

Take Control



**Find links to
the interactive
forms inside**

April
2021

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 in this guide is for adults

18+

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.

The guide has been developed for completing versions of the forms developed by the Victorian Government. Find links to these forms on the Office of the Public Advocate website: publicadvocate.vic.gov.au

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.

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Contents

	Public Advocate's message	2
	Introduction	3
	Planning	4
	About decision-making capacity	6
	Which form to use?	7
01	Medical treatment decision maker	8
	Choosing your medical treatment decision maker	9
	Checklist to appoint a medical treatment decision maker	10
02	Advance care directive	11
	Why make an advance care directive?	12
	Instructions for completing the advance care directive form for adults	14
03	Enduring powers of attorney	20
	Why make an enduring power of attorney?	21
	Checklist of steps to make an enduring power of attorney	23
	Instructions for completing the enduring power of attorney appointment form	24
	Useful information	30
	Authorised witnesses and certified copies of documents	31
	What these words mean	32
	Information for witnesses: Appointment of medical treatment decision maker	33
	Information for witnesses: Advance care directive	35
	Information for witnesses: Enduring power of attorney appointment	37
	Information for medical treatment decision makers	39
	Information for attorneys	41
	Before you sign	43
	When does a directive or appointment end?	45
	Where to get help and more information	45

Public Advocate's message

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.

If you became unable to make some decisions, would those close to you know the preferences and values that guide you when you make decisions? For example, decisions about your finances, medical treatment, or how you live. Who would you trust to make decisions for you?

In Victoria, there are legal documents you can complete to plan ahead, should a time come when you are unable to make certain decisions for yourself.

Sometimes people think they should start with the legal documents.

However, by taking time to reflect on what is important to you, and by having conversations with those close to you, ensures that if you ultimately choose to complete legal documents, they will reflect what you really want.

This booklet contains information about and links to forms to:

- appoint a medical treatment decision maker
- make an advance care directive
- make an enduring power of attorney.

By appointing a medical treatment decision maker, you can specify who has legal authority to make medical treatment decisions for you 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.

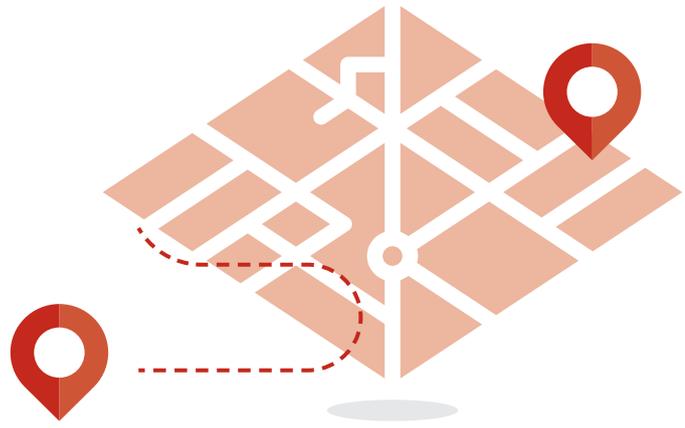
By making an enduring power of attorney, you can choose who will make important financial and personal decisions for you, such as where you will live or what happens to your house, if you are unable to do so in the future.

Keep in mind that in Victoria you can also appoint someone to support you to make decisions. Find more information about this on the **Office of the Public Advocate (OPA) website**.

Please remember you can only make these legal documents for yourself. You cannot make them on behalf of someone else. There are safeguards if you do not appoint someone.

You may choose to seek legal assistance to complete these documents. If you decide to complete the form(s) yourself, 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
Public Advocate



Introduction



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 you choose to complete any or all of the forms yourself using the information and instructions in this guide, you may find it helpful to have the assistance of someone you trust.

Make sure you understand the powers you are giving and how to complete the form(s). OPA's 'Before you sign' checklist may be helpful (see page 43).

This guide also includes fact sheets for:

- witnesses that explain their role
- medical treatment decision makers explaining their role
- attorneys explain their role and responsibilities.

Planning



Working through the steps below can be a helpful place to start.

