

# Caring for Vulnerable Persons

## Understanding the Important Protective and Legal Framework in Singapore

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### Introduction

A famous quote from Mahatma Gandhi goes, “The true measure of any society can be found in how it treats its most vulnerable members”. Our society has become more mature and complex and as such, vulnerable groups within society have higher needs which may not always be adequately met. Various groups have been identified as vulnerable, including those with mental illness and disabilities including intellectual disabilities, and those who are elderly and frail. This has implications on health and social care services as they strive to meet the needs of the vulnerable in our society.

Reflecting these changing societal needs are the enactment of laws to allow appropriate care and protection to be provided to the vulnerable in our society:

- (i) The Mental Health (Care & Treatment) Act 2008 (MHCTA)
- (ii) The Mental Capacity Act 2008 (MCA)
- (iii) The Vulnerable Adults Act 2018 (VAA)

The concept of vulnerability underpins these three statutes. Each are meant to empower society to protect and care for the different vulnerable groups: the MHCTA for those suffering from mental illness; the MCA for those lacking mental capacity; and the VAA for those with impairments rendering them vulnerable to self-neglect, neglect or abuse by others. It is important for medical practitioners who are involved in the care of the vulnerable to be aware of these important statutes.

### Mental Health (Care & Treatment) Act 2008

The Singapore MHCTA<sup>1</sup> supersedes the Mental Disorders and Treatment Act 1965 and provides for the admission, detention, care and treatment of mentally disordered persons in designated psychiatric institutions.

This Act applies to vulnerable persons who are mentally ill and pose significant psychiatric risks but who decline voluntary treatment for their mental illness. The Act also provides for protection of a mentally unwell person against ill treatment by healthcare professionals.

There are several processes and stages to ensure checks and balances in the detention of a person under this statute. The police may, under s.7 of the Act, apprehend and take someone who, due to a mental disorder, poses a danger to themselves or others for further assessment by a medical practitioner or to a psychiatric institution. A medical practitioner may under s.9 of the Act send a person under their care who is mentally disordered or requires psychiatric treatment to a designated medical practitioner at a psychiatric institution.

A designated medical practitioner (DMP) at a gazetted site (Institute of Mental Health [IMH] or Changi Prison) may sign **Form 1**, which allows the involuntary admission of an individual suffering from mental disorder into IMH for treatment, for up to 72 hours. **Form 2** is signed by a different DMP, for up to one month and **Form 3** by two independent DMPs for up to six months if the criteria for detention under the Act continues to be met.

Beyond that, **Form 4** is an application to the courts for an order under **Form 5** for longer term detention, subject to periodic review by the Visitor’s Board which has the power to discharge patients from the Form.

### Mental Capacity Act 2008

The MCA<sup>2</sup> safeguards vulnerable members of the society who lack mental capacity.

The Act allows a person 21 years or older to make a lasting power of attorney (LPA). Under the LPA, a person

(“the donor”) can appoint a proxy (“the donee”) to act or make decisions on his or her behalf for matters relating to personal welfare and/or property and financial affairs when the person loses mental capacity.

It also allows the court to appoint a Deputy to make decisions on behalf of a person who has been determined to lack mental capacity. The Office of the Public Guardian (OPG) oversees the functions of donees of an LPA and court-appointed Deputies to ensure that they act in the best interests of the person lacking capacity. Medical practitioners with concerns in this regard may contact the OPG.

The five statutory guiding principles of the Act are that:

- (i) There is a presumption of capacity and that everyone possesses the capacity to make a decision, unless proven otherwise;
- (ii) A person cannot be assumed to lack capacity unless all reasonable steps have been taken to help the person make the decision;
- (iii) A person cannot be assumed to lack mental capacity merely because the person makes an unwise decision;
- (iv) Any decision made on behalf of a person who lacks mental capacity must be in the person’s best interest; and
- (v) The decision made on behalf of a person who lacks capacity must be least restrictive to the person’s rights.

When assessing the mental capacity of a person, it must be determined firstly, that the person suffers from an impairment in the functioning of the mind or brain; and secondly, that if an impairment is present, it affects the person’s ability to make specific decisions.

A person lacks mental capacity if unable to (i) understand the information relevant to the decision-making; (ii) retain specific information required for decision-making;

(iii) use or weigh relevant information as part of the decision-making process; and (iv) communicate that decision by any means. It is worth bearing in mind that mental capacity is decision specific and time sensitive.

