

9 December 2022

Dr James Popple
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Dear Dr Popple

REVIEW OF THE BEST PRACTICE GUIDE FOR LEGAL PRACTITIONERS IN RELATION TO ELDER FINANCIAL ABUSE

Thank you for providing the Law Society with an opportunity to comment on the above Best Practice Guide.

The Law Society would like to suggest the following additions/amendments to the guide:

- insertion of a new section 3.4 “*Confirm your advice in writing to your client*” as follows:

Practitioners should confirm their advice to their clients in writing, even if that means simply repeating advice provided verbally to the client. This should take the form of a letter to your client stating the practitioner’s advice with an appropriate use of language and detail suited to the specific client. This gives practitioners further proof in addition to file notes to confirm that they provided particular and specific advice to their clients, to support the requirement that a testator know the effect of their Will, in addition to being willing to enter into it.

- The existing 3.4 “*Has the legal practitioner made arrangements to keep the important records in accordance with the Professional Conduct Rules or otherwise as appropriate?*” should properly be numbered 3.3.
- The following addition should be included in section 3.3 “*Has the legal practitioner made arrangements to keep the important records in accordance with the Professional Conduct Rules or otherwise as appropriate?*”:

Notwithstanding the content of the Professional Conduct Rules, the Court expects that practitioners will retain their estate planning file until the completion of estate being administered, or the presumed death of the testator aged 100 (Re Russell; Ex Parte Van Der Kwast [2009] WASC 233). Practitioners should ensure that their file notes and all documents (not just medical reports) are retained in an accessible format. If that format is electronic, the onus is on the practitioner to ensure ease of access, in the event that they are required to produce their file.

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The Law Society feels that this is better and more specific guidance than the existing test, which simply states “for any period of time required by the Professional Conduct Rules or, in the absence of any such rule, as appropriate in the circumstances”. There is judicial guidance on what is “appropriate in the circumstances” (in WA at least) that ought to be reflected in the guide.

Please let me know if the Law Society could provide further assistance to you in your consideration of this matter. If you have any queries please contact Mary Woodford, General Manager Advocacy and Professional Development on (08) 9324 8646 or mwoodford@lawsocietywa.asn.au.

Yours sincerely

A handwritten signature in blue ink, appearing to read "Rebecca Lee", with a stylized flourish underneath.

Rebecca Lee
President