Think about what is important to you

It is easier to think about what is important to you while you are well.

For example, you may value being in your own home, maintaining connections with people close to you or with your community, or you may have specific activities that you value.

Know your options

The options described in this guide are:

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

You also have the option of appointing someone to support you to make decisions. Find more information about this on the OPA website.

Once you understand your options, take time to think about them, talk to others, and seek advice if you need to.

Let those close to you know what is important to you

Regardless of whether you choose to make use of any of the options, it is important people close to you understand what you value and your wishes. If they know this, it will help make sure decisions are made as you would want in the future.

If there is no one suitable to share this information with, it can nevertheless be

helpful to write down your values and wishes (see page 11).

Think about how you will choose someone

If you decide to appoint a person, or people, who will have legal authority to make decisions for you, think about what is important to you.

For example, you may want someone who:

- is willing to listen to, and act on, your wishes rather than their own
- is trustworthy
- has the skill and time required
- is willing to take on the role with all its responsibilities
- can communicate effectively and is willing to consult with others
- understands and respects your culture and connections with your community
- can manage property and money well.

Risks and safeguards

While the majority of appointments work well, sometimes things go wrong. It may be that the person you thought you could trust to act for you does not keep on top of your needs, or misuses your money. You can reduce this risk. The guide *You Decide Who Decides*, available on the OPA website, has tips on how to do this.

If things do go wrong, there are steps you and others can take to stop this, such as applying to the Victorian Civil and Administrative Tribunal (VCAT).

If you do not appoint anyone

It is your choice whether to appoint someone who will have legal authority to make decisions for you. For example, there may be no one suitable, or you think you will be able to make decisions into the future if you have support.

There are safeguards if you do not appoint anyone. The law in Victoria specifies who can make a medical treatment decision for you if you are unable to make the decision (see page 9 for this list). No one has automatic legal authority to make other types of decisions for you (such as about your finances or where you live). However, VCAT can appoint someone, if necessary.

An ongoing process

The planning process is ongoing. Your circumstances and wishes may change over time. If you make legal documents, it is a good idea to review these at least every two years.



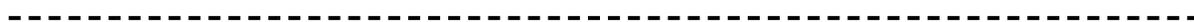
About decision-making capacity



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.



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:

publicadvocate.vic.gov.au



Which form to use?

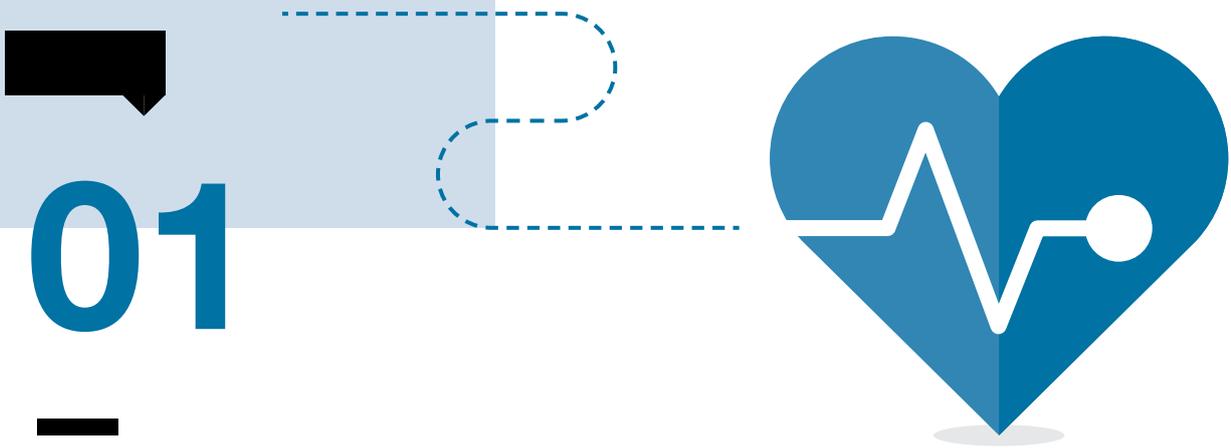


To appoint someone with authority to make decisions for you about:

