

ASSISTED DECISION-MAKING AGREEMENTS & HEALTH CARE DIRECTIVES

KEY FEATURES:

- They provide for the individual's right of autonomy and self-determination to be respected through an EPA and an AHD.

Both are made when a person has the capacity to make decisions. They come into effect when a person may lack decision-making capacity.

- They provide for legally recognised decision makers to support a person in maximising their decision-making powers.
- They place a legal requirement on service providers to comprehensively enable a person to make a decision through the provision of a range of supports and information appropriate to their condition. It abolishes the Wards of Court system.
- The Director of the Decision Support Service will have the power to investigate complaints about any action by a decision-maker in connection to their functions as such decision-maker.

WHEN WILL AN EPA OR AN AHD COME INTO EFFECT?

- When a person lacks the capacity to make decisions
- A test will determine a person's ability to understand [at the time of a decision](#) the nature and the consequences of the decision in the context of the available choices at the time.
 - It sets out a positive and a negative test:
 1. A person lacks capacity if they are no longer able to understand the decision, are unable to retain information long enough to make a voluntary choice or are unable to communicate their decision by any means either directly or through a third party.
 2. A person is not regarded as unable to understand information if they require an explanation appropriate to their circumstances; can only retain information for a short period; lacks capacity for

one decision but not for others; lacking capacity for a decision at one point does not preclude them from having the capacity later.

Information relevant to decision making includes information about the reasonable foreseeable consequences of the choices of failing to make the decision.

WHAT ASSISTED DECISION-MAKING MECHANISMS ARE AVAILABLE?

- A Decision-Making Assistant
- A Co-Decision-Maker
- A Decision-making Representative
- An Attorney under an Enduring Power of Attorney
- A designated healthcare representative
- A Designated Healthcare Representative under an Advance Health Care Directive

ADVANCED HEALTHCARE DIRECTIVES

This means an advance indication of a person's preference of future treatment decisions that may arise if they lack capacity.

Treatment means an intervention which may be made for a therapeutic, preventative, diagnostic, palliative or other purpose for the physical or mental health of the person. This includes life-sustaining treatment.

The objective of the directive is to enable people to be treated according to their wishes and preferences and to provide healthcare professionals with information about persons on their treatment choices.

This includes an entitlement to refuse treatment notwithstanding that the refusal:

- Appears to be an unwise decision
- Appears not be based on sound medical principle

- May result in the person's death

The net effect of the Advance Health Care Directive is to provide civil and criminal indemnity for healthcare professionals if they act in accordance with such Directive.

FOR MORE INFORMATION

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