Using a ‘helicopter lens’: An analysis of the substitute decision-making practice of New South Wales public guardians

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An analysis of the decision-making practices of NSW public guardians

**Aim:** to understand

- how substitute decisions are made for people with disability
- whether practices are inclusive of people with disabilities, and
- if decision-making processes align with the human rights approach of the UNCRPD.
Situating the Researcher – personal perspective

Doing disability law and policy in NSW Government

‘Frank and fearless’ advice, advocacy for true change

Attracted to “wicked problems” (Moore, 1995)

Lived experience

Co-founded ‘Capacity Australia’ - Director for many years

Novice at qualitative research, including constructivist grounded theory
<table>
<thead>
<tr>
<th>Design and method</th>
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<tbody>
<tr>
<td>Participants – public guardians</td>
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<td>Recruitment – via NSW Office of Public Guardian</td>
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<td>Purposive sampling until theoretical saturation reached</td>
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<tr>
<td>Interviews – 7 one-on-one semi-structured, intensive interviews</td>
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<td>Semi-structured recorded interviews - 50 and 120 mins</td>
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<td>Interviews – guardians’ natural setting</td>
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# Qualitative Method – GROUNDED THEORY

- Data collection and analysis are done simultaneously
- Analytic codes form the basic units of analysis
- Codes and categories are constructed from the data
- Constant comparison is utilised
- Theory development happens throughout
- Memos are kept to aid analysis until theoretical sampling occurs

(Charmaz, 2014; Corbin & Strauss, 1990b; Glaser, 1998; Glaser & Strauss, 1967; Strauss, 1987)
Results - Themes

Navigating the authorising environment

Using a Helicopter Lens

Mobilising, manoeuvring and relying on networks

Paying attention to communication

Making empowerment fundamental

Reflexively donning other hats
Theme 1 - Navigating the authorising environment

Guardianship Act 1987 (NSW)  
Both  
Article 12 UNCRPD  
And
Theme 1 – Navigating: sub-themes

A
Reimagining the legal context to correlate with a UNCRPD human rights approach

B
Embracing dignity of risk within a conservative protectionist framework

C
Paying attention to language and using words to achieve person centred outcomes
Theme A - Navigating

Characteristics of guardians

Exploring, remaining flexible with, and being strategic within a conservative and protectionist legislative, organisational and policy environment

Exploring their role/responsibilities, defining decision ambit, working within binary system and organisation boundaries, redefining welfare and interests, manipulating Principles

Embracing dignity of risk within a conservative protectionist framework

Doing person centred, acknowledging guardianship as last resort, applying a ‘step up’ approach, using least restrictive options with safeguards, using lapses

Paying attention to language and using words to achieve person centred outcomes

Promoting autonomy, empowering the person, educating, using ‘government speak’ in reports

Background, Ethos, Values, Skills
Theme 2 - Using a Helicopter Lens: process

Consistently keeping the person at the centre and knowing the person is ‘business as usual’

- Using a ‘helicopter lens’ to develop a high-level atlas
- Delving into detail to populate the map
- Returning to the aerial view to objectively make decisions
- Finding an exact location

“Where’s the client’s voice? If I can’t see it, if I can’t hear it, where is it?”
(Transcript 2 Page 5)
Theme 2 - Using a Helicopter Lens: Sub-themes

A. Developing a high-level atlas on which to map the person’s life
B. Populating the map with detail
C. Rising above the detail
D. Considering risk in context
Sub-theme A - Developing a high-level atlas
Creating a legend

a. Guardian’s functions
b. Legislative and policy environment
c. Decision
d. Person
e. Facts
f. Networks
g. Issues
h. Options
i. Risks
j. Service Systems

Helicopter Lens
Sub-theme B - Populating the map with detail

How

i. Propelling down into the person’s life to populate the legend
   • analytically (documented)
   • subconsciously ‘mind-mapping’

ii. Contextualising the person’s perspective
   • allows Guardians to locate themselves within those environments relevant to the person and the decision

iii. Developing an individualised atlas
   • allows guardians to know the person and to pivot from one decision type to another

