

Side by Side

A guide for people wanting support
to make decisions



Find inside the forms to appoint a:

- medical support person
- supportive attorney

March 2018



Office of the Public Advocate



‘As Above, So Below’

Kath McMillan

“I like to see what I can do with my art, and I enjoy the company of my art group.”

The cover artwork by Kath McMillan was part of the 2016 CONNECTED Art Exhibition.

CONNECTED was established in 2003 by State Trustees and showcases the work of emerging artists with a disability or an experience of mental illness

The event was borne from a passion for recognising and celebrating artists with a physical or mental disability in Victoria.

Celebrating art and culture through events such as CONNECTED enriches lives and communities and encourages social inclusion.

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The information in this guide relates to the law in Victoria. If you are making appointments 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.

The ‘Appointment of support person’ form in this booklet was developed by Victoria’s Department of Health and Human Services.

The ‘Appointment of supportive attorney’ form in this booklet was developed by Victoria’s Department of Justice and Regulation.

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Disclaimer: This publication is intended to be used by readers considering whether to make a supportive attorney or support person appointment, or by people appointed to these positions. The information in this publication is of a general nature and readers may require legal advice for specific circumstances. The Office of the Public Advocate expressly disclaims any liability howsoever caused to any person in respect of any action taken in reliance on the contents of this publication.

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Message from the Public Advocate

My office aims to safeguard the rights and interests of people with disability.

This guide explains laws in Victoria that enable a person to appoint someone to support them to make decisions.

The United Nations Convention on the Rights of Persons with Disabilities recognises that people with disability should have the support they need to make decisions that affect them. Supported decision-making is an important human rights concept for people with disability.

There can be many reasons why people may want to take up the opportunity to appoint someone to support them to make decisions. Some people may want support to make and act on their decisions because of a disability. Other people may want this support when they have a serious illness or injury. Others may experience difficulties communicating, or may have experienced trauma in the past, that means they value having the support of someone else when communicating with organisations.

If you choose to take up the opportunity to appoint someone to support you to make decisions, this step-by-step guide explains how to do this.

Those appointed to support someone else to make decisions, can find information about their role on the Office of the Public Advocate (OPA) website and in the OPA publication Supported Decision-Making in Victoria: A guide for families and carers. (See www.publicadvocate.vic.gov.au)

Colleen Pearce
Public Advocate

How to use this guide

This guide has been developed for adults.

Part 1 of this guide has information in Easy English to help you decide if you want someone to be your:

- medical support person
- supportive attorney.

Part 2 of this guide explains the steps to appoint someone.

Some of the information in Part 2 is complicated because it explains how to make legal documents. You may want someone to help you work through the steps in Part 2.

This guide also includes:

- the forms you need
- information for your witnesses
- other useful information.

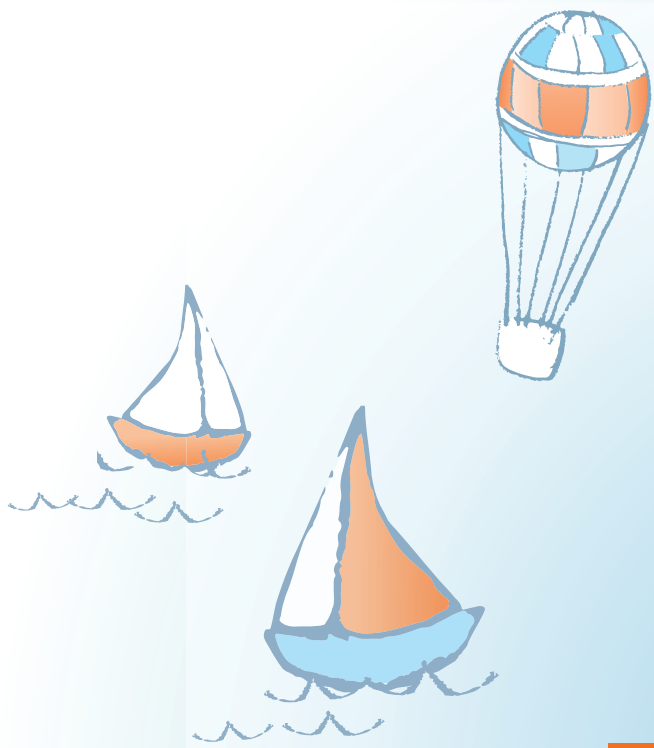


Part 1

Introduction

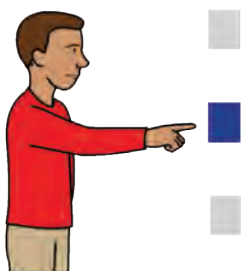
Everyone has the right to make their own decisions about the things that affect them.

In Victoria, you can choose someone to support you to make your own decisions.



Easy English

Help to make your decisions

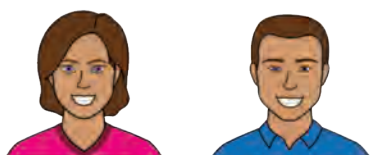


You have the right to make your own **decisions**.

Decisions are like choices.



