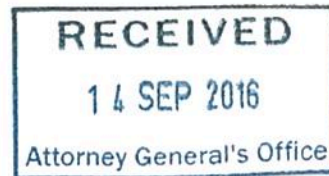




The Hon Jillian Skinner MP
Minister for Health



H16/75298

The Hon. Gabrielle Upton MP
Attorney General
GPO Box 5341
SYDNEY NSW 2001

Dear Attorney General

Gabrielle

Consent to health treatment under the Guardianship Act 1987

Part 5 of the Guardianship Act sets out a substituted decision making regime to ensure that patients over 16 years who lack capacity are able to obtain necessary medical and dental treatment. Under Part 5, where a patient lacks capacity generally the patient's "person responsible" can consent to medical or dental treatment (certain treatments require the approval of the NSW Civil and Administrative Tribunal).

Under Part 5, while the patient's person responsible (or NCAT's) consent is generally required before medical or dental treatment can be provided, in an emergency, where the treatment is urgently necessary to save the patient's life or prevent serious damage to the patient's health or prevent the patient from suffering from significant pain or distress, section 37 of the Act allows such treatment to be provided without consent.

If medical or dental treatment is provided in accordance with Part 5, the Guardianship Act provides that it is as if the patient themselves consented to the treatment. This ensures that lawful medical and dental treatment can be given to a patient who lacks capacity.

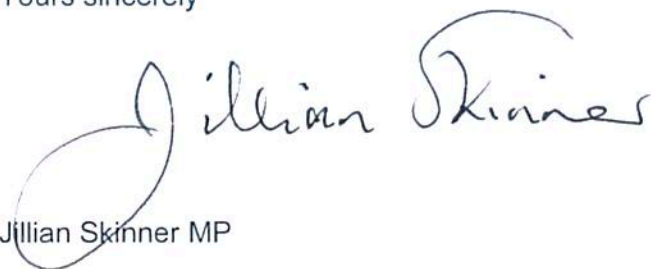
However, Part 5 only applies to medical and dental treatment. Medical and dental treatment includes mental and dental treatment provided under the direction or supervision of a medical practitioner or dentist. However, it does not apply to health treatment provided by a nurse (including a nurse practitioner) or midwife, or any other registered health practitioner who provides health treatment not under the direction or supervision of a medical practitioner or dentist.

In terms of emergency treatment, this limitation is particularly problematic. Nurses and midwives, and less commonly other registered health practitioners, may be required to provide emergency health treatment to save a patient's life or prevent serious damage to the patient's health. Such treatment may not necessarily be provided under the direction or supervision of a medical practitioner or dentist. To ensure that emergency treatment can be provided when required, I ask that you consider an amendment to the Act to ensure that section 37 applies to emergency treatment provided by a registered health practitioner.

More broadly, that Part 5 only applies to medical or dental treatment does not reflect the different forms of treatment that can be provided to patients who lack capacity. Applying Part 5 to treatment provided by any registered health practitioner, which would include Aboriginal and Torres Strait Islander health practitioners, Chinese medicine practitioners, chiropractors, dental practitioners, medical practitioners, medical radiation practitioners, nurses and midwives, occupational therapists, optometrists, pharmacists, osteopaths, podiatrists, physiotherapists and psychologists, would better reflect current health practice and treatment and ensure that patients who lack capacity are not disadvantaged in receiving other forms of health treatment.

If officers of your Department wish to discuss this matter further, they can contact Ms Gemma Broderick, Senior Legal Officer, on 9391 9626 or at gbrod@doh.health.nsw.gov.au.

Yours sincerely

A handwritten signature in black ink that reads "Jillian Skinner". The signature is written in a cursive style with a large, looping initial "J".

Jillian Skinner

Jillian Skinner MP

