was on a fellowship and I showed the protection services some real life case studies from Victoria and asked '... what do you do in these circumstances?'

One circumstance was a person who was living in a state of squalor and self-neglect. His mother had died and he was not able to fend for himself, and was becoming very unwell. What would you do in that situation when the person is saying I do not want services, despite having little insight into what the services might be?

The Adult Protective Services said, well, that is his human right to say no. And I thought that is a corruption of the human rights narrative to simply take a first point of refusal and not try and push past that. I am not proposing plucking him and putting him in residential aged care, but we should push past the point of why is he refusing services, what is he associating the services with? Does he think it is like police? So we need to promote and model this supportive intervention approach, which is starting to happen.

Virginia Trioli: Cassie, I would like to hear from you. And I really want to hear reflections from Paul or Bethany on this; was what you heard from Natalie a bit confronting?

Cassie Mason: Yes, I think it really is quite different in our office. Certainly, our new safeguarding unit is not a punishing agency; we are not an agency that works alone; we have investigative powers; we have our authorised officers who have quite strong coercive powers, which are predominantly in line with the ALRC recommendations. So they could be much more assertive, but they are mostly about information gathering. So really, our remit is about finding out all the information, talking to the people and sharing information. And I agree, we should not just take one refusal necessarily and step away, but make sure that the person is fully informed about the available services. How can they be supported? What are their options, what are their choices? And then we work with the elderly, in line with the choices they made to actually put in place some things. Certainly, our guiding principles take the least interventionists approach, because it is very clear in our legislation that we want to minimise any sort of erosion of any other human rights by the approach that we take. Particularly when you look at situations such as pulling people out of their homes and putting them in residential aged care, that is really not in line with a lot of people's wishes. And then we are out. We are not a regulatory body, we are an empowered, approachable agency, which means we walk alongside somebody, that is our role.

Virginia Trioli: I want to come back to you and talk about the kind of coercive or inquisitorial agencies that might exist in South Australia and get an insight of how they work. Bethany, can you give some reflections or talk about what you have been hearing in this part of the discussion?

Bethany Brown: In my experiences that I have gathered by talking with people all over the world, and through working with the home-based services in England last year, there is this spectre among some older people around sectioning, the coercive power, which, under the Mental Health Act, allows for people being taken out of their own home. And because of this, because of this shadow over the services there, I talked with families and older people who said that they were refusing all home care services, because they did not want anyone to know how bad their dementia was. They did not want to risk being taken out of their environment. And I think that that is really sad.

We need to look at what the unintended consequences are of having these coercive powers on the table. People are not going to be honest with their doctors about how their memories are. People are trying to get by when they have a UTI, because they know that if they go to the hospital, they could be at risk of not being able to go home.

Virginia Trioli: So how are their rights safeguarded? We have heard the subtle overlapping idea of safeguarding an individual's human rights from their own poor decision making versus making a poor decision is not an adult's right. What happens there? Is there a model flexible enough to deal with all of that?

Bethany Brown: I have come across a model outside of Barcelona, in Spain, where the community service provider has made it clear and very public, that they will never use their coercive powers. And they are using that to gain the trust not just of the older people in the community, but of the people with disabilities in the community, particularly people who have had negative experiences with the mental health care system.

So their model uses outreach workers who will talk to the older people, and they will make really sure that people understand what services are available to help them, so that they can make informed decisions about how they choose to live their lives.

Virginia Trioli: Paul, what is your response to what you have been hearing about this particular part of the discussion.

Paul Greenwood: You will be reassured to know that in my 22 years, I never prosecuted one self-neglect case. This highlights the importance of a multidisciplinary team, because there were times when I would sit in a room with social workers, with mental health counsellors, with district nurses and police officers, and there was a discussion about an elderly person living on their own, who was a hoarder. And the complaints were coming in from the neighbours. Do you think the neighbours' rights were being encroached upon? Because there were rats? There were all kinds of hygiene concerns, and the neighbours just

wanted to get rid of the rubbish? Do we just abandon the case and say '... no, this person still has all their faculties, we can let them live in filth, if they want to do that'.