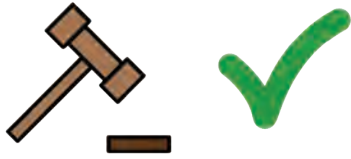
Sometimes we need help to make decisions.



You can choose a person to help you make decisions.



You can give the person you choose **authority** to help you.



Authority means the law says the person can do things like



- get information you need to make a decision
For example, your medical information



- talk to people and organisations about you and decisions you need to make

- tell people and organisations the decisions you have made



- go to meetings with you



- help you to say what you want when you are sick.

You can **appoint** someone to help you make decisions.



Appoint means you fill out a form and sign the form in front of other people called witnesses.

You can appoint a

- **medical support person**
- **supportive attorney**



Medical support person means a person to help you make decisions about what to do when you are sick or hurt.



Supportive attorney means a person to help you make decisions about other things. For example, what bills to pay or where to live.



The law says you can only appoint someone if

- you understand what authority means
- the person you choose says yes.

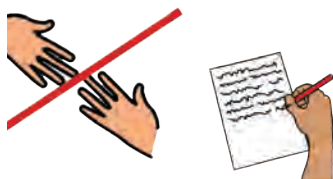


The law says you can **not** choose some people. For example, a paid carer can **not** be your supportive attorney.



When you fill out the form you write things like

- who you choose
- what types of decisions you want help with
- how you want the person to help you.



If you do **not** want the person you appoint to help you anymore, you will need to fill out another form.



You can read all of this booklet to learn how to appoint someone.

You can ask someone you trust to help you to

- read this booklet
- fill out the forms.



More information

Phone 1300 309 337

TTY 1300 305 612

Part 2

How to appoint someone

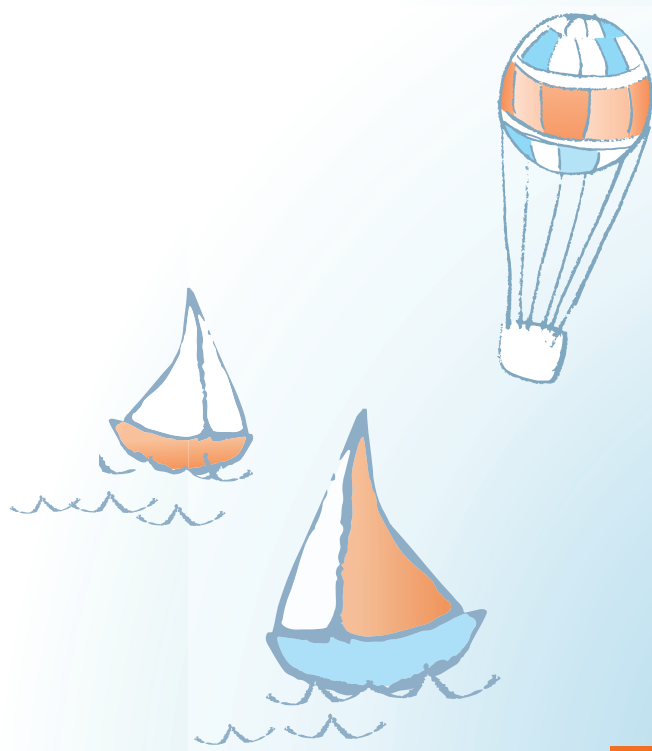
This part of the booklet explains the steps to complete the forms.

In this part you will find information about:

- the steps to appoint a medical support person
- the steps to appoint a supportive attorney.

Some of the information in this part is complicated because it explains how to make legal documents. You may want someone to help you read this guide and complete the steps.

Find the forms at the back of this booklet.



Decision-making capacity to make the appointment

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 and
- communicate your decision, and your views and needs in relation to your decision in some way, including by speech, gestures or other means.

Support

You may need support or time to have decision-making capacity to make some decisions. If you are able to make the decision with support, then you have decision-making capacity.

For example, you might:

- need extra time, and someone who helps you by discussing the decision with you
- have someone assist you to communicate your decision
- use technology that assists you
- have information explained to you in an appropriate way, using modified language or visual aids.

All adults are presumed to have decision-making capacity. A person's decision-making capacity should only be questioned if there is good reason for this.

A person may have decision-making capacity to make some decisions and not others.

If a person does not have decision-making capacity for a particular decision, this may be temporary and not permanent.

How to appoint a medical support person



There may be times when you want someone to support you to make medical treatment decisions.

One way to have this support is to appoint a support person.

They can support you to:

- make
- communicate and
- give effect to...

your medical treatment decisions.

Representing your interests

They can also represent your interests in relation to your medical treatment.

For example, you might tell them what you want, or do not want, and they may help you talk to your doctors, nurses, and other health practitioners about this. They can do this even if you become so unwell that you are not able to make your own decisions at the time.

However, your support person does not have power to make medical treatment decisions for you, unless they are also your medical treatment decision maker.

Find information about medical treatment decision makers on the OPA website.

Accessing your health information

Your support person has authority to access (get) your health information to help you make a decision. For example, they could access information from your medical record.

They can only access the same information that you are able to access.

When the appointment starts

The appointment starts as soon as it is made, however, you may not need your support person to do anything to help you straight away.

