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HEALTH AND DISABILITIES
COMMITTEE

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**Submission to the Queensland Parliament
Health and Disabilities Committee**

On

***Queensland Law Reform Commission
Recommendations on Guardianship Laws Inquiry***

On behalf of

Palliative Care Queensland

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**Palliative
Care
Queensland**

Palliative Care Queensland

Palliative Care Queensland (PCQ) is the peak state organisation in Queensland representing the interests and aspirations of all who share the ideal of quality care at the end of life for all Queenslanders.

PCQ is a member organisation of Palliative Care Australia (PCA) and aspires to meet PCA's national aims at a state level within the capacity of the state organisation.

PCQ recognises that specialist palliative care providers have specialist knowledge, skills and expertise in the care of patients, their families, carers and communities, who are living with a terminal illness and facing dying, death and loss as a result of a progressive condition that has no cure and that can be reasonably expected to cause the death of the individual within the foreseeable future.

Issue 1

Should the POA Act be amended to clearly state that an advance health directive can not operate if the directive is uncertain or if circumstances have changed to the extent that, had the patient known of the changed circumstances they would think the advance health directive was inappropriate?

The State Council and key representatives of PCQ remain concerned that this recommendation places importance on the potential clinical status of the patient (if more advanced medical science is employed), rather than the broader health status of the patient, potentially failing to acknowledge that there remains a high likelihood that the patient will die.

As a result, it is our recommendation that changes to legislation must:

- a) recognise the importance of Advance Health Directives being 'current';
- b) mandate that Advance Health Directives be legally binding in the State of Queensland only if deemed to be 'current', and
- c) Suggest that a 'current' Advance Health Directive must have been prepared within the previous five (5) years.

Issue 2

Would the proposed obligation on health and disability services improve health providers' access to and awareness of advance health directives and enduring powers of attorney?

What impact would the proposal have on hospitals, residential aged care and residential disability facilities and health providers?

The State Council and key representatives of PCQ recommend that a Statewide awareness and education campaign be implemented to inform both members of the general public and health care providers of the existence and importance of Advance Care Planning and Advance Health Directives.



We support the suggestion that health care providers formally discuss Advance Care Planning with both patients and their representatives upon admission to health care facilities, and in particular, upon admission to residential aged care facilities.

We support the continued use and additional promotion of the Queensland Health 'Acute Resuscitation form' and supportive documentation as a viable method for recording consumer wishes for end of life care.

We acknowledge that both the National Palliative Care Strategy and Draft Queensland Health Palliative Care Strategy emphasise the significance that Advance Care Planning and Advance Health Directives play in ensuring a client centred approach to the provision of end of life care.

Issue 3

Should a health provider be required to consult with an attorney appointed under an enduring power of attorney before forming a reasonable belief that a direction in an advance health directive is uncertain (consistent with the current legislation, to consult with an attorney appointed under an advance health directive)?

The State Council and key representatives of PCQ recommend that the attorney appointed be consulted before a decision is made by a health professional when a direction in an advance health directive is considered uncertain.

Should the protection for a health provider who does not follow a direction in an advance health directive because of changed circumstances be modified so that it is a valid reason only if the adult would have thought their direction to be inappropriate if they had known of the change in circumstances?

PCQ recommends that a health professional may only override an advance health directive, following extensive consultation with the attorney appointed.

Should the protection for a health provider who does not follow a direction in an advance health directive because he or she believes it is inconsistent with good medical practice be omitted?

The State Council and key representatives of PCQ believe that the law should provide protection for all health providers in the event that they are requested to provide medical treatment that is clearly consistent with good medical practice.

We recommend that the attorney is consulted prior to a determination being made that the patient would have supported a decision to override the directive because circumstances have changed.



Issue 4

Should the guardianship legislation be amended to ensure that common law rights to consent to or refuse health care are not affected by the legislation?

The State Council and key representatives of PCQ support the national framework on advance care planning, and such, support amendments to guardianship legislation to ensure that common law rights to consent to or refuse health care are not affected.

Issue 5

Should any limitations on the effect of decisions about health care be more clearly stated in the body of the Act, rather than in a definition?

The State Council and key representatives of PCQ support measures that further empower both health care professionals and members of the broader community to have a clearer and more consistent understanding of the definition of health care with legislation.

Should it be an offence to withhold or withdraw a life-sustaining measure without consent or authorisation when continuation or commencement of the life-sustaining measure would not be inconsistent with good medical practice?

We further suggest that more clear and defined legislation will limit the likelihood of confusion over withdrawing a life-sustaining measure without consent or authorisation when continuation or commencement of the life-sustaining measure would not be inconsistent with good medical practice.

Issue 6

Should the limitations on when a direction in an advance health directive to withhold or withdraw a life-sustaining measure can operate be omitted?

The State Council and key representatives of PCQ support QLRC's recommendation that the provision which excludes blood transfusions from the definition of a *life-sustaining measure* be omitted.

