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# Information for Medical Treatment Decision Makers

You have been appointed as a medical treatment decision maker (MTDM), or one of two or more MTDM's, pursuant to the Medical Treatment Planning and Decisions Act (Vic) 2016.

If there is more than one person appointed 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.

As a MTDM for a person you have authority to make medical treatment decisions on behalf of that person if he or she has lost decision-making capacity for that decision.

You are required to make the decision that you reasonably believe the person would have made if the person had decision-making capacity, not what you would want or what you think is best in the circumstances.

If you accept the appointment you must sign a statement of acceptance which is attached to the document. The statement of acceptance states that you:

- understand the obligations of an appointed MTDM; and
- undertake to act in accordance with any known preferences and values of the person; and
- undertake to promote the personal and social wellbeing of the person, having regard to the person's individuality; and

- have read and understand any advance care directive that the person has given before, or at the same time as, the appointment.

An advance care directive is a document signed by a person which contains either or both of the following:

- an instructional directive, which sets out binding instructions about medical treatment that the person consents to or refuses the commencement or continuation of; or

a values directive, which is a statement about the person's preferences and values to be used as the basis upon which the person would like any medical treatment decisions to be made for him or her.

## What decisions can a MTDM make?

As a person's MTDM you can consent to, or refuse the commencement or continuation of, medical treatment or a medical research procedure on behalf of the person.

- 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.

### Important

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



### **What is the process for making a medical decision for a person who has lost decision capacity?**

If the person has not made an instructional directive in relation to a medical treatment decision, then you will be asked to make the decision.

There is a process that you are required to follow when making a medical treatment decision.

You must:

- first consider any valid and relevant values directive made by the person;
- next consider any other relevant preferences that the person has expressed and the circumstances in which the preferences were expressed; and
- if you are unable to identify any relevant preferences, consider the person's values, whether expressed by the person or inferred from the person's life.

You are also required to consider the likely effects and consequences of the medical treatment, including the likely effectiveness, and whether these are consistent with the person's preferences and values.

You must also consider alternative treatment options, which might include not providing treatment, that would be more consistent with the person's preferences or values.

If the person's preferences and values cannot be ascertained, you must make a decision that promotes the person's personal and social wellbeing, ensuring that you respect the person's individuality.

The law also requires you to consult with anyone you believe the person would want consulted to assist you to make an informed decision.

### **What about palliative care?**

A MTDM cannot refuse palliative care for the person.

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

The person may have included statements about palliative care in his or her values directive. The person's health practitioner needs to ensure that the palliative care provided is consistent with the person's preferences and values.

### **Revocation & Resignation**

The person may revoke the power given to you at any time provided the person has decision making capacity in respect of the revocation and signs an appropriate document. If that occurs, your authority to make decisions is terminated.

You can resign from the appointment if you do not want to act. If you resign you must take all reasonable steps to inform the person who made the appointment and any other appointed MTDM's. The resignation must be in writing, signed and dated, and witnessed by one adult witness.

The Victorian Civil & Administrative Tribunal has the power to cancel your 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**

The information in this document contains general information only. It is not comprehensive legal advice.

Sladen Legal  
Tower 2 | Collins Square  
Level 22, 727 Collins Street  
Melbourne 3008  
Victoria Australia

PO Box 633  
Collins Street West  
Victoria 8007

T +61 3 9620 9399  
F +61 3 9620 9288

sladen.com.au