Example case studies



Mei's story

Mei appoints her adult son as her medical support person so that, if she ever becomes very unwell, she will have his support and he will have authority to get her health information.



Martin's story

Martin has impaired ability to communicate, particularly when he is stressed.

He has just been diagnosed with a serious illness. He chooses to appoint his brother, Jose, to be his support person.

Jose will go to medical appointments with Martin. Martin thinks he will find it easier to make difficult decisions about his healthcare with this support. Martin chose to appoint Jose as his support person to make Jose's role clear to his doctor and other health practitioners.

Checklist of the steps



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

☐ **Decide who to appoint**

The person you choose should be someone you trust and who respects and values your right to make your own decisions.

☐ **Fill in the form**

Follow the instructions in the form.

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

☐ **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. See page 27 for a tear-out fact sheet for your witnesses explaining their role.

If you cannot physically sign the appointment form, another person can sign the form at your direction. See the support person page of the OPA website for the form.

☐ **Your support person signs**

The person you appoint needs to accept the appointment and sign in front of an adult witness. This can happen on a later date. They will find information about their role on the support person page of the OPA website and in OPA's booklet

Supported Decision-Making in Victoria: A guide for families and carers.

☐ **Storage and certified copies**

The appointment form is not registered in Victoria. You should keep the original in a safe place and give your support person a certified copy. You may want to give your doctor or hospital (if relevant) a copy. You might also consider uploading a copy to My Health Record at www.myhealthrecord.gov.au

Cancellation of previous appointments

When you make this appointment, you automatically revoke (cancel) any previous support person appointments you have made, if any.

Young people

If you are a young person under 18 years of age, you can appoint a support person if you have decision-making capacity to do so. You can appoint an adult or another young person to support you. For more information see

www.betterhealth.vic.gov.au/havetheconversation

How to appoint a supportive attorney

There may be times when you want someone to support you to make decisions about financial matters, or your personal or lifestyle affairs.

For support with these types of decisions, you appoint a supportive attorney.

To be able to appoint someone, you must be an adult and have decision-making capacity to make the appointment.

There are some people who cannot be your supportive attorney, such as your care worker, health provider, or accommodation provider.

You choose what types of decisions you want support to make.

These can be decisions about:

- financial matters
- personal matters.

For example, you may want support to make decisions about:

- paying your bills
- your banking
- services you need
- where you work or study
- where you live
- who you live with.

See 'What these words mean' on page 24 for more examples.

The type of support you want

You can give your supportive attorney authority to support you in different ways.

For example, you may want your supportive attorney to be able to:

- get personal information about you from other people or organisations (such as your bank, or your electricity company)
- tell other people and organisations a decision you have made
- tell other people and organisations other information that relates to a decision you have made
- do things so your decision can happen, for example, making phone calls to organise services that you decided you want.

Keep in mind, your supportive attorney does not have authority to support you to make and act on decisions about your medical treatment. Only your medical support person has authority to support you to make these types of decisions.

On the next pages you will find:

- examples of ways a supportive attorney can help
- a checklist of the steps to make a supportive attorney appointment.

Examples of ways a supportive attorney can help



Filip's story

Filip's short-term memory has been affected because of a car accident. He has ways to do things that allow him to manage with this. He wants to make his own decisions but thinks that having his mother, Lena, as his supportive attorney for financial matters could be helpful, especially when he has lots of decisions to make running his own small business.



Ishan's story

Ishan has been diagnosed with motor neurone disease. He has many difficult decisions to make. He thinks he may find it increasingly difficult to act on his decisions. He wants to maintain his independence. His son, Ahmed, agrees to be his supportive attorney.

Ishan wants to make a complaint about a service provider. Ahmed makes a phone call to the service provider, puts the call on speaker phone and assists Ishan to communicate his complaint. The service provider and Ishan agree to have a meeting to discuss the complaint and Ahmed negotiates the time and place of the meeting. Ahmed attends the meeting to support Ishan. The complaint is resolved to Ishan's satisfaction.



Lyn's story

Lyn has a communication impairment and uses a communication device.

Lyn wants to apply for a family violence intervention order to protect her from her ex-partner. She feels intimidated by the idea of going to court and knows the court process can be complicated.

Lyn appoints her friend, Jan, as her supportive attorney for decisions about her safety and protection.

Jan goes to court with Lyn and supports Lyn to communicate effectively with the court staff and duty lawyer, and to make sure that Lyn is able to navigate the process smoothly.



Cara's story

Cara has just turned 18 years of age. She has a mild intellectual disability. Cara is excited about being an adult and making her own decisions about moving on from school to work or study.

Cara feels she would benefit from having the support of her parents in gathering information and meeting with organisations during this transition. She appoints her parents as her supportive attorneys.



Checklist of the steps

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

☐ Decide who, what and when

You choose:

- who to appoint
- the types of decisions you want support to make
- how you want your supportive attorney to be able to help you
- when the supportive attorney appointment starts.

☐ Complete the form

Use the instructions on the next page to help you complete the form.

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

☐ Sign the form in front of witnesses

You need to sign the form in front of two adult witnesses. One must be someone authorised to witness statutory declarations, which includes registered medical practitioners (doctors). See page 29 for a tear-out fact sheet for your witnesses explaining their role.

