

# Take Control



Forms  
Inside

March  
2018

## Your self-help guide to:

- ▶ appointing a medical treatment decision maker
- ▶ making an advance care directive
- ▶ making an enduring power of attorney.



The Office of the Public Advocate (OPA) acknowledges Victoria's Aboriginal communities and their rich culture. OPA pays respect to their Ancestors, Elders and communities, who are the custodians of the land on which we work.



**The information and forms in this booklet are for adults**

18+

For information for people under 18 years of age, see **betterhealth.vic.gov.au/havetheconversation**

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## About this guide

The information in this guide relates to the law in Victoria. If you are making documents to operate in other states, territories or countries, refer to resources from those jurisdictions for information, as the legislative requirements vary.

Personal stories are included in this guide to illustrate choices available to you. The personal stories are hypothetical. Any resemblance to any person is entirely coincidental.

## Forms developed by Victorian departments

The following forms that appear in this booklet have been developed by Victoria's Department of Health and Human Services:

- the appointment of medical treatment decision maker form
- the advance care directive form.

The enduring power of attorney form that appears in this booklet has been developed by Victoria's Department of Justice & Regulation.

## About the cover design

The cover design is a graphic treatment by Nicholas Hopkins of the artwork (at right) exhibited at CONNECTED 2017, State Trustees' annual exhibition showcasing the work of emerging artists with a disability or an experience of mental illness.

OPA purchased the artwork *East Kew* by Jessica Ebert.



**Jessica Ebert**  
*East Kew*

*"I am an independent traveller. I love to draw maps of the places I know."*

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# Public Advocate's message

I am pleased to welcome you to this fourteenth edition of *Take Control*.

Everyone has the right to make their own decisions. However, anyone can experience an injury or illness that means they are unable to make decisions, either temporarily or permanently.

In Victoria, there are a number of laws that enable you to plan ahead now, should a time come when you are unable to make certain decisions for yourself.

Appointing a medical treatment decision maker, completing an advance care directive and making an enduring power of attorney are all ways you can take control now to improve the likelihood that decisions are made as you would want them later.

By appointing a medical treatment decision maker, you can specify who has legal authority to make medical treatment decisions for you, including procedures provided by dental and allied health practitioners, if you are unable to do so in the future.

By completing an advance care directive, you can specify your values and preferences which must be considered by your medical treatment decision maker, if you are unable to consent to medical treatment in the future. Alternatively, or in addition, you can provide instructions that your health practitioners in the future are bound to follow about specific medical treatments that you consent to or refuse.

By making an enduring power of attorney, you can choose who will make important financial and personal decisions for you,



such as where you will live or what happens to your house, if you are unable to do so in the future.

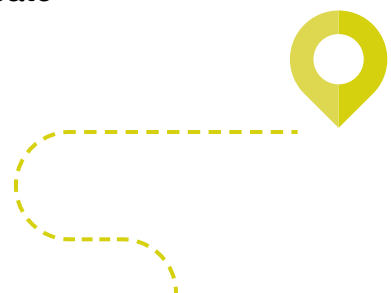
If you choose to appoint a medical treatment decision maker or attorney, it is essential you only appoint someone you trust, who you are confident will be willing and able to make decisions as you would want them. Make sure you talk to them, and to your health practitioners about what is important to you. To achieve the best possible outcomes, it is important to create a partnership between yourself, the people important in your life — such as family members and carers — and your health practitioners.

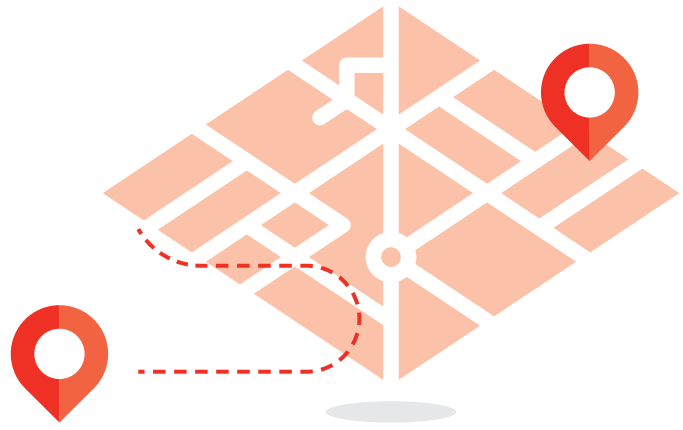
Finally, please remember you can only appoint a medical treatment decision maker, complete an advance care directive or make an enduring power of attorney for yourself. You cannot make these legal documents on behalf of someone else.

I encourage you to carefully read through this guide, seek advice if you need it, and make sure the people close to you know what you want to happen, if you are unable to decide for yourself.

*Colleen Pearce*

Colleen Pearce  
**Public Advocate**





# Introduction



This booklet is divided into:

- guide to medical treatment decision makers
- guide to advance care directives
- guide to enduring powers of attorney.

Depending on your circumstances, one or all of the guides may be relevant to you.

At the back of the booklet you will find the relevant forms and tear-out fact sheets for your witnesses and the people you appoint.

A glossary of terms is on page 30.

While OPA has made every effort to provide clear information, please be aware that the law in these areas can be quite complicated. For this reason, some of the sections in this guide contain a lot of detail. This is because the guide explains how to create legal documents that accurately reflect your choices.

Please read the information provided carefully, and seek clarification and advice if required. If completing any of the forms in this guide, you may find it helpful to have the assistance of someone you trust.

The information and forms in this edition have been updated to take into account the implementation of the *Medical Treatment Planning and Decisions Act 2016*, which came into effect on 12 March 2018.

If you previously appointed someone to make medical treatment decisions in a medical enduring power of attorney, an enduring power of attorney, or an enduring power of guardianship, this appointment is still valid.

# About decision-making capacity



To complete the legal documents in this booklet, you need to have the decision-making capacity to do so.

In Victoria, the law says you have capacity to make a decision if you are able to:

- understand the information relevant to your decision and the effect of the decision
- retain the information to the extent necessary to make the decision
- use or weigh the information to make your decision
- communicate your decision, and your views and needs in relation to your decision in some way, including by speech, gestures or other means.

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## Presumption of decision-making capacity

Adults are presumed to have decision-making capacity, unless there is evidence to the contrary. If you do not have decision-making capacity for a particular decision, this may be temporary and not permanent. You may have decision-making capacity to make some decisions and not others.

If you are able to make a decision with practicable and appropriate support, then you have decision-making capacity to make that decision. For example, you might need extra time, someone who helps you by discussing the decision with you, or technology that assists you.

## Support to make decisions



You may be interested to find out about appointing someone who can support you to make decisions.

See the OPA website for information about appointing a medical support person or supportive attorney:

[www.publicadvocate.vic.gov.au](http://www.publicadvocate.vic.gov.au)



# Which form to use?



## To appoint someone with authority to make decisions for you about:

	Which form to use?	What happens if I do not appoint anyone?
<ul style="list-style-type: none"> <li>Medical treatment decisions</li> </ul>	<b>Appointment of medical treatment decision maker</b>	If you are unable to make medical treatment decisions, the law in Victoria lists who is your medical treatment decision maker. (See page 13 for this list).
<ul style="list-style-type: none"> <li>Financial decisions</li> </ul>	<b>Enduring power of attorney</b> <ul style="list-style-type: none"> <li>Appoint an attorney for financial matters</li> </ul>	No one has automatic legal authority to make these types of decisions for you. The Victorian Civil and Administrative Tribunal (VCAT) can appoint someone (known as an 'administrator') to make these types of decisions for you, either someone close to you or a trustee company.
<ul style="list-style-type: none"> <li>Personal and lifestyle decisions (for example decisions about what support services you need, or where you live)</li> </ul>	<b>Enduring power of attorney</b> <ul style="list-style-type: none"> <li>Appoint an attorney for personal matters</li> </ul>	No one has automatic legal authority to make these types of decisions for you. VCAT can appoint someone (known as a 'guardian') to make these types of decisions for you, either someone close to you or the Public Advocate.

## When making an advance care directive:

	Which part of the form to complete?	What happens if I do not complete this?
<ul style="list-style-type: none"> <li>To record your values and preferences for your medical treatment</li> </ul>	<ul style="list-style-type: none"> <li>Complete the <b>values directive</b></li> </ul>	You can communicate and record your values and preferences for your medical treatment in other ways. (See page 10 for more information).
<ul style="list-style-type: none"> <li>To make binding decisions consenting to, or refusing, medical treatment offered to you in the future</li> </ul>	<ul style="list-style-type: none"> <li>Complete the <b>instructional directive</b></li> </ul>	Your medical treatment decision maker makes medical treatment decisions for you, if you do not have decision-making capacity to do so. Or Victoria's Public Advocate may make the decision if you have no medical treatment decision maker.

# 01



## Guide to medical treatment decision makers

In this section you will find:

- ▶ information about choosing your medical treatment decision maker
- ▶ a checklist of the steps to appoint your medical treatment decision maker.

Find the appointment form at the back of this booklet.



# Choosing your medical treatment decision maker



You can choose who makes medical treatment decisions for you if you are ever unable to make these types of decisions, due to injury or illness.

The person with legal authority to make medical treatment decisions for you is known as your medical treatment decision maker.

Your medical treatment decision maker can only make decisions about your treatment when you do not have decision-making capacity to make the decision.

You can choose who your medical treatment decision maker is by appointing someone to that role. (See page 13 for more information about how to establish who your medical treatment decision maker is).

Examples of the things they can make decisions about include treatment for an injury, an operation, dental treatment, and treatment for mental illness.

For more information, see the definition of medical treatment on page 30.

In Victoria, if you do not have a medical treatment decision maker, and do not have capacity to make a decision, the Public Advocate has authority to make a significant medical treatment decision for you (unless it is an emergency, or unless you have completed a relevant instructional directive).

## Appointing your medical treatment decision maker

Your medical treatment decision maker should be someone you trust to respect your values and preferences for your medical treatment.

You can choose your medical treatment decision maker by appointing someone, using the form in this booklet.

You can only have one medical treatment decision maker at a time. You can also appoint a back-up.

The person(s) you choose needs to accept the role. It is important they have the opportunity to learn about the role, and find out about your values and preferences.

## When your medical treatment decision maker acts

Your medical treatment decision maker only makes medical treatment decisions for you if you are unable to make them. You may be able to make some types of decisions and not others.

If you do not have decision-making capacity to make medical treatment decisions, health practitioners need the consent of your medical treatment decision maker before providing medical treatment, unless it is an emergency or unless you have completed a relevant instructional directive.

## How your medical treatment decision maker decides

Your medical treatment decision maker must make the decision that they reasonably believe you would make. They can make decisions to consent to, or refuse, medical treatment.

# Checklist to appoint a medical treatment decision maker

To be able to appoint your medical treatment decision maker, you must have decision-making capacity to make the appointment.

## □ **Decide who to appoint**

Whoever you choose should be someone you trust to respect your values and preferences. You can appoint more than one person, but only one person acts at any one time.

## □ **Fill in the form**

Follow the instructions in the form.

You can appoint up to two medical treatment decision makers using the form. If you wish to appoint more, use the long version of the form on the OPA website.

If you have decision-making capacity but cannot physically sign, see the OPA website for how another person can sign at your direction.

### **Limitations or conditions**

Your appointed medical treatment decision maker has the powers set out in the Act, subject to any limitations or conditions you include in the appointment form. If you are considering including limitations or conditions, first read the OPA fact sheet about this. (See the 'medical treatment decision maker' page of the OPA website).

