



MELBOURNE
SOCIAL EQUITY
INSTITUTE

TheMHS Awards – Nomination for Exceptional Contribution Award

Bernadette McSherry

1 April 2016

1.

Professor Bernadette McSherry is the Foundation Director of the Melbourne Social Equity Institute at the University of Melbourne. She was formerly an Australian Research Council Federation Fellow, a Professor of Law and the Director of the Centre for the Advancement of Law and Mental Health at Monash University. She has honours degrees in Arts and Law and a Masters of Law from the University of Melbourne, a PhD from York University, Canada and a Graduate Diploma in Psychology from Monash University. She is a Fellow of the Australian Academy of Social Sciences and a Fellow of the Australian Academy of Law and has published widely in the fields of mental health law and criminal law. Professor McSherry is the current president of the Australian and New Zealand Association of Psychiatry Psychology and Law (ANZAPPL). She is a legal member of the Mental Health Review Board of Victoria and has acted as a consultant to government on criminal law, sentencing and mental health law issues.

2. Criteria

2.1 Evidence of a significant contribution to the field of mental health on a local, state or national level.

Professor McSherry is widely regarded as having made a significant contribution to creating human rights-based mental health law, policy and practice in Australia and New Zealand, and internationally. She has received numerous research funding grants. These include grants for the following projects:

- Model Laws to Regulate the Use of Restraint on Persons with Disabilities (Discovery Projects) awarded by AUST RESEARCH COUNCIL 2016 - 2020
- Excellence in NonCommunicable disease REsearch (ENCORE) between Australia and India (International Research & Research Training Fund (IRRTF)) awarded by UNIVERSITY OF MELBOURNE 2015 - 2018
- Unfitness to plead and indefinite detention of persons with cognitive impairments: addressing the legal barriers and creating appropriate alternative supports in the community (Research and Data Working Group Disability Research Project) awarded by NSW DEPT OF FAMILY AND COMMUNITY SERVICES 2015 - 2017
- Workshop for the Disability Human Rights Network (DHRN) (International Research & Research Training Fund (IRRTF)) awarded by UNIVERSITY OF MELBOURNE 2015 – 2016
- OPTIONS FOR SUPPORTED DECISION-MAKING TO ENHANCE THE RECOVERY OF PEOPLE WITH SEVERE MENTAL HEALTH PROBLEMS (Linkage Projects) awarded by MONASH UNIVERSITY 2014 – 2017

Prof McSherry also received the following contracts:

- REVIEW OF THE MANAGEMENT OF ADULT VICTIM OFFENDERS awarded by DEPARTMENT OF JUSTICE AND REGULATION 2015
- Mental Health Act Implementation-expert review of Mental Health Bill awarded by VICTORIAN DEPARTMENT OF HEALTH 2013 - 2014
- National Mental Health Commission of NSW - Short Paper awarded by MENTAL HEALTH COMMISSION OF NSW 2013

Prof McSherry has authored and co-authored dozens of publications in the mental health field – including journal articles, books, reports and news media. The full list of articles is included in the Appendix of this document.

2.2 Evidence of innovation and/or recognised best practise

Prof McSherry has been a leading figure in research on mental health law and human rights. Her research has often promoted good practices aimed at realising mental health support and human rights ‘on the ground’ in the lives of those they are meant to assist. This has included reducing seclusion and restraint in mental health services, promoting supported decision-making, and clarifying issues of patient confidentiality in mental health services.

See for example:

- Model Laws to Regulate the Use of Restraint on Persons with Disabilities (Discovery Projects) awarded by AUST RESEARCH COUNCIL 2016 – 2020

- OPTIONS FOR SUPPORTED DECISION-MAKING TO ENHANCE THE RECOVERY OF PEOPLE WITH SEVERE MENTAL HEALTH PROBLEMS (Linkage Projects) awarded by MONASH UNIVERSITY 2014 – 2017
- Confidentiality for Mental Health Professionals: A Guide to Ethical and Legal Principles. Australian Academic Press. 2009

McSherry's research has advanced debate in key areas of mental health service delivery. In her writing, including co-editing written collections, McSherry has contributed to the innovation of mental health policy and practice. See for example:

- Rethinking Rights-Based Mental Health Laws. Hart Publishing. 2010
- The Concept of Capacity in Australian Mental Health Law Reform: Going in the Wrong Direction 2015
- From coercion to coordination? The role of the law in service provision for individuals with coexisting disorders. *Coercive Care: Rights, Law and Policy*. Routledge. 2013
- 'Incorporating carers' rights in mental health legislation. *Journal of Law and Medicine*. 17.2010

2.3 Evidence of participation of mental health consumers in the planning, implementation and evaluation. There may be exceptions to the involvement of mental health consumers. If so, please address this when responding to this criterion.

