

Planning for the Future

Enduring Powers of Attorney, Medical Treatment Decision Making & Advance Care Directives

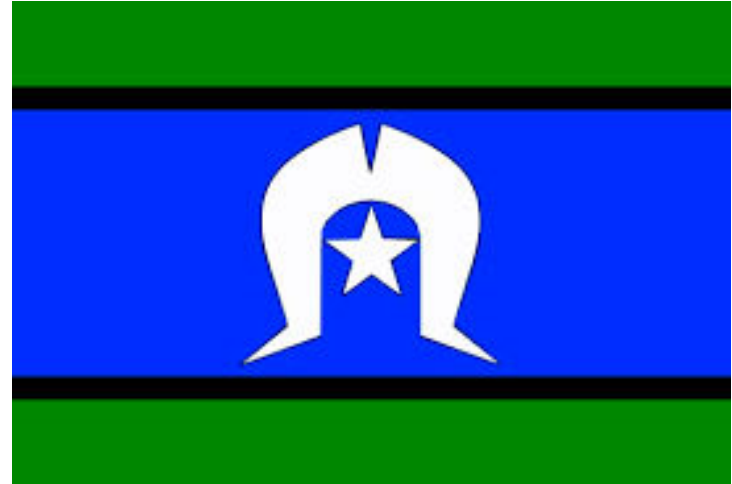
Please Note:

We strongly encourage you to visit the Office of The Public Advocate's website (www.publicadvocate.vic.gov.au) or contact their advice service as a first instance, should you require further information or assistance, as this document only provides a general overview.



Office of the
Public Advocate

Acknowledgement of Country



We acknowledge the Traditional Owners of the land on which we are meeting.

We pay our respects to Elders, past and present and extend that respect to other Aboriginal people present.





Enduring powers of attorney



Powers of attorney – a definition



- ❖ A legal document where an adult with decision-making capacity (known as the principal) gives another adult with capacity (known as the attorney) the power to make decisions for them or support them to make their own decisions
- ❖ Powers of attorney operate while the principal is alive but wants or needs someone to make decisions for them
- ❖ When the principal dies, the authority of the attorney ceases
- ❖ Every state and territory in Australia has its own laws for powers of attorney. In Victoria, POA's are made under the Powers of Attorney Act 2014.



Why make one?



- ❖ Life is unpredictable – illness/accidents
- ❖ Avoid conflict in family about who can make decisions for you when you can't
- ❖ Enables you to make your own decisions into the future even if something happens to you
- ❖ Avoid having to go to VCAT.



Who can be an attorney?



- ❖ A family member/relative/friend 18 +
- ❖ Someone you trust and who knows you well
- ❖ You can appoint more than one person
- ❖ You can appoint an *alternative* – back up.



Who *can't* be an attorney?



- ❖ A care worker for the principal
- ❖ An accommodation provider for the principal
- ❖ A health care provider for the principal
- ❖ Insolvent – bankrupt (financial matters).



Powers you can give your attorney/s



- ❖ **Financial matters** – paying expenses, business, property and legal matters
- ❖ **Personal matters** – accommodation, access to services, access to you.



Duties of an attorney



- ❖ Act honestly, diligently and in good faith
- ❖ Not profit from the position
- ❖ Avoid acting where there may be a conflict of interest
- ❖ Keep accurate records and accounts.



What an attorney *can't* do



- ❖ Delegate their authority
- ❖ Make or change a will
- ❖ Make or change an enduring power of attorney
- ❖ Vote
- ❖ Manage estate of principal upon their death
- ❖ Consent to marriage/divorce.





Enduring Power of Attorney

- ❖ Two witnesses required
- ❖ One witness must be either a registered medical practitioner or able to witness affidavits
- ❖ Cannot be an attorney under the EPOA
- ❖ Cannot be a relative of the principal or of the attorney
- ❖ Cannot be a care worker or accommodation provider of the principal



How do I make one?



