Singapore Law Review
Juris Illuminae Vol 6 (2014/15)

CONSIDERING CONSTRUCTING VULNERABILITIES IN THE VULNERABLE ADULTS ACT

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Announced in January 2015, the Vulnerable Adults Act [the Act] is slated for possible implementation within the year. The purpose of the Act is to legislate for the provision and protection of "vulnerable adults" deemed unable to take care of themselves, particularly in cases of self-harm and neglect. While the Act is still in relatively early stages of development, there are a few possible issues to consider that straddle both legal and policymaking spheres. This article addresses two major issues – terminology and contextual applicability – that the author finds must be sufficiently addressed in order for the Act to function effectively in Singapore's increasingly ageing society.

The first issue is how a "vulnerable adult" should be defined. The most straightforward element to consider would be the person's mental state. Where an individual is rendered mentally incapable of looking after himself, his impaired decision-making abilities create a possible area of weakness wherein his actions cause harm to his health, physical self, or both. Consequently, the Act would effectively serve to protect the individual from himself during the period of impairment by, inter alia, providing appropriate social work or medical institutions with easier access to this individual. This relatively straightforward scenario complements the provisions of the Mental Capacity Act[1] [MCA] by providing an alternate legal pathway for family members or relatives to step in and make decisions on behalf of mentally incapacitated individuals.

The difficulty arises, however, where an individual is not mentally incapable of looking after himself, but is still deemed to be a "vulnerable adult" under the Act. This particular concern is raised in light of then Minister for Social and Family Development Chan Chun Sing's speech during the introduction of the Act, where he pointed out that individuals who are not mentally

[1] Cap 177A, 2010 Rev Ed Sing.

incapable but undergo lack of care from their families or neglect may nevertheless fall within the Act's purview.[2]

The present legal position per s 3(2) read with s (6) of the MCA is that individuals retain the freedom to choose whether or not to receive medical care, unless they are mentally incapable of making decisions in their best interest. In such exceptional situations, a legally appointed donee would make decisions relating to his life to promote the individual's personal welfare.[3] Consequently, the Act's prerogative to legislate the intervention of an individual who is not mentally incapable of making decisions related to his life begs the question of what other factors can be so determinative as to override an individual's validly held mental capacity to make his or her own life choices. Despite the Act's focus on protecting individuals from their own actions, a possible factor is, ironically, the individual's own choices and actions. There is then a need for the relevant stakeholders in the legislation to consider what actions would be so detrimental to an individual so as to necessitate overriding his freedom to choose his own actions in the course of his life, especially when he is in fact mentally capable of choosing so.

The mix of contributing factors to the definitions within the Act is ultimately an extremely pertinent matter affecting the boundaries of the Act. Such boundaries must be narrow enough to ensure distinct identification of an individual considered to be vulnerable, but wide enough such that it reaches individuals who are on the margins of the targeted class of individuals. This aspect is particular crucial not just for the effectiveness of the Act itself, but to prevent social stigma from the mischaracterization of individuals eventually affected by the implementation of the Act.

An additional issue to consider is the function of the Act as part of the Ministry of Social and Family Development's three-pronged approach towards reaching out to this targeted class of individuals. In his speech, the then-Minister strongly emphasised that the Act is to be used as a last resort, with the primary twin foci being on building family support for such individuals and strengthening community and social service support. It is evident that the Act developed as a safety net meant for cases that fall through the cracks of the twin foci. This has a significant impact on the Act's scope. The tension lies between the need for legislation that covers a broad enough range of factual matrices in order to function as an effective legal safety net to catch cases requiring state

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[2] Chan Chun Sing, *Speech at MSF Committee of Supply 2015*, online: Ministry of Social and Family Development <http://app.msf.gov.sg/Press-Room/Speech-at-MSF-Committee-of-Supply-Debate-2015>.

[3] *Wong Meng Cheong and Ling Ai Wah and another*, [2012] 1 SLR 549, [2011] SGHC 233 at [108]).

intervention, and the need for legislation with narrow enough definitions that draw effectively enforceable boundaries.

The principal motivations behind the Act make discussion of its substance a particularly timely one in light of Singapore's ageing population. However, given the conspicuous difficulties that legislators and drafters will face in crafting the Act, it is worth pondering if the Act suffices as a solution to the increasingly prevalent issues of self-harm and neglect, or if the relevant institutions should look towards improving present legislation to resolve these issues instead.