	Which form to use?	What happens if I do not appoint anyone?
<ul style="list-style-type: none"> Medical treatment decisions 	Appointment of medical treatment decision maker	If you are unable to make medical treatment decisions, the law in Victoria lists who is your medical treatment decision maker. (See page 9 for this list).
<ul style="list-style-type: none"> Financial decisions 	Enduring power of attorney <ul style="list-style-type: none"> Appoint an attorney for financial matters 	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"> Personal and lifestyle decisions (for example decisions about what support services you need, or where you live) 	Enduring power of attorney <ul style="list-style-type: none"> Appoint an attorney for personal matters 	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"> To record your values and preferences for your medical treatment 	<ul style="list-style-type: none"> Complete the values directive 	You can communicate and record your values and preferences for your medical treatment in other ways. (For example, you can talk to your medical treatment decision maker.)
<ul style="list-style-type: none"> To make binding decisions consenting to, or refusing, medical treatment offered to you in the future 	<ul style="list-style-type: none"> Complete the instructional directive 	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

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.

Click here for a link to the appointment form or visit publicadvocate.vic.gov.au

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.

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.

You can choose who your medical treatment decision maker is by appointing someone to that role.

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 32.

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

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.

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.

* See the definition of 'appointed medical treatment decision maker' on page 32 for appointments that are recognised.

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 short form. If you wish to appoint more, use the long version of the form.

If you have decision-making capacity but cannot physically sign, there is a version of the form where 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](#) that is available on 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 33 for a fact sheet for your witnesses that explains their role).

[Click here](#) for a link to the the appointment form or visit publicadvocate.vic.gov.au



□ **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 39 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: myhealthrecord.gov.au

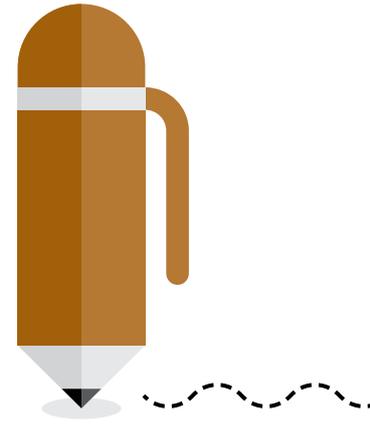
Note about previous appointments

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 32).





02



Advance care directive

In this section find:

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

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

Click here for a link to the advance care directive form or visit publicadvocate.vic.gov.au

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: 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 15 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, [click here](#) for a link to the form or visit **publicadvocate.vic.gov.au**

Use the instructions overleaf to complete the form.

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 that allows someone else to sign at your direction. ([Click here](#) for a link to the advance care directive form.)



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.

(Information on the OPA website 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

To identify your medical treatment decision maker, see page 9.

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 32 for more information).

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.

See the My Values website (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 (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.

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.				

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 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.

If you have decision-making capacity to make the advance care directive but cannot physically sign the form, there is a version of the form that you can use.

Information for witnesses

To help your witnesses understand their role, OPA has a fact sheet for witnesses. (See page 35).

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 **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.





Guide to enduring powers of attorney

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.

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.

Click here for a link to the appointment form or visit
publicadvocate.vic.gov.au

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 financial and/or 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. One way is to involve other people in the use of the power (for example, by appointing more than one attorney or by requiring your attorney provide information to a trusted person). This and other tips are described in the booklet *You Decide Who Decides* available on the OPA website.

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 32 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.

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

Click here for a link to the the appointment form or visit **publicadvocate.vic.gov.au**

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. The short form allows you to appoint one attorney and up to two alternative attorneys. If you wish to appoint more attorneys, use the long version of the form.

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 decision-making capacity but cannot physically sign the form and need someone to sign the form at your direction, the form has an option for this.

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).

[Click here](#) for a link to the the appointment form or visit publicadvocate.vic.gov.au

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 fact sheet on page 41 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 31 for information about certified copies).

Tips for making your enduring power of attorney



Find sample wording and helpful tips in the publication **You Decide Who Decides** available on the OPA website.

