5 March 2019

The Hon John Quigley MLA
Attorney General of Western Australia
Level 5, Dumas House
2 Havelock Street
WEST PERTH WA 6005

Dear Attorney General

ELECTRONIC REGISTER OF END OF LIFE CHOICES

The Law Society of Western Australia notes the recent comments of Mr Simon Millman MLA in the media (23 January 2019) in relation to his appointment as Chair of an expert panel investigating what might be done to improve the uptake and regulation of Advance Health Directives (AHDs) and in particular, after its review, to make recommendations about the establishment of an electronic register for AHDs.

The Law Society writes to draw to the attention of the Attorney General and the Panel Chair that a legislative provision establishing a register of AHDs already exists.

Amendment to the Guardianship and Administration Act 1990 Act (the GA Act) to establish a register of AHDs was recommended by a Standing Committee and accepted in 2007. The Acts Amendment (Consent to Medical Treatment) Bill 2006 was debated and passed, relevantly inserting sections 110ZAA, 110ZAB and 110ZAC into the GA Act.

The Acts Amendment (Consent to Medical Treatment) Act 2008 (the Amending Act) received assent on 19 June 2008. However, the amendments were conditional on section 11 of the Amending Act being proclaimed and that section has yet to be proclaimed.¹

Section 11 of the Amending Act relevantly provides:

Division 4 — Miscellaneous matters

110ZAA. Register of advance health directives

(1) A register of advance health directives must be established and maintained.

(2) The regulations may provide for any matter that is necessary or convenient for the registration of advance health directives, including the following —
   (a) who must establish and maintain the register;
   (b) the form and manner in which the register must be established and maintained;
   (c) the contents of the register, including proof of the contents;
   (d) who may apply for registration;
   (e) the procedure for registration, including the alteration and removal of entries in the register;
   (f) who may have access to or obtain information from the register;
   (g) the review by the State Administrative Tribunal of decisions allowing, or refusing to allow, people to have access to or obtain information from the register;
   (h) the procedure for accessing or obtaining information from the register.

(3) No fee or charge is payable in respect of any matter connected with the register or registration.

110ZAB. Disclosure of information obtained from register

(1) In this section —
   “register” means the register referred to in section 110ZAA.

(2) A person who has access to the register must not disclose any information on the register unless the disclosure is authorised by subsection (4).
   Penalty: $5 000.

(3) A person who obtains any information from the register must not disclose the information unless the disclosure is authorised by subsection (4).
   Penalty: $5 000.

(4) For subsections (2) and (3), a disclosure is authorised if it is —
   (a) authorised by, or made for the purposes of, this Act; or
   (b) made with the consent of the maker of the advance health directive to which the information relates; or
   (c) made for a purpose, or in a circumstance, prescribed by the regulations; or
   (d) otherwise authorised or required by law.
110ZAC. Regulations to facilitate national register

(1) In this section —

“advance health directive” means —

(a) an advance health directive made under this Part; or

(b) an instrument created under the law of another State or a Territory that corresponds sufficiently, in form and effect, to an advance health directive made under this Part, whether or not the instrument is recognised under section 110ZA(1).

(2) The regulations may make provision to facilitate —

(a) the establishment of a national register of advance health directives; and

(b) if a national register is established — the registration of advance health directives on it.

110ZB. Common law preserved

This Part does not affect the common law relating to a person’s entitlement to make treatment decisions in respect of the person’s future treatment.”

Although s.110ZAA does not refer to the register being electronic, it would appear that further legislation is unnecessary as the terms of s.110ZAA would include an electronic register.

We would be grateful if you could draw the Chair’s attention to these provisions.

Yours sincerely

Greg McIntyre SC
President

cc.  Mr Simon Millman MLA
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“In the first half of this year I’ll be busy working away with an Expert Panel, discussing what ought to be done regarding Advance Health Directives.

As part of the ‘My Life, My Choice’ report last year, our committee recommended that the Attorney General convene this Expert Panel, and I am grateful that he has asked me to Chair the Panel.

Read more in The West Australian today, and listen in to RTRFM 92.1 at 10.45 and News Talk 6PR 882 at 11.15.

Health directives a way to preserve our wishes

I find it astounding a person can have these wishes disregarded by health professionals.

A doctor comforts a patient.

23 January 2019