If you cannot physically sign the appointment form, another person can sign the form in your presence and at your direction. If you need to do this, use section A1 of the form.

☐ Your supportive attorneys signs

After you have signed the form in front of witnesses, your supportive attorney must sign a statement of acceptance in front of a witness. This can happen on a later date. Your supportive attorney should read about their role and responsibilities before they accept their appointment. They will find an 'Information for supportive attorneys' fact sheet on the supportive attorney page of the OPA website, and useful information in OPA's booklet *Supported Decision-Making in Victoria: A guide for families and carers*.

☐ Storage and certified copies

The form is not registered in Victoria. You should keep the original in a safe place and give your supportive attorney a certified copy (or make sure they know where to find a certified copy, if and when they need it).

See page 22 for information about certified copies.

Instructions for completing the appointment form



The 'Appointment of supportive attorney' form at the back of this booklet allows you to appoint one supportive attorney.

If you wish to appoint more than one supportive attorney or a back-up supportive attorney, find the form on the OPA website.

The form is divided into five sections. Use the information that follows to help you complete each section of it.

Section 1 instructions

You are the person making the supportive attorney appointment and are known as 'the principal'.

Fill in your full name and address in section 1.

Section 2 instructions

The person you appoint is known as your 'supportive attorney'. Fill in the full name and address of your supportive attorney in section 2.

Your most important decision when making a supportive attorney appointment is choosing who to appoint. They should be someone you trust, and who respects and values your right to make your own decisions.

They need to:

- be eligible to be appointed as a supportive attorney
- agree to be a supportive attorney.

A person is eligible to be your supportive attorney if they are:

- 18 years of age or older
- not a care worker, a health provider or an accommodation provider for you
- not insolvent under administration.

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 supportive attorney for financial matters if they have told you about this. If this is the case, they tick a box in section 5 of the form to indicate that.

Choose the types of decisions you want your supportive attorney to help you make.

You can give your supportive attorney authority to support you to make and give effect to your decisions about your:

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

Financial matters...

are any matter relating to your financial or property affairs.

Examples are:

- paying expenses
- withdrawing money from, or depositing money into, an account with a bank
- paying rates, taxes and insurance premiums.

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

Personal matters...

are matters relating to your personal affairs and lifestyle affairs, but do not include matters that relate to medical treatment.

Personal matters include:

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

Personal matters include any legal matter that relates to your personal and lifestyle affairs.

Choose the powers you want your supportive attorney to have

You can give your supportive attorney any or all of the following three powers:

- information power
- communication power
- power to give effect to decisions.

Information power

You can authorise your supportive attorney to obtain personal information about you from any person or organisation. This includes authorising

your supportive attorney to disclose information where this is relevant to their role as your supportive attorney.

They can also assist you to obtain information.

This power means organisations (such as banks, utility providers, and healthcare providers) can tell your supportive attorney personal information about you.

Communication power

You can authorise your supportive attorney to:

- communicate any information about you that is relevant or necessary to the making of, or giving effect to (acting on), your decision
- communicate, or to assist you to communicate, your decision.

This power means that organisations are able to communicate with the supportive attorney as if they were communicating directly with you.

Power to give effect to decisions

You can authorise your supportive attorney to:

- take any reasonable action
- do anything that is reasonably necessary to give effect to a decision that you have made.

However, this authority does not include giving effect to decisions about a significant financial transaction.

Significant financial transactions

Your supportive attorney cannot give effect to decisions about significant financial transactions. These include (but are not limited to):

- making an investment for you
- undertaking any real estate transaction for you

- dealing with land on your behalf, including taking out a loan on your behalf, or giving a guarantee on your behalf
- undertaking a transaction for you involving the use of the your property as security for an obligation
- buying and selling substantial personal property on your behalf.

There are two exceptions. Your supportive attorney can give effect to a decision of yours to:

- enter into a residential tenancy for a premises in which you live or intend to live
- invest, or continue to invest, an amount that is \$10,000 or less in total, if it is in one or more interest-bearing accounts of an authorised deposit-taking institution. (For a list of such institutions see www.apra.gov.au)

Section 3 instructions

Start date

You can choose when the appointment starts.

The appointment can start:

- immediately
- from another time, circumstance or occasion that you specify.

If you do not specify when the appointment starts, it begins as soon as the appointment is made.

Section 4 instructions

Principal's signature

In this section, you sign the form in front of two witnesses.

If you have not done so already, carefully tear out the pages of the form

from this booklet, and place the pages together in page number order.

OPA recommends that you draw a diagonal line through any text boxes that you have left blank.

You must sign the form in front of two adult witnesses.

Witnessing requirements

One witness must be someone authorised to witness statutory declarations.

See www.justice.vic.gov.au/statdec for a full list.

The witnesses must:

- not be the person you are appointing as your supportive attorney
- not be a person who is signing at your direction (where you are unable to physically sign the supportive attorney form).

In addition, at least one witness must:

- not be a relative of yours or a relative of your supportive attorney
- not be a care worker or accommodation provider for you.

