

## EXPLANATORY MEMORANDUM

# Advance Health Directive

Every competent adult has the legal right to accept or refuse any recommended health care. This is relatively easy when people are well and can speak for themselves. Unfortunately, during severe illness people are often unconscious or otherwise unable to communicate their wishes - at the very time when many critical decisions need to be made. By completing the Advance Health Directive, you can make your wishes known before this happens.

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### WHAT IS AN ADVANCE HEALTH DIRECTIVE?

An Advance Health Directive is a document that states your wishes or directions regarding your future health care for various medical conditions. It comes into effect *only* if you are unable to make your own decisions.

You may wish your Directive to apply at any time when you are unable to decide for yourself, or you may want it to apply only if you are terminally ill.

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### CAN ANYONE MAKE AN ADVANCE HEALTH DIRECTIVE?

Yes, anyone who is over eighteen years of age and is capable of understanding the nature of their directions and foreseeing the effects of those directions can generally make an Advance Health Directive.

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### WHAT DO I NEED TO CONSIDER BEFORE MAKING AN ADVANCE HEALTH DIRECTIVE?

You should think clearly about what you would want your medical treatment to achieve if you become ill. For example:

If treatment could prolong your life, what level of quality of life would be acceptable to you?

How important is it to you to be able to communicate with family and friends?

How will you know what technology is available for use in certain conditions?

It is strongly recommend that you discuss this form with your doctor before completing it. In addition, a doctor must complete Section 5 of the form.

The purpose of an Advance Health Directive is to give you confidence that your wishes regarding health care will be carried out if you cannot speak for yourself. However, a request for euthanasia would not be followed, as this would be in breach of the law. Under the Queensland Criminal Code, it is a criminal offence to accelerate the death of a person by an act or omission. It is also an offence to assist another person to commit suicide.

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### CAN I COVER ALL POSSIBLE HEALTH-CARE DECISIONS IN THIS FORM?

No, it would not be possible to anticipate everything. However, if you wish, you can give someone enduring power of attorney to make health-care decisions on your behalf.

**Note:** This person will not be able to make "special health" decisions, such as withdrawing or withholding life-sustaining medical treatment.

If you have already given someone enduring power of attorney for personal/health matters, all you need to do is discuss the Directive with that person and complete Section 6 of the Directive when you come to it.

If you have *not* yet appointed anyone and you wish to do so, you will need to complete Section 7 of the Directive when you come to it.

You may also wish to give someone enduring power of attorney for financial matters in case you need someone to manage your property or money, for example if you are in a nursing home. If you wish to do that, you will need to complete a separate enduring power of attorney form.

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### CAN I CHANGE OR REVOKE MY ADVANCE HEALTH DIRECTIVE?

Yes, your wishes as stated in an Advance Health Directive are not final; you can change them at any time while you remain mentally capable of doing so.

It is wise to review your Directive every two years or if your health changes significantly.

If you do want to make changes to your Directive, you should destroy the current one and make a new one.

You may also totally revoke your Directive at any time. This must be done in writing, but no specific form is required and the person witnessing your signature does *not* need to be a justice of the peace, commissioner for declarations, lawyer or notary public.

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### WHERE CAN I GET HELP WITH MY ADVANCE HEALTH DIRECTIVE?

redchip lawyers can advise you about this document and your power and responsibilities under it.

As your doctor must complete Section 5 of the Directive, you could ask him/her to help you. Your doctor could explain any medical terms or other words that you are unclear about. You may also wish to discuss your decisions with family members or close friends.

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### WHO IS INVOLVED IN COMPLETING THE DIRECTIVE?

At least three people are involved in the completion of an Advance Health Directive:

1. *You, as the principal.* (You are referred to as the principal because you are the person principally involved). You complete Section 1 to 4, Section 6 or Section 7 if you wish, and Section 8 of the Directive.
2. *A doctor* must complete Section 5.
3. *Your witness* must complete Section 9. Your witness must be twenty-one years of age or over and must be a justice of the peace, commissioner for declarations, a lawyer or a notary public. He/she must not be your attorney, a relation of yours, a relation of your attorney, a beneficiary under your will, your current paid carer or your current health-care provider (eg. nurse or doctor). Your witness and the doctor who signs Section 5 do not have to sign the Directive on the same date.

**Note:** "Paid carer" does not mean someone receiving a carer's pension or similar benefit, so you are free to choose someone who is receiving such a benefit for looking after you.

If you use the Directive to appoint someone as your attorney for personal/health matters, you will have to complete Section 7 and the person you appoint will have to complete Section 10. You may wish to discuss the Directive with your solicitor; however this is not a requirement.

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#### **WHAT DO I DO WITH THE COMPLETED DIRECTIVE?**

You should keep it in a safe place, and you should give a copy to your own doctor, to your attorney for personal/health matters if you have appointed one, to a family member or friend and, if you wish, to your solicitor.

If you are admitted to hospital, make sure the hospital staff know that you have an Advance Health Directive and where a copy can be obtained.

You may also wish to carry a card in your purse or wallet stating that you have made a Directive, and where it can be found.

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#### **HOW OFTEN SHOULD I UPDATE MY ADVANCE HEALTH DIRECTIVE?**

It is strongly recommended that you review the Directive every two years, or if/when there is a major change in your health status (eg. if you are diagnosed with a serious illness). If you do not wish to make any changes, simply sign and date one part of Section 11. If you do want to make major changes, you will need to complete a new Directive.