You may find it helpful to have the advice of a lawyer with knowledge of this area of law. (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.





[Click here](#) for a link to the the appointment form or visit publicadvocate.vic.gov.au

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 fact sheet, 'Information for witnesses', on page 37 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.

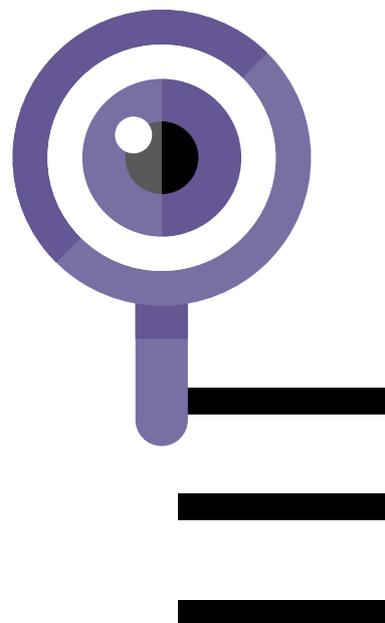
Information for your attorneys

You will find a fact sheet on page 41 with information for your attorneys. They should read this before they sign the form so that they understand their role and responsibilities.

OPA's *Guide for attorneys*, available on the OPA website, has more detail to guide them in the role.

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

Useful information



In this section find information about:

- ▶ who can be your authorised witness p. 31
- ▶ who can certify copies of the documents p. 31
- ▶ the meaning of words used in this booklet p. 32
- ▶ 'Before you sign' checklist p. 43
- ▶ how you can cancel the documents and when they end p. 45
- ▶ where to go for help and to find more information p. 45

Also find:

- ▶ Information for your witnesses p. 33-38
- ▶ Information for your medical treatment decision maker p. 39
- ▶ Information for your attorney(s) p. 41

For more information, visit
publicadvocate.vic.gov.au

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 fact sheets on pages 33 to 38 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 justice.vic.gov.au/affidavit

Certifying copies

People who are authorised to witness affidavits or statutory declarations 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.

For the list of people who can certify copies of original documents see justice.vic.gov.au/certifiedcopies

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 at justice.vic.gov.au/justices

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 in the fact sheets for witnesses on pages 33-38.

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.

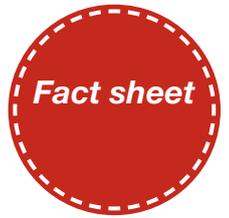
personal matters: any matter relating to the principal's personal or lifestyle affairs. Personal matters include any legal matter that relates to the principal's personal or lifestyle affairs. Examples of personal matters include where and with whom the principal lives and persons with whom the principal 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:

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.

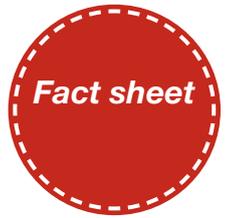
Interpreters

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



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:

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.

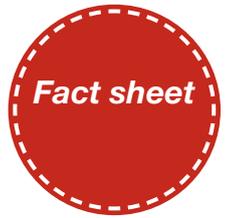
Interpreters

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
Decision-making capacity	That the person appears to have decision-making capacity at the time of signing in relation to each statement in the directive
Understands nature and effect	That the person appears to understand the nature and effect of each statement in the advance care directive
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 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:

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 has decision-making capacity but cannot physically sign, there is a section of the form where they can direct someone else to sign on their behalf in their presence and the presence of their witnesses.

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]

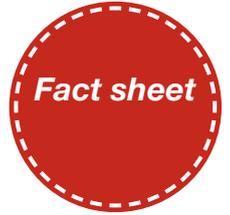
- is not an attorney of the principal.

[Witnesses signature]

What witnesses certify	Enduring power of attorney
Decision-making capacity	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
Understands nature and effect	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)
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 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:

publicadvocate.vic.gov.au

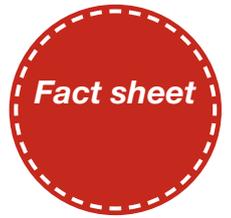


If you are asked to make a medical treatment decision that relates to treatment for mental illness, contact OPA for more information.





