

## **INQUIRY INTO SUBSTITUTE DECISION-MAKING FOR PEOPLE LACKING CAPACITY**

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**NSW Legislative Council  
Standing Committee on Social Issues  
Inquiry into substitute decision-making  
for people lacking capacity**

**Submission by**

**Australian Medical Association (NSW)  
Limited**



## **1. Introduction**

AMA is a medico-political organisation that represents over eight thousand doctors in training, career medical officers, staff specialists, visiting medical officers and specialists and general practitioners in private practice.

AMA (NSW) welcomes the opportunity to make a submission on the important issue of substitute decision making for people lacking capacity in New South Wales.

AMA (NSW) Council has considered the NSW Health June 2009 Discussion Paper on the issue, and has provided feedback which has been incorporated into the AMA (NSW) response.

Any questions regarding this submission should be directed to:

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## **Background**

AMA (NSW) notes that it has no submissions to make in relation to the management of estates of people incapable of managing their affairs. This is an issue which General Practitioners may have experience with, as often patients and families of patients will ask for guidance in the area.

AMA (NSW) members do have significant involvement in the area of guardianship of people who have disabilities. Most often, their interaction with this area arises in a hospital setting where patients with disabilities or patients lacking capacity will require decisions made in relation to their medical treatment, or in relation to issues such as where they may live (nursing homes, community care etc).

### **Guardianship of People who have disabilities or who lack capacity**

AMA (NSW) notes that its' members understand the importance of the autonomy and respect for a patient who has a disability or who may lack capacity, and the need to ensure that any decisions regarding their medical treatment and social circumstances are made appropriately, with a transparent and considered process in place.

AMA (NSW) members have commented that whilst they understand there are due processes which must be followed where a decision is required by the Guardianship Tribunal (in the absence of a guardian or relative), these processes are taking a significant amount of time.

Such time delays are not in themselves an issue where a decision is not required immediately (for example, where a patient is well supported and receiving community care). However, AMA (NSW) has received significant feedback from hospital doctors that often a patient will have to remain in hospital for several weeks whilst a decision is sought from the Tribunal in relation to a patient.

#### ***Example***

*Mrs G is an elderly patient who lives at home on her own. She has no surviving relatives, and no legally appointed guardian.*

*Mrs G is admitted to Bankstown Hospital under the care of the geriatric team, with several medical problems (including health concerns relating to her lack of intake of food and failure to take various medications).*

*Mrs G has dementia, and doctors treating her are concerned given her current health problems as well as her dementia, about her returning to live on her own. Doctors caring for Mrs G believe a nursing home placement would result in better health outcomes for her, and are concerned if she is discharged from hospital to her home her condition will deteriorate.*

*The Geriatric ward at Bankstown is extremely busy, but whilst doctors await a decision from the Guardianship Tribunal relating to their recommendation that she reside in a nursing home, Mrs G must remain in hospital. Mrs G is not required to stay in hospital for medical treatment, but there is no option for her until she can be placed in a nursing home.*

AMA (NSW) is concerned that time delays in cases such as Mrs G's are resulting in patients staying longer in hospital without medical need.

AMA(NSW) is further concerned that this is contributing to access block in emergency departments. Where bed occupancy is over 85% in hospitals (which may be in part caused by long stay patients such as Mrs G who do not need to remain in hospital) this results in significant issues for emergency departments in hospitals. Access block results in patients in emergency departments (both those who require admission and those who don't) waiting much longer for medical treatment, which in turn may result poor outcomes for patients.<sup>1</sup>

**AMA (NSW) submits that an urgency provision should be inserted into legislation which would prioritise decisions by the Guardianship Tribunal/ Public Guardian where the person for whom the decision is required is in hospital awaiting a decision.**

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<sup>1</sup> See for further information- "Access Block and Overcrowding- A Literature Review" Prepared for the Australasian College for Emergency Medicine (ACEM) by Dr Roberto Forero and Professor Ken Hillman, available at [http://www.acem.org.au/media/media\\_releases/Access\\_Block\\_Literature\\_Review\\_08\\_Sept\\_3.pdf](http://www.acem.org.au/media/media_releases/Access_Block_Literature_Review_08_Sept_3.pdf)