

HEALTH SERVICES COMMISSIONER

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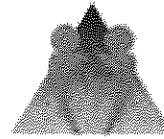
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SUBMISSION BY THE HEALTH SERVICES COMMISSIONER, VICTORIA, TO THE VICTORIAN PARLIAMENT LAW REFORM COMMITTEE'S INQUIRY INTO POWERS OF ATTORNEY

DATE: 24 August 2009

INTRODUCTION

The Health Services Commissioner (HSC) is an independent, impartial, accessible and confidential health complaints resolution commission. HSC assists users of Victoria's health services to make complaints against health service providers and to have these complaints resolved. HSC has formal investigation powers but rarely has to use these as most complaints can be resolved through mediation and conciliation. HSC has worked closely with the Office of the Public Advocate (OPA) for many years and where complaints involve people who have guardians, HSC values their cooperation.

The HSC welcomes the opportunity to make a submission to the Victorian Parliament Law Reform Committee's Inquiry into Powers of Attorney. These instruments affect the rights and interests of people with disabilities and are key tools to assist Victorians with cognitive impairments so they can exercise control over their affairs through the appointment of an attorney who acts in their interests. HSC also recognises that Enduring Powers of Attorney (EPAs) can be misused to the detriment of people with impairments by depriving them of the right to make key life decisions or to participate in this process. The current regulatory regime does not provide enough protection against unscrupulous people who may misuse EPAs.

The HSC has had the opportunity to read the submission made by OPA and endorses this in full. HSC is disappointed that the current review does not include the *Medical Treatment Act* and *Advanced Care Planning*.

The HSC supports the call by OPA for the enactment of a stand alone Powers of Attorney Act to bring together the three Acts currently regulating Powers of Attorney.

- A uniform test for capacity to sign an EPA.
- Legislative requirement for attorneys to seek out the wishes of donors, and where feasible give force to them, when exercising powers under EPAs, even when the decision making capacity of donors is unclear.
- Improve protections to guard against unscrupulous actions by attorneys.

HSC has also considered the list of recommendations in the submission of OPA and it is not necessary to repeat them here, suffice to say that HSC supports them all.

A handwritten signature in black ink, appearing to read "Beth Wilson", followed by a horizontal line.

Beth Wilson
Health Services Commissioner