Epworth HealthCare

Excellence Everywhere Every Day

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Victorian Law Reform Commission
GPO Box 4637
Melbourne VIC 3001

Dear Sir/Madam

Guardianship – Consultation Paper

Further to its submission to the Review of Victoria's Guardianship and Administration Laws, Epworth Foundation trading as Epworth HealthCare ("Epworth") has now been provided with a copy of the Guardianship Consultation Paper Summary together with the Full Consultation Paper. Epworth notes the Commission's aim is to examine how laws relating to guardianship might be "clarified and improved".

Epworth supports the general thrust to modernise Victorian guardianship laws.

As was stated in our previous submission, the current law is cumbersome, and hard to understand by heath professionals.

Epworth is Victoria's largest not for profit health care provider, and deals on a daily basis with patients who have impaired decision making capacity about their health care. At Epworth, there are both elderly patients with disabilities due to their age and frailty, and young patients who lack legal capacity because of an acquired brain injury, for example, following an accident and who are undergoing rehabilitation.

In answer to the specific questions posed, Epworth wishes to answer only in relation to the following:

- Question 5 – Epworth agrees that Victoria's various substitute decision making laws should be consolidated in to *one* single Act;
- Question 6 – Epworth agrees that the term *medical decision maker* or *health decision maker* should replace the notion of a *person responsible* in the current legislation. Because health professionals are not always *medical* and the decision to treat is not necessarily treatment by a medical practitioner but a team decision, Epworth would prefer the term *health decision maker* noting that social workers are invariably involved in liaising with third party decision makers and patients;
- Question 7 – It would be preferable to replace the term *guardian* with the term *adult guardian* and to replace the term *administrator* with the term *financial guardian;*
- Question 26 – Epworth supports the number of enduring appointments being reduced from 3 to 2 by removing the option of appointing an *agent* under the *Medical Treatment Act* and by requiring patients to use an enduring guardianship appointment for medical treatment matters;

- Question 28 – an online registration system would be preferable to the current (almost never used) requirement of having to complete documentation e.g. refusal of treatment certificate and to provide a copy to the CEO of the Hospital. However it should not be necessary to notify any public authority if a power of attorney is activated, as this would be administratively burdensome for health professionals– see question 34;

- Question 30 – Epworth supports there being law concerning advance directives and strongly supports the notion of patients being offered choices with their health care;

- Question 46 – there could possibly be an electronic registration system for *medical* advance directives, but this should not be compulsory. However, the Commission needs to be aware that not for resuscitation orders (NFR orders) are common in Hospitals and are a form of advance directive. A NFR order does not require any form of registration but is placed in the medical record of the patient; and operates as a medical order not to resuscitate say, in the event of a cardiac or respiratory arrest;

- This form of advance directive is invariably very effective, and is more widely used than refusal of medical treatment certificates, for example. Moreover, an advance directive is valid at common law, and does not require *any* written document. The common law simply requires that the adult must be competent at the time the direction was given, and that there is no undue influence. At common law, there is no requirement as to any formality, such as the advance directive to be in writing, or to be witnessed for example as is the case under the *Medical Treatment Act 1988.* The common law relating to advance directives should continue to apply as it currently does under section 4of the *Medical Treatment Act;*

- Question 79-81 Epworth supports the broadening of the definition of medical treatment to include a *wider* range of procedures including the prescription and administration of drugs, physiotherapy;

- Question 83 It is Epworth's contention that the law should permit *minor* medical procedures to be undertaken without substituted consent. If certain safeguards are met e.g. notification to VCAT, say after obtaining a second independent opinion, and documenting the rationale for the procedure in the patient's medical record minor procedures should be lawful.

- Question 84 In circumstances where there is *no* person responsible, under the current law Epworth must currently notify the Public Advocate, but would support a more relaxed approach under safeguards such as those as outlined above for minor medical procedures;

- Question 85 Epworth supports changing the current law so that consent to research by a substituted decision maker could be obtained, subject to safeguards. Medical research that consists of a *major* medical procedure would require the consent of the third party decision maker or notification to the Public Advocate.

Epworth notes that this is the second of three Consultation papers and looks forward to the publication of the third in the course of the Commission's review of guardianship laws. Please contact me if any elaboration is required.

Yours sincerely

Elizabeth Kennedy
Corporate Counsel