Prof McSherry's research in the mental health field has consistently included participatory methods of collaboration with mental health consumers, as well as family members and other supporters.

Research projects and contracts that explicitly included the participation and consultation of mental health consumers in the planning, implementation and evaluation, include:

- Model Laws to Regulate the Use of Restraint on Persons with Disabilities (Discovery Projects) awarded by AUST RESEARCH COUNCIL 2016 - 2020
- Excellence in NonCommunicable disease REsearch (ENCORE) between Australia and India (International Research & Research Training Fund (IRRTF)) awarded by UNIVERSITY OF MELBOURNE 2015 - 2018
- Unfitness to plead and indefinite detention of persons with cognitive impairments: addressing the legal barriers and creating appropriate alternative supports in the community (Research and Data Working Group Disability Research Project) awarded by NSW DEPT OF FAMILY AND COMMUNITY SERVICES 2015 - 2017

For example, Prof McSherry led a project that was commissioned by the Australian Mental Health Commission, which was focused on reducing and eliminating seclusion and restraint in mental health settings. The research included a lived experience reference group, which was co-ordinated by a consumer academic at the University of Melbourne, Cath Roper. Ms Roper and others with lived experience, including family members, were involved from the outset in research design and implementation.

Prof McSherry's written material that addresses the perspective and contribution of service users, include:

- International Trends in Mental Health Laws. Federation Press. 2008
- Rethinking rights-based mental health laws. *Rethinking Rights-Based Mental Health Law*. Hart Publishing. 2010
- Defining Seclusion and Restraint: Legal and Policy definitions versus Consumer and Carer Perspectives. *Journal of Law and Medicine*. 23. 2015
- OPTIONS FOR SUPPORTED DECISION-MAKING TO ENHANCE THE RECOVERY OF PEOPLE WITH SEVERE MENTAL HEALTH PROBLEMS (Linkage Projects) awarded by MONASH UNIVERSITY 2014 – 2017

2.4 Evidence of Partnerships and Linkages (collaboration for continuity between organisations).

Prof McSherry has explicitly worked at the intersections of law and medicine, promoting interdisciplinary initiatives throughout her career. This includes the following co-edited publications, which included material written by legal professionals, clinical professionals, and those with people with lived experience:

- International Trends in Mental Health Laws. Federation Press. 2008
- Rethinking rights-based mental health laws. *Rethinking Rights-Based Mental Health Law*. Hart Publishing. 2010

Grants that reflect partnerships and linkages include:

- Model Laws to Regulate the Use of Restraint on Persons with Disabilities (Discovery Projects) awarded by AUST RESEARCH COUNCIL 2016 - 2020
 - Linkages with international scholars Prof Peter Bartlett (Nottingham University, UK) and Prof Lisa Waddington (Netherlands).
- Excellence in NonCommunicable disease REsearch (ENCORE) between Australia and India (International Research & Research Training Fund (IRRTF)) awarded by UNIVERSITY OF MELBOURNE 2015 – 2018
 - ENCORE will train a new generation of researchers in non-communicable disease prevention and control in India and other low- and middle-income countries in South Asia. Prof McSherry is partnering with lead researcher, Professor Brian Oldenburg, who will

examine mental health issues as contributors to reduced life expectancy.

