

Advance care planning and the law : Victoria

Advance care planning is about your future health and personal care. It gives you the opportunity to plan for what you would want, if you were unable to say it yourself. This fact sheet is about advance care planning and Victorian (VIC) law.

Why should I think about advance care planning?

If illness or serious injury (temporary or permanent) prevents you from making decisions about your health or personal care, advance care planning makes sure that your beliefs, values and preferences for treatment and care are understood and respected.

How to do advance care planning

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

Be open

- Think about your beliefs, values and preferences for current and future health and personal care.
- Choose a substitute decision-maker: someone to speak for you if you become very sick and are not able to speak for yourself.

Be ready

- Talk about your beliefs, values and preferences for current and future health and personal care: talk with your substitute decision-maker(s), family, friends, carers and doctors.
- Write your plan (from March 2018 an Advance Care Directive) and/or formally appoint your substitute decision-maker (a medical treatment decision-maker).

Be heard

- Share your document(s) with others: a written plan makes sure that your substitute decision-maker(s), family, friends, carers and doctors know what you want.
- Review your plan regularly: consider if it needs to be updated and where it is stored.

Who will speak for you?

If you are unable to make decisions about your own health care, substitute decision-makers can make decisions on your behalf.

Your substitute decision-maker may be:

- nominated by you (an **agent or attorney or medical treatment decision-maker**)
- appointed by a tribunal (a **guardian**), or
- appointed by default under legislation (a **person responsible**, from 12 March 2018 **medical treatment decision-maker**).

Agent or attorney / medical treatment decision-maker

Until 12 March 2018, an agent or attorney is appointed by completing an Enduring Power of Attorney (Medical Treatment) form.

From 12 March 2018, an appointed medical treatment decision-maker (MTDM) is appointed by completing an Advance Care Directive. You can appoint more than one person to this role. The person can make decisions relating to refusal/withdrawal of treatment as well as give consent for procedures.

Guardian

A guardian is a person appointed by the Victorian Civil and Administrative Tribunal.

A guardianship order may be continuing or temporary and may be full or limited.

You may choose to do some or all of these steps.

For more information, please visit

advancecareplanning.org.au

Advance Care Planning Australia

BE OPEN | BE READY | BE HEARD

Medical treatment decision-maker

From 12 March 2018, a medical treatment decision-maker is the person designated under Victorian law if there is no guardian, agent, attorney or appointed medical treatment decision-maker.

Your medical treatment decision-maker would be a person with a close continuing relationship to you, chosen in the following order:

1. your spouse or domestic partner
2. a primary carer
3. the first of the following:
 - i) an adult child (oldest if more than one)
 - ii) a parent (oldest if more than one)
 - iii) an adult sibling (oldest if more than one).

(This means your primary carer would be chosen as your medical treatment decision-maker if you don't have a spouse or domestic partner, and an adult child would be chosen if you don't have a primary carer or a spouse/domestic partner.)

Your formal advance care planning document: Refusal of Treatment Certificate

The Refusal of Treatment Certificate is the form prescribed by Victorian law until new laws come into effect on 12 March 2018. The Refusal of Treatment Certificate must be on the prescribed form and witnessed by a medical practitioner and another adult. This certificate remains binding after 12 March 2018 unless revoked.

Advance Care Directive

The Advance Care Directive is a formal document prescribed by Victorian law from 12 March 2018. It only comes into effect if you are unable to make your own decisions.

Your Advance Care Directive allows you to refuse or withdraw medical treatment and consent to commencement of treatments. The directive allows for instructional and values directives.

You should use the [recommended form](#) or similar when completing your directive. To be legally binding, the Advance Care Directive must be witnessed by a medical practitioner and another adult.

We recommend that you regularly review your Advance Care Directive. Usually, health professionals are obliged to comply with the preferences stated in your Advance Care Directive, so ensure it is kept up to date.

If you want to change your Advance Care Directive, make a new one to revoke the existing plan. We encourage you to upload your Advance Care Directive to My Health Record and give a copy to your substitute decision-maker, GP and/or hospital.

What about mental health matters?

In Victoria, a mental health patient can make a separate 'advance statement' in relation to treatment preferences, under the Mental Health Act 2014. Alternatively, the Advance Care Directive can include preferences relating to mental health treatment.



Will my Advance Care Directive apply in other states?

An Advance Care Directive made in Victoria will apply in:

- South Australia (if it complies with South Australian law).
- Northern Territory (as long as the substitute decision-maker works within Northern Territory requirements).
- Queensland (if it meets the Queensland Advance Health Directive requirements).
- Western Australia (if an order is made by the State Administrative Tribunal to recognise the plan).

Please contact the Office of the Public Advocate for more information if you wish.

Where can I get more information?

Advance Care Planning Australia:

advancecareplanning.org.au

National Advisory Service: 1300 208 582

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This publication is general in nature and people should seek appropriate professional advice about their specific circumstances, including advance care planning legislation in their State or Territory.