



Decision making and your rights

Everyone wants to make their own decisions about things that affect their lives, and not be dictated to by others. As the law says, we must presume that adults have 'capacity' to make decisions for themselves unless it is proven otherwise. Generally, this means that when making a particular decision, the adult can:

- understand the facts and the choices involved,
- weigh up the consequences, and
- communicate the decision.

Capacity to make decisions may be affected by factors such as stress, illness, injury or age. Loss of capacity may be total or partial, and permanent or temporary. The law recognises that you may have lost capacity to make some more complex decisions, but not others. For example, you may have lost capacity to understand complicated financial arrangements or make a will, but be quite able to decide your medical treatment and where you want to live.

People with loss of capacity are more vulnerable and can be susceptible to abuse by others, including their own family members. This Helpsheet gives tips on what to do if you lose capacity to make your own decisions.

Who will make decisions for me if I lose capacity?

This all depends on whether you plan ahead. You can decide in advance who you would like

to make decisions for you if you can no longer do so – or no longer want to.



For example, advance care planning lets you plan the medical treatment you would prefer if you become too ill in the future to express your wishes. See advancecareplanning.org.au.

Powers of Attorney (POAs) are legal documents that enable you to choose someone to make decisions for you. They are designed to give you choice and control over how your affairs are handled.

Worried about your safety or independence?

Seniors Rights Victoria – Helpline 1300 368 821–10am–5pm, Monday–Friday.
Free support, legal advice, information and education.

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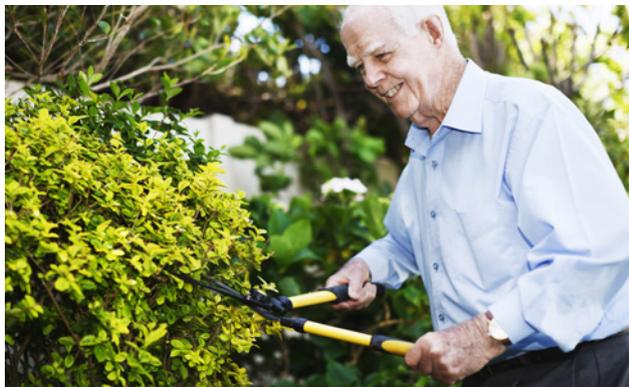


The new *Victorian Powers of Attorney Act 2014* (the Act) commenced on 1 September 2015. A copy of the Act can be found at legislation.vic.gov.au. The purposes of the Act are to:

1. clarify and consolidate Victoria's enduring powers of attorney laws
2. create the role of supportive attorney
3. improve the protections against abuse of enduring powers of attorney.

POAs made before 1 September 2015 remain valid under the new Act. The Act does not affect enduring powers of attorney (medical treatment), which continue to be regulated separately under the *Medical Treatment Act 1988*.

For more information about POAs in Victoria contact the Office of the Public Advocate on 1300 309 337 or via publicadvocate.vic.gov.au.



Who should I choose to be my decision maker?

This is a very important decision. Abuse of POAs is one of the ways that elder abuse occurs. The person you appoint should be someone you trust to do the right thing by you, and should be willing and able to take on the job.

The attorney is required by law to act according to your known wishes, and in your best interests. You may wish to get independent legal advice before appointing a decision maker: don't let anyone pressure you into it.

If you don't know anyone you feel would be suitable, you can appoint an independent trustee company as your attorney, but fees will be charged for its services.



If your attorney is doing the wrong thing by you (such as taking your money or property without authorisation), you can revoke the POA as soon as you are aware of this, and a new appointment can be made. However, if you have lost your capacity to do this, someone with an interest in your welfare will have to step in on your behalf.

This person can apply to the Victorian Civil and Administrative Tribunal (VCAT) to have the attorney's actions looked at and possibly remove them. There are a number of processes to go through to do this.

Who decides if I have lost capacity to make decisions?

The person you have appointed as your decision maker may be the person who decides when you have lost capacity. Or else it may be a lawyer, doctor or service provider who has contact with you and needs to be confident you have capacity to make specific decisions.

An assessment for capacity can be undertaken by a trained medical professional. The best place to start is with a GP, a Cognitive Dementia and Memory Service or an Aged Care Assessment Service. If either you or another person disputes



the assessment that is made about your capacity then you or they can make an application to VCAT to determine the matter.

What happens if I don't plan ahead and I lose capacity?

Family members may be able to informally make some decisions for you, particularly lifestyle decisions, but other decisions, particularly those involving legal or financial issues, can only be made by an attorney appointed through a POA.

If you have not appointed an attorney, and there is a need for one, VCAT can appoint someone to make decisions on your behalf. This can be time-consuming and stressful.

VCAT must listen to your wishes, but can override them if it thinks they are not in your best interest. If there is a conflict between family members, or medical need, VCAT can appoint someone independent.



Remember:

- **Just because you may have lost capacity to make certain decisions, you may still be able to make others.**
- **Plan ahead for if or when you lose capacity and consider arranging Powers of Attorney.**

More information

Seniors Rights Victoria.

www.seniorsrights.org.au
Tel. 1300 368 821

Also see *Assets for Care: A guide for lawyers.*

Planning Ahead Tools

www.planningaheadtools.com.au
Tel. 1300 887 529

Information, tools and resources to help people plan for their future legal, health and asset decisions.

Advance Care Planning Australia

<http://advancecareplanning.org.au>
Tel. +61 3 9096 1350

Explains the steps you can take to help you plan for your future health care.

Cognitive Dementia and Memory Service

www.betterhealth.vic.gov.au/health/serviceprofiles/cognitive-dementia-and-memory-service-CDAMS-service
Tel. 1300 650 172

A specialist multidisciplinary diagnostic, referral and educational service for people experiencing memory loss, or changes to their thinking.

Aged Care Assessment Service

www2.health.vic.gov.au/ageing-and-aged-care/aged-care-assessment-services
Tel. 1800 200 422

Independent teams who assist older people and their carers to identify what kind of care will best meet their needs.

Gifts, Loans & Debts

Office of the Public Advocate

www.publicadvocate.vic.gov.au

Tel. 1300 309 337

A wealth of information on administration and guardianship, enduring powers of attorney, medical consent and the rights of people with disabilities.

Capacity Australia

<http://capacityaustralia.org.au>

Tel (02) 8987 1944

A not-for-profit charity that promotes autonomy of decision-making, with several resources.

NSW Capacity Toolkit

www.justice.nsw.gov.au/diversityservices/Pages/divserv/ds_capacity_tool/ds_capacity_tool.aspx

A handy guide to capacity for anyone who has concerns about the ability of an adult to make decisions for themselves.

VCAT

www.vcat.vic.gov.au

Tel. (03) 9628 9911

Victoria's independent dispute resolution service, deals with capacity disputes and substitute decision-making.

Victoria Legal Aid

www.legalaid.vic.gov.au

Tel. 1300 792 387

Legal advice on a range of issues.

Legal Aid NSW

www.legalaid.nsw.gov.au/get-legal-help/factsheets-and-resources

Tel. 1300 888 529

Factsheets and resources for older people.

National Dementia Helpline

<https://fightdementia.org.au>

Tel. 1800 100 500

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Seniors Rights Victoria acknowledges the support of the Victorian Government, Victoria Legal Aid and the Commonwealth of Australia Attorney General's Department.



This CLC is funded and supported by Victoria Legal Aid



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