- Unfitness to plead and indefinite detention of persons with cognitive impairments: addressing the legal barriers and creating appropriate alternative supports in the community (Research and Data Working Group Disability Research Project) awarded by NSW DEPT OF FAMILY AND COMMUNITY SERVICES 2015 – 2017
 - Partnerships established with the Victorian Aboriginal Justice Agency, Intellectual Disability Rights Service, and North Australian Aboriginal Justice Agency, with national advisory panel members including representatives of the Independent Mental Health Advocacy Scheme, and forensic psychologists.
- OPTIONS FOR SUPPORTED DECISION-MAKING TO ENHANCE THE RECOVERY OF PEOPLE WITH SEVERE MENTAL HEALTH PROBLEMS (Linkage Projects) awarded by MONASH UNIVERSITY 2014 – 2017
 - This innovative, interdisciplinary research project is led by Associate Professor Renata Kokanovic, in collaboration with the University of Melbourne, the Victorian Department of Health and Human Services and five major mental health NGOs supporting people living with diagnoses of mental illness. It aims to document the experiences of people living with psychiatric diagnosis of schizophrenia, psychosis or bipolar disorder, and their carers/family members, to identify how both groups could be better supported when making decisions about care and treatments.
- [The Australian Mental Health Commission short paper on reducing and eliminating seclusion and restraint in mental health settings;](#)
 - This project was conducted by an interdisciplinary team of researchers from the University of Melbourne to look at best practice in reducing and eliminating the use of seclusion and restraint in relation to mental health issues and help identify good practice treatment approaches. The project collected data from a survey and focus groups and invited the direct input of people with lived experience, their families, friends and supporters as well as service providers, workforce interest groups and first responders. It also established two advisory groups which consisted of people who have experienced seclusion or restraint themselves and carers, families or friends of people who have experienced seclusion or restraint. Each group consisted of six people who were continuously engaged with the research team and provided input throughout all stages of the project.

2.5 Verification and evaluation of the program's effectiveness e.g. quality improvement activity, data collection and its use including graphs and tables, achievement of performance indicators, e.g. attendance figures, outcome measures, number of document downloads, page views, click through rates.'

Due to the nature of Prof McSherry's research in policy and law, and her contribution to forms of regulation like the Mental Health Tribunal, the 'effectiveness' of such work is difficult to measure. However, her work is widely regarded as being influential in key debates in the field.

Her [SSRN research profile](#), indicates she has had 2,177 downloads of her publicly available work and her [Google Scholar profile](#) indicates she has been cited 949 times.

3. Conclusion (Up to 1/2 x A4 page)

Prof McSherry has sought throughout her career to advance respect for improved services and human rights in for people with mental illness. Her focus has extended from voluntary service users, right through to those who are most marginalised, including sex offenders and accused persons and prisoners with psychiatric disabilities. The following short list of written materials offers a sense of the breadth of topics Prof McSherry has addressed:

2015

- **Journal Articles Refereed**

- Defining Seclusion and Restraint: Legal and Policy definitions versus Consumer and Carer Perspectives. *Journal of Law and Medicine.* 23. 2015
- Preventive Detention of Sex Offenders: Law and Practice. *University of New South Wales Law Journal.* 38. 2015
- The Concept of Capacity in Australian Mental Health Law Reform: Going in the Wrong Direction 2015

2014

- **Authored Research Books**

- Managing Fear: The Law and Ethics of Preventive Detention and Risk Assessment. Routledge. 2014

- **Journal Articles Refereed**

- Locked Mental Health Wards: The Answer to Absconding?. *Journal of Law and Medicine.* 22. 2014
- Throwing Away the Key: The Ethics of Risk Assessment for Preventive Detention Schemes. *Psychiatry Psychology and Law.* 21. 2014

2013

- **Edited Books**

- Coercive Care: Rights, Law and Policy. Routledge. 2013

- **Research Book Chapters**

- Australian mental health laws and human rights. *Contemporary Perspectives on Human Rights Law in Australia.* Thomson Reuters. 2013
- Coercive care: Rights, law and policy. *Coercive Care: Rights, Law and Policy.* Routledge. 2013

- From coercion to coordination? The role of the law in service provision for individuals with coexisting disorders. *Coercive Care: Rights, Law and Policy*. Routledge. 2013
- Where to from here for coercive care?. *Coercive Care: Rights, Law and Policy*. Routledge.2013

4. Referees - nominate two referees.

Removed for privacy

5. Appendix of Support Material

Contract

- REVIEW OF THE MANAGEMENT OF ADULT VICTIM OFFENDERS awarded by DEPARTMENT OF JUSTICE AND REGULATION 2015
- Mental Health Act Implementation-expert review of Mental Health Bill awarded by VICTORIAN DEPARTMENT OF HEALTH 2013 - 2014
- National Mental Health Commission of NSW - Short Paper awarded by MENTAL HEALTH COMMISSION OF NSW 2013

