



SUBMISSION TO THE QUEENSLAND PARLIAMENT HEALTH AND DISABILITIES COMMITTEE, QUEENSLAND LAW REFORM COMMISSION RECOMMENDATIONS ON GUARDIANSHIP LAWS INQUIRY ISSUES PAPER NOVEMBER 2011

INTRODUCTION

The Queensland Aboriginal & Torres Strait Islander Human Services Coalition (the Coalition) welcomes the opportunity to comment on the Guardianship Laws Issues paper. We would also like to acknowledge the significant input of the Aboriginal & Torres Strait Islander Legal Services (ATSILS) into this submission. The Coalition believes that all people have the right to be treated with respect and dignity, and exercise their right to make informed choices about their healthcare.

The Coalition is a network of over 100 Aboriginal & Torres Strait Islander community controlled health and human service providers across Queensland.

ADVANCE HEALTH DIRECTIVES FOR ABORIGINAL & TORRES STRAIT ISLANDER PEOPLE

Whilst advance health directives have existed some time, their use hasn't been wide spread in Aboriginal and Torres Strait Islander communities. It is our understanding that many Aboriginal and Torres Strait Islander people are unaware of what advance health directives are or how they operate. This is a missed opportunity for Aboriginal & Torres Strait Islander people to determine one of the most fundamental aspects of their lives – whether or not they'd like extraordinary measures to be taken to keep them alive.

For all Australians, talking about one's death is a difficult subject to discuss with family. It is particularly so for Aboriginal & Torres Strait Islander people who may also need to have confronting discussions with extended family – beyond a next of kin. The decision to complete an advance health directive has the potential to significantly impact on the person's family and broader community.

Even though a significant push is being made by governments and Aboriginal Health Services to prevent serious chronic illness, there is a significant history of Aboriginal & Torres Strait Islander people presenting to hospitals and health care facilities at a late stage in their illness. This means that discussions about treatment options, and end-of-life care often occur with the patient, family and treating physician in hospital.

The Coalition believes that the person being treated and the family should be engaged in frank discussions about treatment options and end-of-life care by health care professionals at the earliest

possible stage so that they are fully informed of their condition, prognosis, treatment and expected outcome. The opportunity for individuals to be fully informed, to participate and have a voice in their current and future care, is at the core of advance care planning.

ABORIGINAL HEALTH SERVICES AND RESIDENTIAL REHABILITATION CENTRES

There will be some instances where a patient suffers an acute, life-threatening episode such as heart attack or an overdose on illicit substances whilst being treated in a primary health care facility such as an Aboriginal Health Service or a residential rehabilitation centre. The Coalition urges the committee to consider whether liability is limited for these facilities in the case that an advance health care directive is honoured, or alternatively not honoured (if CPR is commenced for example).

In situations where it is unknown whether an advance health directive exists the Coalition suggests that a reasonable person test would best protect health care providers.

ABORIGINAL & TORRES STRAIT ISLANDER HOME CARERS

Over the past decade, there has been an increased number of people with chronic renal failure and other terminal illnesses being cared for in their homes. The proposed amendments do not clarify what the legal obligations of a home-carer, such as a spouse or other family member are with respect to honouring an advance health directive. The Coalition believes that clarity on this would be very useful, particularly given that Aboriginal & Torres Strait Islander people are largely over represented sufferers of the kinds of chronic disease mentioned above.

IMPLEMENTATION OF ADVANCE HEALTH DIRECTIVES

At present if an adult arrived unconscious at a hospital emergency department and health care was necessary to keep them alive, no consent is required. The proposed amendment would mean that if the adult was accompanied by their spouse, the spouse's consent would be required to provide health care. This could be a controversial recommendation for Aboriginal & Torres Strait Islander and other cultural groups, especially where it may not just be up to the spouse to make such a decision. There is a risk of causing great disharmony and conflict within families and communities if the spouse is viewed as either making the wrong decision or making a decision when it is not viewed as being their role to make such a decision.

The Coalition would like to thank the committee for the opportunity to provide this submission.

Kind Regards,



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