



Office of the Public Advocate

6 August 2019

Ms Avril Diamante  
Coroner's Registrar  
Coroners Court of Victoria  
65 Kavanagh Street  
Southbank 3006



Dear Registrar,

**Investigation into the death of [REDACTED]**

**Your ref: COR 2016 002572**

I refer to your letter to Dr Pearce, the Public Advocate, of 24 May 2019 providing the findings of Coroner Rosemary Carlin into the death of Mr [REDACTED]. Dr Pearce is currently on leave.

The findings include the following recommendation that involves the Office of the Public Advocate (OPA) –

*The OPA review opportunities to expand their support system for people who do not have a disability but:*

- (b) have complex and/or time critical medical needs; and*
- (c) have capacity to make treatment decisions, but may be vulnerable because of the risk of incomplete information and/or lack of understanding of their treatment options, risks and benefits; and*
- (d) where an appropriate Support Person under the Medical Treatment Planning and Decisions Act 2016 cannot be identified.*

I advise that OPA has implemented the Coroner's recommendation insofar as it has reviewed current opportunities to expand the scope of providing supported decision-making for the class of persons set out in the recommendation. That said, the outcome of the review is that there is no ability to provide such support.

Additionally, OPA has reviewed the function of its Medical Treatment Planning and Decisions Team in relation to the obligations and duties of the Public Advocate pursuant to section 63(2) of the *Medical Treatment Planning and Decisions Act 2016*. This section operates where a health practitioner seeks

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Level 1, 204 Lygon Street, Carlton, Victoria, 3053

DX 210293 Local Call: 1300 309 337

the consent of the Public Advocate to administer significant medical treatment to a person where there are no other substitute decision-making mechanisms available (such as an instructional directive or a medical treatment decision maker). The Public Advocate may consent to, or refuse, significant medical treatment in accordance with section 61 as if the Public Advocate were the person's medical treatment decision maker.

In performing this function, the medical treatment decision maker is required to determine, where possible, what decision the person would have made if the person had decision-making capacity. The initial steps in the decision-making process are to discover the person's preferences and values. This may result in decisions that differ from the view of the treating team.

OPA's Medical Treatment Decision Making Team (MTDMT) is supplemented by the medical advice line which is part of OPA's Telephone Advice Service. The MTDMT and the medical advice line work with clinical treating teams to assist them to navigate the legislation. Conversations between the MTDMT, medical advice line staff, and the treating team often include situations identified within the Coroner's recommendation. There are times where the person's decision-making capacity changes during their treatment journey, from having capacity - to not having capacity - to regaining it.

I advise that OPA's general advice line can also provide guidance to persons in the community regarding their rights under the *Medical Treatment Planning and Decisions Act 2016* and under the *Charter of Human Rights and Responsibilities Act 2006*.

OPA does not have resources to provide services beyond substitute decision making for those who do not have capacity to make a medical treatment decision. We do not foresee we will be resourced to expand to a supported decision-making system for medical treatment decisions.

I understand that support to make treatment decisions can be fulfilled by current Palliative and Supportive Care services which are already operating across the State, though this would not meet the Coroner's recommendation that such support be independent.

I note Peninsula Health's Palliative Care website for Palliative Care advises as follows<sup>1</sup> -

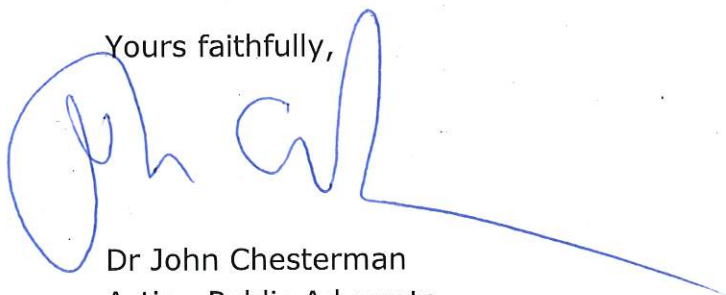
The team includes clinical nurse consultants, pastoral care counsellors and medical support to provide:

- specialist knowledge of support needs of patients, families and carers
- symptom management needs of palliative patients
- advice on and liaison with community palliative care services as part of discharge planning
- consultation with, advice and support of other professional carers at Peninsula Health
- *support and advocacy in discussions regarding treatment choices in potentially life threatening situations.*<sup>2</sup>

Finally I advise that OPA will continue to look and advocate for opportunities to advance supported decision-making. Under the current *Guardianship and Administration Act 1986* and the *Guardianship and Administration Act 2019*, the Public Advocate is limited to advocate on behalf of people with disabilities. The Public Advocate's role under the *Medical Treatment Planning and Decisions Act 2016* is limited to persons who lack decision-making capacity.

The Department of Health and Human Services has responsibility for the *Medical Treatment Planning and Decisions Act 2016* and would be in a better position to consider and implement the Coroner's recommendation. Having said that, I advise that OPA certainly supports supported decision-making options being available for the class of persons identified in the Coroner's recommendation.

Yours faithfully,



Dr John Chesterman  
Acting Public Advocate

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<sup>1</sup> <https://www.peninsulahealth.org.au/services/services-n-z/palliative-care/>

<sup>2</sup> Italics added