

Appointment of Medical Treatment Decision Maker

What is an Appointment of Medical Treatment Decision Maker?

You are no longer able to make an Enduring Power of Attorney (Medical Treatment) to appoint someone to make decisions about your medical treatment when you lose capacity. Instead, you will need to appoint someone known as a "Medical Treatment Decision Maker".

To make this appointment, you will need to complete a legal document, 'Appointment of Medical Treatment Decision Maker' which must be signed in the presence of someone able to witness affidavits in Victoria, or a medical practitioner.

Your appointed Medical Treatment Decision Maker will only be able to make medical treatment decisions for you if and when you can no longer make these decisions for yourself.

What if I already have an Enduring Power of Attorney (EPA) - (Medical Treatment)?

An agent or alternate agent under an Enduring Power of Attorney (Medical Treatment) made pursuant the *Medical Treatment Act 1988* is recognised under the *Medical Treatment Planning and Decisions Act 2016* as your appointed Medical Treatment Decision Maker.

Should I make an Appointment of Medical Treatment Decision Maker?

Yes, if you want to choose who makes medical treatment 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 can lose the capacity to make medical decisions. A coma could render you unconscious temporarily or a brain injury or dementia could mean you lose the ability to make decisions permanently.

You can appoint a Medical Treatment Decision Maker provided you are over 18 years of age and have the requisite capacity. This means you must understand:

- the powers given to your Medical Treatment Decision Maker
- that the appointment will come into effect should you lose the ability to make medical treatment decisions for yourself
- that you can revoke the appointment at any time, provided you have capacity
- that upon losing capacity, you will not be able to supervise the decisions made by your Medical Treatment Decision Maker

What if I have not made an Appointment of Medical Treatment Decision Maker?

If you have not appointed a Medical Treatment Decision Maker, the person who will make decisions about your medical treatment on your behalf is the first of the following who is "reasonably available and willing and able to make the medical treatment decision":

1. a guardian appointed by VCAT with the power to make medical treatment decisions
2. the first of the following with whom you are in a close and continuing relationship:
 - a. your spouse or domestic partner
 - b. your primary carer
 - c. the first of the following (and if more than one, the oldest):
 - d. son or daughter
 - e. father or mother
 - f. brother or sister (including adopted and step relationships)

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Who should I appoint to be my Medical Treatment Decision Maker?

Your Medical Treatment Decision Maker must be over 18 years of age and have capacity to take on the role. You can appoint more than one Medical Treatment Decision Maker. However, only one Medical Treatment Decision Maker can act on your behalf at any one time.

Your Medical Treatment Decision Maker should be someone you trust.

It is fundamental that you fully appraise your Medical Treatment Decision Maker of your wishes (i.e. use of a life support system) as these need to be taken into account. You could write down your wishes in a legal document known as an Advanced Care Directive.

What decision making powers will my Medical Treatment Decision Maker have?

A Medical Treatment Decision Maker will have the authority to make medical treatment decisions they reasonably believe you would have made had you had capacity. Medical treatment includes surgery, the administration of prescription medication, dental treatment, treatment for mental illness and palliative care. However, a Medical Treatment Decision Maker cannot refuse palliative care on your behalf.

If your Medical Treatment Decision Maker refuses "significant" treatment on your behalf, your health practitioner must notify the Office of the Public Advocate who will review the decision to ascertain its reasonableness.

Your Medical Treatment Decision Maker 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

Your Medical Treatment Decision Maker must also (amongst others):

- act in accordance with any Advance Care Directive you have made
- consider the likely effects and consequences of the medical treatment and whether these are consistent with your values
- consult with relevant people when making decisions
- act in good faith and with due diligence

When is consent not required?

Consent is not required in an emergency.

Does my Medical Treatment Decision Maker need to accept the appointment?

Yes, the appointee is required to sign the appointment before a witness. This can be done after your form has been signed.