29 July 2020

The Hon Stephen Wade MLC
Minister for Health and Wellbeing
GPO Box 2555
ADELAIDE  SA  5001

By email: Ministerforhealth@sa.gov.au

Dear Minister


The Society was pleased to note the Government’s response to Recommendation 27. Recommendation 27 provides “the Department should investigate how the use of digital signatures could be implemented under the Act, and make appropriate amendments to the Act if required”. In response to Recommendation 27, the Government not only supported the recommendation, but suggested that amendments to the Advance Care Directives Act 2013 ("the Act") should also consider the order of signing.

On 11 May 2020 the Society once again wrote to the Government to raise its long held concerns regarding the requirement under Regulation 8(1) of the Advance Care Regulations 2014, that a person appointed as a substitute decision-maker (SDM) must sign their acceptance of the appointment prior to execution of the Advance Care Directive (ACD) by the person making the appointment. A copy of this letter is enclosed for your information.

The Society wished to reiterate in this letter its concerns given the additional challenges to fulfilling this requirement which have arisen due to the restrictions in place to reduce the spread of COVID-19. There is an inherent and completely avoidable risk that the person making the ACD may lose adequate mental capacity between the date of giving instructions and the time the document is signed by substitute decision makers and returned for signing by the donor. This was a serious risk pre COVID-19, but of course is heightened in the current circumstances.

The Society remains strongly of the view that the person making the ACD should be able to sign first. Sometimes this should be done at the first appointment, particularly if it is a home or hospital visit before the person is going into supported accommodation or is about to undergo surgery. However, in order to accommodate other circumstances where it may be more efficient to have one or both of the SDMs sign before the person making the ACD, the Society suggests that the order of signing should simply not be prescribed.

The Society asks that you act upon these amendments as soon as practicable, given that it is likely that the COVID-19 restrictions will be in place for the foreseeable future.
The Society further notes the Government’s support of Recommendation 2, which states both the ACD Form and DIY Kit need to be reviewed and the latter significantly updated. In particular, each needs to be tailored for a lay-person. Recommendation 2 also provides that both documents should make it clear that speaking with both (or either) a lawyer and a doctor may result in the completion of an ACD which more closely reflects the wishes and preferences of the person.

The Society has raised concerns around the length and complexity of the ACD Form and DIY Kit on numerous occasions, including in its letter of 11 May, and noted that this would be an appropriate time to reconsider the cumbersome nature of the current document. The Society is pleased that the Government has supported Recommendation 2 and the simplification of the ACD Form and DIY Kit.

I commend the Government for its consideration of amendments to the Regulations with respect to the order of signing. The Society would be pleased to be of assistance with respect to these amendments and any other matters.

Yours sincerely

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Enc: Letter 11 May 2020 re Advance Care Directives Act 2013

Cc: Attorney-General