

# Advance Care Planning: The *Medical Treatment Planning and Decisions Act 2016*

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**ABORIGINAL AUSTRALIA**

Names and regions as used in The Encyclopedia of Aboriginal Australia (D Horton, General Editor), published in 1984 by the Australian Institute of Aboriginal and Torres Strait Islander Studies (Aboriginal Studies Press) GPO Box 553 Canberra, ACT 2601

	Tribal/Language group name
	Region name
	No published information available

SCALE 1 : 4 700 000

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**Acknowledgement**  
 Aboriginal Australia Wall Map, D.R Horton, Aboriginal Studies Press, AIATSIS, 1996

**Disclaimer and Warning:**  
 Not suitable for use in native title and other land claims  
 This map indicates only the general location of large groupings of people which may include smaller groups such as clans, dialects or individual languages in a group. Boundaries are not intended to be exact. For more information about the groups of people in a particular region contact the relevant land councils.

# About this presentation

The new Act commenced on 12 March 2018.

This presentation explains:

- Advance care planning under the new Act.
- The medical consent process under the new Act for a patient who does not have decision-making capacity to make the medical treatment decision.

When the new Act commenced, there was a shift away from a best interests model of medical decision making in favour of promoting the values and preferences of patients.

# Advance care planning and the new Act

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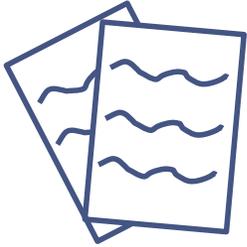
# What people can do under the new Act



In Victoria, from 12 March 2018, people have been able to:

- make an **advance care directive**
- appoint a **medical treatment decision maker**
- appoint a **support person** for their medical treatment decisions.

# Forms



## **Formal requirements**

There are legal requirements for making an advance care directive and these appointments.

## **Forms**

Forms available:

- on the Medical Treatment Planning and Decisions Act page of the [health.vic.gov.au](http://health.vic.gov.au) website
- on the advance care planning page of the Better Health Channel website
- on the Office of the Public Advocate (OPA) website and in the OPA Take Control booklet.

# Advance care directives

An advance care directive is a legal document:

- that sets out a person's
  - preferences and values (values directive)
  - binding instructions (instructional directive)
- in relation to the medical treatment of that person
- in the event that the person does not have decision-making capacity to consent to or refuse the medical treatment they are offered.

## Values directives

A **values directive** is a statement of a person's preferences and values as the basis on which they would like any medical treatment decisions to be made on their behalf.

It must be considered by their medical treatment decision maker.

## Instructional directives

An **instructional directive** is a statement of a person's medical treatment decision that is directed to the patient's health practitioner(s).

It takes effect as if the person who made it has consented to, or refused, the commencement or continuation of the medical treatment.

# Medical treatment decision makers



A person can appoint a medical treatment decision maker with the authority to make medical treatment decisions on their behalf if they do not have decision-making capacity to make the decision(s).



A patient's medical treatment decision maker must make the decision that they reasonably believe is the one that the patient would have made.

## Support persons

This is a new role under the new Act.

The role of a support person is to:

- support the patient to make, communicate, and give effect to their medical treatment decisions
- represent the interests of the patient in respect of the patient's medical treatment, including when the patient does not have decision-making capacity in relation to medical treatment decisions.

They can access health information about the patient that is relevant to a medical treatment decision, for example the patient's medical record.



# Take Control

 Office of the  
Public Advocate



Forms  
Inside

March  
2018

Your self-help guide to:

- ▶ appointing a medical treatment decision maker
- ▶ making an advance care directive
- ▶ making an enduring power of attorney.

# Supported Decision-Making in Victoria

A guide for families and carers



November 2017



Office of the Public Advocate

# Medical consent and the new Act

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# Introduction



Health practitioners need a patient's consent before providing medical treatment, unless they are providing emergency treatment.

The new Act sets out the medical consent process for a patient who does not have decision-making capacity to make the medical treatment decision.

