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Law Reform Committee

Palliative Care  
V I C T O R I A  
Specialist health care and practical support

25<sup>th</sup> November 2009  
Law Reform Committee  
Parliament of Victoria  
Parliament House  
Spring St  
East Melbourne Vic 3002

Dear Committee Members

**SUBMISSION: Inquiry into Powers of Attorney**

Thankyou for this opportunity to contribute to the Law Reform Committee's Inquiry into Powers of Attorney. We believe a more simplified and streamline process around this area of law will make it easier for those individuals living with, and dying from, a terminal illness as well as their carers (non professional and professional).

Palliative Care Victoria (PCV) is the peak body for Palliative Care in Victoria. PCV develops and provides information to help people living with terminal illnesses and their families. Our aim is to optimise their quality of life, empowering them to retain control of their lives through knowledge and information. Palliative Care Victoria also supports its member organisations, palliative care providers and workers and volunteers in their provision of high quality palliative care.

We look forward to the release of the Committee's draft report and working together to advance reform in this crucial area.

Yours sincerely



Kevin Larkins  
Chief Executive Officer

Patrons: The Honourable Sir James Gobbo AC CVO, Dame Beryl Beaurepaire AC DBE      Reg. Inc. No. A0022429M      ABN 88 819 011 622

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## Key recommendations and suggestions

1. That there is one legislative framework underpinning Powers of Attorney (POA) from a national/state and territory perspective. A national, coordinated approach is essential.
2. There is one legislative framework for all POA in Victoria. Currently there are four different types of POA, all governed by separate Acts of Parliament and requiring different forms and witnessing requirements. This causes confusion, distress and inconvenience and restricts uptake of this essential advance care planning process.
3. That Medical POA must be included in any review of POA as they are an essential component of POA. The role of Refusal of Treatment Certificates must also be clearly articulated within the Medical POA. It must also be clear that at present any such refusal of treatment certificate is limited by 'capacity' of the donor to a current/existing condition of the individual, and does not extend to future clinical conditions.
4. That paper work associated with POA's should be simpler, have standardised forms and witnessing requirements so as to ensure it is easy for people to create and understand POA's. A clear distinction between POAs must however be maintained.
5. The current complexity of POAs place increased demands on clinicians and can take away from client care.
6. The word 'donor' is confusing and has different connotations for different people. This should be replaced by a simpler term.
7. There is a need for an 'ongoing' education strategy (directed at the general community and all professionals) to ensure access to POA's is maximised, various instruments are understood and those appointed with POA are aware of their responsibilities.
8. Currently there is no provision for people defined as 'lacking capacity' to appoint enduring POA's. This needs review to protect the increasing number of those with dementia as well to ensure that individual differences that influence 'capacity' are taken into account.
9. A central register of all POA's would help prevent instances of confusion and abuse. Treating doctors and hospitals should have access to this in a medical emergency or when end of life decisions are made. Privacy issues would need to be addressed.
10. POA's cannot be revoked orally unless this is filed through a central register.
11. An accessible system to deal with complaints and appeals surrounding abuse of POA should be developed.

### Some views from the filed

*"I am a Research Nurse who has been collecting carer research data and working with carers in education sessions in the past 18 months, specifically in the area of palliative care.*

*I would like to express the view that generally carers are extremely careful in regard to their role and their relationship with the person receiving palliative care and particularly sensitive regarding the amount of autonomy they give to the patient often over and above their own needs. I believe carers need and deserve as much information and support for themselves as they give to the person for whom they are caring. Many of the carers with whom I have had contact in the past 18 months have expressed concern over not knowing if they are doing the right thing for the patient. Some of these carers have had to apply through VCAT for Power of Attorney for a spouse which has created an enormous workload and I have been told by them that it was a burden that has threatened their own health – particularly their mental health. The patient must at as early a point in their illness, ideally when first diagnosed, be encouraged by the whole cancer and palliative care communities to attend to their legal matters and Power of Attorney for both themselves and their carers."* Anne Harbison, Centre for Palliative Care Education & Research

POA Guardianship

*"POA are used to some extent in the community but not well understood. Barriers include confusion over the different types and understanding of why they may be needed. We have had a couple of instances where family members are disagreeing about care of a relative who is no longer able to make decisions for themselves. We have found ourselves in a difficult position when one family member says they have POA and therefore we should be doing as they direct. This usually occurs with the POA not being sighted by us. Yes there should be a registration system. This would enable us to check the POA."*

Ms. Laurel Eddy, Nurse, Home Nursing, Benalla and District Memorial Hospital