Helicopter Lens
Sub-theme B - Populating the map with detail

What: legend items

- Knowing the scope of the order
- Needing the right function
- Having multiple functions

a: Guardians’ functions

Helicopter Lens
Sub-theme B - Populating the map with detail
What: legend items (cont.)

b: defining the decision’s practical ambit

- Breaking down the decision
- Decision purpose
- Going through the decision process
- Identifying decision significance
- Using evidence
- Providing transparent reasons

Helicopter Lens
Sub-theme B - Populating the map with detail
Identifying decision significance

- Significant decisions require navigation of complexities
- The kind of decision counts
- Small decisions are viewed as routine, usual practice or administrative
- The decision’s nature may be defined according to the person’s view of it, or its impact
- Small decisions are viewed as requiring much less, or no, consultation by the Guardian

Helicopter Lens
Sub-theme B - Populating the map with detail

What: legend items (cont.)

- Meeting the person where they are
- Plotting the person’s ‘good life’
- Understanding the person’s vision and wishes
- Educating the person and their networks
- Prioritising face-to-face engagement
- Testing the person’s truth

c: Knowing the person

Helicopter Lens
Sub-theme B - Populating the map with detail

What: legend items (cont.)

Helicopter Lens

d: Finding the facts

Doing ‘investigative work’

Connecting and analysing facts

Making the right connections

Gathering information and opinions

Discovering gaps

Building the knowledge base

Checking and rechecking truths

Finding the facts
Sub-theme C - Rising above the detail

How

i. Having surveyed the topography in detail, guardians again rise above the coordinates

- Using the ‘helicopter lens’ guardians sift through, sort, and obtain objectivity from, the data

ii. Operating within layers of interconnecting complexity

- Objectivity helps guardians make sense of the complexity

“Without crisis there is no change”
(transcript 4, page 325)
Sub-theme C – Rising above the detail
What: legend items (cont.)

iii) a. Analysing issues

Viewpoints
Conflicts
Obstacles
Critical issues
Impasses
Incidental issues
Morphing of issues

Helicopter Lens
Sub-theme C – Rising above the detail
What: legend items (cont.)

Helicopter Lens

Possibilities

Opportunities

Solutions

Routes

Consequences

iii) b. Plotting options
Sub-theme D - Considering risk in context

"We’re not in a nanny state and we shouldn’t be"
(transcript 7, page 10)

Helicopter Lens

- Using presumption of capacity to enable small decisions
- Routinely balancing person’s wishes against potential risk of harm
- Assessing smaller, less complex decisions as less risky
- Assessing significant, complex decisions as more risky
- Multiple or magnified risk moves focus from person’s wishes to potential safeguarding
- Using presumption of capacity to enable small decisions
### Sub-theme D - Considering risk in context (cont.)

<table>
<thead>
<tr>
<th>Practice</th>
<th>Description</th>
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<tbody>
<tr>
<td>“Turning the situation on its head” - risk enablement</td>
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<tr>
<td>Normalising risk in a practical sense</td>
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<tr>
<td>Personalising risk</td>
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<tr>
<td>Testing the options</td>
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<tr>
<td>Challenging assumptions</td>
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<tr>
<td>Using a stepped-up approach</td>
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<td>Accepting there may never be a correct answer</td>
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<td>Supporting an unworkable order to lapse</td>
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</tbody>
</table>

**vi. Applying other practices**

**Helicopter Lens**
Sub-theme D - Considering risk in context (cont.)

The conservative legal framework

- Legal accountability - barrier to risk empowerment
- Battling risk intensity and multiplicity in least restrictive and last resort context
- Looking at welfare and interests as directing harm minimisation
- Balancing immediate risk with future consequences
- Steering a middle course or looking at Plan B’s

Helicopter Lens
Sub-theme D - Considering risk in context (cont.)

The conservative legal framework

Recognising that risk aversion constrains choice

Safeguarding insightlessness

Using bargaining with the person and their networks

Using the authority of others to influence the person

Being worried about informal decisions of networks

Helicopter Lens
Summary - Themes

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Thank you

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