- ❖ complete the correct forms, appointing the chosen attorneys and their powers – free to complete
- ❖ PoA's are not registered in Victoria
- ❖ consult a lawyer – fee for service



Helpful tips to reduce risks



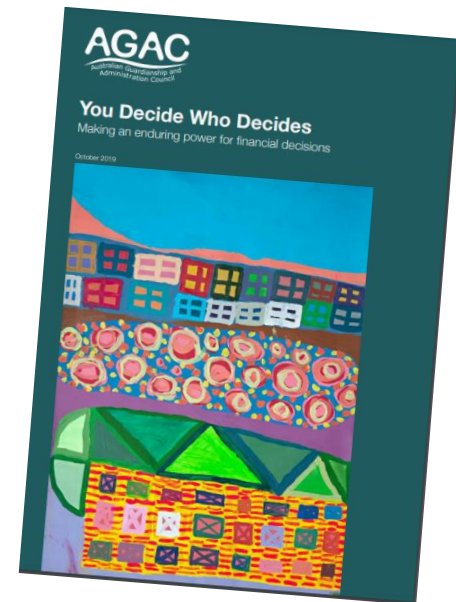
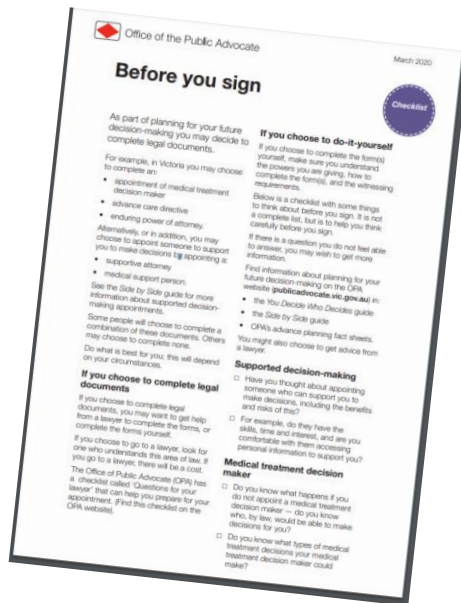
- ❖ Consider the pro's & con's of appointing jointly and/or severally
- ❖ Third party accountability – require attorney to tell a trusted person eg: when it starts, keep them informed
- ❖ State that an independent assessment of your decision making capacity is required.



Resources



Information and resources found on our website





Advance Care Directives



Who can make an Advance Care Directive?



- ❖ a person with decision making capacity
- ❖ can be made in relation to any type of medical treatment, to consent or refuse medical treatment
- ❖ people under the age of 18 can also make one



Who can't make an Advance Care Directive?



- ❖ a person who does *not* have decision making capacity
- ❖ cannot be made on behalf of another person
- ❖ families, carers, friends do have a role to play
however in documenting a person's values and preferences if known



Advance Care Directive



An advance care directive is a legal document that sets out a person's:

- ❖ Values directive (preferences and values)
- ❖ Instructional directive (legally binding instructions)

to inform future medical treatment in the event that the person does not have decision-making capacity



Values Directive



- ❖ a values directive is a statement of a person's preferences and values as the basis on which they would like any medical treatment decisions to be made on their behalf
- ❖ it must be considered by their medical treatment decision maker



Instructional Directive



- ❖ an instructional directive is a statement of a person's medical treatment decision that is directed to the patient's health practitioner(s)
- ❖ it takes effect as if the person who made it has consented to, or refused, the commencement or continuation of the medical treatment



Advance Care Directive Form



- ❖ two witnesses – one must be a registered medical practitioner
- ❖ 2nd witness – adult, over 18



What ACD should **NOT** be



- ❖ for the convenience or benefit of other individuals or organisations
- ❖ an administrative, bureaucratic, form filling function of health and residential service providers
- ❖ a condition of accessing health and residential services



CPR/Not for Resus



- ❖ is a clinical assessment made by a doctor
- ❖ should involve discussion with family and/or medical treatment decision maker
- ❖ doctors are not required by law to provide futile and non-beneficial treatment
- ❖ family members should not be pressured to complete these forms



What I understand to be the persons 'preferences and values' form



- ❖ a form that can be used to write down what is important to that person, capture what is known about the person
- ❖ completed on behalf of that person by family, carer, close friend, professional care worker.
- ❖ is ***not*** an advance care directive (has no legal status)



Advance Care Planning

Advance care directive for adults made under the *Medical Treatment Planning and Decisions Act 2016* (Vic.)

Any advance care directive that you have previously made under this Act is automatically revoked (cancelled) when you complete this advance care directive. This form is designed for adults to complete using the *Instructions for completing the advance care directive form* document.

Part 1: Personal details

You must fill in your full name, date of birth and address. A phone number is optional.

Your full name:	
Date of birth: (dd/mm/yyyy)	
Address:	
Phone number:	

If you have no current health problems, cross out this section.

