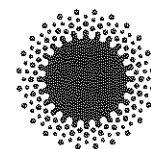


Submission No. POA/8
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Law Reform Committee



the women's
the royal women's hospital

23 July 2009

Ms Kerryn Riseley
Executive Officer
Law Reform Committee
Parliament of Victoria
Inquiry into Powers of Attorney
Parliament House
Spring Street
EAST MELBOURNE 3002

Dear Ms Riseley

Thank you for your letter dated 11 June 2009 addressed to the Chief Executive of the Royal Women's Hospital inviting a submission to the Committee's Inquiry into Powers of Attorney.

The terms of reference for the Committee require it to consider law reform to '*streamline and simplify power of attorney documents*'. However, power of attorney documents under the *Medical Treatment Act 1988* are outside the scope of the Committee's inquiry.

Your letter indicates that the Committee is aware that health care organisations and hospitals often deal with people who hold the power of attorney over someone else, and are seeking to exercise their powers as an attorney. This is not generally the experience of the Women's hospital, as the vast majority of its patients are maternity patients who are fit and well and do not need alternative decision-makers in their medical treatment and care. Other patients may however be "incompetent" such as to not be able to give consent to treatment and may require an attorney (or guardian) to act as substitute decision-maker.

The Women's hospital is supportive of there being the ability on the part of *competent* persons in the State of Victoria to make an *advance treatment directive* which would be binding on health care providers and family members were that patient to become incompetent to make decisions about their own health care in the future. The Women's hospital supports the general intention of the Committee to look at law reform so as to streamline / simplify power of attorney documents to enable more Victorians to plan for their health care needs.

The determination of whether or not a donor has *capacity* to create a legally enforceable document is a matter for medical (and sometimes legal) professionals to judge, and capacity will always be able to challenged, in the absence of such medical assessment, *prior* to the execution of any legal document. Again, to determine whether a person has lost capacity is also a matter for medical judgement, and it will be for the healthcare providers in attendance at the time, to assess a person to see if they are competent to make decisions about their health care or not.

In the absence of a power of attorney having been made, the *Guardianship and Administration Act 1986* now provides for a mechanism for incompetent patients to give consent to treatment (e.g through the "person responsible" for the patient) and by the Public Advocate for example. As the Women's is also involved in providing "special medical procedures" for women (as defined) staff at the Women's often assist in bringing the matter of consent for an incompetent patient before VCAT for determination before treatment may proceed.

Yours sincerely

Elizabeth Kennedy
Corporate Counsel