



# **"THIS IS NOT MY HOME"**

## **AGED RESIDENTIAL CARE WITHOUT CONSENT - ON WHOSE AUTHORITY?**

WELLINGTON - 29<sup>TH</sup> NOVEMBER 2016  
DUNEDIN - 6<sup>TH</sup> DECEMBER 2016

IN ASSOCIATION WITH



**VIDA LAW**

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Many people with moderate or severe dementia are recommended for residential care at the same time as they are assessed as no longer having legal capacity to consent to this care. Often, they have not anticipated this situation and have not appointed anyone to be their Enduring Power of Attorney.

Consequently, families, clinicians and residential care providers are confronted with people with dementia needing to go into long-term care, but with a lack of clarity around the legal authority to facilitate this. This situation risks either long hospital stays, or having to remain in unsatisfactory living circumstances while a legal basis for proceeding is sought. There is often dispute over which party should take responsibility for those proceedings.

This seminar uses a number of case studies as a basis for discussion about the roles of the Mental Health (Compulsory Assessment and Treatment) Act 1992, the Code of Health and Disability Services Consumers' Rights and the Protection of Personal and Property Rights Act 1988. It outlines the principles that underpin New Zealand's wider legislative framework and its international treaty obligations relating to human rights and detention. A panel discussion will explore the case studies and issues arising from those case studies in more detail, followed by a session on proposed liberty safeguards for people who lack capacity in light of international developments, and a call for future reform.

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This seminar was initiated by The Northern Regional Alliance Health of Older People Group in association with Counties Manukau District Health Board, and was first run in Auckland on 27 September 2016. Both organisations have agreed to the seminar being run in other parts of the country. Their work in initiating this discussion is appreciated and acknowledged.

We would like to note our particular thanks to Dr Mark Fisher, Consultant Psychiatrist and Director of Area Mental Health, Counties Manukau District Health Board, and Sue Thomson, Northern Regional Dementia Behavioural Support and Advisory Coordinator, Northern Region District Health Boards.



**Northern**  
Regional Alliance  
He Hononga o te Raki



COUNTIES  
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TIME	SUBJECT	PRESENTER
09:30AM - 9:45AM	REGISTRATION	
9:45AM - 10:00AM	WELCOME AND INTRODUCTIONS	JUDGE PHILIP RECORDON
<b>SESSION ONE: SCOPE OF THE PROBLEM</b>		
10:00AM -10:30AM	THE NATURE OF THE PROBLEM - INTRODUCTION OF CASES	DR MARK FISHER
<b>SESSION TWO: THE LAW</b>		
10:30AM -11:00AM	RIGHT 7(4)	DR CORDELIA THOMAS
11:00AM -11:30AM	PROTECTION OF PERSONAL AND PROPERTY RIGHTS ACT 1988	IRIS REUECAMP (WELLINGTON) ANDREW FINNIE (DUNEDIN)
11:30AM - 12:00PM	THE MENTAL HEALTH (COMPULSORY ASSESSMENT AND TREATMENT) ACT 1992	DR CRAWFORD DUNCAN (WELLINGTON) IRIS REUECAMP (DUNEDIN)
12:00PM - 12:30PM	A HUMAN RIGHTS PERSPECTIVE	JANET ANDERSON-BIDOIS
12:30PM-1:15PM	LUNCH (PROVIDED)	
<b>SESSION THREE: A WAY FORWARD</b>		
1:15PM-2:45PM	PANEL DISCUSSION	CHAIR: PROFESSOR KATE DIESFELD
2:45PM-3:15PM	MINDING THE GAP: LIBERTY SAFEGUARDS FOR PEOPLE WITH IMPAIRED CAPACITY.	ALISON DOUGLASS
3:15PM-3:45PM	NEXT STEPS	JUDGE PHILIP RECORDON
3:45PM-4PM	CLOSING	

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### ABOUT THE SPEAKERS



Janet Anderson - Bidois is the Chief Legal Adviser at the Human Rights Commission. Janet has an interest in issues relating to informed consent, mental health and capacity. She spent 15 years as an in-house medico legal adviser for several district health boards in the Auckland region and worked previously as an investigator for the Health and Disability Commissioner's office and as a general litigator in private practice. Janet has a master of laws degree from Auckland University.