My current major health problems are:

It is helpful to know if you have completed an Advance Statement in relation to a mental illness.

Mark with an X if the statement is true.

I have completed an Advance Statement in relation to a mental illness.

Residential Aged Care Facility GOALS OF CARE Medical Treatment Orders

Facility Address: _____

U.R. NUMBER: _____ SURNAME: _____ SEX: _____

GIVEN NAME: _____ DATE OF BIRTH: _____

APPROXIMATE IDENTIFICATION LABEL HERE

TO BE COMPLETED BY DOCTORS ONLY

Main health problems: _____

Advance Care Directive / Advance Care Planning document for this Resident? No Yes (ensure copy of document is provided to Resident)

Medical Treatment Decision Maker (MTDM) if patient lacks capacity to make medical decisions: No Yes (ensure copy of EPOA/Personal Directive is provided to Resident)

Name: _____ Relationship to Resident: _____ Phone No: _____

Has the MTDM been appointed by the Resident? No Yes (ensure copy of EPOA/Personal Directive is provided to Resident)

Identify the appointment: MTDM MEPOA Enduring Guardian EPOA/Personal Directive

Choose ONE option from A, B, C or D – Add further comments when appropriate.

GOAL A: FOR TREATMENT OF ALL REVERSIBLE ILLNESS → FOR TRANSFER TO HOSPITAL if patient cannot be provided in the facility

FOR CPR and appropriate life-sustaining treatments

GOAL B: FOR TREATMENT OF REVERSIBLE ILLNESS WITH FOLLOWS UP → FOR TRANSFER TO HOSPITAL if patient cannot be provided in the facility

NOT FOR CPR or INTUBATION - but is for other appropriate life-sustaining treatments

GOAL C: FOR TREATMENT OF REVERSIBLE ILLNESS WITH FOLLOWS UP → NOT FOR TRU if patient cannot be managed

TREATMENT - FOR GOOD SYMPTOM MANAGEMENT.

FOR TRIAL OF TREATMENT AT THE FACILITY, if this can be done without causing excessive distress. If deteriorates despite this, for comfort measures only.

OR

NOT FOR LIFE-PROLONGING TREATMENT of new illness / deterioration. All treatment is aimed at comfort and relieving symptoms.

GOAL D: COMFORT DURING DYING – TERMINAL ILLNESS → NOT FOR TRU if patient cannot be managed

All treatment is aimed at relieving symptoms and supporting the Resident and their family / carers.

What I understand to be the person's preferences and values:
Information to help guide future medical decisions for a person who is unable to express their own preferences

Name: _____ DOB: _____ Address: _____

1. Person that this document applies to

Name: _____ Date of birth: ____/____/____ Address: _____ Date completed: _____

2. This document is completed by

Name: _____ Relationship: _____ Phone: _____ How long has the person known you? _____ Signature: _____

3. Assistance with completing this document provided by (if applies)

(i) Name: _____ Relationship: _____ Phone: _____ How long has the person (that this document is for) known you? _____

(ii) Name: _____ Relationship: _____ Phone: _____ How long has the person (that this document is for) known you? _____

4. The person's main health problems

The person's main health problems are: _____



Medical Treatment Decision Making



Enduring power of attorney – Medical



- ❖ Made before March 12, 2018 – remains valid.
- ❖ For medical treatment decisions only, refusing or consenting.
- ❖ Appointed person known as the *agent*.





Medical Treatment Planning and Decisions Act 2016

In Victoria, from March 12, 2018 people can:

- ❖ appoint a medical treatment decision maker
- ❖ make an advance care directive
- ❖ appoint a support person for their medical treatment decisions



Medical Treatment Decision Maker



- ❖ you can appoint a medical treatment decision maker to make decisions on your behalf should you lose capacity to make decisions yourself
- ❖ you can appoint more than one but only one person can act at any given time.



How MTDM should act:



- ❖ to consent or refuse to proposed medical treatment
- ❖ decisions should be made:
 1. According to the persons values and preferences
 2. Promote personal and social wellbeing (if values & preferences are not known).



Witness requirements



- ❖ two witnesses required
- ❖ one witness must be either a registered medical practitioner or able to witness affidavits
- ❖ neither witness can be an appointed Medical Treatment Decision Maker



Role of the Support Person



- ❖ Support you to make, communicate, and give effect to your medical treatment decisions.
- ❖ Represent your interests.
- ❖ Access health information on your behalf.
- ❖ Cannot make medical treatment decisions for you.



