

Planning for future medical care

Medical Treatment Planning and Decisions Act 2016 (Vic) factsheet

Date: 21 June 2018



Planning for future medical care: a factsheet on the *Medical Treatment Planning and Decisions Act 2016 (Vic)*

Recent changes to the law now allow you to better plan for your future medical care, including how medical treatment decisions can be made on your behalf when you lose decision-making capacity for medical treatment.

The *Medical Treatment Planning and Decisions Act 2016 (Vic)* (the Act) repeals the *Medical Treatment Act 1988 (Vic)*, makes significant changes to medical treatment laws and gives legal effect to advance care planning.

The Act applies to all “registered health practitioners” – ie, those regulated by the Australian Health Practitioner Regulation Agency (AHPRA) – as well as ambulance officers and non-emergency patient transport staff.

A registered health practitioner means:

- medical
- dental
- physiotherapy
- pharmacy
- optometry
- podiatry
- nursing and midwifery
- osteopathy
- psychology
- medical radiation practice
- occupational therapy
- chiropractic
- Chinese medicine
- Aboriginal and Torres Strait Islander health practice.

Why is advance care and medical treatment planning important?

You do not have to make an [advance care directive](#) or appoint a [medical treatment decision maker](#) or [support person](#).

However, it is important to think about what medical treatment you would like to receive and who you trust to make medical decisions on your behalf if you are not able to make those decisions yourself.

You should engage in advance care planning in a way that works best for you. This might include:

- making an advance care directive
- appointing a medical treatment decision maker
- appointing a support person
- writing down your preferences and values in some other way than by completing an advance care directive
- discussing your preferences and values with your family members and health care practitioners
- thinking about it when you review your will or power of attorney.

If you are under the age of 18

If you are under the age of 18, you can make an advance care directive as long as you understand:

- the nature of the treatment you are making decisions about
- the potential outcomes if the advance care directive is followed.

You can also appoint a support person. Your support person can also be under the age of 18.

If you are under the age of 18, you cannot appoint a medical treatment decision maker. Your medical treatment decision maker will be your parent or guardian, or a person with parental responsibility for you who is ready, willing and able to make the decision.

Enduring power of attorney (medical treatment)

Under the Act, it is no longer possible to appoint someone as a medical agent under an enduring power of attorney (medical treatment).

Instead, you can appoint a medical treatment decision maker. You can also appoint a medical treatment support person and make an advance care directive.

A medical power of attorney made under the *Medical Treatment Act 1988* (Vic) and executed prior to 12 March 2018 will still be valid and will be treated as if it was an appointment of a medical treatment decision maker.

Advance care directive

An advance care directive is a document that sets out your binding instructions or preferences and values in relation to your medical treatment in the event that you do not have decision-making capacity for that medical treatment.

Provided that you have capacity, any person (including a child) can make an advance care directive.

An advance care directive can include both an instructional directive and a values directive.

Instructional directive

An instructional directive sets out your legally binding instructions about consenting to, or refusing, current and future medical treatment. With very limited exceptions, your instructional directive must be followed by a health practitioner.

Example: I refuse cardiopulmonary resuscitation.

The Act provides that some statements must be interpreted as a values directive, even if expressed as an instructional directive. This includes, for example, any statement concerning palliative care.

Values directive

A values directive sets out your preferences and values that you would like future medical treatment decisions to be guided by. Except in limited circumstances, your values directive must be considered by a health practitioner when they are making decisions about your medical treatment.

Example: If I am unable to recognise family and friends, and cannot communicate, I do not want any medical treatment to prolong my life.

Formal requirements

There is no prescribed form that must be used to make an advance care directive. However, there are a number of formal requirements that must be met:

Your advance care directive must be:

- written in English
- include your full name, date of birth and address
- signed by you in the presence of two adult witnesses:
 - at least one of whom is a registered medical practitioner
 - neither witness can be your appointed medical treatment decision maker.

You must have medical decision-making capacity for each statement in the advance care directive and understand the nature and effect of each statement.

You can upload your advance care directive on My Health Record – your GP can assist if necessary.

Revoking or amending an advance care directive

Provided you have capacity, you can revoke an advance care directive by complying with the same formalities as making an advance care directive.

You should provide a copy of your revocation to your doctor and any appointed medical treatment decision maker(s) or support person.

Appointing medical treatment decision makers

A medical treatment decision maker is an adult appointed by you to make medical treatment decisions on your behalf when you no longer have capacity to make those decisions yourself.

You can appoint more than one medical treatment decision maker, but only one medical treatment decision maker can make decisions for you at any one time.

Your medical treatment decision maker can be your support person or a different person.

Making decisions

Your medical treatment decision maker must make the decisions that they reasonably believe you would have made if you had medical treatment decision making capacity, whether or not they agree with it or think it is in your best interests.