Professor Kate Diesfeld is a member of the California State Bar. With Professor Freckelton, she edited *Involuntary Detention and Therapeutic Jurisprudence* (2003). With Ian McIntosh, she edited *Elder Law in New Zealand* (2014). She has held academic roles at the University of Kent in England and Te Piringa Faculty of Law at the University of Waikato. Now she is Chair of the Ethics Committee at Auckland University of Technology. Her research focuses on elder, medical and disability law.



Alison Douglass is a Dunedin barrister, specialising in health and disability law. Alison is appointed by the Family Court as counsel for the "subject person" (people who lack capacity) under the PPPR Act and for the care recipient under the Intellectual Disability CCR Act. She has been counsel in a number of Family Court, High Court and Court of Appeal cases. Alison is the 2014 recipient of the New Zealand Law Foundation international research fellowship and recently released her report on a comparative analysis of the English Mental Capacity Act, developments in the UK and proposed law reform of the PPPR Act entitled: *Mental Capacity: updating New Zealand's Law and Practice*: <http://alisondouglass.co.nz/>

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Dr Crawford Duncan is psychiatrist at Te Whare Ra Uta, the inpatient psychogeriatric assessment ward at Kenepuru Community Hospital. He graduated from Otago Medical School in 1978 and began training in psychiatry in August 1981 and completed the MRCPsych (Royal College of Psychiatrists) in 1985 and the FRANZCP (Royal Australian and New Zealand College of Psychiatrists) in 1990. Dr Duncan became a member of the Faculty of Psychiatry of Old Age when it came into being in 2002. He has been employed as a Whole-time Specialist Psychiatrist since December 1986 by the Wellington Hospital Board and its successors and since May 1987 has worked entirely in the Psychiatry of Old Age.



Andrew Finnie is a senior family law barrister based in Auckland, NZ. He has more than 17 years' experience in the field of family law and went to the independent bar in 2003. He undertakes court appointed work to represent children in court proceedings (Lawyer for the Child), vulnerable adults in court proceedings (Lawyer for the Subject Person) and intellectually disabled offenders (Lawyer for the Care Recipient). He also acts as Counsel for people detained under the Mental Health (Compulsory Assessment and Treatment) Act.



Dr Mark Fisher is currently Clinical Head and Consultant Psychiatrist in Mental Health Services for Older People in Counties Manukau Health, South Auckland. He is also the Director of Area Mental Health Services (DAMHS) for Counties Manukau under the Mental Health Act. Dr Fisher has been a practising psychiatrist for 20 years, and has worked in Old Age Psychiatry, Liaison Psychiatry and ECT services. He has spent many years in Leadership roles within Mental Health. He has worked primarily in New Zealand but also worked in the United Kingdom. His research interests are in Dementia services, Mental Health law and Driving in Dementia. He has been keenly involved in the setting up of new dementia services in south Auckland.

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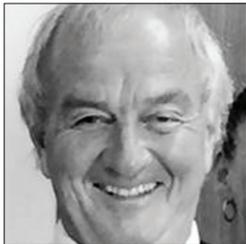
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Judge Philip Recordon practiced as a lawyer in his hometown of Auckland, New Zealand, for 30 years prior to his appointment in 2003 to the District Court at Waitakere and then Manukau (both in Auckland) where he currently sits. His legal practice was varied with a constant thread of working with those who struggle within the city. Family Law, Youth Law and Mental Health Law were also constants of his practice.



Iris Reuvecamp is a barrister and solicitor specialising in health and disability law at Vida Law. She advises both public and private health and disability services providers in in-house counsel type roles and as an external advisor. She has an interest in and commitment to mental capacity law, and in particular, where a person is no longer able to make healthcare decisions themselves. Iris is appointed by the Family Court as "Lawyer for the Subject Person" under the PPPR Act. Iris also has an academic interest in health and disability law, and has published articles on related issues. Iris regularly presents in various forums on legal issues in the health and disability sector.



Dr Cordelia Thomas is the Associate Commissioner- Investigations for the Health and Disability Commissioner. She was previously the HDC Acting Chief Legal Advisor, Specialist Senior Legal Advisor and Investigations Manager. Previously, she was the senior legal advisor for Toi te taio: the Bioethics Council. Her projects included "Who Gets Born: Prebirth testing" and "Human Embryos for Research". For a number of years she was a senior lecturer in law at Massey University and continues to teach Public Health Law.

Her research interests include medical law and bioethics and her PhD thesis in law proposed a legal framework for the collection, retention and use of human body parts. She has published widely and is the author of several textbooks.

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