Information for attorneys



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 Office of the Public Advocate website at 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 **publicadvocate.vic.gov.au**

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



Before you sign



Checklist

As part of planning for your future decision-making you may decide to complete legal documents.

For example, in Victoria you may choose to complete an:

- appointment of medical treatment decision maker
- advance care directive
- enduring power of attorney.

Alternatively, or in addition, you may choose to appoint someone to support you to make decisions by appointing a:

- supportive attorney
- medical support person.

See the *Side by Side* guide for more information about supported decision-making appointments.

Some people will choose to complete a combination of these documents. Others may choose to complete none.

Do what is best for you; this will depend on your circumstances.

If you choose to complete legal documents

If you choose to complete legal documents, you may want to get help from a lawyer to complete the forms, or complete the forms yourself.

If you choose to go to a lawyer, look for one who understands this area of law. If you go to a lawyer, there will be a cost.

The Office of Public Advocate (OPA) has a checklist called 'Questions for your lawyer' that can help you prepare for your appointment. (Find this checklist on the OPA website).

If you choose to do-it-yourself

If you choose to complete the form(s) yourself, make sure you understand the powers you are giving, how to complete the form(s), and the witnessing requirements.

Below is a checklist with some things to think about before you sign. It is not a complete list, but is to help you think carefully before you sign.

If there is a question you do not feel able to answer, you may wish to get more information.

Find information about planning for your future decision-making on the OPA website (publicadvocate.vic.gov.au) in:

- the *You Decide Who Decides* guide
- the *Side by Side* guide
- OPA's advance planning fact sheets.

You might also choose to get advice from a lawyer.

Supported decision-making

- Have you thought about appointing someone who can support you to make decisions, including the benefits and risks of this?
- For example, do they have the skills, time and interest, and are you comfortable with them accessing personal information to support you?

Medical treatment decision maker

- Do you know what happens if you do not appoint a medical treatment decision maker — do you know who, by law, would be able to make decisions for you?
- Do you know what types of medical treatment decisions your medical treatment decision maker could make?

Advance care directive

- Do you know the difference between a values directive and an instructional directive in an advance care directive?
- If you make an instructional directive, do you know whether your health practitioners are required to follow it?
- Have you discussed the benefits/risks in making an instructional directive with your health practitioner(s)?
- Are there really any risks in making a values directive?
- If you make an advance care directive, do you know who you should give copies to and where you should keep the originals?
- If you have previously had mental health concerns, have you considered documenting your preferences and values for any treatment for mental illness in an advance statement as well as in an advance care directive?

Enduring power of attorney

Enduring power of attorney forms can be complex to complete as there are many options to consider.

The checklist below is to help you make an enduring power of attorney that:

- reflects your wishes
- includes conditions to reduce the risk of things going wrong.

Find helpful tips for making an enduring power of attorney in the *You Decide Who Decides* guide on the OPA website.

Where to start

- Have you had a discussion with those close to you?
- Have you decided that making an enduring power of attorney is right for you?

Choosing someone you trust to make decisions for you

- Have you considered what qualities are important to you when choosing an attorney?

- Do you trust the person to make decisions as you would like them to?
- Have you discussed the appointment and your wishes with that person?
- Is that person willing to take on the role and listen to what you want?

Deciding what powers to give

- Have you decided what powers to give to your attorney?

Deciding when the powers should start

Have you decided when the powers will start?

Helpful tips

Have you considered:

- appointing more than one attorney to act jointly (together)?
- appointing more than one attorney to act jointly and severally (together or alone) or as a majority?
- including an instruction that your attorney provide reports to another trusted person?
- authorising your attorney to disclose confidential information?
- including an instruction requiring your attorney to obtain an independent assessment of your decision-making capacity?
- including an instruction that another person is notified before the power is used for the first time?
- including other conditions and instructions to your attorney?
- whether you want to authorise a conflict transaction? For example, allowing a person to live in your house free of charge.
- whether you want to place any limits on the gifts that your attorney can make?

