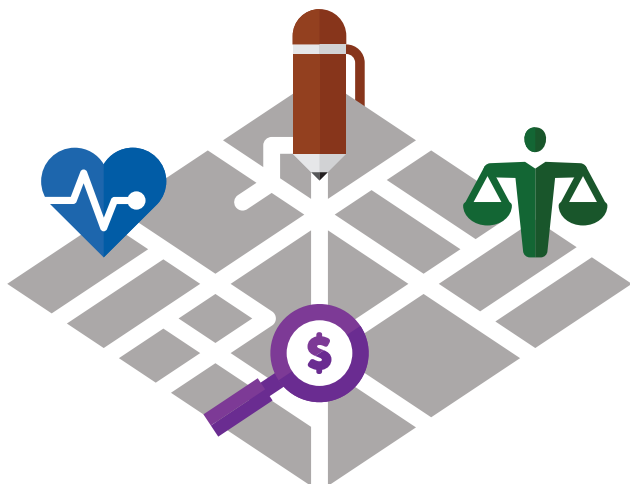




Office of the Public Advocate



Take Control

of your future decision-making

An introduction

Planning ahead

Your medical treatment decision maker

Advance care directive

Enduring power of attorney

Support for decisions

February 2020

Forms available at publicadvocate.vic.gov.au

The information in this guide relates to adults and to Victoria.

18+

If you are thinking of making documents to operate in other states, territories or countries, refer to their resources for information, as the legal requirements vary.

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.

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Jessica Ebert, *East Kew*

"I am an independent traveller. I love to draw maps of the places I know."

About the cover design

The cover design is a graphic treatment by Nicholas Hopkins of the artwork (at left) of Jessica Ebert exhibited at *CONNECTED* 2017, State Trustees' annual exhibition showcasing the work of emerging artists with a disability or an experience of mental illness.

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Why plan ahead?



Think about this...

What if an injury, illness or disability meant you needed support to make decisions? Who would you want to support you?

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?

This guide walks you through the process of planning for your future decision-making, and explains your options. This can include completing legal documents.

Sometimes people think they should start with the legal documents.

Instead, I encourage you to start by taking time to reflect on what is important to you, and having conversations with those close to you.

If you ultimately choose to complete legal documents, the time you spend planning will ensure these documents reflect what you really want.

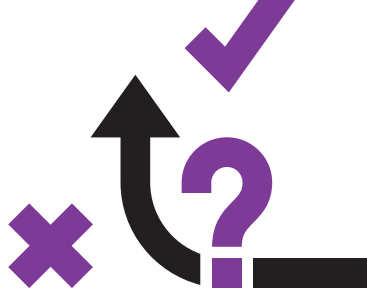
Colleen Pearce

Colleen Pearce
Public Advocate

Planning



The planning process



Planning for your future decision-making is about your important right, as an adult, to make your own decisions.

For this reason, only **you** can plan for **your** future decision-making. No one else can do this type of planning for you, although others can support you.

Taking time to work through the steps below is a good 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**

It is useful to know the options you have under the law in Victoria. You may choose to make use of some, all or none of these.

In broad terms, you can:

- appoint someone to support you to make decisions
- appoint a person (or people) to make medical, lifestyle or financial decisions for you in the future, if you do not have decision-making capacity to make the decision(s)
- include information for the people you appoint, or instructions or conditions
- make decisions in advance about medical treatment you consent to or refuse.

(For an explanation of decision-making capacity see page 23).

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.

The Office of the Public Advocate (OPA) website has tips for how to start a conversation with those close to you.

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 14).

If someone who does not know you needs to make a decision for you in the future, this information will be helpful.

□ 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 11 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.



2

SECTION 2

Your options



Your medical treatment decision maker



Identify

In Victoria, the person who has authority to make medical treatment decisions for you, if you are unable to, is called your medical treatment decision maker.

You may not have decision-making capacity to make the medical treatment decision because of an injury, illness or disability.

Medical treatment decision maker list

The Medical Treatment Planning and Decisions Act 2016 states who your medical treatment decision maker is.

They are the first person on the list on the next page who is:

- reasonably available, and
- willing and able to make the medical treatment decision.

1. Your appointed medical treatment decision maker*
2. A guardian appointed by VCAT to make decisions about your medical treatment
3. 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.

