

COMMENTS: ACTS AMENDMENT (ADVANCE HEALTH CARE PLANNING) BILL 2006

Background

The Health Consumers' Council is an independent community based organisation, representing the consumers' 'voice' in health policy, planning, research and service delivery. The Council advocates on behalf of consumers to government, doctors, other health professionals, hospitals and the wider health system. Funded by the Department of Health WA, the Council provides a state wide service. To find out more you can check our website www.hcc-wa.global.net.au.

In 2005, with the release of the discussion paper *Medical Care of the Dying*, the Council held two public meetings to hear the issues from members of the community. A total of 130 people participated. There was keen interest in this issue and our subsequent submission July 2005, reflected this.

We are therefore pleased to comment on this draft bill using our submission as a reference point. The Health Consumers' Council welcomes the preservation of the common law relating to a person's treatment decisions in relation to their future treatment.

Comments

p.4 Part 2 s5

25 Under definition of "treatment"

We would strongly recommend that this include nutrition and hydration.

The Health Consumers' Council recommends an additional section in either legislation or regulation to include a practical scheme of an Advance Health Care Register.

In addition, the Health Consumers' Council recommends that user friendly guides to this legislation are published and promoted.

Section 3(1) of the *Guardianship and Administration Act 1990* (WA) (“Act”) should be amended to include “grandchildren” in the definition of “nearest relative”.

Section 110P to be inserted in the Act effectively requires that an advance health directive must be in writing, which is different to the position under the common law where oral directives can be made. The directive does not, however, need to be signed by the maker, but can be signed at the direction of the maker, such signature to be witnessed by 2 persons 18 years or older. The section strikes a balance between

allowing sufficient flexibility to consumers in respect of making advance health directives, and providing certainty to health professionals.

Section 110Q to be inserted in the Act should specify that the maker has consulted with a health professional in relation to the treatment decision.

Section 110ZJ to be inserted in the Act generally provides that a treatment action is to be taken for all purposes to have been taken in accordance with a treatment decision that has been made by the patient and as if the patient were of full legal capacity where the health professional has acted under a reasonable belief and in good faith. Under the current draft, it is not clear that the requirement to act under a reasonable belief and in good faith extends to the circumstances specified in Subsection 4. It is considered the requirement to act under a reasonable belief and in good faith should apply in all circumstances.

Part C Persons responsible for patients

(1102C) (3) the person responsible is the first in order of persons listed in subsection 4 (1) is of full legal capacity

The Health Consumers’ Council has some concerns about the language in relation to competence. The phrase, “full legal capacity” has a meaning that is

unclear as it seems to suggest something other than the normal functional understanding of competence. It seems to suggest that the person has to be competent in all possible decisions as compared to this particular decision.

Clarification would be helpful.

p.12 - 110Q Requirements in relation to treatment decision in advance health directive.

The Health Consumers' Council is concerned that there is no provision for the provision of accurate/appropriate information being given by a registered medical practitioner or registered nurse practitioner, which is a requirement for informed consent to medical treatment. There are no duties on anyone to provide accurate appropriate information.

p.13 110R (3)b

The Health Consumers' Council suggests that the clause should read (b) may *have caused the maker to change his or her mind.*

p.17 – 110ZC

(4) (b)

Change section to read, *“a person who regularly provides or arranges for the provision of personal care, domestic services and support to the patient, but is not remunerated for doing so”.*

p.20 – 110ZH

(1)

Health Consumers' Council is of the view that use of term "practicable" is open to interpretation and may provide a loophole to health professionals to ignore their obligations. We recommend that the term practicable needs some qualifications.

p.22 and p.23 – 110ZJ Reliance by health professional on treatment decision

Sections 2, 3 and 4 appear to negate all the safeguards earlier in the Bill and in our view gives too much responsibility to health professionals. This section needs to be revised.

p.26 Part 4 Criminal Code amended

The Health Consumers' Council strongly recommends that wherever the term "treatment (including palliative care)" is used in this section, it should read

"treatment (including palliative care, hydration and nutrition)"

p.26 Section 259 following subsection last clause

"having regard to the patient's state at the time and to all the circumstances of the case"

Does this include making an advance health directive?

Health Consumers' Council notes that the section that replaces the old s119 does not say anything about how the responsible person should make the decision ie best interest or substituted judgements. This is a problem in our view.

Final comment

s110R(3) the word "revokes" is a worry . We would have thought it meant that it wouldn't apply to that decision. But surely it should continue to be valid in any other circumstances.

The role of SAT is unclear. For example, s110K, 110W, 110Y. It is not clear whether it is necessary for SAT to make an order in all cases or only if there is a dispute.

S110M and 110ZF should specify relevant criteria for revoking enduring guardian power and for reviewing decision of responsible person eg not in best interests.

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17 May 2006