

Advance care planning and the law: **Victoria**

Advance care planning is about your future health care. It gives you the opportunity to plan for what you would want or not want, if you become unable to make or communicate your own preferences. This factsheet is about advance care planning, Victorian (VIC) law and the recommended documentation.

Why should I think about advance care planning?

To make medical decisions, you must have decision-making capacity. If illness or serious injury (temporary or permanent) prevents you from making decisions about your health care, advance care planning makes sure that your values, beliefs and preferences for treatment and care are understood and respected. Completed and accessible Advance Care Directive documentation allows you to be heard and is important to your treating team and others.

How to do advance care planning

Advance care planning is an ongoing process with a number of steps.

Be open

- Think and talk about your values, beliefs and preferences for current and future health care.
- Choose a substitute decision-maker: someone you trust to speak for you if you became very sick and couldn't speak for yourself. Ask them if they are prepared to be your substitute decision-maker.

Be ready

- Talk about your values, beliefs and preferences with your substitute decision-maker and other people involved in your care such as family, friends, carers and doctors.
- Write your preferences and/or appoint your substitute decision-maker using the recommended Advance Care Directive document(s).

Be heard

- Share your Advance Care Directive documentation with your substitute decision-maker, family, friends, carers and your doctors. This will help ensure everyone knows what you want.
- Upload your completed documents to MyHealth Record.
- Review your plan regularly and update it as needed.

Who will speak for you?

If you become unable to make decisions about your own health care, a substitute decision-maker will make decisions on your behalf.

Your substitute decision-maker may be:

- Chosen and appointed by you
- Appointed for you by a guardianship tribunal
- Identified for you by a default list under legislation.

Your substitute decision-maker is the first of the following who is available, willing and able to make decisions.

1. A **medical treatment decision-maker(s)** appointed by you
2. A **guardian** appointed by the Victorian Civil and Administrative Tribunal (VCAT) to make decisions on your medical treatment
3. A person with a close and continuing relationship with you (**medical treatment decision-maker**), chosen in the following order:
 - a. Your spouse or domestic partner
 - b. Your primary carer
 - c. Your adult child (eldest to youngest)
 - d. Your parent (eldest to youngest)
 - e. Your adult sibling (eldest to youngest).

Advance Care Directive – appointing your substitute decision-maker

In Victoria, the substitute decision-maker appointed by you is a **medical treatment decision-maker**.

You may want to choose and appoint one or more adults to this role. To do this you need to complete the *Appointment of a medical treatment decision-maker* form. The form has specific requirements for completion and witnessing. Your chosen medical treatment decision-maker must accept this role by signing the form.

Your medical treatment decision-maker can consent to or refuse treatment on your behalf. They must act in accordance with any lawful limitations or conditions contained in the form. They must make the decision they believe you would make if you could make

your own decision. For this reason, it is helpful to talk to them about what is important to you and any preferences you have.

Note: If you have appointed a medical enduring power of attorney, an enduring power of attorney, or enduring power of guardianship made prior to 12 March 2018, these are still valid.

Advance Care Directive – preferences for care

In your Advance Care Directive, you can write either or both:

- An instructional directive with legally binding instructions about future medical treatment you consent to or refuse.
- A values directive which documents your values and preferences for your medical treatment decision-maker to consider when making decisions for you.

Medical treatment includes treatment for physical and/or mental conditions.

You should use the recommended form *Advance Care Directive for adults* or similar. The form has specific instructions for completion that need to be followed. It needs to be witnessed by a medical practitioner and another adult. For other documentation to meet the formal requirements of an Advance Care Directive, it must be in English, include your full name, address, date of birth, be signed by you and dated, and meet witnessing requirements. Commonly, these documents also include details regarding your organ donation status.

Upload your completed medical treatment decision-maker appointment form and your Advance Care Directive to your My Health Record.

Note: A valid refusal of medical treatment certificate made prior to 12 March 2018 and signed by a doctor is still valid.

Support person

If you require support to make and/or communicate your own medical treatment decisions while you have decision-making capacity, a support person can help represent your interests. You can appoint a support person by completing the *Appointment of a Support Person* form.

Making changes

We recommend that you review your decisions and documents regularly. This is particularly important if there is a change in your health, personal or living situation. You can update your Advance Care Directive

and/or your appointment of a medical treatment decision-maker at any time providing you still have decision-making capacity.

Your Advance Care Directive ends when you complete a new Advance Care Directive, you revoke it, it expires (if an expiry date is included) or you die. You can amend the document by writing on the face of the document. You should let others know of any changes, and provide updated copies.

Your medical treatment decision maker(s) appointment(s) ends if you revoke it, if the people appointed are unable to act, resign their appointment, or if you die.

Your support person appointment(s) ends if you revoke it, if the people appointed are unable to act, resign their appointment, if you lose capacity, or you die.



Will my Advance Care Directive apply in other states and territories?

In general, a valid Advance Care Directive will apply in other places in Australia, although there may be some limitations and additional requirements.

Similarly, an appointment of a medical treatment decision-maker will usually apply, but there is variation in the laws within Australia. It is recommended that you obtain specific advice from the Office of the Public Advocate or equivalent in the relevant state or territory.

If you are permanently moving state or territory, it is recommended you update your documentation using the recommended form(s) in consultation with your doctor, substitute decision-maker and/or support person.

Where can I get more information?

Advance Care Planning Australia

advancecareplanning.org.au

National Advisory Service: 1300 208 582

learning.advancecareplanning.org.au

[Forms for your state or territory](#)