In addition, we recommend acknowledgement of two key points:

- Best practice medical treatment at end of life may incorporate the provision of a blood transfusion, if the aim of the procedure is to improve quality of life, and
- At all costs, restrictions on patient autonomy should be avoided.

Should the limitations on a direction to withhold or withdraw artificial nutrition or hydration be treated differently to other life-sustaining measures?

The State Council and key representatives of PCQ recommend that artificial nutrition or hydration be treated no differently than other life sustaining measures. We recommend further that the emotive component of the argument to continue artificial nutrition and hydration not be outweighed by scientific evidence which suggests that withdrawal of such treatment is not associated with increased discomfort or distress.



Issue 7

Should the limitations on operation of a substitute decision maker's consent to withhold or withdraw a life-sustaining measure be omitted?

The State Council and key representatives of PCQ recommend that these limitations should not be omitted.

Alternatively, if a substitute decision maker's consent can not operate under s.66A of the GAA Act, should the legislation allow the health provider to refer the decision to the adult guardian to make a decision (if the adult guardian is the guardian for the adult, for the Tribunal to make a decision)?

As an acceptable safeguard, we recommend referral of the decision to the adult guardian in this circumstance.

Issue 8

Should consent be required to withhold (not commence) a medically futile life-sustaining measure?

The State Council and key representatives of PCQ recommend that consent should not be required to withhold a medically futile life-sustaining measure.

Should consent be required to withdraw a medically futile life-sustaining measure that has been commenced?

We recommend that no consent be required to prevent the implementation of medically-futile life sustaining measures or to withdraw medically-futile life sustaining measures.

Issue 9

Should 'withholding or withdrawing a life-sustaining measure' be omitted from the definition of health care for the purpose of s.67 of the GAA Act?

The State Council and key representatives of PCQ recommend 'withholding or withdrawing a life-sustaining measure' be omitted from the definition of health care for the purpose of s.67 of the GAA Act. This modification would better allow for circumstances where a person is demanding health care.

Should the proposed new s.67A (above) be added to the GAA Act?

In keeping with the above statement, we recommend a modification that would provide a process to help resolve the situation where a person is objecting to not receive or is demanding health care.



Issue 10

Should the Criminal Code be amended to remove any doubt that a health provider who withholds or withdraws a life-sustaining measure in accordance with the guardianship legislation is not criminally responsible?

The State Council and key representatives of PCQ recommend alteration of the criminal code to remove any doubt that a health provider who withholds or withdraws a life-sustaining measure in accordance with the guardianship legislation is not criminally responsible.

Issue 11

Should the authority to provide urgent health care without consent to meet an imminent risk to life or health be clarified so that it is consistent with the authority to provide health care without consent to prevent significant pain or distress, that is, where it is not reasonably practicable to get consent from a person who could give it under the guardianship legislation?

The State Council and key representatives of PCQ recommend that in circumstances where a patient has a terminal condition, and has clearly consented to comfort measures only, and where the goal of treatment is comfort rather than cure, there should be no mechanism for the wishes of the patient to be over-ridden. We would further recommend alteration of the criminal code to reflect that such an action is consistent with common law assault.

Should it be possible to provide health care without consent to meet an imminent risk to life or health if the health provider knows that the adult objects to the health care in an advance health directive or refused the health care at a time when the adult had capacity to make decisions about health care.

The State Council and key representatives of PCQ recommend that in circumstances where a patient has a terminal condition, and has clearly consented to comfort measures only, and where the goal of treatment is comfort rather than cure, there should be no mechanism for the wishes of the patient to be over-ridden. We would further recommend alteration of the criminal code to reflect that such an action is consistent with common law assault.

Issue 12

Is it appropriate that registration of enduring powers of attorney is not required?

The State Council and key representatives of PCQ do not recommend a separate register for enduring power of attorney, but would recommend that both advance health directives and enduring powers of attorney be registered on a national e-health registry, provided that such a registry is easily accessible to health care providers when necessary.



Issue 13

Should the courts have the ability to appoint, without consent, the Public Trustee or the Adult Guardian as a litigation guardian of last resort for a person who does not have capacity?

The State Council and key representatives of PCQ recommend that all patients at all times have access to a litigation guardian.

What are the main costs and benefits of appointment of the Public Trustee or the Adult Guardian as a litigation guardian?

No response to this question provided.

Should the court be able to appoint another person as a litigation guardian without their consent?

No response to this question provided.

Issue 14

Should the Adult Guardian charge fees for guardianship services?

It is the view of the State Council and key representatives of PCQ, that services provided by the Office of the Adult Guardian should be free of charge. Further, we recommend that funding to the Office of the Adult Guardian be reviewed in order that funding is commensurate to the direct needs of the department, bearing in mind projections for future service provision.

What are the main costs and benefits of continuing with current arrangements, and of introducing fees?

No response to this question provided.