Grant

- Model Laws to Regulate the Use of Restraint on Persons with Disabilities (Discovery Projects) awarded by AUST RESEARCH COUNCIL 2016 - 2020
- Excellence in NonCOmmunicable disease REsearch (ENCORE) between Australia and India (International Research & Research Training Fund (IRRTF)) awarded by UNIVERSITY OF MELBOURNE 2015 - 2018
- Unfitness to plead and indefinite detention of persons with cognitive impairments: addressing the legal barriers and creating appropriate alternative supports in the community (Research and Data Working Group Disability Research Project) awarded by NSW DEPT OF FAMILY AND COMMUNITY SERVICES 2015 - 2017
- Workshop for the Disability Human Rights Network (DHRN) (International Research & Research Training Fund (IRRTF)) awarded by UNIVERSITY OF MELBOURNE 2015 - 2016

- OPTIONS FOR SUPPORTED DECISION-MAKING TO ENHANCE THE RECOVERY OF PEOPLE WITH SEVERE MENTAL HEALTH PROBLEMS (Linkage Projects) awarded by MONASH UNIVERSITY 2014 – 2017

Education and Training

- Grad Dip Psych, Monash University 2000
- PhD, York University 1996
- LLM, University of Melbourne 1990
- LLB(HONS), University of Melbourne 1984
- BA(Hons), University of Melbourne 1984

Awards and Honors

- Fellow of the Academy of the Social Sciences in Australia, 2011
- Fellow of the Australian Academy of Law, 2007
- Fellow of the Australian Research Council, 2007

Publications

2015

- **Journal Articles Refereed**
 - Defining Seclusion and Restraint: Legal and Policy definitions versus Consumer and Carer Perspectives. *Journal of Law and Medicine.* 23. 2015
 - Preventive Detention of Sex Offenders: Law and Practice. *University of New South Wales Law Journal.* 38. 2015
 - The Concept of Capacity in Australian Mental Health Law Reform: Going in the Wrong Direction 2015

2014

- **Authored Research Books**
 - Managing Fear: The Law and Ethics of Preventive Detention and Risk Assessment. Routledge. 2014
- **Journal Articles Refereed**
 - Locked Mental Health Wards: The Answer to Absconding?. *Journal of Law and Medicine.* 22. 2014
 - Throwing Away the Key: The Ethics of Risk Assessment for Preventive Detention Schemes. *Psychiatry Psychology and Law.* 21. 2014

2013

- **Edited Books**
 - Coercive Care: Rights, Law and Policy. Routledge. 2013
- **Research Book Chapters**
 - Australian mental health laws and human rights. *Contemporary Perspectives on Human Rights Law in Australia.* Thomson Reuters. 2013
 - Coercive care: Rights, law and policy. *Coercive Care: Rights, Law and Policy.* Routledge.2013

- From coercion to coordination? The role of the law in service provision for individuals with coexisting disorders. *Coercive Care: Rights, Law and Policy*. Routledge. 2013
 - Where to from here for coercive care?. *Coercive Care: Rights, Law and Policy*. Routledge.2013
 - **Journal Articles Refereed**
 - The Preventive Detention of “Dangerous” Sex Offenders in Australia: Perspectives at the Coalface . *International Journal of Criminology and Sociology*. 2. 2013
 - Torture and ill-treatment in health care settings: Lessons from the United Nations. *Journal of Law and Medicine*. 20. 2013
- 2012**
- **Research Book Chapters**
 - Post-sentence incapacitation of sex offenders and the ethics of risk assessment. *Incapacitation*. Ashgate. 2012
 - **Journal Articles Refereed**
 - Legal capacity under the convention on the rights of persons with disabilities. *Journal of Law and Medicine*. 20. 2012
- 2011**
- **Edited Books**
 - Dangerous People: Policy, Prediction and Practice. Routledge. 2011
 - **Research Book Chapters**
 - "Dangerous" people: The road ahead for policy, prediction and practice. *Dangerous People: Policy, Prediction and Practice*. Routledge. 2011
 - 'Dangerous' people: An overview. *Dangerous People: Policy, Prediction and Practice*. Routledge. 2011
 - The preventive detention of suspected terrorists: Better safe than sorry?. *Dangerous People: Policy, Prediction and Practice*. Routledge. 2011
 - **Journal Articles Refereed**
 - Detention and treatment down under: Human rights and mental health laws in Australia and New Zealand. *Medical Law Review*. 19. 2011
 - Laws to detain individuals with substance dependency: Breaching human rights or restoring health. *Journal of Law and Medicine*. 19. 2011
 - Who do I Turn to? Resolving complaints by mental health consumers and carers. *Journal of Law and Medicine*. 18. 2011
- 2010**
- **Edited Books**
 - Rethinking Rights-Based Mental Health Laws. Hart Publishing. 2010
 - **Revised Books**
 - Principles of Criminal Law. Thomson Reuters. 2010
 - **Research Book Chapters**
 - Rethinking rights-based mental health laws. *Rethinking Rights-Based Mental Health Law*. Hart Publishing. 2010