## □ **Sign the form in front of witnesses**

You need to sign the form in front of two witnesses. One must be a registered medical practitioner (doctor) or someone authorised to witness affidavits.

Arrange for an interpreter, if needed. OPA recommends using an independent and accredited interpreter.

(See page 31 for a fact sheet for your witnesses that explains their role).

Find the appointment form at the back of this booklet.



## □ **Your medical treatment decision maker signs**

Any person you appoint needs to accept the appointment and sign in front of an adult witness. They can do this on the day you sign, or on a later date.

Provide them with the fact sheet on page 37 that explains their role.

You should make sure your medical treatment decision maker understands your values and preferences for your medical treatment, and continue to keep them informed of any changes.

If you have made an advance care directive, give your medical treatment decision maker a certified copy or make sure they know where to find it.

## □ **Storage and certified copies**

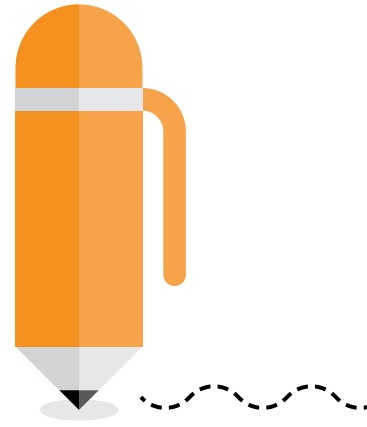
The appointment form is not registered in Victoria. You should keep the original in a safe place. Make sure your medical treatment decision maker knows where to find it if they need it, or give them a certified copy. You should give your doctor, relevant health practitioner, or hospital (if relevant) a copy. Consider uploading a copy to My Health Record: [www.myhealthrecord.gov.au](http://www.myhealthrecord.gov.au)

### **Note about previous appointments**



If you appoint a medical treatment decision maker using the form in this booklet, you can use the form to revoke (cancel) any previous appointment. This includes someone you appointed under a legal document recognised by the Act, for example, a medical enduring power of attorney. (See 'appointed medical treatment decision maker' in 'What these words mean' on page 30).

## 02



# Guide to advance care directives

## In this section find:

- ▶ information about possible reasons for completing an advance care directive
- ▶ instructions for completing the form.

This guide has information to help you choose whether to make an advance care directive.

Find the  
advance care  
directive form at  
the back of this  
booklet.

# Why make an advance care directive?



## Recording your values and preferences for your medical treatment

If you record your values and preferences for your medical treatment, this will help your medical treatment decision maker, or the Public Advocate to make the decision you would want.

Thinking about your values and preferences, talking about them, and recording them, is a process known as advance care planning. For more information about the process of advance care planning, see: [www.betterhealth.vic.gov.au/havetheconversation](http://www.betterhealth.vic.gov.au/havetheconversation)

Making an advance care directive is one way of recording your values and preferences.

## Making binding decisions about future medical treatment

In Victoria, an advance care directive allows you to make binding decisions about future medical treatment.

## The two types of directives

In summary, you can complete an advance care directive to:

- record your values and preferences for your medical treatment to guide your medical treatment decision maker (a values directive)
- make legally binding statements directed to your health practitioners, in which you consent to, or refuse, specific future medical treatment (an instructional directive).

## Does the form need to be witnessed?

In Victoria, an advance care directive made under the Medical Treatment Planning and Decisions Act is a legal document. This is why there are witnessing requirements.

If you want to complete a valid instructional directive, you must have it properly witnessed.

If you fill in the advance care directive form, but do not have it witnessed, it will still be a record of your values and preferences. Nonetheless, there are some advantages to having it witnessed. (See the information about the values directive on page 13 for more about this).

## Case examples

Completing a values directive, or otherwise recording your values and preferences for your medical treatment, is helpful for most people's circumstances.

However, you should only complete an instructional directive if you know the medical treatment that you want or do not want in the future, as health practitioners are bound to follow your instruction.

The examples on the next page illustrate possible reasons for making a values directive, instructional directive, or both.

## Robert's story

Robert feels very strongly that he would not want certain medical treatments if they were offered to him. When his mother was very ill, he felt that she would not have wanted some of the treatments that were offered. However, his sister wanted his mother to have the treatments.

Robert has previously been treated for bowel cancer and knows there is significant risk it will reoccur. He does not want to go through chemotherapy and radiotherapy ever again. He decides to complete an instructional directive in which he refuses these treatments.

He also completes a values directive and writes that quality of life, not length of life, is what matters to him. He does not want a family member to make decisions for him, so appoints his good friend, Nanette, to be his medical treatment decision maker.

## Jose's story

Jose has early stage Alzheimer's disease. He understands how the disease is likely to progress. While he is fearful of losing his independence and suffering, he loves and values life.

Jose's wife had a stroke two years ago and died soon after. Jose regrets that, at the time, he did not know his wife's wishes for treatment. For this reason, he decides to complete a values directive to guide his medical treatment decision maker.

Jose has an adult stepson, Martin. He thinks that Martin would be the best person to appoint to be his medical treatment decision maker, because he communicates well with his other children and lives close by. Jose talks to all of his adult children about his preferences for his medical treatment, and his reasons for appointing Martin, and shows his children his advance care directive.

## Maria's story

Maria, 85, is in good health, lives alone, and does not have children.

She does not have anyone suitable to appoint as her medical treatment decision maker.

Maria knows that if she becomes unable to make her own decisions about her medical treatment, Victoria's Public Advocate may need to make a decision for her. She wants to record information about her values and preferences.

Maria completes a values directive and gives a copy to her doctor for her patient record. She also makes sure that an electronic copy is uploaded to her My Health Record.

If you choose to make an advance care directive, find the form you need at the back of this booklet.

Carefully tear out the form and use the instructions overleaf to complete it.

# Instructions for completing the advance care directive form for adults



If you have a physical disability that means you cannot sign the form, use the version of this form that allows someone else to sign at your direction. (See the OPA website).



Use these instructions to complete the parts of the advance care directive form relevant to you. Find the form at the back of this booklet. Cross out any sections that are not relevant.

In your advance care directive, you can include:

- a values directive
- an instructional directive.

A **values directive** is a statement of your values and preferences for your medical treatment. Your medical treatment decision maker will use your values directive to guide them when they make decisions for you.

Your medical treatment decision maker is the person with legal authority to make medical treatment decisions for you, if you do not have decision-making capacity to make the decision(s).

An **instructional directive** is a legally binding statement in which you consent to, or refuse, future medical treatment.

Your instructional directive takes effect as if you had consented to, or refused the treatment.

You can choose to complete **either or both** directives, using this form.

## If you previously made an advance care directive

If you previously made an advance care directive under the Medical Treatment

Planning and Decisions Act, it is automatically revoked (cancelled) when you make a new one.

Replace any old advance care directive (or similar document) with your most recent advance care directive to ensure your medical treatment decision maker and health practitioner(s) have accurate records. If you previously made an 'advance care plan', 'statement of choices', or similar document, this will be considered by your medical treatment decision maker as a statement of your values and preferences.

## Part 1 — Personal details

### Your personal details

To make a valid advance care directive, you must include your full name, date of birth and address. A phone number is optional.

### Your current major health problems

List your current health problems. This information provides context for your medical treatment decision maker and your health practitioner(s) about your health when you wrote this directive. If your health problems change, your medical treatment decision maker and health practitioner will be able to find up-to-date information about this on your patient record.

### Advance statements under the *Mental Health Act 2014*

If you have a mental illness (or have had one in the past) you may have completed an Advance Statement under the Mental Health Act. In your advance care directive, you can also document your preferences for your treatment for mental illness.

(See the advance care directive page of the OPA website for a fact sheet that

explains the differences between Advance Statements and advance care directives).

Mark with an X if the statement on the form is relevant to you.

## Part 2 – Values directive

Completing a values directive is one way to communicate to your medical treatment decision maker and health practitioner your values and preferences for your medical treatment.

Your medical treatment decision maker must make the decision that they reasonably believe is the one you would have made. Your values directive will help them to do this.

Your medical treatment decision maker can rely on what you write in your values directive because:

- you sign your values directive in front of witnesses who certify that you have decision-making capacity to make a values directive and are making it voluntarily
- your witnesses need to check that you understand the nature and effect of what you have written
- one of your witnesses is a doctor.

### Identifying your medical treatment decision maker

You can appoint your medical treatment decision maker using the Appointment of medical treatment decision maker form.

You may have appointed a medical treatment decision maker before 12 March 2018 in:

- a medical enduring power of attorney
- an enduring power of attorney for personal matters
- an enduring power of guardianship.

(See appointed medical treatment decision maker on page 30 for more information).

These will be valid as medical treatment decision maker appointments under

the Medical Treatment Planning and Decisions Act. If you are unable to make medical treatment decisions, the Medical Treatment Planning and Decisions Act specifies who your medical treatment decision maker is in Victoria.

### Medical treatment decision maker list

The first person in the list below who is reasonably available, and willing and able, to make the decision will be your medical treatment decision maker.

- your appointed medical treatment decision maker
- a guardian appointed by VCAT to make decisions about your medical treatment
- the first of the following people who is in a close and continuing relationship with you:
  - your spouse or domestic partner
  - your primary carer (not a paid service provider)
  - your adult child
  - your parent
  - your adult sibling.

Where you have two or more relatives who are first on this list, it is the eldest.

If you do not have decision-making capacity and do not have a medical treatment decision maker, consent for significant treatment must be obtained from the Public Advocate.

### Ways to complete your values directive



Keep in mind that you are communicating to your medical treatment decision maker (or the Public Advocate). Your values directive should help them to make the decisions you would want.

Before you start on this part of the form, spend some time thinking about your values, preferences, beliefs and any worries you have about your current and future health.

The prompts in the form are to help you get started. You can complete all or some of the sections in Part 2.

**a) What matters most in your life**

What matters most in life varies from person to person. Things that make your life worth living may include family, friends, religious or cultural beliefs, spirituality, interests, or maintaining independence.

What matters most to you can affect the decisions you would make about medical treatment. This is the opportunity to let your medical treatment decision maker know what quality of life means to you.

For example:

- Do you want to live as long as possible, whatever it takes? Or is quality of life more important to you?
- If remaining independent is important to you, try to give examples of what you mean by this. For some people remaining independent means living in their own home. Other people may

be more concerned with being able to take care of their personal grooming, remaining mobile, participating in specific activities, maintaining connections with family and friends, or being able to make decisions for themselves.

- Do you have religious or spiritual beliefs that affect the type of medical treatment you would consent to?

**b) What worries you most about your health in the future**

For example, you may worry about being in pain, not being able to take care of yourself, being unable to participate in specific activities or live in your own home.

**c) Unacceptable outcomes**

It will help your medical treatment decision maker if they understand how you feel about experiencing a range of possible outcomes.

To help you get started, consider the outcomes in the table below and think about how you would feel if your life resembled these.

**Life like this would be...**

	Difficult but acceptable	Worth living but just barely	Not worth living	Cannot answer now
I can no longer recognise family/friends.				
I can no longer talk or be understood by others.				
I permanently rely on a breathing machine to keep me alive.				
I can no longer move myself around, in or out of bed, and rely on other people to shift or move me.				
I can no longer feed, wash or dress myself.				
I no longer have control of my bladder and bowels.				



See the My Values website ([www.myvalues.org.au](http://www.myvalues.org.au)) for more information, and the option of completing a survey that may help you to think more about the important issues that underpin difficult decisions about future treatment.

