

The *Medical Treatment Planning and Decisions Act 2016 (the Act)* came into effect on 12 March 2018.

Along with consolidating existing laws into one piece of Victorian legislation, the Act introduces significant changes to medical treatment decisions, including for example, enabling clients to:

- make an Advance Care Directive setting out binding instructions, or preferences and values, in relation to medical treatment; and
- nominate multiple decision-makers. While only one person can act at a time, the other decision-makers are alternates and are listed in the order in which you would like them to act.

Why do you need an Appointment of Medical Treatment Decision-Maker?

Unless there is an emergency, health practitioners require a patient's consent before providing medical treatment.

If you are unable to make medical treatment decisions due to illness or injury, the health practitioner will either:

- follow the binding/instructional directives in your Advance Care Directive (if one has been completed); or
- refer the decision to your medical treatment decision-maker.

Under the Act, you can make decisions in advance about what medical treatment you receive or do not want in the future, if you do not have decision-making capacity.

Part of our estate planning service includes the preparation of an Appointment of Medical Treatment Decision-Maker, as this is the only way a person can control who will make decisions on their behalf when they are unable.

Advanced planning can be done through making an Advance Care Directive.

Importantly, you should read this brochure together with our brochure on Advance Care Directives.

Who can you appoint as a medical treatment decision-maker?

You can appoint an adult person you trust to respect your values and preferences to make medical treatment decisions on your behalf.

While you can appoint multiple persons for this role, the first person listed in the Appointment who is reasonably available and willing and able to act at the particular time will make decisions for you.

When does the Appointment commence?

The Appointment only takes effect if, and when, you become incapable to make decisions for yourself, as certified by a medical practitioner.

What are medical treatment decisions?

Medical treatment decisions applies to a range of registered health professions, including for example, paramedics, medical and nursing, dental, pharmacy, psychology and occupational therapy.

A medical treatment decision includes:

- treatment with physical or surgical therapy (e.g. an operation);
- treatment for mental illness;
- treatment with prescription pharmaceuticals;
- dental treatment; and
- palliative care.

Obligations of the appointed medical treatment decision-maker

Your medical treatment decision-maker must make a decision which they reasonably believe you would have made, if you had decision-making capacity. Your medical treatment decision-maker will:

- consider any valid and relevant values directive in your Advance Care Directive (if one has been completed);
- consider any other relevant preferences that you may have expressed (e.g. any documented wishes or discussions you have had with those closest to you) or what they may be able to infer from your life; and
- consult with anyone that they reasonably believe you would want them to.



If your preferences are not known, your medical treatment decision-maker must:

- act in good faith and with due diligence; and
- consider the likely effects and consequences of the medical treatment, including the likely effectiveness and whether there are any alternatives (including refusing medical treatment) that would better promote your personal and social wellbeing, having regard to the need to respond your individuality.

It is therefore important that you:

- discuss your preferences with your medical treatment decision-maker;
- continue to keep your medical treatment decision-maker informed of any changes to your values and preferences; and
- provide your medical treatment decision-maker with a copy of your Advanced Health Directive – if you have completed this document.

Your medical treatment decision-maker(s) must accept the Appointment and confirm that he or she:

- understands their obligations;
- undertakes to act in accordance with your known preferences and values;
- undertakes to promote your personal and social wellbeing, having regard to the need to respect your individuality; and
- has read and understands any Advance Care Directive that you have given before, or at the same time as, the appointment.

Protective measures

Criminal offences may apply to a medical treatment decision-maker who:

- induces a person to make an Advance Care Directive;
- knowingly makes a false or misleading statement in relation to an Advance Care Directive;
- purports to act if they are not the appointed medical treatment decision-maker (e.g. if the appointment was revoked); or
- induces a person to make an Appointment of Medical Treatment Decision-Maker.

What to do after you have completed the Appointment

Your Appointment should be kept in a safe place, known to your medical treatment decision-maker.

You should also consider:

- providing a copy of your Appointment and Advanced Health Directive (if you have completed this document) to your medical treatment decision-maker(s), doctor and hospital (if relevant); and
- uploading a copy to MyHealthRecord.gov.au.

Your medical treatment decision-maker should also maintain accurate records of all medical decisions made and the reasons why they chose to make those decisions. The records should contain copies of all correspondences, notes of conversations with you, your doctors and health service professionals. These records may be useful if a dispute arises with a doctor or health service professional, or if someone challenges that the decisions was not in accordance with your wishes.

When does the Appointment end?

The Appointment will end on any of the following circumstances:

- your death;
- the death of your appointed medical treatment decision-maker(s);
- your medical treatment decision-maker(s) resign;
- you revoke the Appointment (whilst you are competent to do so) and notify your appointed medical treatment decision-maker(s); or
- you sign a later Appointment, which revokes all previous Appointment and notify your appointed medical treatment decision-maker(s).



What happens if I do not appoint a medical treatment decision-maker?

If you do not appoint a medical treatment decision-maker, then:

- responsibility will fall to the first adult person in the following list who is willing and reasonably available to make decisions for you, and where there is more than one in any category, the eldest:
 - your spouse or domestic partner;
 - primary carer;
 - adult children;
 - parents;
 - siblings; and/or
- your family or a person concerned may need to apply to the Victorian Civil and Administrative Tribunal for the appointment of a guardian to make medical treatment decisions for you. In some circumstances, particularly if there is a dispute or conflict between your family / persons concerned, VCAT may appoint an independent person or the Office of the Public Advocate to act as your guardian.

The law is complex and the types of decisions a medical treatment decision-maker may be required to make are varied, often highly emotional and done so under pressure. For advice and assistance, we recommend you contact our Estate Group on (03) 8600 8885.

