



Office of the Public Advocate

# Supported decision-making in Victoria

An introduction

March 2020

## From the Public Advocate



It is a human right, enjoyed by all adults, that we make our own decisions and we should have the support we need to do this.

This is called supported decision-making. In Victoria, the law recognises the important role of supported decision-making. It says if you can make a decision with support then you have capacity to make the decision.

### Decision-making capacity

A person has decision-making capacity to make a particular decision if they can:

- understand the relevant information
- retain that information to make their decision
- use or weigh the information
- communicate their decision in some way, including by speech, gestures or other means.

*Colleen Pearce*

**Colleen Pearce**  
Public Advocate

## How can others support you?

Health practitioners and other workers may be able to support you to make decisions by:

- explaining information in a way you can understand
- using communication aids, such as pictures or technology
- giving you extra time to understand the information and to make your decision, if you need this.

You may sometimes want another person to support you at an appointment or meeting.

You may also want someone who can:

- help you to get information you need to make a decision
- help explain information
- help you break down a decision into smaller steps
- help you to communicate a decision
- help you to carry out a decision.

## Appointing someone to support you to make decisions

If you are an adult in Victoria, you can appoint another person to support you to make decisions.

If you want to appoint someone to support you, the person you choose will need to agree.

## How can this help?

Privacy laws mean organisations cannot give information about you to someone else without your permission, even if they are helping you.

By appointing someone, the person has authority to get information about you to help you make a decision. This also lets others know that you have chosen a particular person to support you and makes their role clear to everyone.

## Your options

To make the following appointments you must have **decision-making capacity** to do so. For you to make an appointment, you will need to complete a special form and sign it in front of the required witnesses.

For information about the law if you are not able to make a decision, even with support, see the OPA website.

## Medical support person

A medical support person (known as a 'support person') can support you to make, communicate, and act on your medical treatment decisions. For example, decisions about an operation, or dental treatment.

The appointment starts once it is made, but you may not need support immediately.

## Getting your health information

Your support person has authority to get your health information to help you make a decision (for example, from your doctor). They can only get the same information that you are able to get.

## Representing your interests

They can also represent your interests in relation to your medical treatment. For example, by talking to your doctor about what you want. However, they do not have authority to make medical treatment decisions for you, unless they are also your medical treatment decision maker.

These appointments are made under the *Medical Treatment Planning and Decisions Act 2016*.

## Mental health

You can also choose a nominated person to represent your interests and be a supporter if you become a compulsory patient under the *Mental Health Act 2014*. Find more information on the Independent Mental Health Advocacy website [imha.vic.gov.au](http://imha.vic.gov.au)

## Supportive attorney

You can appoint a supportive attorney if you want someone to support you with decisions about your financial or personal matters (for example, decisions about what services you need, who you want to provide them or where you live).

You can give your supportive attorney authority to support you in different ways.

For example, so they are able to:

- get information about you from other people or organisations (such as your bank, or electricity provider)
- tell other people and organisations a decision you have made or information about a decision you have made
- do things so your decision can happen, for example, making phone calls to organise services that you decide you want.

### Keep in mind

They do not have authority to support you to act on a decision about a significant financial transaction (for example, buying or selling a house), or to support you to make medical treatment decisions.

Some people cannot be your supportive attorney (for example, your care worker, or health or accommodation provider).

Supportive attorney appointments are made under the *Powers of Attorney Act 2014*.

## Supportive guardians and supportive administrators

These appointments are very similar to supportive attorney appointments. The main difference is that the Victorian Civil and Administrative Tribunal (VCAT) makes the appointment.

### When can VCAT do this?

If you have a disability and want or need support to make decisions, another person can apply to VCAT, and ask VCAT to appoint a supportive guardian and/or supportive administrator for you.

Whoever applies to VCAT must suggest someone for VCAT to appoint, and that person needs to agree. You also need to agree.

A **supportive guardian** can support you to make, communicate, and/or act on decisions about the personal matter(s) that are set out in the VCAT order.

A **supportive administrator** can support you in relation to decisions about the financial matter(s) in the VCAT order.

### Where to find the forms and more information

Visit the OPA website:  
**[publicadvocate.vic.gov.au](http://publicadvocate.vic.gov.au)**

Or contact OPA's Advice Service:  
**1300 309 337.**



## Office of the Public Advocate

Level 1, 204 Lygon Street, Carlton, Victoria 3053

OPA Advice Service: 1300 309 337

TTY: 1300 305 612 NRS: 133 677

Fax: 1300 787 510

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

The information in this publication is of a general nature and readers may require legal advice for specific circumstances. The Office of the Public Advocate expressly disclaims any liability howsoever caused to any person in respect of any action taken in reliance on the contents of this publication.