Other resources are available at the advance care planning page of the Better Health Channel website ([www.betterhealth.vic.gov.au/havetheconversation](http://www.betterhealth.vic.gov.au/havetheconversation)).

In Part 2 of the form, at c), write what are unacceptable outcomes for you.

#### **d) Other things you would like known**

There may be other things that will help your medical treatment decision maker to understand your values and preferences. These could be your spiritual, religious, or cultural requirements, or your preferred place of care, for example, home, hospice or hospital.

You may have specific preferences that you want your medical treatment decision maker to know. Among other things, you can include information about your preferences that relate to:

- treatment with prescription pharmaceuticals
- treatment for mental illness
- dental treatment
- medical research procedures.

For example, because of side-effects you have experienced in the past, you may have preferences in relation to particular prescription pharmaceuticals.

#### **e) Other people I would like involved in discussions about my care**

Consider if there are other people you would like your medical treatment decision maker and health practitioner(s) to involve, or not involve, in discussions about your care.

#### **f) If I am nearing death**

Consider if there are things you would want known if you are nearing death, for example, who you would want present.

#### **If you are supportive of organ and tissue donation**

If you are a registered organ and tissue donor or are willing to be considered for organ and tissue donation, there are extra things you should consider when completing your advance care directive. There are interventions in an end-of-life care situation that are important for successful organ donation. If you are supportive of organ and tissue donation and want these interventions to be able to happen to you, make sure you are clear about this in your advance care directive.

Find more information about interventions required for successful organ and tissue donation on the Australian Government's Donate Life website. (See [www.donatelife.gov.au](http://www.donatelife.gov.au)).

### **Part 3 – Instructional directive**

You should **only** complete an instructional directive if you know the medical treatment that you want or do not want in the future, as this is a legally binding statement.

Keep in mind, if you complete an instructional directive **you** are making the decision, not your medical treatment decision maker.

In your instructional directive you can consent to or refuse future medical treatment. These decisions are directed toward your health practitioners, not your medical treatment decision maker.



**Be aware that consenting to or refusing treatment in your instructional directive could be acted on in situations you have not considered.**

For example, if you write, 'In all circumstances, I don't want to be put on a machine that breathes for me', this means that this treatment will not be provided to you, even if you only need it for a short period of time while you are recovering after successful surgery.

## Consulting your doctor

If you choose to complete an instructional directive, it is recommended that you consult a doctor first, to make sure you have the information you need.

For example, if you have a current health condition, you should understand your prognosis, treatment options, and the risks and benefits of these options.

You should also make sure your statements are clear to the doctor. It can be helpful to include the reasons for your statements.

If you include statements about treatment for mental illness or dental treatment, consider consulting your relevant health practitioners about these statements.

## How your instructional directive will be used

If, in the future, you do not have decision-making capacity to make a medical treatment decision, your health practitioner will:

- see if you made an instructional directive
- read your instructional directive to see if you made a decision about the medical treatment they are proposing
- follow your directive, if you made a decision to either consent to or refuse the treatment they are proposing.

## Organ and tissue donation

If you are supportive of organ and tissue donation and intend to refuse particular medical treatments, you should be aware that there are interventions that could be needed for successful organ donation in an end-of-life care situation. If you wish to be considered for organ and tissue donation, it can be a good idea to state this, and that you understand there are interventions that may be required for facilitating it.

## Other things to keep in mind

Make sure you only write binding instructions in the instructional directive section of the form. Any instruction not written in this section or not identified as an instructional directive, will be considered a values directive.

Keep in mind that your health practitioner will only provide a medical treatment that it is medically appropriate (helpful). They are not compelled to offer a treatment just because you have consented to it in an instructional directive.

If you make any statements about palliative care, they will be considered a values directive, even if you include them in your instructional directive.

Keep in mind that your health practitioner(s) cannot do anything that would require them to:

- do something unlawful
- breach their professional code of practice.

## Part 4 – Expiry date

You have the option of including an expiry date in your advance care directive, but this is not a requirement.

It is recommended that you review your advance care directive once every two years, or whenever your medical or personal situation changes.

You may choose to include an expiry date as a safeguard in case you forget to review your advance care directive. However, keep in mind if you include an expiry date, your advance care directive could expire when you do not have decision-making capacity to complete a new one.

## Part 5 — Witnessing

### Witnessing requirements

To make a valid advance care directive you need to sign in front of two witnesses. One must be a registered medical practitioner (a medical doctor). Neither witness can be someone you have appointed as your medical treatment decision maker.

For what to do if you cannot physically sign the form, see the 'advance care directive' page of the OPA website.

### Information for witnesses

To help your witnesses understand their role, OPA has a fact sheet for witnesses. (See page 33).

It is important your witnesses are able to communicate with you in a language that you understand. If you need an interpreter, it is recommended that you use an independent and qualified interpreter.

### If an interpreter is present

If an interpreter is present at the time the document is witnessed, they must sign and date Part 5 of the form immediately after the document is witnessed.

## Part 6 — Interpreter statement

### If an interpreter helped you prepare the document

If an interpreter assisted you in preparing your advance care directive, they will need to sign the interpreter statement in Part 6 of the form. They can fill in this section before the document is witnessed or when the document is witnessed.

## After you have completed your advance care directive

### When it will be used

Your advance care directive is valid as soon as it is signed and witnessed correctly, but it can only be used when you do not have decision-making capacity to make the decision.

### Who to discuss it with

After you have completed your advance care directive, it is important that you share and discuss it with your medical treatment decision maker, your family and/or friends and relevant health practitioners.

### Who to give copies to

Keep the original signed copy of your advance care directive in a safe place. Give your medical treatment decision maker a certified copy or make sure they know where to find the original or a certified copy.

Other ways to make sure your advance care directive is readily available to those who might need to refer to it include:

- uploading a copy of your advance care directive to My Health Record at [www.myhealthrecord.gov.au](http://www.myhealthrecord.gov.au)
- giving a copy to your health practitioner and/or your hospital
- giving a copy to any other health practitioners who will need to access it.

### If you change your mind

You can cancel or change your advance care directive by completing a new directive, or by completing the advance care directive revocation form. (See the OPA website for the revocation form).

### Reviewing your advance care directive

Your preferences for medical treatment may change over time. For this reason, it is recommended that you review your advance care directive every two years, or whenever your medical or personal situation changes.





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# Guide to enduring powers of attorney

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## In this section find:

- ▶ information about why you might choose to make an enduring power of attorney
- ▶ a checklist of the steps involved
- ▶ instructions for completing the form.

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This guide is to help you make an enduring power of attorney, if you choose to do this.

Allow time to think about your choices, and to complete the steps.

Find the appointment form at the back of this booklet.

# Why make an enduring power of attorney?



If you make an enduring power of attorney, you can give someone you trust the legal authority to make decisions on your behalf about either or both financial and personal matters.

You have the right to make your own decisions about these matters. However there may be a time, due to injury or illness, that you are unable to.

Making an enduring power of attorney is one way you can take control now, so that decisions about your financial and personal matters are made as you would want them in the future.

In Victoria, enduring powers of attorney are made under the *Powers of Attorney Act 2014*.

## Risks in making an enduring power of attorney

The majority of enduring powers of attorney work well. Unfortunately, it is not possible to guarantee that your enduring power of attorney will only be used in the way you want.

There are steps you can take to reduce the risk of things going wrong. These are described in the OPA booklet *Your voice — Trust your choice: Tips for seniors making enduring powers of attorney*.

This booklet also includes other tips and sample wording. (See the enduring power of attorney page of the OPA website for *Your voice — Trust your choice*).

## Powers you can give your attorney(s)

You choose what powers you give to the person, or people, you appoint (known as your 'attorneys').

You can give your attorney(s) the power to make decisions about:

- your financial and personal matters
- your financial matters only
- your personal matters only
- only some of your financial or personal matters.

## Financial matters

Financial matters are any matter relating to your:

- financial affairs
- property affairs.

Examples include:

- paying expenses
- undertaking a real estate transaction
- carrying on a business.

Financial matters include any legal matter that relates to your financial or property affairs.

## Personal matters

Personal matters are matters relating to your:

- personal affairs
- lifestyle affairs.

Examples include:

- access to support services
- where and with whom you live.

(See 'What these words mean' on page 30 for more examples).

## Medical treatment decisions

Please note that someone you appoint under an enduring power of attorney, **cannot** make medical treatment decisions for you.

In the event that you are unable to make decisions about your medical treatment, only your medical treatment decision maker can make these decisions for you.

## Choosing your attorney(s)

Choosing who to appoint is your most important decision.

If there is no one that you trust to appoint, you can appoint someone independent such as a trustee company for financial matters.

If you do not appoint anyone, and become unable to make a decision when it needs to be made, there are safeguards. VCAT can appoint someone with authority to make decisions for you, such as a family member, the Public Advocate, or a trustee company.

### Mei's story

To help her decide who to appoint as her attorneys, Mei has listed the things she believes are important in the people she appoints.

For her attorney for financial matters, she wants someone who handles money well, is trustworthy and will not upset the rest of the family.

For her attorney for personal matters, she wants someone who knows what she will want, is someone she is fond of and who is fond of her, and who lives close by.

## Support to manage your finances

You may want help to manage your finances while you are still able to make these types of decisions. If so, you can choose for the appointment to start immediately.

### Anna's story

Anna is making an enduring power of attorney.

She has decided the power will start immediately for financial matters because she would like support to manage her finances now.

Anna will oversee the actions of her attorney while she is able to make her own decisions. For example, she would like support for decisions about improvements to her home.

She has decided that she will give her attorney access to a bank account she has set up for these expenses. She will transfer money into this account and will monitor this account, along with all her accounts.

## If you choose to make an enduring power of attorney

Read through the steps in the checklist that follows.

Following the checklist, you will find instructions for completing the appointment form.

Find the form at the back of this booklet or, for the longer version of the form, see the OPA website.

If you use the form in this booklet, carefully tear it out, and complete using the instructions on page 22.

# Checklist of steps to make an enduring power of attorney

To be able to make the appointment, you must be an adult and have decision-making capacity to make the enduring power of attorney.



**No one else can make an enduring power of attorney on your behalf.**

## □ **Decide who, what and when**

You decide who to appoint. In the appointment form in this booklet, you can appoint one attorney, and up to two alternative attorneys. If you wish to appoint more attorneys, use the long version of the form. (See the OPA website).

You decide the types of decisions your attorney(s) can make.

You decide when your attorney(s)' powers start, and can choose for the powers to start at different times for different matters.

## □ **Complete the form**


Refer to the instructions on the next page to complete the form.

It is important that the form has been explained in a language you understand. OPA recommends using an independent and qualified interpreter.

If you have a physical disability that means you will need someone to sign the form at your direction, use the online version of the form which has a section for this. (See the OPA website).

## □ **Sign the form in front of witnesses**

You need to sign the form in front of two witnesses who are 18 years of age or older. One must be authorised to witness affidavits or a medical practitioner (a medical doctor). See page 35 for who can be a witness.



Find the appointment form at the back of this booklet.

## □ **Your attorneys sign**

After you have signed the form in front of witnesses, each of your attorneys and alternative attorneys must sign a statement of acceptance in front of a witness. This can happen on a later date. Your attorneys have significant responsibilities under the law. Find a tear-out fact sheet on page 39 to give to your attorneys, that explains their role and responsibilities.

## □ **Storage and certified copies**

Your completed document is not registered in Victoria. You should keep the original in a safe place and give your attorneys certified copies, or make sure they know where to find a certified copy, if and when they need it. (See page 29 for information about certified copies).

