



# 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. 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 illness, injury, or cognitive decline. Loss of capacity may be total or partial, 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 information sheet gives tips on what you can do to prepare for the future in case you lose capacity to make your own decisions.

## Legislation

The four key pieces of legislation in this area are the *Powers of Attorney Act 2014* (the POA Act), the *Medical Treatment Planning and Decisions Act 2016* (the MTPD Act), the *Guardianship and Administration Act 2019* and the *Aged Care Restrictive Practices (Substitute Decisionmaker) Act 2024*.

### Victorian legislation website

[legislation.vic.gov.au](https://legislation.vic.gov.au)

#### Important note

POAs made before 1 September 2015 remain valid under the new POA Act. Powers of Attorney (Medical Treatment) made before 12 March 2018 remain valid under the new MTPD Act.

## Advance care planning

Advance care planning lets you plan the medical treatment you would prefer if you become too ill in the future to express your wishes.

### Advance Care Planning Australia

[advancecareplanning.org.au](https://www.advancecareplanning.org.au)

Tel. 1300 208 582

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

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## Enduring Powers of Attorney and supportive attorneys

The person who you appoint to make financial and/or personal decisions for you under the POA Act is called your attorney.

Enduring Powers of Attorney (EPOA) are legal documents that enable you to choose someone to make decisions for you. These decisions might be financial (such as accessing your bank account in order to pay your bills or arranging the sale of your property) or personal (such as where you live or who can visit you, or daily living matters such as diet or dress).

An attorney appointed under an EPOA is required by law to act in the least restrictive way possible, involve you in decision-making and give effect to your wishes.

You can also choose someone to help you to make a decision – but not to actually make a decision for you. These people are called supportive attorneys. For example, a supportive attorney might help you to collect information about two different aged care facilities you are considering and help you compare what they are offering but wouldn't actually make the decision about where you would live. You would still make that decision. EPOA and supportive attorney appointments are designed to give you choice and control over who you appoint and how your affairs are handled.

### Office of the Public Advocate

[publicadvocate.vic.gov.au](http://publicadvocate.vic.gov.au)

Tel. 1300 309 337

### Important note

If you have capacity, you can always make your own decisions EVEN IF you have appointed an attorney.

## Medical Treatment Decision Maker (MTDM)

The person you appoint to make decisions for you under the MTPD Act is called a Medical Treatment Decision Maker (MTDM).

A MTDM must make the medical treatment decision that they reasonably believe is the decision that the person would have made if the person had decision-making capacity. So, this means that they must act in accordance with your known values and preferences and make the decision that they believe you would have made, regardless of their own personal views on the matter.

## Restrictive Practices Nominee (RPN)

A person who you appoint under the *Aged Care Restrictive Practices (Substitute Decision-maker) Act* is called a Restrictive Practices Nominee (RPN).

You may want to nominate a RPN to make decisions about the use of restrictive practices whilst in aged care. A restrictive practice is any action which limits your freedom of movement including physical restraints (like being strapped to a chair) and chemical restraints (the use of medication to control behavior) or environmental restraint such as taking your mobile phone away.

## Who should I choose to be my decision maker?

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

If you don't have a suitable person to appoint as your financial decision-maker, you can appoint

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an independent trustee company as your attorney/administrator, but fees will be charged for their services.

Only an individual person can be appointed as a MTDM; a corporation or other entity cannot.

You may wish to get independent legal advice before appointing a decision-maker, but whatever you choose to do, don't let anyone pressure you into it.

## What if I want to change my decision maker?

If your EPOA is doing the wrong thing by you (such as taking your money or property without authorisation or forcing you into aged care against your wishes), or you just no longer feel comfortable with the decision you made (for example the EPOA, MTDM, or RPN person you appointed may have moved overseas, or there may have been a family conflict) you can revoke the existing EPOA, MTDM, or RPN easily while you have decision-making capacity.

You can also do so by appointing a new EPOA, MTDM, or RPN or by revoking the existing EPOA, MTDM or RPN without appointing anyone else. You or your representative must notify the existing EPOA, MTDM, or RPN of the revocation so that they are aware to stop acting.

The only time you cannot revoke documents already made is if you have lost the decision-making capacity to do so. In that situation, 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 decision-maker's actions looked at and possibly remove them and/or replace them with someone else.

If you have a guardian who works for OPA, you can make a complaint to OPA, the Victorian Ombudsman, or apply to VCAT to have them changed.



A lawyer can draft and witness EPOA, MTDM and RPN appointment and revocation forms for you. Alternatively, forms to appoint or revoke an EPOA, MTDM, and RPN are available on the Office of Public Advocate and Department of Health websites and have specific witnessing requirements.

**VCAT**

[vcat.vic.gov.au](http://vcat.vic.gov.au)

Tel. 1300 018 228

## Who decides if I have lost capacity to make decisions?

It may be a lawyer or a medical professional who will need to complete an assessment of your capacity at the time that you wish to make the decision to appoint a decision-maker.

An assessment for capacity can be undertaken by a medical professional such as your general practitioner, a geriatrician or a neuropsychologist. If either you or another person disputes the assessment that is made about your capacity, you can seek a further opinion. You or an interested party can also make an application to VCAT to determine the matter.

### Remember

Just because you may have lost capacity to make certain decisions, you may still be able to make other decisions and express your will and preferences, and the law requires that you remain involved in decision-making.

Plan ahead for if or when you lose capacity and consider arranging an EPOA, a MTDM, a RPN, and an Advance Care Directive.

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

If you have not appointed a MTDM or a RPN, there is a list in the legislation of close family members who can provide consent on your behalf (i.e. in order of priority: spouse, carer, oldest adult child, older parent, etc).

If you do not have a close family member or MTDM who can provide consent, or an Advance Care Directive, the Office of the Public Advocate can provide consent to significant treatment on your behalf. Consent is not required for routine treatment.

VCAT can authorise restrictive practices on your behalf if you do not have close family members or have not appointed a RPN to provide consent on your behalf.

If you have not appointed an EPOA, those close to you may be able to make some

informal decisions for you or continue to act on previously established authorities (such as Centrelink nominee or bank account co-signatory).

If you have not appointed anyone to be your EPOA and there is a need for a financial or personal decision-maker, or there is a dispute over medical treatment, VCAT can appoint either an administrator for financial decisions or a guardian for personal or medical decisions.

VCAT must take into account your will and preferences but may override these to appoint a suitable person. If there is a conflict between family members, or no-one available or suitable, VCAT can appoint someone independent.

When making an application to VCAT for a decision-maker, there must be a decision that needs to be made at the time of the application and evidence that the person can't make the decision.

## Further information

### Victoria Legal Aid

[legalaid.vic.gov.au](http://legalaid.vic.gov.au)

Tel. 1300 792 387

### Capacity Australia

[capacityaustralia.org.au](http://capacityaustralia.org.au)

Tel. +61 2 8987 1944

### National Dementia Helpline

[fightdementia.org.au](http://fightdementia.org.au)

Tel. 1800 100 500

### Aged Care Assessment Service

[health.vic.gov.au/ageing-and-agedcare/aged-care-assessment-services](http://health.vic.gov.au/ageing-and-agedcare/aged-care-assessment-services)

Tel. 1800 200 422

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Victoria Legal Aid

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