

Sladen drives
Legal results

Information about appointing a Medical Treatment Decision Maker

Medical decision making laws changed on 12 March 2018 with the commencement of the Medical Treatment Planning and Decisions Act (Vic) 2016 (Act). The appointment of a medical treatment decision maker (MTDM) is made pursuant to the Act. A medical enduring power of attorney made before this change in the law is still recognised and valid under the Act.

What is MTDM?

The Act allows you to plan ahead and take control of who has legal authority to make medical treatment decisions for you if you are unable to do so for yourself in the future.

If you appoint a MTDM in accordance with the Act your MTDM has authority to make medical treatment decisions on your behalf if you have lost decision-making capacity for the particular decision that needs to be made.

The MTDM is required to make the decision that he or she reasonably believes you would have made if you had decision-making capacity.

If you have appointed more than one person as a MTDM then the first person named in the document who is reasonably available, and willing and able to act at the particular time, can make the decision.

What decisions can a MTDM Make?

A MTDM can consent to, or refuse the commencement or continuation of, medical treatment or a medical research procedure on your behalf.

Medical treatment includes:

- treatment with physical or surgical therapy;
- treatment for mental illness;
- treatment with -
 - prescription pharmaceuticals; or
 - an approved medicinal cannabis product;
- dental treatment; and
- palliative care.

How do I record my wishes about medical treatment?

In Victoria an adult person who has decision-making capacity can make an **advance care directive**.

An advance care directive sets out binding instructions, or preferences and values, in relation to medical treatment.

An advance care directive may contain either or both of the following:

- an **instructional directive**, which is an express statement about medical treatment that you consent to or refuse the commencement or continuation of; or

Important

This document is a guide only. It is not comprehensive legal advice.



- a **values directive**, which is a statement about your preferences and values to be used as the basis upon which you would like any medical treatment decisions to be made on your behalf.

An advance care directive has specific witnessing requirements. One of the witnesses must be a registered medical practitioner.

What is the process for making medical treatment decisions?

If you have lost decision-making capacity and you have made an instructional directive that includes directions about the proposed medical treatment then your health practitioner must follow your directive as far as reasonably practicable.

If you have made an advance care directive, but it does not include a relevant instructional directive, then your MTDM will be asked to make the decision.

The MTDM must:

- first consider any valid and relevant values directive;
- next consider any other relevant preferences that you have expressed and the circumstances in which the preferences were expressed; and
- if he or she is unable to identify any relevant preferences, consider your values, whether expressed by you or inferred from your life.

The MTDM is also required to consider the likely effects and consequences of the medical treatment, including its likely effectiveness, and whether these are consistent with your preferences and values.

The MTDM must also consider alternative treatment options, including not providing treatment, that would be more consistent with your preferences or values.

If your preferences and values cannot be ascertained, the MTDM must make a decision that promotes your personal and social wellbeing, ensuring that your individuality is respected.

The MTDM is also required to consult with any person the MTDM reasonably believes you would want to be consulted in the circumstances.

The MTDM must act in good faith and with due diligence.

what about palliative care?

A MTDM cannot refuse palliative care.

Palliative care is often provided to a person nearing the end of their life for the relief of pain, suffering and discomfort and includes the reasonable provision of food and water.

You might wish to include statements about palliative care in your values directive. Your health practitioner needs to ensure that the palliative care provided is consistent with your preferences and values.

Revocation

You can revoke the appointment of a MTDM at any time if you have capacity.

The Victorian Civil & Administrative Tribunal also has the power to cancel an appointment, review a medical treatment decision (that is, it can uphold or set aside a decision) and provide advice or direction about a person's medical treatment or an advance care directive.

Caution

If you would like to appoint someone to make decisions in relation to financial and personal matters on your behalf then separate enduring powers of attorney will also need to be prepared. Please see our brochures Information to persons appointing enduring powers of attorney (financial matters) and Information to persons appointing enduring powers of attorney (personal matters) for more details.

The information in this document contains general information only. It is not comprehensive legal advice. You should consult us about appointing a MTDM.

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