1988.1. Informed Consent to Medical Treatment

Submitted 10 January 1988 to the Law Reform Commission of Victoria, the Australian Law Reform Commission and the New South Wales Law Reform Commission in response to Discussion Paper No. 7 (Medicine, Science and the Law) of the Law Reform Commission of Victoria

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In general, we consider there is a need for a Victorian Act similar to the South Australian legislation, Consent to Medical and Dental Procedures Act 1985 (SA). Such an act would legislatively reflect the community view of the importance of informed consent to medical treatment, rather than relying on common law. The SA Act covers in appropriate general terms the three basic community needs of medical/dental treatment: that it be competent ("to prevailing medical standards"), that it be not negligent, and that the patient consents ("an informed consent"). Victoria (and NSW), following the lead of South Australia, would assist in other States acting similarly and so achieve the desired aim of uniform Australian legislation. Such an informed consent should be regarded as part of the medical procedure. Thus the appropriate consent procedures should be taught as part of the courses for general and specialist medical practitioners to guidelines established by the Medical Board of Victoria and the Victorian Health Department. Such guidelines should be initially published in draft form for public discussion to ensure that the community and patient views are taken into consideration in such guidelines. Complaints as regards informed consent would then be regarded similar[ly] to other more technical aspects of medical treatment, namely was the consent "reasonably appropriate . . . to prevailing medical standards", i.e. as expressed by the guidelines, and was "the procedure . . . carried out in good faith and without negligence".

Any such complaints would normally be addressed to the Victorian Medical Complaints Commission. Any legal action would normally only arise following parties to a complaint not receiving satisfaction. As regards the nature of recording the fact that informed consent be given there is the basic need for a patient's agreement be recorded on an official form. This is understood to be a present practice if not requirement. Whether any additional recording such as a tape of the interview or the need for a witness would be a matter covered by the guidelines established as above.

In addition, responses to the individual questions were forwarded from seven of our members: Mervyn Corner, Colin Duncan, Pos Dunn, Helen Gerstmann, May Haig, Lorna Noble and Halina Strnad.

ADDENDUM

From the *Victorian Humanist*, March 1990: 3.
Feedback [on] Submissions

Informed Decisions – Medical Procedures (Law Reform Commission)

The Inquiry was commenced because of a lack of clarity in the law on the notion of "informed consent" to medical procedures. The study found that a significant improvement in doctor-patient communication appears necessary. Guidelines, rather than rigid statutory standards, are recommended to cover the many variables in individual cases. These guidelines are to be

a) formulated by the National Health & Medical Research Council,
b) issued to doctors,

c) included in medical courses,
d) given to patients and self-help programs and
e) referred to in quality controls in hospitals and peer reviews. Legislation should be enacted to allow the breach of guidelines to be admissible as evidence in actions for professional negligence.

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