** This includes a valid appointment you made before the Medical Treatment Planning and Decisions Act commenced on 12 March 2018 (for example, someone appointed under an old medical enduring power of attorney).*



If you do not have a medical treatment decision maker, and are unable to make a decision about significant treatment, Victoria's Public Advocate will make the decision on your behalf.



Choose

You can choose your medical treatment decision maker by appointing someone to the role. You can also appoint a back-up(s). To do this you must have decision-making capacity to make the appointment and must complete the form correctly, including by signing in front of the required witnesses.

When do they make decisions?

If you do not have decision-making capacity to make a medical treatment decision, your medical treatment decision maker may need to make it for you.

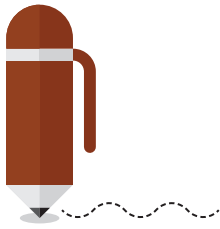
Your health practitioner will need to ask your medical treatment decision maker to make a decision unless:

- it is an emergency
- you have consented to, or refused, the treatment in an instructional directive in an advance care directive (see page 14).

How do they make decisions?

They must make the decision they reasonably believe you would make if you had decision-making capacity. It is helpful if you let your medical treatment decision maker know what is important to you (your values), and any preferences you have.

Advance care directive



In Victoria, you can complete an advance care directive in which you can:

- record your values and preferences for your medical treatment (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**).

You must have decision-making capacity to make the directive and must complete the form correctly, including by signing in front of the required witnesses (one must be a registered medical practitioner).

Values directive

If you choose to record your values and preferences in a values directive, this can help your medical treatment decision maker make the decision you would want. (If you do not have a medical treatment decision maker, it can help Victoria's Public Advocate to do this).

Instructional directive

In an 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.

You should **only** complete an instructional directive if you know the type of medical treatment and the circumstances in which you want, or do not want, the treatment in the future, as it is a legally binding statement.



When is it used?

Your advance care directive will be used if, at sometime in the future, you do not have decision-making capacity to consent to or refuse medical treatment that is offered to you.



Enduring power of attorney



An enduring power of attorney is a legal document that lets you appoint a person, or people (your 'attorneys'), to make certain decisions on your behalf.

These appointments are made under the Victorian *Powers of Attorney Act 2014*.

To be able to make one, you must have decision-making capacity to do so.

No one else can make an enduring power of attorney on your behalf. It is an offence if anyone dishonestly pressures you to make one.



Financial and personal matters

You can choose to give your attorney(s) power to make decisions about your financial matters, personal matters, or both. Or you can give your attorney(s) power to make decisions about specific financial or personal matters.

An example of a financial matter is using your money to pay your expenses.

Examples of personal matters are where you live or services you need, but does not include medical treatment decisions.

You can include conditions on the exercise of your attorneys' power, and can give instructions.

Who to appoint?

Choosing your attorney(s) is your most important decision.

If there is no one you trust to follow your wishes, you can appoint someone independent, such as a lawyer or a trustee company for financial matters. Or you may choose not to appoint anyone.

There are safeguards if you do not complete one. If, in the future, a decision needs to be made on your behalf, VCAT can appoint someone with authority to do this, such as a family member, the Public Advocate, or a trustee company.

When the role starts

You choose when your attorney(s)' role starts. This could be immediately, or when you cease to have decision-making capacity for the matter. For example, you may choose for it to start immediately for financial matters if you want help to manage your finances while you are able to make these decisions. Where this is the case, speak to your attorney about how you want them to act.

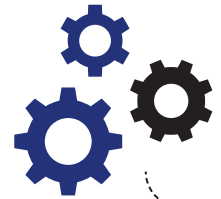
Information for your attorney

Your attorney(s) should understand their role and duties before they agree to be your attorney. See the OPA website for information about this.

Reduce the risk of things going wrong

OPA's guide, *You Decide Who Decides*, has tips to reduce the risk of things going wrong. See the OPA website: publicadvocate.vic.gov.au

Support for decisions



In the future, you may sometimes want support to make some decisions.

Supported decision-making is about your right, as an adult, to:

- make your own decisions
- get the support you need to do so.

You have the right to make your own decisions while you have decision-making capacity to do so.

Examples of ways a person can have support to make decisions are:

- additional time to make the decision
- information explained in a way they can understand
- support of another person.