So we bring in the health department to see if there are any code violations of the health department, maybe we can do an administrative action to remove the health concerns and the neighbours' rights are now being consolidated. And then, as we were discussing it, somebody may say '... well, I was over there last night visiting this gentleman, and there was some strange behavior with people coming and going. That is when we were wondering what was going on there. And you end up realising that not only is there a hoarder with self-neglect, there is also drug activity going on inside the house. And that was when the police and my ears and eyes opened up. And we started investigating that aspect of it as a potential criminal investigation.

Virginia Trioli: John, you wanted to say something?

John Chesterman: Yes. The Australian Law Reform Commission, Australia's premier legal reform body, was engaged with this topic of when do you override someone's expression of their will. And this is the formulation that the ALRC came up with, and they recommended that adult safeguarding agencies should be legislatively empowered in Australia to conduct investigations of at-risk adults. At-risk adults are defined as people 18 years and over who have care and support needs, who are being abused or neglected and are unable to protect themselves. And they also, within the autonomy versus protection argument, included that their consent should always be sought, that it should not be required in serious cases of physical abuse, sexual abuse or neglect, that consent should also not be necessary where a person cannot be contacted. So that was the way the ALRC tried to render a modern, rights-affirming paradigm of that, the autonomy protection distinction.

Virginia Trioli: Cassie, I did want to come back to you, because you were talking about what your agency does, which is very different to what Natalie does. But taking that multidisciplinary team approach, what about the more prosecutorial agencies and the ones with a bit more power in that regard. Do they work with your agency and how?

Cassie Mason: Well, let's just keep in mind, our agency has not started yet. A new legislation will come into effect on 1 October 2019, and that is when our adult safeguarding unit will open. So, what we are doing at the moment is developing a code of practice, which really steps up in that very practical way, how we work and how we work with other agencies, because we are quite aware of the fact that we are a small unit, and there are a whole range of other agencies in South Australia that do a whole range of work in this space. And so it is not about duplicating functions, it is about working alongside those other agencies. So we are currently, as well as our code of practice, developing a memorandum of administrative agreement with a range of other key partners, and we are working quite closely with the Legal Services Commission, other advocacy services, the Office of the Public Advocate and police. So we establish this strong interface with other agencies so we can then identify which office is best equipped to deal with a certain matter? How do we make those referrals? How do we ensure that once we have referred a matter, it has not just been a dump and run. We actually follow up and seek feedback as to was it the right place, did the person get the service they needed? Do we need to come back and have more conversations with a range of other agencies?

Virginia Trioli: Natalie, you have already had some experience of agencies working together. Are there any particular reflections on that and the initial startup phase, and other valuable experiences you might want to share?

Natalie Siegel-Brown: Absolutely. We have been running this power for almost 15 years. And the work we do is civil, it is to immediately intervene to stop the perpetrator handling the money, to be able to make orders to freeze the assets and have healthcare delivered. I would like to very quickly give you a typical example where I would intervene. Remember that this is just like domestic violence. So very often, the perpetrator will conceal all contact and stymie all contact with the victim of the abuse, and very often there are no other services involved. And in fact, it is that complete lack of contact, that other service deliverers have with that person.

Virginia Trioli: So the abuse happens right in the intimate relationship, right in the family home.

Natalie Siegel-Brown: That is right. And the perpetrator does that to avoid being caught. So I am going to talk about service delivery, both at the beginning of it and at the end of it. The most frequent identifier of abuse is in fact the bank. Because that

does not require you necessarily to have clapped eyes on exactly what is going on with a person. But we have a few banks who are absolutely sensational at picking up funny little spider web transactions, breaches of enduring powers of attorney, and otherwise. I cannot tell you the number of times that a bank refers a case of financial abuse to us, we lift the veil and go and visit the person and we find them locked up in a room under the house, completely dehydrated, walking around in soiled underpants, not knowing what time of day it is. They may not have eaten for days, and the family who is living upstairs have just left. Many of the stories that Paul described this morning are exactly the kind of things we become involved in.