### **Tips for making your enduring power of attorney**



Find sample wording and helpful tips in the companion publication *Your voice — Trust your choice: Tips for seniors making enduring powers of attorney*. (See the OPA website).

You may find the advice of a lawyer with expertise in this area helpful. (If you use a lawyer, you will need to pay for this).

# Instructions for completing the enduring power of attorney appointment form



You can appoint one attorney and up to two alternative attorneys, using the form in this booklet. If you wish to appoint more attorneys, use the long version available on the OPA website.

Use the information that follows to help you complete each section of the form.

## Section 1 instructions

### YOUR DETAILS

#### Your name and address

You are the person making the enduring power of attorney and are known as the 'principal'.

Fill in your full name and address in section 1.

#### Revocation

If you made an enduring power of attorney or enduring power of guardianship in the past, this will be automatically revoked (cancelled).

This means that if you made any of the following powers of attorney, they will be automatically cancelled when you make this new enduring power of attorney, unless you specify otherwise:

- an enduring power of attorney made under the *Powers of Attorney Act 2014*
- an enduring power of attorney (financial) made under the *Instruments Act 1958*
- an enduring power of guardianship made under the *Guardianship and Administration Act 1986*.

### Optional step

In section 1, you are able to specify if you want an enduring power of attorney to continue. See example below.

#### Example

Joe plans to make an enduring power of attorney and appoint an attorney for personal matters.

In the past, Joe made an enduring power of attorney (financial) under the Instruments Act. He wants this to continue. He specifies this in section 1 of the form.

I specify that the following existing enduring powers of attorney made by me are not revoked by this enduring power of attorney:


*The enduring power of attorney (financial) I made on 20 October 2013.*

When thinking about whether or not you want an enduring power of attorney that you made in the past to continue, keep in mind:

- it will generally be more straightforward if you have one enduring power of attorney document
- protections for you as principal, when you make an enduring power of attorney under this Act.







Find the appointment form at the back of this booklet.

## Section 2 instructions

### YOUR ATTORNEYS' DETAILS

The person you appoint is known as your attorney. The form in this booklet allows you to appoint one attorney, and up to two alternative attorneys (back-ups).

Your most important decision when making an enduring power of attorney is choosing who to appoint.

Whoever you appoint will have the authority to make decisions for you when you no longer have decision-making capacity to change or cancel the appointment. Your attorney's decisions have the same legal force as if you had made them.

#### Your first attorney's full name and address

You fill in the full name and address of your attorney in section 2 of the form.

Whoever you appoint needs to be **eligible** to be an attorney, and agree to be your attorney.

#### To be eligible to be your attorney

An eligible person needs to be all of the following:

- an adult
- not insolvent under administration
- not a care worker, a health provider or an accommodation provider for you.

(A person who is an undischarged bankrupt is an example of a person who is 'insolvent under administration').

A person who has been convicted or found guilty of an offence involving dishonesty is only eligible to be appointed as your attorney for financial matters if they have disclosed the conviction, or finding of guilt, to you, and this is recorded in the enduring power of attorney. (There is a place for this in sections 7 and 8 of the form).

### TYPES OF DECISIONS YOUR ATTORNEY CAN MAKE

You decide the types of decisions your attorney can make.

These can be decisions about:

- both personal and financial matters
- personal matters only
- financial matters only or
- only the personal or financial matters that you specify.

#### Example

To appoint her husband as her attorney for financial and personal matters Jan ticks:



I authorise my attorney to do anything on my behalf that I can lawfully do by an attorney (including both personal and financial matters)

## Things that your attorney cannot do on your behalf

The Powers of Attorney Act specifies things that your attorney cannot do on your behalf. These are:

- vote
- make decisions about the care or wellbeing of children
- make (or revoke) a will
- make (or revoke) an enduring power of attorney
- consent to a marriage or a sexual relationship or the dissolution of a marriage
- make decisions about adoption of a child
- enter into surrogacy arrangements
- manage your estate on your death
- consent to an unlawful act.

## ALTERNATIVE ATTORNEYS

The form asks you if you want to appoint one (or two) alternative attorneys for this attorney, to act as back-up for this attorney.

The person or people you choose must be eligible to be your attorney.

If appointing alternative attorney(s), fill in their full name and address.

### When your alternative attorney(s) acts

Your alternative attorneys are authorised to act if the attorney they are back-up for:

- dies
- does not have decision-making capacity for the matters they were appointed to make decisions about
- is otherwise not willing or able to act
- is no longer eligible to be an attorney or
- when you specify.

## Section 3 instructions

### How your alternative attorneys can act

If you have appointed two alternative attorneys for any attorney, you should specify how you want them to make decisions.

When deciding how your alternative attorneys are to act, you should ensure that this will be a workable arrangement.

You may appoint your alternative attorneys to act:

- **jointly** — they must make decisions together (and all sign any document)
- **jointly and severally** — they can make decisions together or independently (for example, either all sign any document, or one attorney alone can sign any document)
- **severally** — they can make decisions independently (and one attorney alone can sign any document).

### Example

Jan appoints her husband as her attorney. She appoints her adult daughter and adult son as her alternative attorneys for her husband. She wants them to make decisions together.

In the text box Jan writes:

*My alternative attorneys,  
Dan Smith and Lea Smith,  
are to act jointly.*

## Section 4 instructions

### Start date

You can choose for your attorney(s)' powers to start:

- immediately
- when you cease to have decision-making capacity for the matters or matter
- at another time, circumstance or occasion.

You can specify that the powers start at different times for different matters.

If you do not specify, the powers start immediately for all matters.

If the power starts immediately (while you still have decision-making capacity for the matters), you oversee the use of your attorney's power and your attorney acts at your direction.

### Example

Jan wants the power to start immediately for financial matters so that she can have help to manage her finances when she requests this.

Jan fills out the form as follows:

**At different times for different matters** .....

Complete **all** that apply.

Immediately on the making of this enduring power of attorney, for these matters .....  **Specify**

*Financial matters*

When I cease to have decision making capacity for these matters .....  **Specify**

*Personal matters*

## Section 5 instructions

### Conditions and instructions (optional)

Section 5 of the form is optional.

The information below may help you decide if you wish to include any conditions or instructions.

### Conflict transactions

Your attorney cannot enter into a transaction where there is, or may be, a conflict between their duty to you and their interests (or those of their relative, business associate or close friend). This is known as a 'conflict transaction'.

However, there may be a situation where you want to authorise (give permission) for your attorney to enter into a conflict transaction. You can authorise a specific conflict transaction or a specific kind of conflict transaction.

You can do this:

- in the enduring power of attorney or
- after making the enduring power of attorney, but only while you have decision-making capacity to authorise this.

You should consider getting legal advice before authorising your attorney to enter into conflict transactions to be clear about what this will mean. These types of transactions are not allowed in order to help protect you from financial abuse or unintended financial consequences.

### Gifts

You can include a condition or restriction on the giving of gifts.

Even if you do not include a condition or restriction on the giving of gifts, your attorney for financial matters may only give a gift from your property (including a gift of money) if the gift is reasonable having regard to all the circumstances and, in particular, your financial circumstances and it is:

- to a relative or a close friend of yours and is of a seasonal nature or for a special event (such as a birth or marriage) or
- a type of donation that you made (when you had decision-making capacity for the matter) or that you might reasonably be expected to make.

Please note that gifts that meet the above-listed criteria are permitted, even if it is a conflict transaction for your attorney.

### Maintenance of dependants

For your attorney to be able to provide from your property for the needs of your dependants, for example, your children, you must authorise this in your enduring power of attorney. Your attorney can only provide what is reasonable, taking into account your financial circumstances, unless you have stated otherwise.

Note, if you have authorised maintenance of your dependants, your attorney is permitted to do this even if it is a conflict transaction for your attorney. For example, if your dependant is also a relative of your attorney.

#### Example

Jan has a sister, Kim, who has an intellectual disability and who she supports financially.

She writes:

*I authorise my attorneys for financial matters to provide for the needs of my sister, Kim Jones, who is currently my dependant.*

### Payments to attorneys

Your attorney is not entitled to be paid from your property unless you have authorised this in your enduring power of attorney.

### Additional conditions or instructions

You can place conditions on your attorney(s)' powers.

You can also give instructions to your attorney(s) about how you want them to use the powers.

#### Example

Jan thinks that if she was ever unwell, she would want her attorney for personal matters (her husband, John) to be able to share confidential information about her health with other family members.

Jan writes:

*I authorise my attorney for personal matters to disclose confidential information about my health to my children Lea Smith and Ray Smith.*

#### Example

Martin has appointed his brother as his attorney. As a safeguard, he wants his brother to provide annual accounts to his sister, Anna.

He writes:

*My attorney for financial matters must provide annual accounts to my sister, Anna Garcia. I authorise my attorney for financial matters to disclose any relevant confidential information about my finances to Anna Garcia.*

## Section 6 instructions

### Your signature

This is the start of the signature and witnessing sections.

Even if you have left a page blank, include the blank page so that it will be clear to everyone that there are no missing pages. Cross out any sections you have left blank.

You must sign the form in front of two adult witnesses. (Arrange for an interpreter if you need one).

### Witnessing requirements

One witness must be:

- someone authorised to witness affidavits or
- a medical practitioner (a medical doctor).

Neither witness can be:

- one of your attorney(s)
- a relative of yours or a relative of any of your attorney(s)
- a care worker or accommodation provider for you
- a person who is signing at your direction (because you are unable to physically sign the form).

### Information for your witnesses

The role of your witnesses goes beyond making sure your signature is genuine.

To help them understand their role, find a tear-out fact sheet, 'Information for witnesses', on page 35 that you can give them.

## Section 7 and 8 instructions

### Statement of acceptance

After you have signed the form in front of witnesses, your attorney and your alternative attorney(s) need to sign to say that they accept their appointments. They need to sign in front of a witness who is 18 years of age or older.

They can do this on a later date.

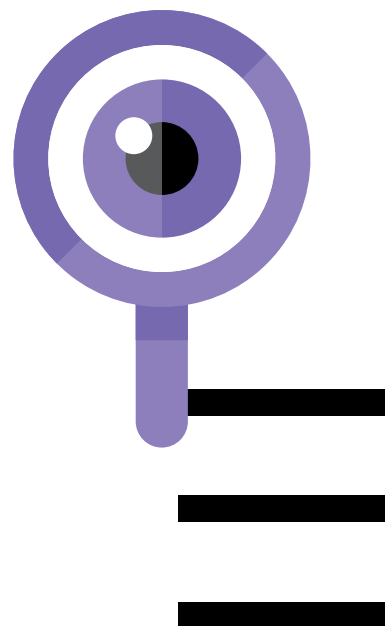
### Information for your attorneys

You will find a tear-out fact sheet on page 39 with information for your attorneys. They should read this before they sign the form so that they understand their role and responsibilities.

If needed, you can download more copies of the fact sheet from the OPA website.

# Useful information and the forms

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## In this section find information about:

- ▶ who can be your authorised witness p. 29
- ▶ who can certify copies of the documents p. 29
- ▶ the meaning of words used in this booklet p. 30
- ▶ how you can cancel the documents and when they end p. 65
- ▶ where to go for help and to find more information. p. 65

## Find tear-out fact sheets:

- ▶ for your witnesses about their role p. 31
- ▶ for your medical treatment decision maker(s) p. 37
- ▶ for your attorney(s). p. 39

Find the forms at the back of this booklet.



# Authorised witnesses and certified copies of documents



## Your authorised witness

To complete each of the three forms in this booklet, you need two adult witnesses. One must be an authorised witness. (See the tear-out fact sheets on pages 31 to 36 for information for your witnesses that explains their role).

