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| A summary of the Medical Treatment Planning and Decisions Act 2016 |
| For health practitioners (2nd edition, revised) |

The ***Medical Treatment Planning and Decisions Act 2016*** provides a framework for making medical treatment decisions when people do not have capacity to make their own decisions.

The Act is part of a broader shift towards empowering and supporting people to make their own treatment decisions.

# Decision-making capacity

An adult is presumed to have decision-making capacity. To have decision-making capacity a person must be able to do all of the following:

* understand the information relevant to the decision and the effect of the decision
* 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
* communicate the decision and the person’s views and needs as to the decision in some way, including by speech, gestures or other means.

# Advance care directive

A person may only create an advance care directive if they have decision-making capacity in relation to each statement in their advance care directive. An advance care directive must be witnessed by two adults, one of whom is a medical practitioner.

There are two forms of statement a person may include in their advance care directive:

* an instructional directive
* a values directive.

## Instructional directive

In an **instructional directive** a person may either consent to or refuse a particular medical treatment.

If the person subsequently does not have the capacity to make a decision about that treatment, the instructional directive will apply as though the person has consented to or refused the treatment. Any statement not explicitly identified as an instructional directive, through the use of these words, will be considered a values directive.

Refusal of treatment certificates made prior to the commencement of the Act on 12 March 2018 will be treated as instructional directives.

## Values directive

In a **values directive** a person may make more general statements about their preferences and values and what matters to them.

If the person has not included a relevant instructional directive, then the health practitioner will need to obtain consent from a medical treatment decision maker to provide treatment. **The medical treatment decision maker must consider the values directive.**

Any advance care plan made prior to the commencement of the Act on 12 March 2018 should be considered in the decision-making process.

# Medical treatment decision makers

If medical treatment is clinically indicated and a person does not have decision-making capacity, a health practitioner must obtain consent through an instructional directive, or if there is none, obtain consent from a medical treatment decision maker.

An adult may appoint a medical treatment decision maker when they have decision-making capacity.

If an adult does not have decision-making capacity, the medical treatment decision maker will be the first willing and available person from the list below (there can only be one medical treatment decision maker at a time):

* an appointed medical treatment decision maker
* a guardian appointed by the Victorian Civil and Administrative Tribunal (VCAT)
* the first of the following with a close and continuing relationship with the person:
  + 1. the spouse or domestic partner
    2. the primary carer of the person
    3. the first of the following and, if more than one person fits the description in the subparagraph, the oldest of those persons:

an adult child of the person

a parent of the person

an adult sibling of the person.

If a child does not have decision-making capacity, their medical treatment decision maker will be a parent, guardian or other person with parental responsibility. Previous enduring power of attorney and guardianship appointments will remain valid under the Act.

# Making medical treatment decisions

If medical treatment is required in an emergency to prevent death, serious damage or significant pain or distress, it may be provided without consent to a person lacking decision-making capacity. **But not in contravention of an instructional directive of which the health practitioner is already aware.**

When providing medical treatment to a person without decision-making capacity (other than in an emergency), a health practitioner must make reasonable efforts in the circumstances to locate an advance care directive and a medical treatment decision maker. This requirement will vary depending on the urgency of the treatment and what is known about the person.

If there is a relevant instructional directive, a health practitioner must comply with it just as if the person has consented to, or refused, the treatment. A health practitioner does not have to provide a treatment that is not clinically indicated just because a person has consented to that treatment in advance. If there is no relevant instructional directive, the decision must be made by the medical treatment decision maker.

The Act requires a medical treatment decision maker to make the decision they reasonably believe the person would have made. The Act includes a process for determining the decision the person would have made. It says that the medical treatment decision maker must:

* first consider any valid and relevant values directive
* next consider any other relevant preferences that the person has expressed and the circumstances in which the preferences were expressed
  + if the medical treatment decision maker is unable to identify any relevant preferences, they must consider the person’s values, whether these are expressed by way of a values directive or otherwise, or inferred from the person’s life.

In making a decision, the medical treatment decision maker must also consider the likely effects and consequences of the medical treatment, including:

* its likely effectiveness
  + whether these are consistent with the person’s preferences and values.

The medical treatment decision maker must also consider alternative treatment options, including not providing treatment. If the person’s preferences and values cannot be ascertained, the medical treatment decision maker must make a decision that promotes the person’s personal and social wellbeing, having regard to the need to respect the person’s individuality.

**A health practitioner may administer palliative care to a patient without decision-making capacity regardless of any decision by their medical treatment decision maker or statement in an advance care directive.**

# No medical treatment decision maker

If there is no instructional directive and no medical treatment decision maker, a health practitioner must seek a decision from the Public Advocate for significant treatment. For routine treatment, the health practitioner may proceed without consent, but must document this in the person’s clinical record.

# More information

Standard forms under the Act, a guide to significant treatment and a detailed guide to the Act, are available on the [health.vic website](https://www2.health.vic.gov.au/hospitals-and-health-services/patient-care/end-of-life-care/advance-care-planning) <www.health.vic.gov.au/acp>.

A copy of the Act is available on [the Victorian Legislation and Parliamentary Documents website](http://www.legislation.vic.gov.au/) <http://www.legislation.vic.gov.au/>.

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