

23 June 2020

Our ref: EL-VK

Ms Margery Nicoll
Acting Chief Executive Officer
Law Council of Australia
GPO Box 1989
Canberra ACT 2601

By email: [REDACTED]

Dear Ms Nicoll

Review of the Law Council's draft submission: Royal Commission into Aged Care Quality and Safety

Thank you for the opportunity to provide feedback on the draft submission prepared by the Law Council of Australia (the **draft submission**).

This response has been compiled with assistance of the QLS Elder Law Committee, whose members have substantial expertise in this area.

Queensland Law Society (**QLS**) is generally supportive of the draft submission. We raise the following aspects of the draft which we consider would benefit from amendment:

Executive Summary – point 5

5. This submission highlights issues with the existing scheme for reporting assaults in respect of residential aged care recipients. The Law Council supports the Australian Law Reform Commission's (**ALRC**) recommendation for a new serious incident response scheme which would extend to flexible and in-home care, as well as residential care. This scheme would require approved providers to proactively investigate and respond to incidents. It welcomes the Australian Government's progress on this issue, while raising some key issues for consideration, and encourages an exposure draft of proposed legislation on this model to be released.

QLS considers that this recommendation ought to be expanded and mandatory, requiring the appropriately detailed reporting of incidents and deaths as part of the expanded scheme. Deaths in care must be reported in every instance, and reviewed to understand the context of the death, to improve statistical accuracy, and to consider whether further investigation and learnings may be evident.

Executive Summary – point 8

8. The Law Council is concerned that quality of care is compromised by the aged care system's poor interface with health care services. It calls on the Australian Government to continue to review the Medicare Benefits Schedule relating to general practitioner visits to residential aged care facilities to incentivise continuity of care. More generally, the Law Council supports improved information sharing frameworks to streamline care, while incorporating confidentiality and privacy safeguards.

QLS endorses the LCA position set out in point 8. We suggest that this point should also refer to the need to address arrangements where aged care facilities and general practitioners have formed what is essentially a restricted service arrangement. This common practice means that residents are unable to access their usual general practitioner, as they are not allowed to access their patients in the aged care facility. QLS considers that this is an unacceptable practice which prioritises the preferences of the aged care facility above the resident's access to their trusted health care practitioner.

Recommendation 26

- Consideration should also be given to requiring aged care facilities to provide information and encourage residents to complete an advance care planning document as soon as possible after entering an aged care facility.

The practise of encouraging residents to complete an advance care planning document after entry to the aged care facility is one that is often already in place. It leads to the aged care facility not properly engaging with the resident, but rather with the substitute decision maker as a matter of course – regardless of whether the resident has impaired capacity or not. This is deeply problematic and we do not support further endorsement of the practice. QLS suggests removing this recommendation.

Requesting a copy of the resident's will – paragraphs 226-228

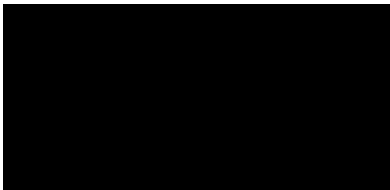
226. It is now also being reported that some facilities are requiring copies of residents' wills, purportedly to ensure that property, including refundable accommodation deposits, is properly distributed after a resident's death as there have been incidents of property being handed over to the wrong party.
227. Facilities should ensure that staff have sufficient understanding of the role, responsibilities and limitations of attorneys and/or other substitute decision-makers and be alive to the possibility of substitute decision-making powers enabling elder abuse.
228. Facilities should also ensure that they have robust procedures that ensure property is only released to those who are legally entitled to it without necessarily requiring that residents provide a copy of their will. The Law Council would be happy to engage further on the development of these procedures to ensure that they are appropriate and adapted to their purpose.

Response to draft submission | Royal Commission into Aged Care Quality and Safety

QLS supports the drafting of the above paragraphs. There is little utility and in fact, significant risk associated with obtaining a copy of the person's will before they have died. Wills can of course be amended or revoked. Once a resident has died, the facility should undertake reasonable steps to ensure that property and personal effects are released to the legally entitled person, which may include requesting a copy of the will be provided. We strongly recommend that aged care facilities engage appropriately qualified legal practitioners to assist in the implementation and oversight of this process.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via policy@qls.com.au or by phone on (07) 3842 5930.

Yours faithfully



Luke Murphy
President