Where a person is determined to lack mental capacity, then the person who needs the decision taken must make the decision in the best interests of the incapacitated person and must take into consideration the past wishes, beliefs and values of the person.<sup>3</sup>

### Vulnerable Adults Act 2018

The VAA<sup>4</sup> seeks to safeguard vulnerable adults from abuse, neglect or self-neglect, and allows the State to intervene so as to assist and protect the vulnerable adult when earlier interventions have been unsuccessful.

The Act defines a vulnerable adult as any individual aged 18 years and above with mental or physical disabilities, and who is unable to protect himself/herself from abuse, neglect, or self-neglect because of these disabilities. The Act defines these key terms as follows:

- (i) **Abuse** includes physical, emotional or psychological abuse. It is also defined as controlling or dominating behaviour which causes the individual to fear for his or her safety or well-being, or behaviour that unreasonably deprives or threatens to unreasonably deprive the vulnerable adult's freedom of movement or well-being.
- (ii) **Neglect** means the lack of provision of essential care, such as food, clothing, medical aid and lodging, to an individual that causes personal injury, physical pain or injury to physical and mental health.
- (iii) **Self-neglect** occurs where an individual fails to perform essential tasks of daily living (including not seeking medical aid) to care for himself/herself. This results in the individual living in grossly unsanitary or hazardous conditions, suffering from malnutrition or dehydration, from an untreated physical or mental illness, or injury.

The **Guiding Principles** of the VAA are:

- (i) Protect vulnerable adults from abuse, neglect and self-neglect;

- (ii) Vulnerable adults with mental capacity are generally best placed to decide how they wish to live and whether or not to accept any assistance;
- (iii) Vulnerable adults lacking mental capacity must have their views (whether past or present), wishes, feelings, values and beliefs considered;
- (iv) Regard must be had as to whether actions taken can be achieved in a way that is less restrictive of the vulnerable adult's rights and freedom of action; and
- (v) The welfare and best interests of the vulnerable adult must be the first and paramount consideration.

Under this Act, the State, in the form of the director-general of social welfare, has the power to remove a vulnerable adult from their place of residence if there are reasonable grounds to suspect that he or she is experiencing or at risk of abuse, neglect or self-neglect and commit them to a place of temporary care and protection or to the care of a fit person.<sup>5</sup> The Act also allows the vulnerable adult, their family and/or the State to apply for various court orders for their protection including the following Protective Orders:

- (i) Restraining the perpetrator from (further) abusing the vulnerable adult;
- (ii) Prohibiting the perpetrator from entering the vulnerable adult's home (or parts of it);
- (iii) Prohibiting the perpetrator from entering or remaining in a specified area frequented by the vulnerable adult for a specified period; and
- (iv) Prohibiting the perpetrator from communicating with or visiting the vulnerable adult.

These applications should be made with the vulnerable adult's consent, unless he or she lacks the mental capacity to provide that consent. In cases where the vulnerable adult is suspected or known to lack mental capacity to consent to the application, a mental capacity assessment by a registered medical practitioner, psychiatrist or psychologist needs to be undertaken and their report included as part of the court application.<sup>6</sup> Medical practitioners who have concerns regarding a vulnerable adult may contact the Adult Protective Service under the Ministry of Social and Family Development.

### Conclusion

Clinicians working with vulnerable groups in our society should be familiar with the purpose and application of the statutes mentioned here. In this direction, the SMA Centre for Medical Ethics and Professionalism, in collaboration with the College of Psychiatrists, Academy of Medicine, Singapore will be organising a webinar on 17 April 2021, Saturday from 1 pm to 4.30 pm. ♦

### References

1. *Mental Health (Care and Treatment) Act (Cap 178A, 2012 Rev. Ed.)*. Available at: <https://bit.ly/37e8BbZ>.
2. *Mental Capacity Act (Cap 177A, 2010 Rev. Ed.)*. Available at: <https://bit.ly/3rYAFsf>.
3. Ho RC, Ho CS, Khan N, Kua EH. An overview of mental health legislation in Singapore. *BJPsych Int* 2015; 12(2):42-4.
4. *Vulnerable Adults Act 2018*. Available at: <https://bit.ly/3jNYeQY>.
5. *Ministry of Social and Family Development. Protection for Vulnerable Adults*. Available at: <https://bit.ly/2ZkVU8>.
6. *The Law Society of Singapore. Understanding the Vulnerable Adults Act*. Available at: <https://bit.ly/3qq30XE>.

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