

9 February 2022

Office of Advance Care Planning  
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Dear Review Team

### **Review of the Statement of Choices**

Thank you for the opportunity to provide feedback on draft amendments to the Statement of Choices documents, Form A and Form B (the **Drafts**). Aged and Disability Advocacy Australia (**ADA**) appreciates being consulted on these documents which aim to assist Queenslanders with their advance care planning.

### **About ADA Australia**

ADA is a not for profit, independent, community-based advocacy and education service with nearly 30 years' experience in informing, supporting, representing and advocating in the interests of older people, and persons with disability in Queensland.

ADA also provides legal advocacy through ADA Law, a community legal centre and a division of ADA. ADA Law provides specialized legal advice to older people and people with disability, including those living with cognitive impairments or questioned capacity, on issues associated with human rights, elder abuse, and health and disability legal issues related to decision-making.

### **Review of amendments**

ADA has reviewed the Drafts and provides the following for your consideration.

Our primary concerns with the Statement of Choices documents more broadly remains that, in their current form:

- it is not clear to a lay person where these documents fall in the 'hierarchy' of advance care planning documentation, particularly in comparison to an enduring power of attorney (**EPOA**) and advance health directive (**AHD**); and
- that the documents present as being legally enforceable, though they are not.

These concerns are not alleviated by the amendments included in this revision of the documents.

We acknowledge the wording on pages 1 and 2, that the Statement of Choices is not legally binding. We remain unconvinced that this is sufficient to alert a person, who perhaps is considering completion of a Form A following hospital admission, that the document is not legally enforceable

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ADA Australia acknowledges the Traditional Custodians of this land and pays respect to Elders, past and present.

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and may not be followed, particularly in circumstances where a ‘competing’ advance care planning document exists.

The documents give the appearance that they will be legally enforceable. This is reinforced by the presence of the Queensland Government’s Coat of Arms, the inclusion of the Statement of Choices in a list of Queensland’s advance care planning documents (of which the other listed documents are legally binding), and the promise that the choices set out in the documents will be enforced, seemingly irrespective of the ambiguity of the document’s validity. For example, the statement *‘Think now. Plan sooner. Peace of mind later’*.

Whilst the intention of the documents is to increase clarity for a person in relation to their health care choices at the end of life, it is our position that these documents are not achieving that purpose. Rather, we suspect that they present the image of a legally binding document and may impress upon a person that their wishes have been communicated and will be followed, this may not be the case.

Form B continues to be of particular concern. The form permits a person who is not a legally appointed substitute decision-maker to make critical decisions about the person’s medical care and emergency treatment. It is our firm view that the form should not be completed by a person who has not been verified as an authorised substitute decision-maker. As currently drafted, the form incorporates no safeguards to ensure that it is not completed by a person who may have a conflict of interest regarding the outcomes for the affected adult, or by a person who does not have a close and enduring relationship with the adult and has clear knowledge of the adult’s wishes.

These concerns are amplified by the breadth of decisions set out to a person completing a Form B, as well as the approach to witnessing or ‘certifying’ of the document.

The section titled ‘understanding of the document’ on page 4 is confusing. Form B is intended only to be used for a person who is without decision-making capacity. However, this section requires the person completing the document to agree to a series of statements about their and the affected adult’s understanding of the document, including about:

- its importance and purpose;
- that it doesn’t form consent for treatment;
- that it remains current until it is replaced or withdrawn;
- that consent is provided to share information on this form, including for quality improvement and research purposes.

Is it inappropriate that the person completing the form on another’s behalf be required to certify as to the understanding of the document, or provision of consent in relation to information sharing or other decisions set out, by the affected adult for whom the presumption of decision-making capacity has apparently been rebutted – hence the reliance on Form B. Similarly, it is inappropriate to require a doctor or nurse practitioner that they are satisfied that the person completing the form is an *‘appropriate person’*. What is the definition of ‘appropriate person’, and to what lengths is a doctor or nurse practitioner expected to go to determine if the person before them is appropriate? This imposes an unreasonable degree of risk of future litigation upon individual practitioners.

It is unclear how a Statement of Choices, Form B will be replaced or withdrawn. Will the adult for whom the form was made be permitted to seek its withdrawal or replacement?

## Recommendations

We consider that Form B should be removed, and further changes made to Form A. Alternative options include:

- development of a less 'formal looking' Form A– to clearly distinguish that it is not a legally binding document. We suggest changing the name of the form to use the word 'preferences' rather than 'choices'; and
- inclusion of wording to encourage that a person always endeavour to first complete an EPOA and AHD.

We suggest also that the Review Team have regard to the amended AHD and EPOA forms which came into effect on 30 November 2021. We understand the changes made were intended to make these forms more comprehensible and user-friendly.

Thank you again for the opportunity to comment. ADA would be pleased to further assist the Committee with its inquiry. Should you wish to discuss this submission, please do not hesitate to contact Vanessa Krulin, Solicitor and Senior Policy and Research Officer on [REDACTED].

Yours faithfully



**Geoff Rowe**  
Chief Executive Officer