# Decision-making capacity

A patient has decision-making capacity for the medical treatment decision if they are able to:

- understand the information relevant to the decision (including their medical condition, treatment options, and risks and benefits of treatment options)
- retain that information to the extent necessary to make the decision
- use or weigh that information as part of the process of making the decision and
- communicate their decision in some way, including by speech gesture or other means.

# Health practitioners

The Act applies to registered health practitioners in the following professions:



- medical
- dental
- physiotherapy
- occupational therapy
- chiropractic
- pharmacy
- optometry
- podiatry
- nursing and midwifery
- medical radiation practice
- psychology
- osteopathy
- Chinese medicine
- Aboriginal and Torres Strait Islander health practice

The Act also applies to paramedics and non-emergency patient transport staff.

## Definition of medical treatment

The definition of **medical treatment** in the Act has two parts. It is treatment by a health practitioner for one or more of the purposes listed below, and for one of the forms of treatment listed below.

<b>Purpose of treatment</b>	<b>Form of treatment</b>
<ul style="list-style-type: none"><li>○ diagnosing a physical or mental condition</li><li>○ preventing disease</li><li>○ restoring or replacing bodily function in the face of disease or injury</li><li>○ improving comfort and quality of life.</li></ul>	<ul style="list-style-type: none"><li>○ treatment with physical or surgical therapy</li><li>○ treatment for mental illness</li><li>○ treatment with<ul style="list-style-type: none"><li>➤ prescription pharmaceuticals</li><li>➤ an approved medicinal cannabis product</li></ul></li><li>○ dental treatment</li><li>○ palliative care.</li></ul>

Note: The *Mental Health Act 2014* applies where a person is a compulsory patient under that Act.

# Emergency treatment

## **Definition of emergency treatment**

Medical treatment (or medical research procedure) that is necessary, as a matter of urgency to:

- save the patient's life
- prevent serious damage to the patient's health or
- prevent the patient from suffering or continuing to suffer significant pain or distress.

Consent is not needed for emergency treatment.

However, if the health practitioner is aware that the patient has refused the treatment in an instructional directive, they must not proceed with the treatment.

## Obtaining a medical treatment decision



The Act sets out three steps for health practitioners to follow when a patient does not have decision-making capacity to make their own medical treatment decision.

## Step 1

Is there an advance care directive with a relevant instructional directive?

A health practitioner must make reasonable efforts in the circumstances to find out if the patient has an advance care directive with a relevant instructional directive.



**Yes**

Give effect to relevant instructional directive.

If the patient has **refused** the particular medical treatment in their instructional directive, the health practitioner:

- withholds or withdraws that medical treatment.

If the patient has **consented to** the particular medical treatment in their instructional directive, the health practitioner:

- administers that medical treatment if they are of the opinion that it is clinically appropriate to do so.



**No**

Proceed to step 2.

## Step 2 Is there a medical treatment decision maker?

### Medical treatment decision maker hierarchy in the new Act

1. The patient's appointed medical treatment decision maker.
2. Guardian appointed by VCAT under the *Guardianship and Administration Act 1986* who has the power under that appointment to make medical treatment decisions.
3. The first of the following persons who is in a close and continuing relationship:
  - (a) the spouse or domestic partner of the patient
  - (b) the primary carer of the patient
  - (c) an adult child of the patient
  - (d) a parent of the patient
  - (e) an adult sibling of the patient.

If more than one, the eldest of those persons.

Note: Legal documents made before the new Act commenced, are recognised. For example, a medical enduring power of attorney.



**Yes**

Medical treatment decision maker makes the decision to consent to or refuse the treatment.



**No**

Proceed to step 3.

### Step 3 Is the proposed treatment significant treatment?

**Significant treatment** means any medical treatment of a patient that involves any of the following:

- a significant degree of bodily intrusion
- a significant risk to the patient
- significant side effects
- significant distress to the patient.

