

why you must have an enduring power of attorney (medical treatment)

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what is an enduring power of attorney (epa) (medical treatment)?

This is a legal document where you as donor appoint an agent to make medical treatment decisions for you. An enduring power of attorney (medical treatment) needs to be signed in the presence of someone able to witness a statutory declaration in Victoria.

Your agent will only be able to make medical treatment decisions for you if and when you can no longer make these decisions for yourself.

should I make an epa (medical treatment)?

Yes, everyone over 18 years should appoint a medical agent to ensure that you decide who will make medical decisions on your behalf in the event that you are unable to do so for yourself.

It is important to remember that anyone at any age (not just the elderly) can lose the capacity to make medical decisions either temporarily (e.g. coma as a result of injury or illness) or permanently (e.g. dementia, brain injury as a result of an accident).

You can appoint an agent provided you are over 18 years of age and have the requisite capacity. This means you must understand

- the powers given to your agent
- that the power will come into effect should you lose the ability to make medical treatment decisions for yourself
- that you can revoke the power at any time, provided you have capacity
- that upon losing capacity, you will not be able to supervise your agent's use of the power

what if I have not appointed an agent?

If you have not appointed a medical agent, the 'person responsible' will make medical treatment decisions on your behalf.

The person responsible is one of the following, in order of preference

1. a person appointed by Victorian Civil & Administration Tribunal (VCAT)
2. a guardian appointed by VCAT with health care powers
3. an enduring guardian appointed by the patient with health care powers
4. a person appointed by the patient in writing to make decisions about medical treatment including the proposed treatment
5. the patient's spouse or domestic partner
6. the patient's primary carer excluding paid carers or service providers
7. the patient's nearest relative over the age of 18, which means
 - a) son or daughter
 - b) father or mother
 - c) brother or sister (including adopted and step relationships)
 - d) grandfather or grandmother
 - e) grandson or granddaughter
 - f) uncle or aunt
 - g) niece or nephew

If your family members (e.g. your three children) do not get along or if they all have different opinions as to what medical care you should receive, each of them will be giving different instructions to the medical profession. If the instructions are conflicting, the medical profession will likely take the instructions from a legally appointed agent.

[please turn over...](#)



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what decision making powers will my agent have?

Your agent will be able to consent, or withhold consent, to medical treatment on your behalf. Your agent can refuse medical treatment which is administration of a drug or other substance, an operation, or another medical procedure.

Your agent may only withhold consent if

- the medical treatment would cause you unreasonable distress or
- if your agent believes that you would consider the treatment unwarranted

Your agent cannot consent to the following without applying to VCAT for a decision

- medical procedures likely to render you infertile
- termination of a pregnancy
- removal of tissue for transplant
- your participation in medical research

Please note that a medical agent is not authorised to refuse palliative care (medical procedures to ease suffering, pain and discomfort). Additionally, your agent cannot refuse the reasonable provision of food and water. The enduring power of attorney (medical treatment) cannot be used by your agent to make guardianship, legal or financial decisions. You will need to make an enduring power of guardianship and enduring power of attorney (financial).

when is consent not required?

Consent is not required where treatment

- is needed to prevent death, serious health damage, significant pain and distress
- is minor i.e. first aid, visual examination

who should I appoint to be my medical agent?

Your medical agent must be over 18 years of age and have capacity to take on the role. You should appoint someone you trust will comply with your wishes. It is also advisable to appoint another individual to be your alternate agent. Your alternate agent will only act if your first appointed agent is unable to.

what are my agent's responsibilities?

It is fundamental that you fully appraise your agent of your wishes (i.e. use of a life support system). This will ensure that your agent will be acting on your instructions, rather than having to make difficult decisions him/herself. If your agent is acting contrary to your best interests, VCAT has the authority to revoke or suspend the power.

Your agent must

- act in your best interests
- as far as possible, make the same decision that you would make yourself
- avoid conflicts of interest

details required (full name including middle names)

agent's full name (you may only appoint one person)

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agent's address

.....

alternate agent (you may only appoint one person)

.....

alternate agent's address

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