Support of another person

In the future, you may want another person to support you to make decisions. For example, to:

- help you to get information
- help explain information
- help you to communicate a decision
- help you to carry out a decision.

Appointing someone to support you to make decisions

In Victoria you can complete legal documents where you appoint a person to support you to make decisions.

You can give them authority to support you to make, communicate, and act on your decisions.

This can be helpful:

- because it means organisations must recognise the authority of the person who supports you to make decisions
- if the person supporting you needs to get information to help you to make a decision (for example, information from your doctor or your bank).

Types of appointments

You can appoint a:

- **medical support person** for support to make medical decisions
- **supportive attorney** for support to make other types of decisions, such as about financial or personal matters.

Other ways to have support

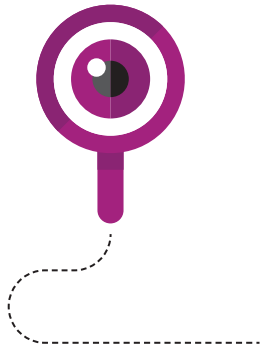
There may be other steps you can take to make it easier for you to manage your affairs that do not involve appointing someone. For example, someone who sits with you to help you with your bills.



About the forms



Options for completing the forms



You may choose to get help from a lawyer or complete the forms yourself.

The help of a lawyer

An enduring power of attorney gives significant authority to another person so if you choose to complete one, you may find it helpful to talk about safeguards with a lawyer.

If you choose to go to a lawyer, look for one who understands this area of law. Use OPA's 'Questions for your lawyer' checklist to prepare for your appointment (available on the OPA website).

A lawyer can also help you complete the form(s) to reflect your wishes. If you go to a lawyer, there will be a cost.

If you do-it-yourself

If you choose to complete the form(s) yourself, you can use the forms developed by the Victorian Government.

Be aware, if you choose this option, make sure you understand the powers you are giving and how to complete the form(s). Read OPA's 'Before you sign' checklist (see the OPA website).



For links to the forms, instructions, tips, the 'Before you sign' checklist, and information about interpreters, visit:

publicadvocate.vic.gov.au

About decision-making capacity

To complete the legal documents described in this booklet, you need to have decision-making capacity to do so.

Decision-making capacity



Adults are presumed to have decision-making capacity unless there is evidence to the contrary.

A person has decision-making capacity to make a decision if they are able to understand the information relevant to the decision and the effect of the decision, retain the information to the extent necessary, use or weigh the information, and can communicate their decision in some way.

Witnessing requirements

You will need to sign the form(s) in front of the required witnesses.

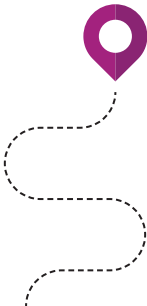
The table on the next page lists the witnessing requirements for:

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

Your witnesses must certify that you appeared to:

- have decision-making capacity to make the legal document
- understand the consequences of what you are signing
- sign freely and voluntarily.

Visit the OPA website for the witnessing requirements for other documents.



WITNESSING REQUIREMENTS TABLE

Name of form	How many witnesses?	Who can be your authorised witness?	Who can't be a witness for you?
Appointment of medical treatment decision maker	Two adult witnesses	One witness must be: • a registered medical practitioner or • authorised to witness affidavits (for example, a practising lawyer or Justice of the Peace).	Neither witness can be a person who you are appointing as your medical treatment decision maker.
Advance care directive for adults	Two adult witnesses	One witness must be a registered medical practitioner.	Neither witness can be someone who is an appointed medical treatment decision maker for you.
Enduring power of attorney appointment	Two adult witnesses	One witness must be: • a registered medical practitioner or • authorised to witness affidavits.	Neither witness can be: • a relative of yours • a person who you are appointing as an attorney or alternative attorney, or any of their relatives • a care worker or accommodation provider of yours.

For the forms and more information



Office of the Public Advocate (OPA)

For more information, including links to the forms, helpful checklists, tips, and ways to get help, such as how to find a lawyer, visit the OPA website:

publicadvocate.vic.gov.au

Level 1, 204 Lygon St
Carlton VIC 3053



OPA Advice Service: 1300 309 337
(Inform reception if you require
an interpreter)

TTY: 1300 305 612

Fax: 1300 787 510

If you are deaf or have a hearing or speech impairment



Use the National Relay Service
to phone.

For more information visit:

relayservice.com.au



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