## Advance care directive

**Only** a registered medical practitioner (doctor) can be your authorised witness for an advance care directive.

## Appointment of medical treatment decision maker

Your authorised witness can be:

- a registered medical practitioner or
- someone able to witness affidavits.

## Enduring power of attorney

Your authorised witness can be:

- a registered medical practitioner or
- someone able to witness affidavits.

## People able to witness affidavits

Some of the people able to witness affidavits in Victoria are:

- a Justice of the Peace or a bail justice
- lawyer with a practising certificate
- a police officer of, or above, the rank of sergeant or, for the time being, in charge of a police station.

For the full list of who can witness affidavits see: [www.justice.vic.gov.au/affidavit](http://www.justice.vic.gov.au/affidavit)

## Certifying copies

People who are authorised to witness affidavits can also certify copies of original instruments. This means they can certify that a photocopy of your completed form is a true and complete copy of the original.

For the enduring power of attorney, the Powers of Attorney Act states that each page, other than the last page, of the copy must be certified to the effect that the copy of that page is a true and complete copy of the corresponding page of the original instrument.

The last page of the copy must be certified to the effect that the copy of the instrument is a true and complete copy of the original instrument.

The other completed forms should be certified in a similar way.

### Justices of the Peace



Justices of the Peace are authorised to witness affidavits. They are volunteers and do not charge for their services. Some speak languages other than English. Find the locations and times that you can access Justices of the Peace by visiting: [www.justice.vic.gov.au](http://www.justice.vic.gov.au)

You will need to organise another person, who is eligible to be a witness, to go with you to the Justice of the Peace. See information about who can be your witness on pages 31-35.

# What these words mean



## Medical treatment decision maker and advance care directive

**advance care directive:** a document made under the Medical Treatment Planning and Decisions Act that sets out a person's binding instructions or preferences and values in relation to medical treatment, in the event they do not have decision-making capacity for that treatment.

**advance care plan:** a range of documents that people may use to express their values for care and treatment. These documents are not made under the Medical Treatment Planning and Decisions Act.

### appointed medical treatment

**decision maker:** a person appointed under the Medical Treatment Planning and Decisions Act. In addition, legal appointments made prior to the start of the Act are recognised. These are an:

- enduring power of attorney (medical treatment) made before 12 March 2018
- enduring power of attorney appointing an attorney for personal matters made between 1 September 2015 and 11 March 2018
- enduring power of guardianship appointing an enduring guardian with health care powers made before 1 September 2015.

(Valid appointments made in other Australian states and territories are also recognised).

**health practitioner:** under the Medical Treatment Planning and Decisions Act this is a health practitioner who is registered with the Australian Health Practitioner Regulation Agency, for example in the medical or dental professions. A health practitioner under the Act also includes paramedics and non-emergency patient transport staff.

**medical treatment:** any of the following treatments of a person by a health practitioner for the purposes of diagnosing a physical or mental

condition, preventing disease, restoring or replacing bodily function in the face of disease or injury or improving comfort and quality of life:

- treatment with physical or surgical therapy
- treatment for mental illness
- treatment with
  - prescription pharmaceuticals
  - an approved medical cannabis product
- dental treatment
- palliative care.

**medical treatment decision:** a decision to consent to, or refuse the commencement or continuation of, medical treatment or a medical research procedure.

**medical treatment decision maker:** a person authorised under the Medical Treatment Planning and Decisions Act to make a medical treatment decision on behalf of a patient who doesn't have decision-making capacity to make that decision.

**palliative care:** includes the provision of reasonable medical treatment for the relief of pain, suffering and discomfort, and the reasonable provision of food and water.

## Enduring power of attorney

**accommodation provider:** a person who is, in a professional or administrative capacity, directly or indirectly responsible for or involved in the provision of accommodation to the individual.

**attorney:** a person appointed under an enduring power of attorney to make decisions about financial and/or personal matters.

**care worker:** a person who performs services for the care of an individual and receives remuneration for those services. Does not include a person who receives a carer payment from the government for providing home care or a person who is a health provider.

**financial matters:** any matter relating to the principal's financial or property affairs and includes any legal matter that relates to the financial or property affairs of the principal. Examples of financial matters include:

- making money available to the principal for the principal's personal expenditure
- paying expenses for the principal
- receiving and recovering money payable to the principal
- undertaking any real estate transaction for the principal.

(See the OPA website for more).

**health provider:** a person who provides healthcare in the practice of a profession or in the ordinary course of business.

**legal matters:** use of legal services for the principal's benefit or bringing or defending a legal proceeding or hearing in a court, tribunal or other body on behalf of the principal, including settling a claim before or after a legal proceeding or hearing starts.

**offence involving dishonesty:** an offence that involves dishonesty and that is punishable by at least three months' imprisonment.

**personal matters:** any matter relating to the principal's personal or lifestyle affairs. Personal matters include any legal matter that relates to the principal's personal or lifestyle affairs. Examples of personal matters include where and with whom the principal lives and persons with whom the principal associates (see the OPA website for more).

**principal:** the person who makes an enduring power of attorney.

**relative:** any of spouse or domestic partner, child, parent or step-parent, sibling or step-sibling, grandparent, grandchild, uncle or aunt, nephew or niece.





# Information for witnesses



## Appointment of medical treatment decision maker

This fact sheet explains your role if you act as witness for a person appointing their medical treatment decision maker under Victoria's *Medical Treatment Planning and Decisions Act 2016*.

To appoint a medical treatment decision maker, a person must have decision-making capacity to do so. You must be satisfied the person is acting freely and voluntarily.

Contact the Office of the Public Advocate on 1300 309 337 if you have any concerns or for more information or at:  
**[www.publicadvocate.vic.gov.au](http://www.publicadvocate.vic.gov.au)**



Your role as witness involves three steps.

### Step 1: Check you are the right person to witness the document

For an appointment of medical treatment decision maker, two adult witnesses are required.

One must be:

- a registered medical practitioner or
- authorised to witness affidavits.



Neither witness can be a person who is being appointed in the document.

### Step 2: Ask questions

The Medical Treatment Planning and Decisions Act sets out what witnesses certify. (See below and the table overleaf).

You will need to be able to communicate with the person in a language they understand. If an interpreter is needed, it is preferable that they are accredited by the National Accreditation Authority for Translators and Interpreters (NAATI).

You should ask questions to make sure you are satisfied of the following things.

#### Decision-making capacity to make the document

When you act as witness, you certify that the person appeared to have decision-making capacity to make the appointment. They have this if they are able to:

- understand the information relevant to their decision to make the appointment and the effect of this 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 and
- communicate the decision, and their views and needs in relation to the decision in some way, including by speech, gestures or other means.

If a person is able to make a decision with practicable and appropriate support, then they have decision-making capacity to make that decision. For example, they may need extra time, or someone present who supports them to talk to you about their decision to appoint a medical treatment decision maker.

## What to check

The person should be able to tell you:

- what sorts of decisions their medical treatment decision maker will be able to make, and when they will have the authority to make these decisions
- the effects that these decisions could have
- that they know they can cancel the appointment while they have decision-making capacity to do so.

## Step 3: Witnessing

If you are satisfied of the things set out in the table below, the person signs in front of you and the other witness. You both then sign and date the witness certification.

### Interpreters

If you use an interpreter to communicate with the person, there is a place in the witnessing section of the form for the interpreter to sign. For this reason, you will need to use a face-to-face interpreter. Contact the OPA Advice Service for more information if this is not possible.

What witnesses certify	Appointment of medical treatment decision maker
Decision-making capacity	That the person appears to have decision-making capacity at the time of signing in relation to making the appointment
Understands nature and consequences	That the person appears to understand the nature and consequences of making the appointment
Freely and voluntarily signs	That the person appears to freely and voluntarily sign the document, and in the presence of the witnesses
Eligibility to be a witness	That you are eligible to be a witness



# Information for witnesses

Tear-out  
fact sheet

## Advance care directive

This fact sheet explains your role if you are asked to act as witness for a person completing an advance care directive under Victoria's *Medical Treatment Planning and Decisions Act 2016*.

To complete an advance care directive, a person must have decision-making capacity to do so. You must be satisfied the person is acting freely and voluntarily.

Contact the Office of the Public Advocate on 1300 309 337 if you have any concerns or for more information or at:

[www.publicadvocate.vic.gov.au](http://www.publicadvocate.vic.gov.au)



Your role as witness involves four steps.

### Step 1: Check you are the right person to witness the document

For an advance care directive, two adult witnesses are required.

One must be a registered medical practitioner.



Neither witness can be an appointed medical treatment decision maker for the person.

### Step 2: Read the advance care directive form

To comply with your responsibilities as witness, you will need to first read the person's advance care directive form. This is because you must be satisfied that the person understands each statement in their advance care directive.

### Step 3: Ask questions

The Medical Treatment Planning and Decisions Act sets out what witnesses are certifying. (See below and the table overleaf). You should ask questions to make sure you are satisfied about this.

You will need to be able to communicate with the person in a language they understand. If an interpreter is needed, it is preferable that they are accredited by the National Accreditation Authority for Translators and Interpreters.

### Decision-making capacity to make the document

When you act as witness, you certify that the person appeared to have decision-making capacity to make the document.

They have this if they are able to:

- understand the information relevant to their decision to complete an advance care directive and the effect of this 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 and
- communicate the decision, and their views and needs in relation to the decision in some way, including by speech, gestures or other means.

If a person is able to make a decision with practicable and appropriate support, then they have decision-making capacity to make that decision. For example, they may need extra time, or someone present who supports them to talk to you about their decision to make an advance care directive.

If the person has included a values directive in their advance care directive, you should be satisfied that they understand this is a statement of their values and preferences for their medical treatment, to guide their medical treatment decision maker and health practitioner.

If they have included an instructional directive, you should be satisfied they understand that health practitioners are bound to follow their instructions.

### Things to check

You must be satisfied that the person understands each statement in their advance care directive.

If you are the witness who is a registered medical practitioner, you should draw on your medical expertise when checking that the person's instructional directive is clear and unambiguous for a health practitioner who needs to refer to it in the future.

## Step 4: Witnessing

If you are satisfied of the things described above and set out in the table below, the person signs in front of you and the other witness. You both then sign and date the witness certification.

### Interpreters

If you use an interpreter to communicate with the person, there is a place in the witnessing section of the form for the interpreter to sign. For this reason, you will need to use a face-to-face interpreter. Contact the OPA Advice Service for more information if this is not possible.

What witnesses certify	Advance care directive
<b>Decision-making capacity</b>	That the person appears to have decision-making capacity at the time of signing in relation to each statement in the directive
<b>Understands nature and effect</b>	That the person appears to understand the nature and effect of each statement in the advance care directive
<b>Freely and voluntarily signs</b>	That the person appears to freely and voluntarily sign the document, and in the presence of the witnesses
<b>Eligibility to be a witness</b>	That you are not an appointed medical treatment decision maker for the person



# Information for witnesses



## Enduring power of attorney appointment

This fact sheet explains your role if you are asked to act as witness for a person completing an enduring power of attorney under Victoria's *Powers of Attorney Act 2014*.

To make an enduring power of attorney, a person must have decision-making capacity to do so. You must be satisfied the person is acting freely and voluntarily.

Contact the Office of the Public Advocate (OPA) on 1300 309 337 if you have any concerns or for more information or at:

**[www.publicadvocate.vic.gov.au](http://www.publicadvocate.vic.gov.au)**



Your role as witness involves three steps.