Formal requirements

There is no prescribed form to appoint a medical treatment decision maker, however, there are a number of formal requirements that must be met.

Your appointment of your medical treatment decision maker must be:

- written in English
- include your full name, date of birth and address
- signed by you in the presence of two adult witnesses
 - at least one of whom is an authorised witness (that is, a registered medical practitioner or a person authorised to take affidavits)
 - neither witness can be your appointed medical treatment decision maker
- accepted by the proposed medical treatment decision maker(s).

An acceptance of appointment as an appointed medical treatment decision maker must be:

- in writing on the same document as the appointment
- signed by the appointee(s)
- include a statement to the effect that the appointee understands their obligations and undertakes to act in accordance with the known preferences and values of the person

- witnessed by an adult who certifies as to witnessing the signing of the acceptance.

Revocation of appointment of medical treatment decision maker

Provided you have capacity, you can revoke an appointment of a medical treatment decision maker by complying with the same formalities as appointing a medical treatment decision maker (with the exception of the acceptance requirements).

You should provide a copy of your revocation to your medical treatment decision maker(s) and your doctor.

What if I haven't appointed a medical treatment decision maker?

If you haven't appointed a medical treatment decision maker, the Act provides a hierarchy of people who are authorised to be your medical treatment decision maker.

Your medical treatment decision maker will be the first person who is ready, willing and able of:

1. a guardian appointed by VCAT to make medical decisions.

If none then:

2. spouse or domestic partner.

If none, then the first of the following (and if more than one, the oldest):

3. primary carer
4. adult child
5. parent
6. adult sibling.

Support person

The role of a support person is to support you to make, communicate and give effect to your medical treatment decisions. A support person does not have the power to make your medical treatment decisions for you.

Both adults and children can appoint a support person. A support person can be an adult or a child.

You can only appoint one support person.

Your support person can be your medical treatment decision maker or a different person.

There is no prescribed form to appoint a support person, however, there are a number of formal requirements that must be met.

Your appointment of your support person must be:

- include your full name, date of birth and address

- signed by you in the presence of two adult witnesses
 - at least one of whom is an authorised witness (that is, a registered medical practitioner or a person authorised to take affidavits)
 - neither witness can be your appointed medical treatment decision maker
- accepted by the proposed support person.

An acceptance of appointment as a support person must be:

- in writing on the same document as the appointment
- signed by the appointee
- include a statement to the effect that the appointee understands the appointment and the role of a support person
- witnessed by an adult who certifies as to witnessing the signing of the acceptance.

Revocation of appointment of support person

Provided you have capacity, you can revoke an appointment of a support person by complying with the same formalities as appointing the support person (with the exception of the acceptance requirements).

You should provide a copy of your revocation to your support person and your doctor.

Refusal of medical treatment

Under the Act, it is no longer possible to make a refusal of treatment certificate.

Instead, you can refuse treatment for a current or future medical condition through an instructional directive in your advance care plan. With very limited exceptions, your instructional directive must be followed by a health practitioner.

A refusal of treatment certificate made under the *Medical Treatment Act 1988* (Vic) and executed prior to 12 March 2018 will still be valid. It will be treated in the same way as an instructional directive. Health practitioners must follow it.

Emergencies

Emergency medical treatment can be administered to a person without medical treatment decision making capacity, without their consent, where it is believed that treatment is reasonably necessary to:

- save the person's life
- prevent serious damage
- prevent suffering from significant pain and distress.

If the health practitioner is aware that you have made a valid instructional directive refusing treatment, the health practitioner cannot administer that treatment, even in an emergency.

Palliative care

Palliative care is defined as including “reasonable medical treatment for the relief of pain, suffering and discomfort, and the reasonable provision of food and water”.

You cannot refuse palliative care in an instructional directive.

You can, however, include statements about palliative care in your values directive, which a health practitioner must consider.

A medical treatment decision maker cannot make a decision about palliative care but must be consulted by a health practitioner before palliative care is administered.

My Health Record

Ask your GP or health care provider about uploading your advance care directive to your "My Health Record".

For more information

The Law Institute of Victoria has a number of other medical treatment resources for the community and the legal profession, including frequently asked questions:

<https://www.liv.asn.au/Professional-Practice/Medical-Treatment-Act>

The Department of Health and Human Services:

<https://www2.health.vic.gov.au/hospitals-and-health-services/patient-care/end-of-life-care/advance-care-planning/medical-treatment-planning-and-decisions-act>

The Office of the Public Advocate:

<http://www.publicadvocate.vic.gov.au/medical-consent>

‘Take Control’, March 2018 edition: <http://www.publicadvocate.vic.gov.au/our-services/publications-forms/take-control-march-2018/474-take-control-1>

My Health Record:

<https://www.myhealthrecord.gov.au/for-you-your-family/howtos/add-advance-care-plan>