



AUSTRALIAN MEDICAL ASSOCIATION
(SOUTH AUSTRALIA) INC.
ABN 91 028 693 268

13 September 2017

The Hon. John Rau MP
Attorney General
Level 11, 45 Pirie Street
Adelaide SA 5000

Dear Mr Rau

Amendments to the *Land and Business (Sale and Conveyancing) Act 1994*

Thank you for the opportunity to provide input into draft regulations to increase protections for vulnerable consumers who might be at risk of being unfairly treated in the sale of their home or property.

The Australian Medical Association of South Australia (AMA(SA)) supports, in principle, the amendments to the Land and Business (Sale and Conveyancing) Act, to protect the elderly and those with mental illness from predatory sales practices that lead them to unwittingly sell their property for a price significantly below market value.

Our members also support the principle of having a medical practitioner certify whether a vendor had sufficient mental capacity to enter a contract of sale for their property, as proposed in the new section 24G(10b) of the *Land and Business (Sale and Conveyancing) Act 1994*.

Assessing mental capability is highly complex and requires skilled judgement based on evidence. The AMA(SA) believes that it is vital for the successful implementation of this legislative reform that doctors are closely involved in the process of certifying decision-making capability and in developing the regulatory instrument to ensure that the new system is workable.

It is well documented that doctors have been overwhelmed by the amount of compliance paperwork they are required to complete, usually without remuneration. Therefore, doctors must be appropriately remunerated for the time required to access and complete the form.

In addition, our members note that for the certification process to be workable, it should adopt language consistent with the Advance Care Act 2013, especially section 7. In particular, the new regulations should refer to "decision-making capacity" rather than "mental capacity".

Section 7 defines impaired capacity in this way:

1. For the purposes of this Act, a person will be taken to have impaired decision-making capacity in respect of a particular decision if
 - a. The person is not capable of —
 - i. Understanding any information that may be relevant to the decision (including information relating to the consequences of making a particular decision)
 - ii. Retaining such information

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AMA(SA) submission on Land and Business (Sale and Conveyancing) Act 1994 regulations
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- iii. Using such information in the course of the decision
- iv. Communication his or her decision in any manner
- b. The person has satisfied any requirement in an advance care directive given by the person that sets out when he or she is to be considered to have impaired decision-making capacity (however described) in respect of a decision of the relevant kind.

Fact sheets to support this Act have already been developed to assist medical practitioners in making a determination about decision-making capability and it would seem logical to build on this knowledge base rather than confusing the issue.

Thank you for the opportunity to provide comment. Please contact the AMA(SA) for further information.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Joe Hooper', with a large, stylized initial 'J' and 'H'.

Mr Joe Hooper
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CHIEF EXECUTIVE