As soon as my investigators establish, on the balance of probabilities, that that abuse has occurred, it does not matter that somebody has formed that allegation, we can form it ourselves. If we substantiate it, we will intervene straightaway. And where we believe a crime has been committed, we will then refer it to the police. I think the question actually comes down to not necessarily what are other services doing and how are they responding, that is important, but that is driven by culture. What is the culture of identification. We have done a lot of work in the last nine months with banks. And I cannot tell you, that has been the most instructive of all. In the last six months the referrals from banks of abuse have gone up by 900%, much to the enjoyment of my staff, and it has been so instructive in terms of exactly the scale of abuse, and how early we can intervene. The culture then comes on the other side of the fence. And this is something we could still do a lot of work with Queensland Police Service, in respect of how much is enough fraud and enough financial abuse to actually go forward and take a criminal action. Police are also under enormous resource constraints, they have their guidelines around prosecution. And then we go straight back to that old conundrum of the person just wants the abuse to stop, they do not want to see their son, daughter, nephew, niece in the dock, necessarily, to use an Americanism. So when we speak to many of the adults, they are really grateful for the way we have been able to intervene without seeing their son/daughter put away because the vast majority of abuse we see is committed by a child of the victim.

Virginia Trioli: Great story. Paul, you are going to have 35 things you want to say, pick a few of them.

Paul Greenwood: Well, number one, I am so encouraged by what you are telling us about the banks responding and giving you this 900% increase in reporting. And the story you have just outlined is so typical. But this is where the perpetrator, who made those financial decisions and took that money, does need to be held accountable for their actions, because the underlying issue is, typically as a family member, what are they spending that money on? I always ask that question, where is that money going? Is it going to drugs, alcohol or gambling, because those three are the typical ones. And that is where I come back to my argument why it is important to prosecute the perpetrators, even though mother does not want me to put them in the dock. But we have to deal with the underlying addiction. And the only way that I found to be successful is when a judge orders the defendant to do certain treatment programs. And if they do not do it, they are going to end up in the state prison. So the incentive for the perpetrator is enormous to get back on track. And ultimately, if that is successful, then mother or father is equally happy with it.

Questions from the audience

Naomi Rotem (audience member): When you believe that a person is an imminent risk of harm from elder abuse, how do you balance their right to refuse intervention with the duty of care to attend to the person's safety?

Virginia Trioli: We have covered a bit of this terrain. But would anyone like to take that further in a real-world sense, given that we have agencies here?

Paul Greenwood: That is the \$64 million question. And I always say in these circumstances, every situation is different. And there are always ways in, but there are so many variables you have to work with. The most important thing is to identify A. what the person wants, to get to the person and identify what the person wants, and then you can work out from there. If the imminent risk is coming from somebody else, then that could well be a criminal matter that warrants police intervention. If the danger is in terms of self-neglect, or neglect by another person, then there are ways in which you can seek local service agencies to get involved. And the most important thing really is to talk to others who know about the situation and sharing the information. So that is an abstract answer. But it is difficult without having the specifics.

Virginia Trioli: Would anyone else like to jump in?

Cassie Mason: Certainly, serious imminent risk of harm is one of our exceptions to consent. So we have quite a high bar for acting without consent, but that is certainly one of them. That is why we will be working quite closely with police to ensure that when those sort of things happen, we have processes in place to intervene.

Audience member : What consideration is given to a victim when a prosecution is pursued against their wishes.

