



# Advance Care Directives Act 2013

## Section 10 – Principles

The following principles must be taken into account in connection with the administration, operation and enforcement of this Act (including, to avoid doubt, the resolution of disputes under Part 7):

- (a) an advance care directive enables a competent adult to make decisions about his or her future health care, residential and accommodation arrangements and personal affairs either by stating their own wishes and instructions or through 1 or more substitute decision-makers;
- (b) a competent adult can decide what constitutes quality of life for him or her and can express that in advance in an advance care directive;
- (c) a person is, in the absence of evidence or a law of the State to the contrary, to be presumed to have full decision-making capacity in respect of decisions about his or her health care, residential and accommodation arrangements and personal affairs;
- (d) a person must be allowed to make their own decisions about their health care, residential and accommodation arrangements and personal affairs to the extent that they are able, and be supported to enable them to make such decisions for as long as they can;
- (e) a person can exercise their autonomy by making self-determined decisions, delegating decision making to others, making collaborative decisions within a family or community, or a combination of any of these, according to a person's culture, background, history, spiritual or religious beliefs;
- (f) subject to this Act, an advance care directive, and each substitute decision-maker appointed under an advance care directive, has the same authority as the person who gave the advance care directive had when he or she had full decision-making capacity;
- (g) a decision made by a person on behalf of another in accordance with this Act—
  - (i) must, as far as is reasonably practicable, reflect the decision that the person would have made in the circumstances; and
  - (ii) must, in the absence of any specific instructions or expressed views of the person, be consistent with the proper care of the person and the protection of his or her interests; and
  - (iii) must not, as far as is reasonably practicable, restrict the basic rights and freedoms of the person;
- (h) in the event of a dispute arising in relation to an advance care directive, the wishes (whether expressed or implied) of the person who gave the advance care directive are

of paramount importance and should, insofar as is reasonably practicable, be given effect;

- (i) subject to this Act, in determining the wishes of a person who gave an advance care directive in relation to a particular matter, consideration may be given to—
  - (i) any past wishes expressed by the person in relation to the matter; and
  - (ii) the person's values as displayed or expressed during the whole or any part of his or her life; and
  - (iii) any other matter that is relevant in determining the wishes of the person in relation to the matter.

## Section 7 – Impaired decision-making capacity

(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); or
  - (ii) retaining such information; or
  - (iii) using such information in the course of making the decision; or
  - (iv) communicating his or her decision in any manner; or
- (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.

(2) For the purposes of this Act—

- (a) a person will not be taken to be incapable of understanding information merely because the person is not able to understand matters of a technical or trivial nature; and
- (b) a person will not be taken to be incapable of retaining information merely because the person can only retain the information for a limited time; and
- (c) a person may fluctuate between having impaired decision-making capacity and full decision-making capacity; and
- (d) a person's decision-making capacity will not be taken to be impaired merely because a decision made by the person results, or may result, in an adverse outcome for the person.

Section 35 – Substitute decision-maker to give effect to advance care directive

- (1) Subject to this Act, in making a decision under an advance care directive, a substitute decision-maker—
  - (a) must, as far as is reasonably practicable—
    - (i) give effect to any instructions or directions expressed in the advance care directive; and
    - (ii) seek to avoid any outcome or intervention that the person who gave the advance care directive would wish to be avoided (whether such wish is expressed or implied); and
    - (iii) obtain, and have regard to, the wishes of the person who gave the advance care directive (whether such wishes are expressed or implied); and
    - (iv) endeavour to make the decision in a manner that is consistent with the principles set out in section 10; and
  - (b) must make the decision that he or she reasonably believes the person who gave the advance care directive would have made in the circumstances; and
  - (c) must act in good faith and with due diligence.