Find Clinical Guidelines about what constitutes significant treatment on the [health.vic.gov.au](http://health.vic.gov.au) and OPA websites.



**Yes**

Decision is made by the Public Advocate.

To seek a decision by the Public Advocate, health practitioners complete an online form available on the OPA website.



**No**

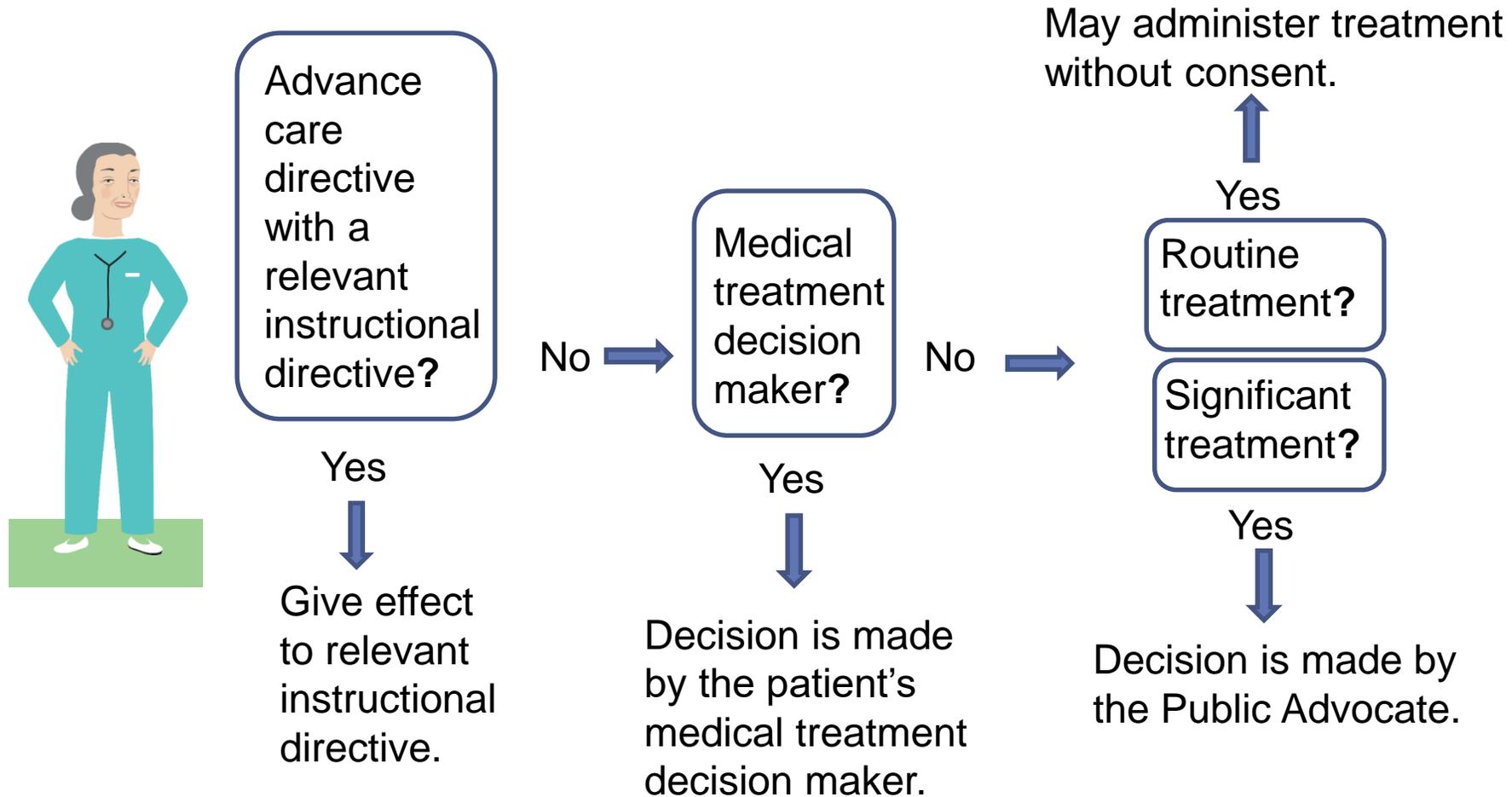
The health practitioner may provide treatment without consent if it is routine treatment.