Section 5

Statement of acceptance

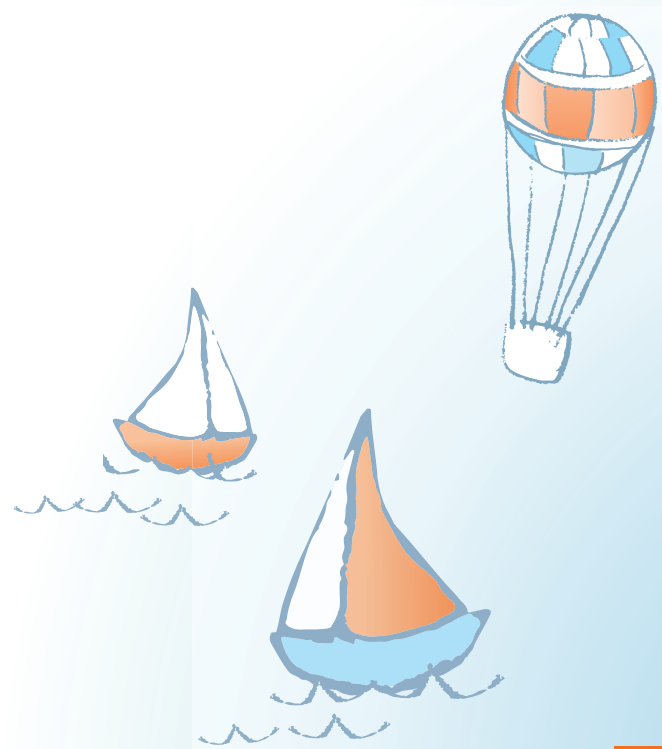
After you have signed the form in front of your witnesses, your supportive attorney needs to sign in front of an adult witness to say that they accept their appointment. This can happen on a later date. Before signing, your supportive attorney should read about their role and responsibilities.

See 'Information for supportive attorneys' fact sheet on the supportive attorney page of the OPA website.

Useful information

Find:

- information about witnessing and certified copies
- information about ending and cancelling
- what these words mean.



Authorised witnesses and certified copies of documents

Your authorised witness

To complete each of the forms in this booklet, you need two adult witnesses. One must be an authorised witness.

Appointment of medical support person

Your authorised witness must be:

- a registered medical practitioner or
- someone able to witness affidavits (authorised to administer an oath).

Appointment of supportive attorney

Your authorised witness must be:

- someone able to witness statutory declarations (which includes a registered medical practitioner)

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
- a legal practitioner (a practising lawyer)
- a police officer of or above the rank of sergeant or, for the time being, in charge of a police station.

Some may charge a fee. For the full list of who can witness affidavits see www.justice.vic.gov.au/affidavit

People able to witness statutory declarations

People able to witness affidavits can also witness statutory declarations. In addition, the following people can witness statutory declarations:

- a police officer
- a registered medical practitioner (medical doctor)
- a registered dentist
- a registered pharmacist.

Some may charge a fee. For the full list see www.justice.vic.gov.au/statdec

Certifying copies

People who are authorised to witness affidavits can 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 document. Each page should be certified to the effect that the copy of that page is a true and complete copy of the corresponding page of the original form. The last page should be certified to the effect that the copy of the instrument is a true and complete copy of the original form.

Justices of the Peace

Justices of the Peace are authorised to witness statutory declarations and 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

You will need to organise another person, who is eligible to be a witness, to go with you to the Justice of the Peace.

When the appointment ends

The appointment of your medical support person, or your supportive attorney, ends if:

- you revoke (cancel) the appointment (while you have decision-making capacity to do so)
- VCAT revokes the power
- the person you appointed dies or is unable to act.

How you revoke (cancel) an appointment

You can revoke an appointment at any time, as long as you have the decision making capacity to do so. You complete a revocation form to do so. See the OPA website for the forms.

Times when the person you appointed cannot act

The person you appointed cannot support you to make decisions during any period that you do not have decision-making capacity to make the particular decisions. Also, they cannot give effect to your decisions at this time. See page 12 for what it means to have decision-making capacity to make a decision.

If you want there to be someone who can make decisions for you if you become unable to make your own decisions, find information about this in the OPA publication *Take Control*.

Your medical support person can represent your interests

Your medical support person is able to represent your interests in relation to your medical treatment. They are able to do this even if you do not have decision-making capacity to make the decision. This means they can communicate what they understand you would want. However, they cannot make a decision on your behalf (unless they are also your medical treatment decision maker).



Kim's story

Kim has a mental illness and knows that, at times, she needs support to make decisions about financial matters because she can become stressed and overwhelmed.

Her sister, Ella, has often helped her, but sometimes it has been difficult because organisations have not always recognised Ella's support role. Kim hopes a more formal arrangement will overcome these obstacles and appoints Ella as her supportive attorney.

These arrangements work well until Kim is hospitalised because of her mental illness. Kim is assessed as unable to make decisions about her financial matters and Ella is unable to act as her supportive attorney during this time.

What these words mean

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.

care worker

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

certified copy

a copy of a document which an authorised person has certified as a true and complete copy of the original.

decision-making capacity

having the ability to understand the information relevant to the decision and the effect of the decision, and retain that information to the extent necessary to make the decision, and use or weigh that information as part of the process of making the decision and communicate the decision and the person's views and needs as to the decision in some way, including by speech, gestures or other means.