### Step 1: Check you are the right person to witness the document

Two adult witnesses are required for an enduring power of attorney appointment.

One must be:

- authorised to witness affidavits or
- a registered medical practitioner.



**The following people cannot be a witness:**

- a relative of the person making the appointment
- a person who is being appointed (an attorney or alternative attorney), or their relative

- a care worker or accommodation provider for the person making the appointment.

### Step 2: Ask questions

The person making the appointment is known as the 'principal'. You should ask the principal questions to check that they appear to have decision-making capacity to make the enduring power of attorney.

### Definition of decision-making capacity

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

- understand the information relevant to the decision and the effect of this decision
- retain the information to the extent necessary to make the decision
- use or weigh the information as part of the process of making the decision and
- communicate the decision, and their views and needs in relation to the decision in some way, including by speech, gestures or other means.

The principal must be acting freely and voluntarily. It is good practice to talk to the person without anyone they are appointing present.

You will need to be able to communicate with the principal in a language that they understand. If an interpreter is needed, it is preferable that they are accredited by the National Accreditation Authority for Translators and Interpreters (NAATI).

The Powers of Attorney Act sets out what witnesses certify. (See table overleaf). You should ask questions to make sure you are satisfied of these things.

## Understanding the effect of their decision

You need to check the principal understands the effect of their decision to make an enduring power of attorney. According to the Powers of Attorney Act, this includes that they understand:

- when the enduring power of attorney starts
- that, once the power starts, their attorney has the same legal authority as the principal to make decisions about their financial matters, personal matters, or both (depending on what powers the principal has given their attorney)
- that they may place conditions on the power they give to their attorney and may give instructions
- that they may revoke (cancel) the power of attorney at any time while they have decision-making capacity to do so
- that the enduring power of attorney continues, even if they subsequently lose decision-making capacity for the matters included in the enduring power of attorney (for example, they become unable to make decisions about financial matters)
- that, at any time they do not have decision-making capacity, they will be unable to effectively oversee the use of the power.

## Step 3: The person signs in front of you

If you are satisfied of the above and everything listed in the table below, the person signs in front of you and the other witness. You and the other witness then sign and date the witness certification.

If the principal cannot physically sign, see the 'information for witnesses' page of the OPA website for the process.

### Interpreters

If you need to use an interpreter to communicate with the person, OPA recommends that you and the other witness complete and sign the following statement on the form:

We communicated with the person through an interpreter, [name and NAATI number (if accredited)] who, to the best of our knowledge and belief:

- truly interpreted to the person in

-----  
[insert language]

- is not an attorney of the principal.

-----  
[Witnesses signature]

What witnesses certify	Enduring power of attorney
<b>Decision-making capacity</b>	That the person appears to have decision-making capacity at the time of signing in relation to the making of the enduring power of attorney
<b>Understands nature and effect</b>	That the person appears to understand the effect of their decision to make the enduring power of attorney (see above for what the Act says this means)
<b>Freely and voluntarily signs</b>	That the person appears to freely and voluntarily sign the document, and in the presence of the witnesses
<b>Eligibility to be a witness</b>	That you are eligible to be a witness



# Information for medical treatment decision makers



If you are a person's medical treatment decision maker, you have legal authority to make medical treatment decisions for them. You only have authority to do this if the person does not have decision-making capacity to make their own decision(s).

The *Medical Treatment Planning and Decisions Act 2016* specifies a list of people who can be a person's medical treatment decision maker.

If you have been formally appointed, you are at the top of this list. (If more than one person is listed in the appointment form, you are the person's medical treatment decision maker if you are the first person listed who is reasonably available and willing and able to make the decision).

## Medical treatment decision maker list

Whoever is first in the list below, is considered a person's medical treatment decision maker. They must be reasonably available, and willing and able, to make the medical treatment decision on behalf of the person. Where there are two or more relatives who are first on this list, the eldest is the medical treatment decision maker.

1. The person's appointed medical treatment decision maker
2. A guardian appointed by VCAT to make decisions about medical treatment for the person
3. The first of the following people who is in a close and continuing relationship with the person:
  - a. the person's spouse or domestic partner
  - b. the person's primary carer (not a paid service provider)
  - c. an adult child of the person

- d. a parent of the person
- e. an adult sibling of the person.

## When you act

Health practitioners need their patient's consent before providing medical treatment.

If their patient does not have decision-making capacity to consent to the proposed treatment, the health practitioner follows these steps:

- If the patient has made an advance care directive in which they have consented to or refused the treatment (in an instructional directive), the health practitioner will follow this.
- If not, the health practitioner will ask you, as the patient's medical treatment decision maker, to make the medical treatment decision for the patient.

## Medical treatment is any of the following treatments by a health practitioner:

- treatment with physical or surgical therapy (such as dressing a wound or an operation)
- treatment for mental illness
- treatment with
  - prescription pharmaceuticals
  - an approved medicinal cannabis product
- dental treatment.

## How you make decisions when acting as someone's medical treatment decision maker

The Medical Treatment Planning and Decisions Act sets out how you must make decisions when acting as a person's medical treatment decision maker.

You must make the medical treatment decision that you reasonably believe is the decision that the person would have made, if they had decision-making capacity to make the decision.

### **Consider the preferences and values of the person**

To make the decision that you reasonably believe is the decision that the person would have made, you must:

- First, consider any valid and relevant values directive in an advance care directive that the person made, if any.

Their values directive records their values and preferences for their medical treatment, and it guides you when you make a decision on their behalf.

- Next, consider any other relevant preferences that the person has expressed, and the circumstances in which those preferences were expressed.

For example, the person may have written down their wishes, or may have told close family members.

- If you cannot identify any relevant preferences of the person, you must give consideration to the person's values.

They may have expressed their values, or you may be able to infer them from their life.

### **Consider the proposed medical treatment**

As a person's medical treatment decision maker, you must also consider:

- the likely effects and consequences of the medical treatment, including the effectiveness of the medical treatment
- whether the likely effects and consequences are consistent with the person's preferences or values

- whether there are any alternatives, that would be more consistent with the person's preferences or values. (An alternative can include refusing medical treatment).

### **Consult**

In the process of making the decision for the person, you must consult with anyone that you reasonably believe the person would want you to.

### **Act in good faith and with due diligence**

You must act in good faith and with due diligence.

### **If you cannot find out the person's preferences or values**

If you cannot find out the person's preferences or values, you need to make a decision that promotes their personal and social wellbeing. In doing this, you need to consider the person's individuality.

You need to consider the proposed treatment, in the same way as described above. The one difference is that you consider whether the proposed treatment or any alternatives would be better in promoting the personal and social wellbeing of the person, rather than whether it would be more consistent with the person's preferences or values.

Contact the Office of the Public Advocate (OPA) on 1300 309 337 for more information or at:

[www.publicadvocate.vic.gov.au](http://www.publicadvocate.vic.gov.au)



If you are asked to make a medical treatment decision that relates to treatment for mental illness, contact OPA for more information.







# Information for attorneys

Tear-out  
fact sheet

As an attorney, you have obligations under the *Powers of Attorney Act 2014*. This fact sheet introduces your role.

Find more information in the Guide for attorneys (the guide) available on the 'Information for attorneys' page of the Office of the Public Advocate website at [www.publicadvocate.vic.gov.au](http://www.publicadvocate.vic.gov.au)

## Your powers as an attorney

You have been appointed by another person, called the 'principal', to have legal authority to make decisions for them.

You can only make decisions:

- about matters for which the principal has appointed you
- once your role starts.

Refer to the enduring power of attorney appointment form, to find out the types of decisions you can make and when your role starts.

## Types of matters you can make decisions about

You will have been appointed to make decisions about:

- financial and personal matters
- financial matters only
- personal matters only or
- specific financial or personal matters.

A financial matter is any matter relating to the financial or property affairs of the principal. For example, paying expenses, undertaking a real estate transaction for the principal, and making money available to the principal for their personal use.

A personal matter is any matter relating to the principal's personal or lifestyle affairs. For example, services for the principal, and where and with whom the principal lives.

## Things you cannot do

You cannot make decisions about medical treatment for the principal, unless you are also their medical treatment decision maker.

The Powers of Attorney Act includes a list of things you cannot do on behalf of the principal, for example, vote. Read the full list in the guide.

## When your role starts

The enduring power of attorney may specify that the power starts at different times for different matters. For example, this could be immediately for financial matters and, for personal matters, when the principal ceases to have decision-making capacity for them.

If your role starts immediately, you will only need to assist the principal when they ask for your help. If your role starts when the principal ceases to have decision-making capacity for the matter(s), you may be asked to show evidence of this before you act.

## Conditions and instructions

The appointment form will state whether the principal placed conditions on the exercise of your power, or gave instructions.

## How you make decisions

If the power starts immediately (while the principal still has decision-making capacity for the matters), the principal oversees the use of your power, and you act at their direction.

If you make a decision on behalf of the principal when they do not have decision-making capacity to make the decision, you must:

- give all practicable and appropriate effect to the principal's wishes
- take steps (reasonably available) to encourage the principal to participate in the decision-making
- act in a way that promotes the personal and social wellbeing of the principal.

If the principal has appointed more than one attorney for any or all matters, refer to the appointment form to see how attorneys make decisions. For example, if you are appointed 'jointly', you make decisions together and must all agree.

## Your duties

You must:

- Act honestly, diligently and in good faith.
- Exercise reasonable skill and care.
- Not use the position for profit (though an enduring power of attorney may authorise an attorney to be paid).
- Not disclose confidential information (unless authorised by the enduring power of attorney or by law).
- Keep accurate records and accounts of all dealings and transactions, for example, in a book or spreadsheet.
- Keep your property separate from the principal's property. This does not apply to property owned jointly by the principal and you.
- Avoid acting where there is, or may be, a conflict between your duty to the principal and your interests (or the interests of your relative, business associate or close friend), unless the principal or the Victorian Civil and Administrative Tribunal (VCAT) has authorised this.

If you act when you have a conflict and the principal has not authorised this, you may be liable to pay compensation. If you act dishonestly, you could be charged with an offence. A principal can only authorise a conflict transaction when they have the decision-making capacity to do so. If the authorisation is not in the enduring power of attorney, you may be asked to show evidence of this.

## The principal's dependants

You can only provide from the principal's property for the needs of their dependant(s), if they authorised this.

## Gifts

You can only give gifts from the principal's property in limited circumstances.

## Compensation orders and offences

If you fail to properly undertake your duties or obligations, and this results in a loss to the principal, you may be ordered by VCAT or the Supreme Court to compensate the principal for the loss.

You can be charged with a criminal offence if you dishonestly use the enduring power of attorney to obtain financial advantage for yourself (or for another person) or cause loss to the principal (or another person).

## If you want to resign

There are steps you must take to resign, or if you are no longer eligible to be the principal's attorney.

For more information, see the guide on the OPA website at [www.publicadvocate.vic.gov.au](http://www.publicadvocate.vic.gov.au)

or contact OPA's Advice Service on 1300 309 337.





# 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 medical treatment decision maker (cont.)

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

Appointment by: (insert your full name)

## Part 3: Any limitations or conditions (optional)

Cross out if not including limitations or conditions.

Three horizontal lines for entering limitations or conditions.

## Part 4: Witnessing

You must sign in front of two adult witnesses. One witness must be a registered medical practitioner or able to witness affidavits. See justice.vic.gov.au/affidavit for list. Neither witness can be an appointed medical treatment decision maker for you. Refer to the checklist if someone else is signing on your behalf.