Find more information on the OPA website or call OPA's Advice Service. 
publicadvocate.vic.gov.au
Phone: 1300 309 337.

When does a directive or appointment end?

	Advance care directive	Medical treatment decision maker appointment	Enduring power of attorney appointment
When you make a new one?	Yes	No, but you can revoke (cancel) previous appointments using the appointment form in this booklet.	Yes, unless you specify otherwise.
When you revoke the appointment while you have decision-making capacity to do so?	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.
Ends when VCAT cancels it?	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.
Ends when all the people you appointed are unable (or no longer eligible) to act?	Not applicable. You do not appoint anyone when you make an advance care directive.	Yes	Yes
Ends when you die?	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
publicadvocate.vic.gov.au

Better Health website

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
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
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
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.

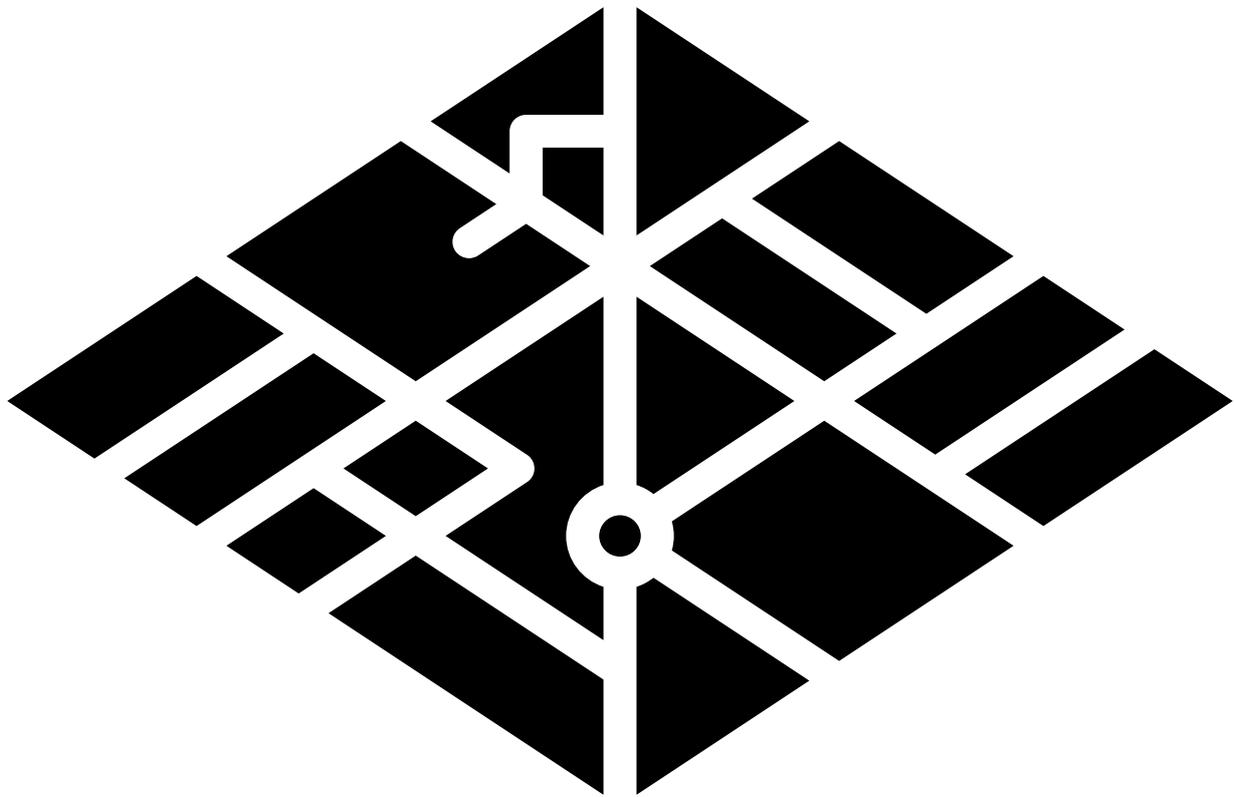
Tel: 131 450

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:
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
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