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 are:

- making money available for personal expenditure
- paying expenses
- paying debts

- receiving and recovering money payable
- paying rates, taxes and insurance premiums or other outgoings
- withdrawing money from or depositing money into an account.

(See OPA's website for more examples.)

health practitioner

- a registered health practitioner in the following fields:
 - medical
 - dental
 - physiotherapy
 - occupational therapy
 - chiropractic
 - pharmacy
 - optometry
 - podiatry
 - nursing and midwifery
 - medical radiation practice
 - osteopathy
 - psychology
 - Chinese medicine
 - Aboriginal and Torres Strait Islander health practice
- paramedics or non-emergency patient transport staff.

health provider

a person who provides health care 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.

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.

medical treatment decision maker

a person with authority under the *Medical Treatment Planning and Decisions Act 2016* to make a medical treatment decision on behalf of a patient who doesn't have decision-making capacity in relation to the medical treatment.

My Health Record

My Health Record is a Federal government website that allows you to digitally store health information so that your healthcare providers, like doctors and hospital staff, can see these details when they need to. You can store your completed support person form on My Health Record. For more information, see www.myhealthrecord.gov.au

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, but do not include matters that relate to medical treatment. Personal matters include any legal matter that relates to the principal's personal or lifestyle affairs.

Examples of personal matters are:

- where and with whom the principal lives
- persons with whom the principal associates
- whether the principal works and, if so, the kind and place of work.

(See OPA's website for more examples.)

principal

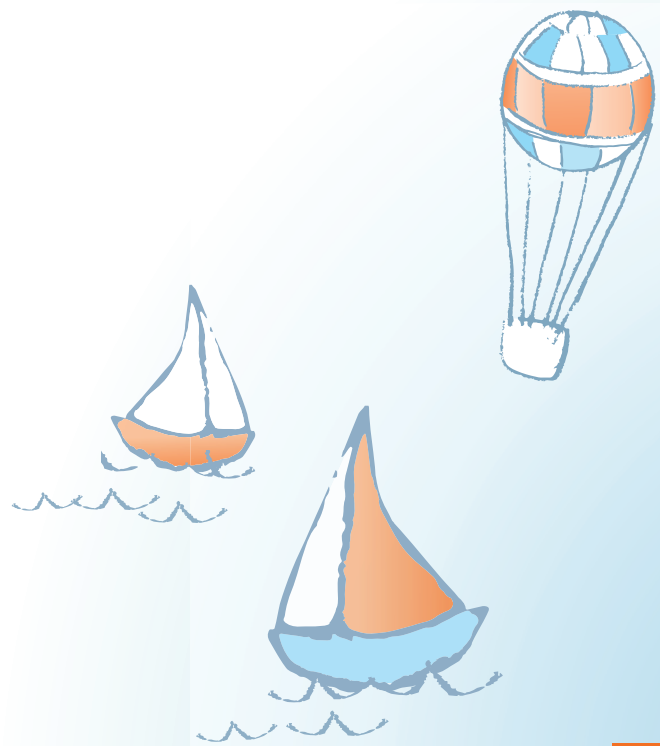
the person who makes a supportive attorney appointment.

relative

a spouse or domestic partner, child, parent or step-parent, sibling or step-sibling; grandparent, grandchild, uncle or aunt, nephew or niece.

Fact sheets

Find tear-out fact sheets for your witnesses.





Information for witnesses

Appointment of Support Person

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

To appoint a support person, the person making the appointment 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.

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 a support person, 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 following and the table overleaf.)

You should ask questions to make sure you are satisfied about these things.

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.

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.

What to check

The person should be able to tell you

- what sorts of things their support person will be able to do to support them, for example, their support person will have authority to access their personal health information
- 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.

What witnesses certify	Appointment of support person
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 they are signing a legal document appointing a support person with certain powers who is able to help them do certain things. For example, getting information to help you make a decision and helping you give effect to your decision, such as prescriptions filled for you.
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

Appointment of Supportive Attorney

This fact sheet explains your role if you act as witness for a person appointing a supportive attorney under Victoria's *Powers of Attorney Act 2014*.

To appoint a supportive attorney, the person making the appointment, known as the 'principal', 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.

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 a supportive attorney, two adult witnesses are required.

One must be someone authorised to witness statutory declarations (which includes a registered medical practitioner).

Neither witness can be a person who is being appointed, or someone who signs at the direction of the principal (if the principal is unable to physically sign).

In addition, at least one of the two witnesses must not be a:

- relative of the principal or relative of the supportive attorney
- care worker or accommodation provider for the principal.

Step 2: Ask questions

The Powers of Attorney Act sets out what witnesses certify (see below.)

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

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.

When witnessing a supportive attorney appointment, you must certify that:

- the principal (the person making the supportive attorney appointment) appeared to freely and voluntarily sign in your presence
- that, at the time the principal signed the instrument, they appeared to have decision-making capacity to make it.

Decision-making capacity

The principal has capacity to make a supportive attorney appointment if they are able to:

- understand the information relevant to this decision 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 the person's views and needs as 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 the decision.