### Signature of person making this appointment (you sign here)

Signature box for the person making the appointment.

Each witness certifies that:

- at the time of signing the document, the person making this appointment appears to have decision-making capacity and appears to understand the nature and consequences of making the appointment and revoking any previous appointment; and
• at the time of signing the document, the person making this appointment appeared to freely and voluntarily sign the document; and
• the person signed the document in my presence and in the presence of a second witness; and
• I am not the person's medical treatment decision maker under this appointment.

### Witness 1 – Authorised witness

Full name of authorised witness:

Full name box for authorised witness.

Qualification of authorised witness:

Qualification box for authorised witness.

Signature of authorised witness:

Date: (dd/mm/yyyy)

Signature and date boxes for authorised witness.

### Witness 2 – Adult witness

Full name of adult witness:

Full name box for adult witness.

Signature of adult witness:

Date: (dd/mm/yyyy)

Signature and date boxes for adult witness.

A registered medical practitioner or someone able to witness affidavits must complete this section.

Another adult witness must complete this section.



# Appointment of medical treatment decision maker (cont.)

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

Appointment by: (insert your full name)

## If an interpreter is present when this document is witnessed

If an interpreter is present at the time the document is witnessed, they complete this section immediately after the document is witnessed.

Name of interpreter:

If accredited with the National Accreditation Authority  
NAATI number:

I am competent to interpret from English into the following language:

I provided a true and correct interpretation to facilitate the witnessing of the document.

Signature of interpreter: Date: (dd/mm/yyyy)

## Part 5: Interpreter statement

### If an interpreter assisted in the preparation of this document

If an interpreter assisted you in preparing this document, the interpreter completes this part. Cross out Part 5 if not relevant.

I interpreted in the following language:

When I interpreted into this language the person appeared to understand the language used in the document.

Name of interpreter:

NAATI number (if accredited):

Signature of interpreter: Date: (dd/mm/yyyy)

Appointment of medical treatment decision maker



# Appointment of medical treatment decision maker (cont.)

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

Appointment by: (insert your full name)

## Part 6: Statement of acceptance

Each medical treatment decision maker you appoint must read the statement of acceptance and sign in front of an adult witness.

### Medical treatment decision maker 1

Your first medical treatment decision maker must read this statement of acceptance and sign in front of an adult witness.

I accept my appointment as medical treatment decision maker and state that:

- I understand the obligations of an appointed medical treatment decision maker; and
I undertake to act in accordance with any known preferences and values of the person making the appointment; and
I undertake to promote the personal and social wellbeing of the person making the appointment, having regard to the need to respect the person's individuality; and
I have read and understand any advance care directive that the person has given before, or at the same time as, this appointment.

Name of medical treatment decision maker:

[Empty box for name of medical treatment decision maker]

Signature of medical treatment decision maker: Date: (dd/mm/yyyy)

[Empty boxes for signature and date of medical treatment decision maker]

Witness completes this section.

I certify that I witnessed the signing of this statement of acceptance.

Name of adult witness:

[Empty box for name of adult witness]

Signature of adult witness: Date: (dd/mm/yyyy)

[Empty boxes for signature and date of adult witness]



# Appointment of medical treatment decision maker (cont.)

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

Appointment by: (insert your full name)

## Part 6: Statement of acceptance (cont.)

### Medical treatment decision maker 2

If you appoint a second medical treatment decision maker, they must read this statement of acceptance and sign in front of an adult witness.

I accept my appointment as medical treatment decision maker and state that:

- I understand the obligations of an appointed medical treatment decision maker; and
I undertake to act in accordance with any known preferences and values of the person making the appointment; and
I undertake to promote the personal and social wellbeing of the person making the appointment, having regard to the need to respect the person's individuality; and
I have read and understand any advance care directive that the person has given before, or at the same time as, this appointment.

Name of medical treatment decision maker:

[Empty box for name of medical treatment decision maker]

Signature of medical treatment decision maker: Date: (dd/mm/yyyy)

[Empty boxes for signature and date of medical treatment decision maker]

Witness completes this section.

I certify that I witnessed the signing of this statement of acceptance.

Name of adult witness:

[Empty box for name of adult witness]

Signature of adult witness: Date: (dd/mm/yyyy)

[Empty boxes for signature and date of adult witness]

You have reached the end of this form.

- Please keep your original 'Appointment of medical treatment decision maker' form safe and accessible for when it is needed.
It is recommended your medical treatment decision maker has read and understood the contents of your advance care directive (if any).
Your 'Appointment of medical treatment decision maker' form and advance care directive can be uploaded on MyHealth Record and it is recommended copies be shared with your appointed medical treatment decision maker and relevant health practitioner(s) / health service(s).

Appointment of medical treatment decision maker













# Advance care directive for adults (cont.)

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

Advance care directive of: (insert your full name)	
---	--

## Part 3: Instructional directive

**This instructional directive is legally binding and communicates your medical treatment decision(s) directly to your health practitioner(s).** It is recommended that you consult a medical practitioner if you choose to complete this instructional directive.

- Your instructional directive will only be used if you do not have decision-making capacity to make a medical treatment decision.
- Your medical treatment decisions in this instructional directive take effect as if you had consented to, or refused to, begin or continue medical treatment.
- If any of your statements are unclear or uncertain in particular circumstances, it will become a values directive.
- In some limited circumstances set out in the Act, a health practitioner may not be required to comply with your instructional directive.

**Cross out this page if you do not want to consent to or refuse future medical treatment.**

Refer to Part 3 of the instructions for more information on how to complete your instructional directive.

Keep in mind:

- you should include details about the circumstances in which you consent to or refuse treatment
- health practitioners can only offer treatment that is medically appropriate
- in an end-of-life care situation, certain medical interventions may be required for organ and tissue donation to take place.

a) I consent to the following medical treatment:  
*(Specify the medical treatment and the circumstances)*

.....
.....
.....
.....
.....
.....
.....
.....

b) I refuse the following medical treatment:  
*(Specify the medical treatment and the circumstances)*

.....
.....
.....
.....
.....
.....
.....
.....



# Advance care directive for adults (cont.)

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

Advance care directive of: (insert your full name)	
---	--

## Part 4: Expiry date (optional)

Only complete this part if you want this advance care directive to have an expiry date. Refer to Part 4 of the instructions.

This advance care directive expires on: (dd/mm/yyyy)	
--	--

## Part 5: Witnessing

You must sign in front of two adult witnesses.  
One witness must be a registered medical practitioner.  
Neither witness can be a person that you have appointed as your medical treatment decision maker.  
Refer to Part 5 of the instructions if someone else is signing on your behalf.

### Signature of person giving this directive (you sign here)

--

Each witness certifies that:

- at the time of signing the document, the person giving this advance care directive appeared to have decision-making capacity in relation to each statement in the directive and appeared to understand the nature and effect of each statement in the directive; and
- the person appeared to freely and voluntarily sign the document; and
- the person signed the document in my presence and in the presence of the second witness; and
- I am not an appointed medical treatment decision maker of the person.

### Witness 1 – Registered medical practitioner

A registered medical practitioner must complete this part of the form.

Full name of registered medical practitioner:

--

Qualification and AHPRA number of registered medical practitioner:

--

Signature of registered medical practitioner:      Date: (dd/mm/yyyy)

--	--

### Witness 2 – Adult witness

Another adult witness must complete this part of the form.

Full name of adult witness:

--

Signature of adult witness:      Date: (dd/mm/yyyy)

--	--

Advance care directive for adults



# Advance care directive for adults (cont.)

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

Advance care directive of: (insert your full name)	
---	--

## If an interpreter is present when this document is witnessed

If an interpreter is present at the time the document is witnessed, they complete this section immediately after the document is witnessed.

Name of interpreter:

If accredited with the National Accreditation Authority

NAATI number:

I am competent to interpret from English into the following language:

I provided a true and correct interpretation to facilitate the witnessing of the document.

Signature of interpreter: Date: (dd/mm/yyyy)

<input type="text"/>	<input type="text"/>
----------------------	----------------------

## Part 6: Interpreter statement

### If an interpreter assisted in the preparation of this document

If an interpreter helped you to prepare this document, they complete this section. They can fill in this section before the document is witnessed or at the time the document is witnessed. Refer to Part 6 of the instructions.

Name of interpreter:

If accredited with the National Accreditation Authority

NAATI number:

I am competent to interpret from English into the following language:

When I interpreted into this language the person appeared to understand the language used in the document.

Signature of interpreter: Date: (dd/mm/yyyy)

<input type="text"/>	<input type="text"/>
----------------------	----------------------

You have reached the end of this form.

It is recommended that you **review your advance care directive every two years**, or whenever there is a change in your personal or medical situation.

- Please keep your original advance care directive safe and accessible for when it is needed.
- Ensure that your medical treatment decision maker (if any) has read and understood its contents.
- Your advance care directive can be uploaded on MyHealth Record and should be shared with your medical treatment decision maker and relevant health practitioner(s) / health service(s).

# Enduring Power of Attorney Appointment

This enduring power of attorney is made under Part 3 of the **Powers of Attorney Act 2014** and has effect as a deed under section 81 of the Act.

## Section 1: Principal (You)

The person making this enduring power of attorney is known as the 'principal'. Whenever you see the word 'principal' in this form, it means you.

### Name of principal

### Residential address

.....  
.....  
.....  
.....

Complete the section below if you want an existing enduring power of attorney to continue or want part of an existing power of attorney to continue.

I specify that the following existing enduring power of attorney or parts of an existing enduring power of attorney made by me are not revoked by this enduring power of attorney (specify date made, if known)

.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....

### Revocation of previous enduring powers of attorney

Under section 55 of the **Powers of Attorney Act 2014** any existing enduring power of attorney previously made by you will be revoked on making this enduring power of attorney, unless you specify otherwise.

An *existing enduring power of attorney* is taken to include an enduring power of attorney made under the **Powers of Attorney Act 2014** or the **Instruments Act 1958** and an appointment of an enduring guardian made under the **Guardianship and Administration Act 1986**.

## Section 2: Your attorney

This form allows you to appoint an attorney and up to two alternative attorneys. You also need to specify what decisions your attorney can make.

If you wish to appoint more attorneys, or more alternative attorneys, use the long version of this form available online. If you need someone to sign this form for you due to a physical disability, you will need to use either the long or short version of this form available online.

I appoint the person listed below as my attorney.

### Name of attorney

Insert your attorney's name or, if appointing a company, the business name.  
Insert position, if appointing the occupant of a position.

### Residential or business address

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### What decisions can this attorney make?

I authorise my attorney to do anything on my behalf that I can lawfully do by an attorney (including both personal and financial matters) .....

**OR**

I authorise my attorney to do anything on my behalf that I can lawfully do by an attorney for:

► *Please select **any** that apply*

personal matters only .....

***personal matters** are matters that relate to your personal or lifestyle affairs but do not include matters that relate to medical treatment, or to medical research procedures. Common examples include access to support services and where and with whom you live.*

financial matters only .....

***financial matters** are matters (including legal matters) that relate to your financial or property affairs. Common examples include paying expenses, making investments, undertaking a real estate transaction and carrying on a business.*

the following specified matters .....

– *please specify each matter (such as, one or more personal and financial matters) that you want to authorise*

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**Do you want to appoint an alternative attorney(s) for this attorney?**

No .....  **Go to next page**

Yes ....  **Provide details**

I appoint the person(s) listed below as my alternative attorney(s).

**Name of alternative attorney**

Insert your alternative attorney's name or, if appointing a company, the business name. Insert position, if appointing the occupant of a position.

