



Health

South Eastern Sydney
Local Health District

NSW Law Reform Commission
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9 February 2018

Dear Commissioners

Re. Review of the Guardianship Act 1987

I refer to your draft proposals for changes to the Guardianship Act 1987 published in November 2017. Thank you for the opportunity to make a submission.

The SESLHD Clinical Ethics Committee is responsible for providing an avenue for the review, analysis and reporting of ethical issues arising in the care of patients. The Committee's primary role is to provide support, education, and guidance in regards to the ethical issues that arise in the design, delivery and provision of health care within SESLHD.

The South Eastern Sydney Local Health District (SESLHD) Clinical Ethics Committee hereby responds to your invitation to make a submission. The numbering below refers to the numbering in your 'Draft Proposals' document. Our submission refers principally to Section 6 'Healthcare Decisions'.

Advance Care Directives

We note the significant weight placed on advance care directives (ACDs) eg. 1.11, 6.5, 6.15(b)(i) and 6.17(1)(a). We suggest that this may be problematic because despite the intuitive appeal of advance care directives as instruments to promote patient autonomy there is increasing evidence^{1,2,3,4} that they have more to do with limiting care than promoting autonomy and may do little to improve care. Particularly at the end of life they may lack utility and may at times compromise decision making and communication.

We are also concerned that without any statutory requirements for a valid advance care directive there will not usually be any quick way for a health professional to be reassured about the quality of the decision making contained in the advance directive (6.5).

South Eastern Sydney Clinical Ethics Committee

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Finally, we are concerned about potential situations where there is inconsistency between a prior advance care directive and a presently expressed preference in a patient who does not presently have decision-making ability (1.11).

Chemotherapy and Radiotherapy – ‘Special’ Medical Treatment

High-dose chemotherapy and radiotherapy used in the context of cancer care and bone marrow transplantation often causes permanent infertility as an anticipated but unwanted adverse effect of therapy and is therefore a ‘special’ medical treatment. We are concerned that the draft proposal would mean that chemo-radiotherapy and/or transplantation for persons lacking decision-making ability could only be consented to by the Tribunal (6.7). In our view this is clinically and ethically inappropriate as patients with life-threatening illnesses often have limited options and are treated only after sustained and shared consideration of the risks and benefits of treatment. It may also be that any requirement for involvement by the Tribunal may unnecessarily and inappropriately delay and compromise treatment. We suggest that anticipated infertility as a result of chemotherapy and radiotherapy is excluded from the definition of ‘special’ medical treatment and consent is most appropriately provided by the person responsible.

Withdrawing or Withholding Life-sustaining Measures

The Clinical Ethics Committee notes the proposal to make explicit that, “Death as a result of withdrawing or withholding life-sustaining measures is not necessarily incompatible with promoting a patient’s personal and social wellbeing” (6.14(2)). This is a welcome proposal that will resolve the ambiguity created by Sec 32(b) of the Guardianship Act in relation to appropriate consent to withdraw or withhold life-sustaining measures.

If you have any questions in relation to this submission please contact Dr Giles Yates, Clinical Ethics Project Officer, [REDACTED]

Yours sincerely

[REDACTED]
Chair
SESLHD Clinical Ethics Committee

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