



## ATTORNEY GENERAL

Our Ref: 67-05930

Ms A Sanderson MLA  
Chair  
Joint Select Committee on End of Life Choices  
Legislative Assembly  
Parliament House  
PERTH WA 6000

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Dear Ms Sanderson

*Amber,*

### **STATE GOVERNMENT'S RESPONSE TO THE RECOMMENDATIONS OF THE STATUTORY REVIEW OF THE *GUARDIANSHIP AND ADMINISTRATION ACT 1990***

I am writing to inform the Committee of the Government's response to the Statutory Review of the *Guardianship and Administration Act 1990* (WA) which was tabled in the Parliament on 2 December 2015 by the previous Attorney General.

I understand the Committee was interested in the progress with the implementation of the statutory review when the Public Advocate appeared before the Committee in a public hearing earlier this year.

I note that the Liberal-National Government did not progress the recommendations from the review. However, the McGowan Government made an election commitment to expedite the enactment of amendments set out in the recommendations of the Statutory Review of the *Guardianship and Administration Act 1990*, and Cabinet approved the drafting of an amendment Bill in December last year. It is anticipated that the Amendment Bill will be introduced in the Spring session; however, this will depend on drafting and Parliamentary priorities.

The amendments will enhance the operation of the *Guardianship and Administration Act 1990* (the Act) and the safeguards for adults with a decision-making disability. The recommendations will provide consistency in relation to the provisions for guardianship and administration, and enduring powers of attorney and enduring powers of guardianship, and seek to improve the interpretation of the Act.

The report on the statutory review made 86 recommendations. The Government has carefully considered all the recommendations in the report and whilst the vast majority were approved, nine legislative recommendations will not be pursued.

The first recommendation not supported was Recommendation 10, which proposed amending the definition of 'mental disability' in the Act to include autism spectrum disorder. As a person with autism, spectrum disorder may have impaired decision-making and therefore is not excluded from the operation of the Act, an amendment to the definition was not deemed necessary.

Recommendations 32, 33 and 35 all required the *Rules of the Supreme Court 1971* to be amended. The Chief Justice indicated that he is not in favour of amendment the Rules of the Supreme Court as suggested, and consequently those recommendations are not being pursued.

Recommendations 17, 34 and 37 had implications for the State Administrative Tribunal (the Tribunal). Recommendation 17 proposed amendments to the *Guardianship and Administration Act 1990* to provide that parties to guardianship proceedings be made aware of medical reports and other documents to enable them to apply for access to the documents prior to the hearings. Consultation with the Tribunal indicated that administrative processes could be improved for access to these documents rather than legislating.

In further consultation with the Tribunal, it was not deemed necessary to pursue Recommendation 34 to amend section 65 of the Act to make it clear that the Tribunal can make an order under this section even if there is not a current application under section 40 for an administration order.

Under recommendation 37, the review proposed that the Act be amended to state that an administrator of a represented person may have access to that person's medical records. This recommendation was not adopted as medical records contain personal confidential information, and an administrator can already access medical records if there is a genuine need through application to the Tribunal.

Recommendation 39 proposed that section 76 of the Act be amended so that an administrator may not employ an agent in respect of which the administrator has an interest, however this will be addressed through the amendment resulting from recommendation 83.

Recommendation 67, which concerns the review by the State Administrative Tribunal of administration orders for persons deemed to be incapable patients or infirm persons, was effectively dealt with under the *Mental Health Legislation Amendment Act 2014*, and therefore the proposed amendment is not required.

The remaining 77 recommendations from the Statutory Review of the *Guardianship and Administration Act 1990* are supported by the Government. When implemented, the recommendations will enhance the operation of the *Guardianship and Administration Act 1990* and improve the safeguards for adults with a decision-making disability in the community.

I trust this information will be of assistance to the Committee's deliberations regarding end of life choices.

Yours sincerely

Hon. John Quigley MLC  
ATTORNEY GENERAL

24 APR 2018