**Residential or business address**

.....

.....

.....

.....

**Do you want to appoint another alternative attorney for this attorney?**

No .....  **Go to 'When can your alternative attorney(s) act?' at top of next column**

Yes ....  **Provide details**

**Name of alternative attorney**

Insert your alternative attorney's name or, if appointing a company, the business name. Insert position, if appointing the occupant of a position.

**Residential or business address**

.....

.....

.....

.....

**When can your alternative attorney(s) act?**

You can specify below when your alternative attorney(s) can act. If you do not specify, an alternative attorney can **only** take the place of the attorney if:

- the attorney is unable or unwilling to act
- the appointment of your attorney is revoked (cancelled) because they are no longer eligible to be your attorney (for example, the attorney becomes your care worker or health provider).

.....

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## Section 5: Conditions and instructions (optional)

Your attorney is required to consider any conditions and/or instructions that you specify when making decisions for you. You do not have to place conditions or give instructions unless you want to.

The exercise of power under this enduring power of attorney is subject to the conditions and/or instructions set out below.

### Conflict transactions (optional)

Only fill in this section if your attorney has been appointed for **financial matters**.

Sometimes there may be a conflict between the duty of your attorney to you and an interest of their own, or of a relative, business associate or close friend. You can authorise (give permission) for your attorney to enter into transaction(s) even if there is a conflict of interest.

I authorise my attorney to enter into the following conflict transaction(s):

<p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>
---

### Gifts (optional)

Only fill in this section if your attorney has been appointed for **financial matters**.

An attorney for financial matters can use your money or other financial assets to give a gift or donation. Gifts must be of a seasonal nature or for a special event and be made to your relatives or close friends. An attorney can also give a gift to themselves, their relatives, close friends or organisations with which they have a connection. The donation must be the type of donation made when you had capacity or that you might reasonably be expected to make. All gifts and donations must be reasonable in the circumstances, particularly having regard to your financial situation.

Specify any conditions or restrictions that you want to place on the making of gifts or donations.

<p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>
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## Maintenance of your dependants (optional)

Only fill in this section if your attorney has been appointed for **financial matters**.

You can specify in your enduring power of attorney if you want your attorney for financial matters to use your money or other financial assets to provide for the needs of one or more of your dependants (for example, one of your children). The amount made available by your attorney to maintain your dependants must not be more than what is reasonable having regard to all the circumstances, in particular your financial circumstances, unless you specify otherwise in your enduring power of attorney.

Specify if you want to authorise your attorney for financial matters to provide for the maintenance of your dependant(s) from your money or other financial assets and, if so, whether you want to authorise an amount that is more than what is reasonable in the circumstances.

<p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>
---

## Payments to your attorney (optional)

An attorney is not allowed to be paid to act as your attorney, unless payment is authorised in the enduring power of attorney or by law.

You can authorise your attorney to be paid by specifying below how your attorney is to be paid and any limits on how much they can be paid.

<p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>
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## Additional conditions or instructions (optional)

You may want to set out additional conditions and/or instructions to guide your attorney. You may also want to specify a person(s) to be notified by the attorney, when the attorney starts acting for you, when you no longer have decision making capacity.

Enter conditions and instructions below.

<p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>
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## Section 6: Principal's signature

You must sign the form in front of two witnesses. They must then sign and date the form in front of you and each other. One witness must be a medical practitioner, or be a person who is authorised to witness affidavits. A list of people who are authorised to witness an affidavit can be found at [justice.vic.gov.au/affidavit](http://justice.vic.gov.au/affidavit).

If you need someone to sign for you due to a physical disability, you will need to use either the long or short version of this form available online.

In this section, the words 'I', 'my' or 'me' refer to a witness. The word 'principal' means the person making this enduring power of attorney.

### Name of principal

### Signature

### Date

### Witnesses

Each witness **certifies** that:

- the principal appeared to freely and voluntarily sign this instrument in my presence, and
- at that time, the principal appeared to me to have decision making capacity in relation to making this enduring power of attorney, and
- I am not an attorney under this enduring power of attorney, and
- I am not a relative of the principal or of an attorney under this enduring power of attorney, and
- I am not a care worker or accommodation provider for the principal.

### Name of authorised witness

### Residential or business address

### Signature

### Qualification (as a medical practitioner or person authorised to witness affidavits)

### Date

### Name of other witness

### Residential or business address

### Signature

### Date

## Section 7: Statement of acceptance of appointment by attorney

This section needs to be read and signed by your attorney. A witness must also sign the witness certificate.

This section can be completed at the same time as the principal completes their section or at a later time.

### Attorney

I accept my appointment as attorney for the principal under this enduring power of attorney and state that:

- I am eligible under Part 3 of the **Powers of Attorney Act 2014** to act as an attorney under an enduring power of attorney, and
- I understand the obligations of an attorney under an enduring power of attorney and under the **Powers of Attorney Act 2014** and the consequences of failing to comply with those obligations, and
- I undertake to act in accordance with the provisions of the **Powers of Attorney Act 2014** that relate to enduring powers of attorney.

*If appointed for financial matters and you have been convicted or found guilty of an offence involving dishonesty*

I have disclosed to the principal that I have been convicted or found guilty of an offence involving dishonesty. ....

### Name of attorney

### Position

*(if appointed as the occupant of a position)*

### Residential or business address

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### Signature

### Date

### Witness

I witnessed the signing of the statement of acceptance by the attorney.

### Name of witness

### Residential or business address

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### Signature

### Date

## Section 8: Statement of acceptance of appointment by alternative attorney

This section needs to be read and signed by each alternative attorney you are appointing. A witness must also sign the witness certificate for each alternative attorney.

This section can be completed at the same time as the principal completes their section or at a later time.

### Alternative attorney

I accept my appointment as an alternative attorney under this enduring power of attorney and state that:

- I am eligible under Part 3 of the **Powers of Attorney Act 2014** to act as an attorney under an enduring power of attorney, and
- I understand the obligations of an attorney under an enduring power of attorney and under the **Powers of Attorney Act 2014** and the consequences of failing to comply with those obligations, and
- I undertake to act in accordance with the provisions of the **Powers of Attorney Act 2014** that relate to enduring powers of attorney, and
- I understand the circumstances in which the alternative attorney is authorised to act under the **Powers of Attorney Act 2014**, and
- I am prepared to act in place of the attorney for whom I am appointed, if still eligible to act as attorney, when authorised to do so under the **Powers of Attorney Act 2014**.

*If appointed for financial matters and you have been convicted or found guilty of an offence involving dishonesty*

I have disclosed to the principal that I have been convicted or found guilty of an offence involving dishonesty. ....

#### Name of alternative attorney

#### Position

*(if appointed as the occupant of a position)*

#### Residential or business address

#### Signature

#### Date

#### Witness

I witnessed the signing of the statement of acceptance by the alternative attorney.

#### Name of witness

#### Residential or business address

#### Signature

#### Date



## Alternative attorney

I accept my appointment as an alternative attorney under this enduring power of attorney and state that:

- I am eligible under Part 3 of the **Powers of Attorney Act 2014** to act as an attorney under an enduring power of attorney, and
- I understand the obligations of an attorney under an enduring power of attorney and under the **Powers of Attorney Act 2014** and the consequences of failing to comply with those obligations, and
- I undertake to act in accordance with the provisions of the **Powers of Attorney Act 2014** that relate to enduring powers of attorney, and
- I understand the circumstances in which the alternative attorney is authorised to act under the **Powers of Attorney Act 2014**, and
- I am prepared to act in place of the attorney for whom I am appointed, if still eligible to act as attorney, when authorised to do so under the **Powers of Attorney Act 2014**.

*If appointed for financial matters and you have been convicted or found guilty of an offence involving dishonesty*

I have disclosed to the principal that I have been convicted or found guilty of an offence involving dishonesty. ....

### Name of alternative attorney


### Position

*(if appointed as the occupant of a position)*

### Residential or business address

.....  
.....  
.....  
.....

### Signature

  
.....

### Date

### Witness


I witnessed the signing of the statement of acceptance by the alternative attorney.

### Name of witness

### Residential or business address

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.....  
.....  
.....

### Signature

  
.....

### Date

You have reached the end of this form. You do **not** need to submit this form anywhere.

You need to complete it, make sure it is signed and witnessed properly, and then keep the original in a safe place. You should give your attorney(s) a certified copy of this form.

# When does a directive or appointment end?

	Advance care directive	Medical treatment decision maker appointment	Enduring power of attorney appointment
<b>When you make a new one?</b>	Yes	No, but you can revoke (cancel) previous appointments using the appointment form in this booklet.	Yes, unless you specify otherwise.
<b>When you revoke the appointment while you have decision-making capacity to do so?</b>	Yes. Find revocation form on the OPA website.	Yes. Find the revocation form on the OPA website.	Yes. Find the revocation form on the OPA website.
<b>Ends when VCAT cancels it?</b>	Yes, eligible applicants can apply to VCAT, including, your health practitioner and your medical treatment decision maker.	Yes, eligible applicants can apply to VCAT, including, your health practitioner and your medical treatment decision maker.	Yes, those who can apply to VCAT include your attorney and a person with a special interest in your affairs.
<b>Ends when all the people you appointed are unable (or no longer eligible) to act?</b>	Not applicable. You do not appoint anyone when you make an advance care directive.	Yes	Yes
<b>Ends when you die?</b>	Yes	Yes	Yes

## Where to get help and more information

### Office of the Public Advocate

Find more information on the OPA website, or call OPA's Advice Service.

Level 1, 204 Lygon St  
 Carlton VIC 3053  
 OPA Advice Service: 1300 309 337  
 TTY: 1300 305 612  
 Fax: 1300 787 510  
[www.publicadvocate.vic.gov.au](http://www.publicadvocate.vic.gov.au)

### Better Health website

[www.betterhealth.vic.gov.au/havetheconversation](http://www.betterhealth.vic.gov.au/havetheconversation)

### Victoria Legal Aid Legal Help

For free information about the law and how Victoria Legal Aid can help you, call Legal Help on 1300 792 387, Monday to Friday, from 8.45 am to 5.15 pm.

More information is available on the Victoria Legal Aid website  
[www.legalaid.vic.gov.au](http://www.legalaid.vic.gov.au)

### Victorian Civil and Administrative Tribunal

Level 5, William Cooper Justice Centre  
 223 William Street,  
 Melbourne Victoria 3000  
 Tel: 1300 01 8228  
[www.vcat.vic.gov.au](http://www.vcat.vic.gov.au)

### Federation of Community Legal Centres

Call or visit website for your nearest community legal centre or specialist legal centre for people with disability or mental illness.

Tel: 9652 1500  
[www.communitylaw.org.au](http://www.communitylaw.org.au)

### If you need an interpreter



Call the Translating and Interpreting Service for an interpreter to help you speak to any of the agencies in this section. Ask the interpreter to put you through to the agency you need. This is usually free.

Tel: 131 450

### If you are deaf or have a hearing or speech impairment



Use the National Relay Service to phone any of the agencies in this section.

For more information visit:  
[www.relayservice.com.au](http://www.relayservice.com.au)



Office of the  
Public Advocate

**Office of the Public Advocate**  
Level 1, 204 Lygon Street, Carlton, Victoria 3053  
OPA Advice Service: 1300 309 337  
TTY: 1300 305 612 NRS: 133 677  
Fax: 1300 787 510  
[www.publicadvocate.vic.gov.au](http://www.publicadvocate.vic.gov.au)

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[cle@vla.vic.gov.au](mailto:cle@vla.vic.gov.au)