- The right of access to mental health care: Voluntary treatment and the role of the law. *Rethinking Rights-Based Mental Health Laws*. Hart Publishing. 2010
- **Journal Articles Refereed**
 - 'Incorporating carers' rights in mental health legislation. *Journal of Law and Medicine*. 17.2010
 - Australian and Canadian Mental Health Acts compared. *Australian and New Zealand Journal of Psychiatry*. 44. 2010
 - Diversion down under - Programs for individuals with mental illnesses in Australia. *International Journal of Law and Psychiatry*. 33. 2010
 - Seclusion and restraint: Rethinking regulation from a human rights perspective. *Psychiatry Psychology and Law*. 17. 2010

2009

- **Authored Research Books**
 - Confidentiality for Mental Health Professionals: A Guide to Ethical and Legal Principles. Australian Academic Press. 2009
 - Sex Offenders and Preventive Detention: Politics, Policy and Practice. Federation Press.2009
- **Edited Books**
 - Regulating Deviance: The Redirection of Criminalisation and the Futures of Criminal Law. Hart Publishing. 2009
- **Research Book Chapters**
 - Criminal law. *Appealing to the Future: Michael Kirby and His Legacy*. Thomson Reuters.2009
 - Expanding the boundaries of inchoate crimes: The growing reliance on preparatory offences. *Regulating Deviance: The Redirection of Criminalisation and the Futures of Criminal Law*. Hart Publishing. 2009
 - Regulating deviance: The redirection of criminalisation and the futures of criminal law. *Regulating Deviance: The Redirection of Criminalisation and the Futures of Criminal Law*. Hart Publishing. 2009
- **Journal Articles Refereed**
 - Hospital orders for offenders with mental illnesses: An appropriate diversionary option. *Journal of Law and Medicine*. 16. 2009
 - Mental health laws for those "compliant" with treatment. *Journal of Law and Medicine*. 17.2009
 - To detain or not to detain: A question of public duty?. *Psychiatry Psychology and Law*. 16. 2009
 - Without sex: Slavery, trafficking in persons and the exploitation of labour in Australia. *Alternative Law Journal*. 34. 2009

2008

- **Edited Books**
 - International Trends in Mental Health Laws. Federation Press. 2008
- **Research Book Chapters**
 - 'Dangerous' legislation. *Forensic Psychology and Criminology: An Australian Perspective*. McGraw Hill Australia. 2008
 - International trends in mental health laws: Introduction. *International Trends in Mental Health Laws*. Federation Press. 2008

- Protecting the integrity of the person: Developing limitations on involuntary treatment. *International Trends in Mental Health Laws*. Federation Press. 2008
- **Journal Articles Refereed**
 - Health professional-patient confidentiality: Does the law really matter?. *Journal of Law and Medicine*. 15. 2008
 - Justice for individuals with mental illnesses. *Pandora's Box*. 2008. 2008
 - Mental health and human rights: The role of law in developing a right to enjoy the highest attainable standard of mental health in Australia. *Journal of Law and Medicine*. 15. 2008
 - Psychologists' perceptions of legal and ethical requirements for breaching confidentiality. *Australian Psychologist*. 43. 2008
 - The United Nations convention on the rights of persons with disabilities. *Journal of Law and Medicine*. 16. 2008
 - Trafficking in women and forced migration: Moving victims across the border of crime into the domain of human rights. *International Journal of Human Rights*. 12. 2008

2007

- **Major Reports and Working Papers**
 - High-risk offenders: Post-sentence supervision and detention, Discussion and option paper2007

2006

- **Major Reports and Working Papers**
 - Preventive detention for dangerous offenders in Australia: A critical analysis and proposals for policy development 2006

2005

- **Revised Books**
 - Principles of Criminal Law. Thomson. 2005

2004

- **Authored Research Books**
 - Australian Criminal Laws: Critical Perspectives. Oxford University Press. 2004

2002

- **Research Book Chapters**
 - Epilepsy and confidentiality: Ethical considerations. *Epilepsy: A Question of Ethics*. Yozmot Heiliger. 2002

2001

- **Authored Research Books**
 - Principles of Criminal Law. LBC Information Services. 2001