You need to be satisfied that the principal understands the effect of this decision and should ask questions to check this.

Understanding the effect of the decision to make a supportive attorney appointment includes understanding:

- that the appointment enables the principal to make and give effect to their decisions with support
- that the appointment allows the principal to choose a person to support them to make and give effect to their own decisions
- that supported decisions are decisions of the principal and not the supportive attorney
- when the appointment commences
- that the principal may revoke (cancel) the appointment at any time when the principal has decision-making capacity to do so.

Step 3: Witnessing

If you are satisfied of the things set out in Step 2, the person signs in front of you and the other witness. You both then sign and date the witness certification.

If the principal cannot physically sign the supportive attorney appointment form, the form has a space for another person who can sign the form in the presence of the principal and at the direction of the principal. This person must be an adult, not be a witness and not be a supportive attorney.

Interpreters

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

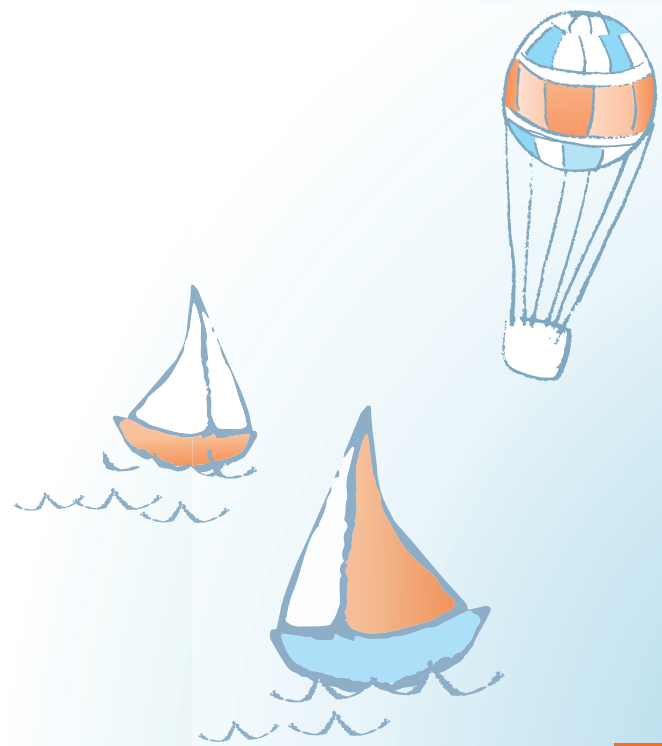
We communicated with the person through an interpreter, [name and NAATI number (if accredited)] who, to the best of our knowledge and belief:

- truly interpreted to the person in [insert language]
- is not a supportive attorney of the principal.

Forms

Find:

- the appointment of support person form
- the appointment of supportive attorney form.



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intentionally blank.



Appointment of support person

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 support person can access, or help you to access, health information relevant to your medical treatment.

Your support person does not have the power to make medical treatment decisions on your behalf.

Any existing support person appointment previously made by you under the Act will be revoked on making this appointment.

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: Support person details

I **appoint** as my support person:

Fill in the details of your support person here.

You must fill in their full name, date of birth and address. A phone number is optional.

Full name:			
Date of birth: (dd/mm/yyyy)			
Address:			
Phone number:			

Appointment of support person



Appointment of support person (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: Witnessing

You must sign in front of two adult witnesses at the same time.

One witness must be a registered medical practitioner or able to witness affidavits. See justice.vic.gov.au/affidavit for the list of eligible persons.

Neither witness can be your appointed support person.

Refer to the checklist if someone is signing on your behalf.

Signature of person making this appointment (you sign here)

--

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
- 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 support person under this appointment.

Witness 1 – Authorised witness

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

Full name of authorised witness:

--

Qualification of authorised witness:

--

Signature of authorised witness:

Date: (dd/mm/yyyy)

--	--

Witness 2 – Adult witness

Another adult witness must complete this section.

Full name of adult witness:

--

Signature of adult witness:

Date: (dd/mm/yyyy)

--	--



Appointment of support person (cont.)

For patient record purposes, health services can afford:
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)

<input type="text"/>	<input type="text"/>
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Part 4: 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 4 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):

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

Signature of interpreter:

Date: (dd/mm/yyyy)

<input type="text"/>	<input type="text"/>
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Appointment of support person



Appointment of support person (cont.)

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

Appointment by:
(insert your full name)

Part 5: Statement of acceptance

The support person you appoint must read the statement of acceptance and sign in front of an adult witness.

Your support person must read this statement of acceptance and sign in front of an adult witness.

Support person

I accept my appointment as support person and state that I understand the role of a support person is to:

- support the person to make, communicate and give effect to the person's medical treatment decisions; and
- represent the interests of the person in respect of the person's medical treatment, including when the person does not have decision-making capacity in relation to medical treatment decisions.

Name of support person:

Signature of support person:

Date: (dd/mm/yyyy)

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

Witness completes this section.

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

Name of adult witness:

Signature of adult witness:

Date: (dd/mm/yyyy)

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

You have reached the end of this form.

- Please keep your original 'Appointment of support person' form safe and accessible.
- Your 'Appointment of support person' form can be uploaded on MyHealth Record.

