

10 December 2020

The Hon John Quigley MLA
Attorney General
5th Floor, Dumas House
2 Havelock Street
WEST PERTH WA 6005

Dear Attorney General

ADVANCE HEALTH DIRECTIVES

The Law Society of Western Australia writes with regard to the Government's project to update the template form of the Advance Health Directive (AHD).

The Law Society notes that following the final report of the [Ministerial Panel on AHDs](#) (the report), the Department of Health has been charged with implementing the recommendations of the report relating to development of a new AHD template.

The Department of Health has not formally consulted with the Law Society regarding the form and substance of the new template. However, members of Law Society's Elder Law and Succession Committee of their own initiative have attended public consultations organised by the Department and have concerns on the length and content of the draft template which was presented.

The Law Society members and staff who participated in the Workshops note the Queensland Advance Health Directive 'version 4' was utilised by the Department of Health in formulating the new template for WA. Queensland has recently updated their template, with a new 'version 5' coming into effect from 30 November 2020. The Law Society has alerted the Department of Health's project officer of this update and is concerned to ensure that to the extent the WA template is based upon Queensland Documents, it is based upon the most recent version.

Furthermore, the Law Society understands from the workshops that there will be no consultation on the final form of the AHD. Once the draft AHD form is finalised, but before the template is prescribed through regulation, the Law Society would appreciate the opportunity to review the template.

The Law Society is concerned the AHD template could have the potential to be legally uncertain and practically hard to use by Western Australian citizens as well as the medical and legal professionals providing them advice.

It is important to remember that it will be the lawyer, in appointments with their clients to discuss their Wills and Enduring documents, who will most likely provide advice on the AHD. It is likely that a general practitioner, who runs a busy practice of short consultations, will have neither the time nor the inclination to advise their patient on a legally binding document and will refer their patient to a lawyer.

¹ <https://www.publications.qld.gov.au/dataset/power-of-attorney-and-advance-health-directive>

Given the involvement of its membership in the new AHD regime, the Law Society is anxious to cooperate with the Department to ensure that the new AHD is a document that promotes, rather than hinders, advance care planning in our jurisdiction.

The renewal of the AHD is an important opportunity for Western Australia and the Law Society is willing and able to assist in its development. Once again, the Law Society would welcome the opportunity to review the final template before it is prescribed.

If you have any queries or would like to discuss this further, please contact Mary Woodford, General Manager Advocacy, on 9324 8646 or email mwoodford@lawsocietywa.asn.au.

Yours sincerely

A handwritten signature in blue ink, consisting of a series of loops and a long horizontal stroke extending to the right.

Nicholas van Hattem
President

cc. The Hon Roger Cook MLA
Minister for Health
13th Floor, Dumas House
2 Havelock Street
WEST PERTH WA 6005