



# DISPUTE RESOLUTION SERVICE

# 27

(Advance Care Directives Act 2013 &  
Consent to Medical Treatment & Palliative Care Act 1995)

The Dispute Resolution Service is a statutory function of the Office of the Public Advocate. Legislation authorising the Public Advocate to resolve disputes came into effect on July 1st 2014. Authorisation is given by two pieces of legislation, the *Advance Care Directives Act 2013* and the *Consent to Medical Treatment and Palliative Care Act 1995*. This means that disputes about an advance care directive or a health issue can be resolved without the need to go through the more formal Guardianship Board process. The Office of the Public Advocate has three primary functions in relation to dispute resolution. These are;

1. Providing information and advice
2. Mediating disputes
3. Issuing declarations (advance care directives only)

## INFORMATION AND ADVICE

Where decisions cannot be made, problems arise with decisions made under an advance care directive or there are concerns about the decisions of a person responsible<sup>1</sup>, advice can be sought from the Office of the Public Advocate who can provide preliminary assistance in resolving a matter by –

- (a) Ensuring that the people involved in the dispute are fully aware of their rights and obligations
- (b) Identifying the issues (if any) that are in dispute between the parties
- (c) Canvassing any options that will remove the need for further proceedings
- (d) Where appropriate, facilitating full and open communication between the parties.

Initial assistance is available from the Office of the Public Advocate's Information and Advisory Service. Enquiries to that service can be made by telephone or in person during office hours. In *emergency* situations, the Office of the Public Advocate can be contacted after hours by telephone.

## MEDIATION

Under Section 45 of the *Advance Care Directives Act 2013* and Section 18 of the *Consent to Medical Treatment and Palliative Care Act 1995* the Public Advocate can mediate disputes in the following circumstances:

- If the person has made an advance care directive and there is a disagreement about a health, accommodation and personal decision that has to be made for that person. This includes people who have who have made an Enduring Power of Guardianship, a Medical Power of Attorney or an Anticipatory Direction before July 1<sup>st</sup> 2014.

<sup>1</sup>A person responsible can make substitute decisions for a person if they have impaired decision-making capacity in relation to a specific decision. A person responsible is outlined in Section 14 of the *Consent to Medical Treatment and Palliative Care Act, 1995* - See Information Sheet 9 - *Consent to medical and dental treatment for people with impaired decision-making capacity*

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- If a person does not have an advance care directive, but there is a disagreement about health care and /or medical treatment. This includes disputes involving children under 16 years of age.

*See Information Sheet 26 – Dispute Resolution Service (Mediation)*

## **DECLARATION**

Section 45 of the *Advance Care Directives Act 2013* authorises the Public Advocate to issue a Declaration in relation to an advance care directive. Section 45 (5) (a) states that the Public Advocate can make declarations about:

- the nature and scope of a person’s powers or responsibilities under an advance care directive
- Whether or not a particular act or omission is within the powers, or discharges the responsibilities, of a person under the advance care directive
- Whether or not the person who gave the advance care directive ha impaired decision-making capacity in relation to a specified decision
- Any other declaration prescribed by the regulations

Declarations made by the Public Advocate are not binding, but can offer clarity in situations where conflict or doubt exists in relation to an advance care directive.

The Public Advocate may refuse to determine an application for a declaration or advice, if on the opinion of the Public Advocate it is more appropriate that the matter be dealt with by the Guardianship Board (Section 45 (7)).

## **HOW TO APPLY FOR DISPUTE RESOLUTION SERVICE**

Application forms for both mediation and dispute resolution are available by:

- Downloading the forms from the Office of the Public Advocate’s website
- Contacting the Information and Advisory Service by email or telephone

## **URGENT AND EMERGENCY SITUATIONS**

If the situation is urgent or an emergency, an Office of the Public Advocate staff member can take an application over the telephone.

## **ASSISTANCE TO COMPLETE APPLICATION**

If an applicant needs assistance to complete an application, an Office of the Public Advocate staff member can assist over the telephone or in person.