## Acting in good faith



A health practitioner who, in good faith and without negligence, reasonably believes they have complied with the medical consent process set out in the new Act, is not guilty of an offence or liable for unprofessional conduct or professional misconduct.

# Summary of steps for health practitioners



## Other

The new Act also covers:

- The process for health practitioners where the patient is likely to recover within a reasonable time
- When a health practitioner may administer palliative care
- Futile or non-beneficial treatment
- The consent process for medical research procedures.

# Notifications to the Public Advocate

A health practitioner must notify the Public Advocate if:

- a patient's medical treatment decision maker **refuses** medical treatment **and**
- the health practitioner reasonably believes that the preferences and values of the patient
  - are not known or
  - are unable to be known or inferred by that medical treatment decision maker.

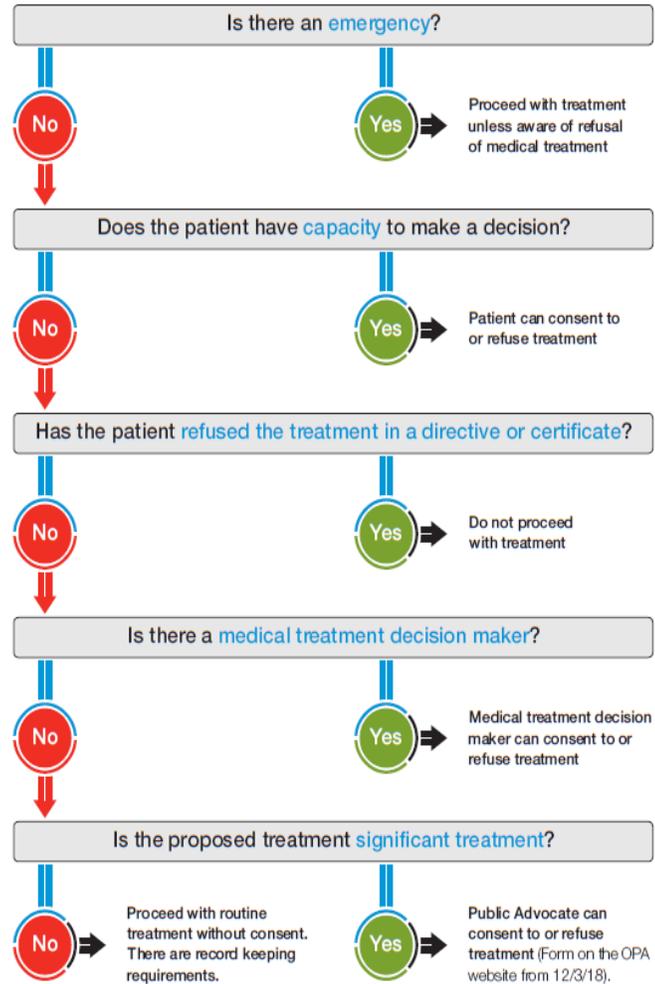
Note: To notify the Public Advocate, complete an online form available on the OPA website.



# Can your adult patient consent?

Process from 12 March 2018

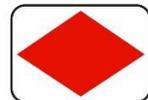
[www.publicadvocate.nhs.uk](http://www.publicadvocate.nhs.uk)



# For more information

- The Medical Treatment Planning and Decisions Act page of [www.health.vic.gov.au](http://www.health.vic.gov.au)
- The Office of the Public Advocate [www.publicadvocate.vic.gov.au](http://www.publicadvocate.vic.gov.au)

This presentation was developed by the Office of the Public Advocate and the Department of Health and Human Services. It is intended as a general guide only.



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