



EVERSOL'S weekly law

Contributed by Lesley McDonnell

Your body; Your life ... but is it Your Choice?

A recent decision of the Supreme Court of NSW addressed a complex and equally controversial matter involving a person's right to control or make decisions about their own body versus the interest of the State in the preservation of life.

The facts can be summarized briefly. Mr A was a patient in a hospital after being admitted to the emergency department suffering from septic shock and respiratory failure with a decreased level of consciousness. His condition later deteriorated, resulting in renal failure. He was kept alive by mechanical ventilation and kidney dialysis. The hospital became aware of a document prepared one year earlier, which indicated Mr A would refuse dialysis. The hospital applied to the Court for some guidance to determine the validity of the document given by Mr A to refuse dialysis.

People can put in place documents that operate when life takes an unexpected turn for the worse. Such documents are typically known as an Appointment of Enduring Guardian or Advance Care Directive. Such documents operate to permit a person to appoint a trusted friend or family member to make health and medical decisions for them in the event that they lose the ability to make such decisions for themselves. For example an unexpected car accident may render a person unconscious and in a coma for many weeks or months.

In reaching its decision the Court emphasized that the case was not about "the right to die". The case centred on whether a person (having capacity) has the right to refuse medical treatment. It was stated that "Recognition of the right to reject medical treatment does not depreciate the value of life". Where a document such as an Advance Care Directive exists and is made by a capable adult "and extends to the situation at hand, it must be respected". The Court recognized Mr A's right to refuse dialysis.

At Everingham Solomons we have the expertise and experience to assist you in putting your affairs in order to ensure your wishes are properly documented should the unexpected occur because ***Helping You is our Business.***



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