



Appointment of Medical Treatment Decision Maker (VIC)

Who will make decisions about your health and welfare when you can't?

An **Appointment of Medical Treatment Decision Maker** is a legal document that enables you to appoint someone to make medical and lifestyle decisions on your behalf when you are unable to.

Your Medical Treatment Decision Maker can make decisions as to what health care you will receive, who will be your treating doctor etc. Certain medical treatment can only be approved by the Guardianship Tribunal, and your Medical Treatment Decision Maker cannot override your wishes in refusing medical treatment (without the approval of the Tribunal).

Everyone hopes that they will always be capable of making decisions about their own welfare. However, sometimes it is not possible for people to make their own decisions. For example, if someone becomes seriously ill, is badly injured, is rendered unconscious or suffers from a mental health condition, it may be impossible for them to make decisions for themselves. Appointing a Medical Treatment Decision Maker is vital to deal with these sorts of situations, so that there is always someone you trust to make the important decisions for you.

Many people think that they can just make a Medical Treatment Decision Maker when they become ill or are injured. Unfortunately, that is not possible. If a person has already lost the capacity to make their own decisions, they have also lost the legal capacity to appoint a Medical Treatment Decision Maker.

The appointment of a Medical Treatment Decision Maker only takes effect during any time that you have lost your capacity to make decisions.

An assessment of a person's decision-making capacity includes the following considerations:

- Whether the person can understand information relevant to the decision;
- Whether the person can retain information over a short period of time;
- Whether the person can use relevant information to arrive at a decision; and
- Whether the person can communicate their decision in any form.

It will be up to your Medical Treatment Decision Maker to consult with a health practitioner about your capacity to make decisions before taking steps on your behalf.

The person you choose to act as your Medical Treatment Decision Maker should be someone who you trust and who is capable of making decisions in your best interests as they will be make decisions on your behalf if you are unable to do so.

The person you appoint:

- Must be over 18 years of age;
- Must understand what the Medical Treatment Decision Maker is used for and when it will apply; and
- Cannot be responsible for providing treatment or care to you at the time of appointment (i.e. you cannot appoint your doctor or paid carer).



You may wish to appoint more than one Medical Treatment Decision Maker. If you appoint more than one, you will need to specify whether you want them to make joint or separate decisions.

You can document your personal preferences using an **Advance Care Directive (ACD)**. This is a legal document which allows you to document your preferences and wishes concerning your future health care, preferred living arrangements and/or other personal matters.

An ACD also allows you to specify any **binding provisions** you wish to put in place. A **binding provision** is a refusal to receive certain medical treatment and must be followed by your Medical Treatment Decision Maker and health practitioner. A binding provision can only be overridden if reasonable evidence exists to suggest you have changed your mind or the objection does not apply to the current circumstances. You are not able to specify any wishes, directions or binding provisions in your ACD that are unlawful or would require an unlawful act to be performed.

Both your Appointment of Medical Treatment Decision Maker and your ACD will need to be witnessed by a GP and an independent witness for them to be legally binding.

What types of decisions cannot be made by my Medical Treatment Decision Maker?

A Medical Treatment Decision Maker cannot make a Will for you, vote on your behalf, consent to marriage, manage your finances, transfer your property, or disregard any binding provisions you have stated in your ACD. The law also prevents your Medical Treatment Decision Maker from making any illegal decisions, refusing the provision of food or water to you, or refusing the provision of medicine to you to relieve pain or distress (palliative care).

An appointment of Medical Treatment Decision Maker does not cover decisions relating to your legal and financial affairs, or personal affairs that do not relate to medical treatment (such as where you live and activities you participate in). Accordingly, it is important that you also consider putting an **Enduring Power of Attorney** document in place to appoint someone to manage your legal, financial and personal affairs.

What happens if I do not appoint a Medical Treatment Decision-Maker?

If you do not appoint a Medical Treatment Decision Maker and then circumstances arise where one is needed, a family member or close friend may be asked to consent to or refuse health care on your behalf. You are not able to decide who will act, it will be determined by the Victorian Civil Administrative Tribunal.

What next?

If you would like to speak to someone about putting in place an Appointment of Medical Treatment Decision Maker, call us on **1300 654 590** or email us at wehelp@adlvlaw.com.au.

Further information can also be found on our website at www.adlvlaw.com.au.