



Enduring Power of Attorney (Medical Treatment)

Planning ahead for future medical treatment decisions

An enduring power of attorney (medical treatment) is a legal document where you (the donor) appoint someone (the agent) to make medical treatment decisions for you - like agreeing to medication or surgery.

Enduring means it continues (endures) when you are unable to make these types of decisions for yourself.

How does it work?

- You complete, sign and have witnessed an enduring power of attorney (medical treatment) form - giving power of attorney to someone you choose.
- Their power begins when you are unable to make decisions.
- Your agent's decisions have the same legal force as if you had made them yourself.

Why would I give someone this power?

We recommend everyone have an enduring power of attorney (medical treatment). It is the only way you can have control over who will make decisions on your behalf if you are ever unable to do so yourself. You could lose the capacity to make decisions permanently, such as through dementia or an acquired brain injury from a car accident, or temporarily, by becoming unconscious as a result of an illness.

What type of decisions can an agent make?

An agent can agree to or refuse medical treatment including your involvement in medical research. They can only refuse medical treatment if:

- the treatment would cause you unreasonable distress, or
- the agent reasonably believes that you would consider the treatment unwarranted.

An agent's decision takes precedence over those of an enduring guardian you may have appointed who has healthcare powers.

An enduring power of attorney (medical treatment) cannot be used to make financial, legal or guardianship decisions. For further information about these powers see our fact sheets, *enduring power of attorney (financial)* and *enduring power of guardianship*, or *Take Control (see below)*.

Are there medical decisions that my agent cannot agree to?

An agent cannot agree (consent) to the following medical procedures:

- those likely to lead to infertility
- termination of a pregnancy
- removal of tissue for transplant.

Before any of these procedures can be carried out, the agent **must** apply to the Guardianship List of the Victorian Civil and Administrative Tribunal (VCAT) for a decision.

Note: The agent cannot refuse medical treatment to alleviate pain or suffering when a person is dying (palliative care). See *refusal of medical treatment* fact sheet.

Who can appoint an agent?

You can appoint an agent if you are over 18 years of age and have the capacity to make the appointment.

What is capacity?

You have capacity when you have the ability to:

- understand
- retain
- believe
- evaluate (i.e. process) and
- weigh

the information which is relevant to appointing an agent. The relevant information includes:

- The powers of the agent
- That the power will operate if you lose the ability to make medical treatment decisions
- That you can revoke these powers while you have capacity
- Once you lose capacity you will not be able to supervise the use of the powers.

If you do not have sufficient capacity, the 'person responsible' (usually a close family member or unpaid carer) or a guardian appointed by the Guardianship List of the Victorian Civil and Administrative Tribunal (VCAT) can consent to medical treatment decisions for you. See *medical/dental treatment for patients who cannot consent and guardianship fact sheets*.



Choosing your agent

An agent must be over 18 years of age and have the capacity to be your agent. You can appoint any person you choose, as long as they agree to take on the role. They should be someone that you trust to respect and carry out your wishes. You can also choose to appoint a second person (an alternate agent). They can only make decisions on your behalf when the agent is unable to.

Responsibilities of the agent

The agent must:

- act in your best interests
- wherever possible, make the same decision that you would have made
- avoid situations where there is a conflict of interest.

To help the agent understand your views about possible medical procedures (e.g. the use of a life support system), we suggest you discuss this with them and write down your wishes.

When the donor dies, the enduring power of attorney (medical treatment) ends.

How do I make an enduring power of attorney (medical treatment)?

An enduring power of attorney (medical treatment) is easy to make. It does not have to be prepared by a lawyer.

Witnesses to the signing of the form have to be assured that you, as donor, know what you are doing (have capacity) in making the power of attorney. There are restrictions upon who can be a witness.

If there is any question about your capacity, an independent medical assessment should be obtained. It would be wise to seek legal advice.

Forms are available from most newsagents and legal stationers, and can be downloaded from our website.

To help you, the Office of the Public Advocate has produced a free kit for making powers of attorney and guardianship called *Take Control*. You can order the kit or download it via www.legalaid.vic.gov.au. It can also be downloaded from www.publicadvocate.vic.gov.au.

What if I change my mind?

You can cancel (revoke) the appointment at any time as long as you understand the nature and effect of revoking the power. You can revoke the power by telling the agent that their power is withdrawn or by destroying the enduring power of attorney document and any copies. We recommend that you also complete a *Revocation of Enduring Power of Attorney* form and give a copy to your agent. See *Take Control*. If you appoint a new agent, any earlier appointment is automatically revoked, but you should still notify the first agent that their power has been revoked.

Safeguards

You do not have to register or send the form anywhere. You should keep the original form in a safe place and keep a certified copy for everyday use. You should also give a copy to anyone who is involved in your care, such as your doctor.

If an agent is not acting in your best interests VCAT can revoke or suspend the enduring power of attorney. Anyone who has a genuine interest in your welfare can ask VCAT to consider the actions of the agent. VCAT operates a 24-hour emergency service and can appoint a guardian to make medical treatment decisions if the power of attorney is revoked. Contact the Office of the Public Advocate for advice and further information.

Advice for agents

If the agent is unsure what to do in a particular situation, they can contact the Office of the Public Advocate's Advice Service or VCAT for assistance.

Access to health records

An agent may need to obtain your health information in order to make decisions about your care. If you are unable to exercise your rights to consent to the release of health information, your agent is authorised to exercise these rights on your behalf. The agent, acting in this role, is known as your 'authorised representative'.