Virginia Trioli: We have covered this terrain, but this is an interesting change to the scenario. In some cases, the perpetrator may be the only support, and prosecuting them may cause isolation and trauma. Paul, I want to get you to start on it.

Paul Greenwood: Yes, that is a very valid concern. And I remember one case where the mother was pleading with me. Her son had just assaulted her two days earlier, causing a significant serious eye injury; she begged me, especially when I told her that I was going to ask for six years in prison. She went hysterical. And I said the reason I am asking for six years is because of your son's prior conviction. You know what it was? Murdering his younger brother. So she said to me, but I do not want you to do it, because I have already lost one son. What you are trying to do is, help me lose my only other son, and then I have nobody else. And so it obviously is a dilemma. But again, it just comes back to what is in, what I believe as a prosecutor, the best interest of his mother. And that is where as a multidisciplinary team has to come in, and I have to keep emphasising it. What I am proposing to you is not me prosecuted in isolation, it is me in a room with social workers, so I can say I have this mother here, she is going to be abandoned when I prosecute her son and lock him up. What can we do to help her? There is a support system, there are victim advocates who go and talk to my victim so I can learn a lot more about my victim's needs. We as a team can reach out to other families, we reach out to her place of worship, we reach out to Meals on Wheels, we make sure that her further rights are safeguarded. But ultimately, my duty is to separate that son from his mother, because she will otherwise, I believe, end up dead.

Virginia Trioli: Natalie, anything you want to add there?

Natalie Siegel-Brown: This is a very frequent conundrum that we often come across. Yes, I have been locked up under the house, and I have been starving. And I have not been taken to the toilet, but my grandchildren live in this house. And if I leave here, if I am taken somewhere else, I will not see my grandchildren again. That is extraordinarily common. What I actually think this comes down to is how you do the business. So there is a great deal, Cassie that you spoke of, even though it might sound like my inquisitorial powers are quite confronting by comparison, there is a lot that John spoke of in the ALRC principles that are absolutely the way we go about doing our job. Just because you have those powers, does not mean you cannot work in a way that still supports an outcome that will enable them to see their grandchildren and so on.

The other thing I want to point out here is that if you speak to most people on the street, and you ask them, what is the law around domestic violence? And how would you be protected from that? They would not know the ins and outs of it. Most people fear your action, because they do not actually understand the capacity of that action. And how it can be done in a way that is actually going to reach the best outcome. It might not be the ideal outcome. But again, we have to pit rights against each other in some circumstances. So what is the best of all scenarios?

Heath Read (audience member): My name is Heath Read and I am from the National LGBTI Health Alliance. And I was just reflecting on Malloy's story that we heard yesterday about where legislation did actually discriminate against LGBTI people for a long time. So did health settings, institutions and services. So how can we support people? Or how can we navigate the system to think about all those people that have been forgotten, about people who self neglect, but actually avoid services to avoid reliving trauma and past experiences. And while anti-discrimination laws now legislate and protect older LGBTI people, that does not mean that it is reflected in service provision on the coalface, people are still experiencing discrimination.

Virginia Trioli: Do you want to jump in there, Cassie?

Cassie Mason: Yes, sure. As part of our new legislation, we are actually working with a number of key partner agencies to create community networks, because we know that, as a government agency, we are not going to be necessarily accessible or appropriate for a range of people who have had certain experiences in their lives where they do not trust government, they do not necessarily want to come into a government building to tell their stories. And so we are working with colleagues who have got trusted networks within Aboriginal communities, within CALD communities, within LGBTIQ communities. So we actually can get that information out there, we can provide them with resources and information and opportunities, so that they can then within their own communities either provide the information, or create an opportunity where they can accompany and support a person who might want to make a report to our unit.

We know that this is only at the beginning stages at the moment, we are at the moment forming these community networks. We feel like trusted networks is a way to actually speak to communities who do not trust government necessarily. So actually working with people to find out what is the best way to ensure that people within their community know their rights and are able to safeguard them as well.

