

GREENS LIST

BARRISTERS



ELIZABETH BROPHY

BAR ROLL: 1999 | ADMITTED: 1982

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EXPERTISE

[Alternative Dispute Resolution](#) | [Appellate](#) | [Commercial Law](#) | [Equity & Trusts Law](#) | [Family Law](#) | [Inquests, Inquiries, Tribunals & Commissions](#) | [Property Law](#) | [Public Law & Administrative Law](#) | [Wills & Estates Law](#)

PROFILE

Type of practice:

Particular expertise and interest in the area of **elder Law** and the **regulation of health and medical care.**

Appearance, opinion and drafting work including:

- Royal Commission into Aged Care Quality and Safety 2018 - present
- VCAT -

guardianship, administration (older persons and young persons with a disability)

powers of attorney

medical treatment decision making

special medical procedures

- Regulation of aged care - merits review (AAT) and judicial review;

- Inquests - aged care, health/medical, mental health
- Advice on aged care and health legislation such as *Aged Care Act 1997* (Cth), *Health Services Act 1988*, *Drugs Poisons and Controlled Substances Act 1981*, *Food Act 1987*;
- Aged accommodation contracts
- Mental Health Tribunal
- Health practitioner disciplinary proceedings - Australian Health Practitioner Regulation Agency (AHPRA);
- Medicare Australia matters -

Peer Services Review Scheme under *Health Insurance Act 1973*
 Medicare Participation Review Committee under *Health Insurance Act*

1973

- Acting as an investigator
- Medical decision making for children and adults -

Re Jamie [2013] FamCAFC 110 (special medical procedure, Gillick competence)

Re Jamie [2012] FamCAFC 8 (standing)

Re Baby D (No 2) [2011] FamCA 176 (medical procedure, parental responsibility,

Best interests)

Gardner; Re BWV [2003] VSC 173 (whether provision of nutrition and hydration

by artificial means constitutes palliative care or medical treatment -

Medical Treatment Act 1988 (Vic), *parens patriae* jurisdiction)

Mediator:

- mediation of disputes relating to elder law matters;
- appointed mediator under *Aged Care Act 1997* (Cth) and Principles 2000-2008;
- mediation of disputes relating to health and medical care;
- instructor in the Lawyers Mediation Certificate (six day course for the purposes of national accreditation) with Dr. Peter Condliffe & Anthony Neal QC 2011 - present

Post Graduate Studies:

Doctor of Philosophy completed at the University of Melbourne Law School - the regulation of health services, health practitioners and complementary

medicines, the legal obligations of medical practitioners when incorporating integrative medicine and complementary and alternative medicine into conventional medical practice.

PhD awards - Medico-Legal Society of Victoria Academic Prize 2002 and Harold Luntz Graduate Research Thesis Prize 2008, University of Melbourne Law School.

Publications:

- 'Incapacity and medical treatment decision making - The Medical Treatment Planning and Decisions Act 2016 (2018) Issue 92, Wills and Probate Bulletin, Leo Cussen Centre for Law, 10
- 'Wayward Attorneys - Financial misconduct and compensation for the principal', (2016) Issue 86, Wills and Probate Bulletin, Leo Cussen, 3.
- 'The new enduring power of attorney - increased safeguards for principals and greater accountability for attorneys' (2015) Issue 80, Wills and Probate Bulletin, Leo Cussen, 10;
- 'Powers of Attorney Act 2014' (2015) Issue 79, Wills and Probate Bulletin, Leo Cussen, 18;
- 'Capacity negligence: the duty to obtain and act on competent instructions', Retirement and Estate Planning Bulletin, (2013) Vol 16, No 6.
- 'Victoria Ready for Guardianship Reform', Retirement and Estate Planning Bulletin, (2013) Vol 15, No 7.
- 'Safe Keeping: Aged Care Accommodation Bonds' (jointly with Robert Philips) (2010) (July) Law Institute Journal 49-53;
- 'Statutory standards as indicators of the standard of care in negligence: the nursing home context', (jointly with Harold Luntz) (1999) 7 Torts Law Journal, 263;
- 'Legal and ethical issues and their impact on the care of the older person in the community', chapter in 'Ageing at Home - practical approaches to community care', Theresa Cluning (ed), Ausmed Publications, 2001;
- 'Socio-Legal Decision Making and the Elderly' in 'In the Shadow of the Law', (jointly with Elizabeth Ozanne and Justin Mc Dermott) edited by Phillip Swain, Federation Press, 2nd edition 2002;
- 'The role of mediation under the *Aged Care Act 1997* (Cth)' 4th National Mediation Conference Proceedings, Tom Fisher, La Trobe University (ed) 1998;
- Health care decision-making, CM and the law, (2014) Advances in

Integrative Medicine, 1(1) 41

- 'Integrative Medicine and the Law', chapter in 'General Practice: The Integrative Approach', Dr Kerry Phelps and Dr Craig Hassed, (Eds) Churchill Livingstone, 2011;
- 'Integrative Medicine' chapter in Essentials of Law, Ethics and Professional issues in Complementary and Alternative Medicine, Julie Zetler and Rod Bonello (Eds), Elsevier, 2011;
- 'The GP's Duty of Care', (2009) 8(2) *Journal of Complementary Medicine*, 20;
- 'Does a doctor have a duty to provide information and advice about complementary and alternative medicine?', (2003) 10 *Journal of Law and Medicine*, 271;
- 'Informed consent and CM', (2003) 2(4) *Journal of Complementary Medicine*, 23;
- 'Referral to complementary therapists', (2003) 2(6) *Journal of Complementary Medicine*, 42;
- 'Medico-legal implications of complementary medicine', chapter in 'Holistic Healthcare in Practice', edited by Marc Cohen, AIMA, 2003.

Conferences:

Presented numerous papers at international, national and state conferences and seminars in the area of **elder law, elder mediation** and the law related to **integrative medicine** and **complementary** and **alternative medicine**.

To get in touch with Elizabeth Brophy | or for more information please contact the

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