Hierarchy of MTDM



Where a patient lacks decision making capacity to make a decision about medical treatment, a decision can be obtained in the following order:

- (1) Advance care directive (if relevant to the specific decision) /A medical treatment decision maker appointed by the patient
- (2) A guardian appointed by VCAT to make decisions about medical treatment
- (3) The first of the following who is *reasonably available, willing, able* and in a *close and continuing relationship* with the patient:
 - a) spouse or domestic partner
 - b) primary carer
 - c) adult child
 - d) parent
 - e) adult sibling



Forms and Resources



Appointment of medical treatment decision maker

made under the *Medical Treatment Planning and Decisions Act 2016* (Vic.)

For patient record purposes, health services can affix UR number, patient name and date of birth here

Your medical treatment decision maker has legal authority to make medical treatment decisions on your behalf, if you do not have decision-making capacity to make the decision.
Your medical treatment decision maker is the first person you list below who is reasonably available, and willing and able to make the decision. Only adults can appoint a medical treatment decision maker.

Part 1: Personal details

Before you start, read the checklist of steps with this form.

You must fill in your full name, date of birth and address. A phone number is optional.

Your full name:			
Date of birth: (dd/mm/yyyy)			
Address:			
Phone number:			

Part 2: Medical treatment decision maker details

This form allows you to appoint up to two people. To appoint more people, use the long version of this form.

I **revoke** any other previous appointment of a medical treatment decision maker however described.
I **appoint** as my medical treatment decision maker(s):

Fill in the details of your first medical treatment decision maker here.

Medical treatment decision maker 1

Full name:			
Date of birth: (dd/mm/yyyy)			
Address:			
Phone number:			

Fill in the details of your second medical treatment decision maker here. Cross out this section if you are not appointing a second medical treatment decision maker.

Medical treatment decision maker 2

Full name:			
Date of birth: (dd/mm/yyyy)			
Address:			
Phone number:			

Appointment of medical treatment decision maker



Appointment of support person

made under the *Medical Treatment Planning and Decisions Act 2016* (Vic.)

For patient record purposes, health services can affix UR number, patient name and date of birth here

Your support person can access, or help you to access, health information relevant to your medical treatment.
Your support person does not have the power to make medical treatment decisions on your behalf.
Any existing support person appointment previously made by you under the Act will be revoked on making this appointment.

Part 1: Personal details

Before you start, read the checklist of steps with this form.

You must fill in your full name, date of birth and address. A phone number is optional.

Your full name:			
Date of birth: (dd/mm/yyyy)			
Address:			
Phone number:			

Part 2: Support person details

Fill in the details of your support person here.

You must fill in their full name, date of birth and address. A phone number is optional.

I **appoint** as my support person:

Full name:			
Date of birth: (dd/mm/yyyy)			
Address:			
Phone number:			

Appointment of support person

Summary of steps



When a patient is unable to consent...



Advance care directive with a relevant instructional directive?

Yes

Give effect to relevant instructional directive.

No

Medical treatment decision maker?

Yes

Decision is made by the patient's medical treatment decision maker.

No

May administer treatment without consent.

Yes

Routine treatment?

Significant treatment?

Yes

Decision is made by the Public Advocate.



Decision Making Capacity



Decision making capacity



- ❖ specific to each decision; a person may have capacity to make some decisions and not others
- ❖ lack of capacity may be temporary and not permanent
- ❖ it should not be assumed a person does not have capacity just because the person makes a decision that is, in the opinion of others, unwise (assessment of capacity is of the process of how the person has made the decision, not the decision itself)



Decision making capacity



A person has decision-making capacity if they are able to:

- ❖ **understand** the information relevant to the decision
- ❖ **retain** that information to the extent necessary to make the decision
- ❖ **use or weigh** that information as part of the process of making the decision
- ❖ **communicate** their decision in some way, including by speech gesture or other means.



Practicable and appropriate support



While support can be informal, a person can appoint a Support Person:

- ❖ support you to make, communicate, and give effect to your decisions
- ❖ represent your interests.
- ❖ access information on your behalf
- ❖ cannot make decisions for you, but assist you to be able to make decisions for yourself



For more information



The Office of the Public Advocate website

www.publicadvocate.vic.gov.au

Advice Service on **1300 309 337** or

OPA_advice@justice.vic.gov.au





Are there any questions?