Audience member: It has actually largely been answered; I did want to ask about the groups that have had adverse experiences, particularly in relation to Aboriginal and Torres Strait Islander people, and also the Forgotten Australians group that grew up in institutions. I am very interested in the discussion about finding out why people are resisting services, and I want to understand what approaches are applied in this context, and the level of thought that has been put into those issues.

Virginia Trioli: I think we will just take that as a statement if that is okay. A couple of other statements have come in on the app. Anonymous: It is not always the case, as Paul says, that addiction, gambling, drugs or alcohol are driving adult children's behavior. Sometimes they are just narcissistic and entitled.

Natalie Siegel-Brown: May I make a very quick comment on that statement. You might call it a privilege, or you might call it the opposite of a privilege that we actually cross examine perpetrators of elder abuse. And why I say it is a privilege is because this is one of the rare jobs where I get to get an insight over the course of four or six hours about why someone did it. We might be thousands of miles apart across the Atlantic, but there are a lot of similarities. I am not going to disagree with the narcissistic stuff, it can sometimes be wound up with the other matters. In my experience, in the majority of cases I have had, gambling has actually been at the heart of it. But I think why I like this point is because this is just like domestic and family violence, we are actually not going to be able to make a real dent on this problem, unless we get to what drives the behavior in the first place. What is driving the perpetration, and that is a critical thing to analyse.

Virginia Trioli: And given what we have learned about ourselves as Australians, and I am glad you mentioned the Forgotten Australians there, in a number of inquiries, the Forgotten Australians, the Royal Commission into Institutional Responses to Child Sexual Abuse, the Banking Royal Commission, this royal commission, what we are learning about ourselves is an ugliness that is horrific to confront. That we as Australians and adults have been capable of this to others, to children, to people we know who are in our care. Is it answering that question? I do not know, I think you need a room full of philosophers and something approaching a god. If you believe in a god.

I just want to get two perspectives from our visitors here because I think it is a nice way to actually end this panel, given that we have these terrific but very different approaches, a real patchwork model of approaches, to safeguarding. Paul, what are your key concerns about where Australia is headed with this patchwork quilt to safeguarding models, and also are perpetrators receiving particular messages because we do not have a uniform approach?

Paul Greenwood: Dealing with the second point first, I think wherever a legal system fails to aggressively respond to perpetrators, abuse and exploitation, it sends a very clear message that I can get away with it, and I am going to do it again. So that is always a concern of mine. And for the first point, I believe that this is a very special time in Australia's legal system with the Royal Commission, with the media playing a very important part in bringing Australian citizens' awareness to this issue. And Anne Connolly yesterday really showed us the power of the media in bringing it to the attention of the legislator as well and getting them to do a reaction. I think the worst thing we can do is to ignore this growing groundswell of opinion, which I believe

is calling for a change in the legal system, and hopefully calling for a criminal statute in every state that will then encourage this multidisciplinary environment. This is such a complex area, prosecutors cannot do it alone, police cannot do it alone, social workers cannot do it alone. But together in a room, I tell you, I have seen it, provided there is food, it works.

Virginia Trioli: And Bethany, given what you have said over the last two days, how important is it for you that Australia has a uniform model and consistently applied safeguarding laws?

Bethany Brown: I think there are a lot of points that have come out in this session around an individualised approach, around looking into the people that the system is considering acting upon, and what their life experiences have been, how the system has treated them over the course of their lives. That is really important.

Final remarks

Bethany Brown: I would also just take my parting moments to say that we have been talking about the sort of the harm that can come to people if nothing is done. I would like to add that in many cases, by doing something, you can also be doing harm, by taking someone out of their home, by asserting a system over a person. You are challenging their autonomy to themselves. And that is something that we really need to sit with as we think about what safeguarding should be, going forward.

Virginia Trioli: The eternal conflict in a way, but beautifully rendered by a great panel. Thank you.