Appointment of Supportive Attorney

This supportive attorney appointment is made under Part 7 of the **Powers of Attorney Act 2014**.

Section 1: Principal (You)

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

Name of principal

Residential address

Section 2: Your supportive attorney

This form allows you to appoint a supportive attorney. You also need to specify what types of decisions your supportive attorney can help you to make.

If you wish to appoint a second supportive attorney or any alternative supportive attorney(s), use the long version of this form available online.

I appoint the person listed below as my supportive attorney.

Name of supportive attorney

Residential address

What types of decisions can this supportive attorney help me make?

I authorise my supportive attorney to exercise powers for the **matters** specified in this appointment.

Select **all** options that apply.

Personal matters ☐

Financial matters ☐

Both personal and financial matters ☐

The following personal, financial or other matters only ... ☐ **Specify**

What powers will this supportive attorney have?

I authorise my supportive attorney to exercise the powers specified below.

Select as many options as you need.

Information power (under section 87 of the **Powers of Attorney Act 2014**) ☐

To access, collect or obtain from or assist me in accessing, collecting or obtaining from any person any personal information about me that:

- (a) is relevant to a supported decision; and
- (b) may lawfully be collected or obtained by me.

To disclose any personal information about me given to the supportive attorney for the purpose of:

- (a) anything that is relevant and necessary to carry out the role of supportive attorney; or
- (b) any legal proceeding or report of a legal proceeding under the **Powers of Attorney Act 2014**; or
- (c) any other lawful reason.

Communication power (under section 88 of the **Powers of Attorney Act 2014**) ☐

To communicate any information about me that is relevant or necessary to the making of or giving effect to a supported decision, or to communicate or assist me to communicate a supported decision.

Power to give effect to decisions (under section 89 of the **Powers of Attorney Act 2014**) ☐

To take any reasonable action or to do anything that is reasonably necessary to give effect to a supported decision, other than a decision about a significant financial transaction.

Section 3: Start date

If you do not complete this section, your supportive attorney can start helping you to make decisions immediately on the making of this supportive attorney appointment.

This supportive attorney appointment commences:

Please choose **one** option.

Immediately, on its making ☐

From the time, in the circumstance or on the occasion ☐ **Specify**

<hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/>

Section 4: 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 person who is authorised by law to witness the signing of statutory declarations. A list of people who are authorised to witness the signing of statutory declarations can be found at justice.vic.gov.au/statdec.

If you need someone to sign for you due to a physical disability, do not fill out this section. Fill out **Section A1** on page 6.

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

Name of principal

Signature



Date

Witnesses

Each witness **certifies** that:

- the principal appeared to freely and voluntarily sign this supportive attorney appointment form in my presence, and
- at that time, the principal appeared to me to have decision making capacity in relation to making this supportive attorney appointment.

Each witness **states** that:

- I am not a supportive attorney under this appointment.

Name of authorised witness

Residential or business address

Signature



Qualification (as a person who is authorised by law to witness the signing of statutory declarations)

Date

Name of other witness

Residential or business address

Signature



Date

Section 5: Statement of acceptance of appointment by supportive attorney

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

The word 'principal' means the person making this supportive attorney appointment.

Supportive attorney

I accept my appointment as supportive attorney for the principal under this supportive attorney appointment and **state** that:

- I am eligible under the **Powers of Attorney Act 2014** to act as a supportive attorney under a supportive attorney appointment, and
- I understand the obligations of a supportive attorney under the **Powers of Attorney Act 2014** and the consequences of failing to comply with the **Powers of Attorney Act 2014**, and
- I undertake to act in accordance with 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 supportive attorney

Residential address

Signature

Date

Witness

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

Name of witness

Residential or business address

Signature

Date

Section A1: Signed at the direction of the principal

Name of principal

Name of person signing
at the direction of the principal

Residential address

Signature



Date

Witness

Each witness **certifies** that:

- in my presence, the principal appeared to freely and voluntarily direct the person to sign for the principal and that person signed this supportive attorney appointment in my presence and in the presence of the principal, and
- at that time, the principal appeared to me to have decision making capacity in relation to making this supportive attorney appointment.

Each witness **states** that:

- I am not a supportive attorney under this appointment, and
- I am not a person who is signing at the direction of the principal.

Name of authorised witness

Residential or business address

Signature



Qualification (as a person who is authorised by law to witness the signing of statutory declarations)

Date

Name of other witness

Residential or business address

Signature



Date

Where to get help

Office of the Public Advocate (OPA)

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

Victoria Legal Aid

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

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.

Phone: 9652 1500
www.communitylaw.org.au

Betterhealth website

www.betterhealth.vic.gov.au/havetheconversation

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.

Phone: 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.

This is free. To make an internet relay call and for more information about the NRS visit: www.relayservice.com.au

TTY users: Call 133 677 and then ask for the phone number you need. Include the area code.

Speak and Listen users:
Call 1300 555 727 and then ask for the phone number you need. Include the area code.



Office of the Public Advocate

Level 1, 204 Lygon St, Carlton VIC 3053

OPA Advice Service: 1300 309 337

TTY: 1300 305 612

Fax: 1300 787 510

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