

# WOLLERMAN SHACKLOCK LAWYERS

Your voice through our values of equality, respect and integrity.

## Changes to Medical Powers of Attorney and how they may affect you

Recently, new laws came into force which change the way medical power of attorneys are made.

Replacing the Enduring Medical Power of Attorney, is a new document called **Appointment of a Medical Treatment Decision Maker**. Just like the previous medical power of attorney, you can appoint a person to make decisions regarding your medical treatment in the event you lose the capacity to do so. In addition to this, you can now also make an **Advanced Care Directive**. This is a separate document that allows you to put in writing specific instructions regarding your future medical treatment.

### Appointment of a Medical Treatment Decision Maker

You have the power to appoint a person as your *medical treatment decision maker*.

This person will make decisions regarding your medical treatment for you, in the event you lose the capacity to make those decisions for yourself.

Examples of medical treatment include (but are not limited to):

- ❖ Treatment for an illness;
- ❖ Treatment for an injury;
- ❖ An operation;
- ❖ Dental treatment;
- ❖ Allied Health (physiotherapy, podiatrist etc.).

Your appointed *medical treatment decision maker* will be called upon to make the decision they reasonably believe you would have made, if you had capacity. The decision is made in consultation with a medical practitioner.

We can assist you with preparing and signing this document.

### Advance Care Directive

An Advance Care Directive is a written statement, or set of statements, setting out what medical treatment you either consent to, or refuse to receive.

There are two types of an Advanced Care Directive:

- ❖ A values directive: This is a written record of your values and preferences regarding your future medical treatment. This type of advanced care directive is **not** binding on your *medical treatment decision maker* and is to be used as a guide in relation to the provision of medical treatment.

- ❖ An instructional directive: This is a written record of what you wish. The instructions in this document **are** binding on your appointed *medical treatment decision maker*. These instructions can include what you consent to and what you refuse for your future medical treatment.

Your *medical treatment decision maker* is bound to follow your *instructional directives*. If there is no *instructional directive* regarding a certain form of treatment or condition, then the *medical treatment decision maker* is required to make the appropriate decision for you, taking into account any *values directive* (if any). If an *instructional directive* is ambiguous, then it will be considered to be a *values directive*.

If there is no values directive then your medical treatment decision maker will need to make the decision that he or she reasonably believed you would have made in regards to your medical treatment.

Due to the binding nature of *instructional directives*, it is important that you give very careful consideration to each directive. These directives should be drafted in close consultation with your medical practitioner, to ensure that you fully understand the meaning and repercussions of each directive you make. For example, you may state “*I do not want to be put on an assisted breathing device at any time.*” You might make this statement with the intention that you do not want to prolong life when faced with a terminal illness or brain injury. However, you may undergo a successful operation, and to assist with your recovery you need an assisted breathing device for a short time. The statement is binding though. By not going on the device for the short period of time, this could lead to complications with an otherwise successful operation.

Therefore, preparing an Advance Care Directive requires very careful consideration, and should not be entered into lightly.

### **Issues to consider:**

Whilst it is important to plan ahead, we cannot foresee the future. Our needs or values may change. Science is always advancing; new treatments may be available. You need to consider your current health, values and beliefs. What worries do you have now, or for the future? What matters most in your life; is it longevity of life or quality of life that is most important? An *instructional directive* may not accommodate these changes, or reflect your current wishes at that time, however a medical practitioner would be bound to follow the directive.

If you prepare an Advanced Care Directive, it is important to regularly review it. If you pop it away in a drawer and forget about it, when the time comes for it to be used (and a medical practitioner has a duty to enquire whether there is an Advance Care Directive in place and to act in accordance with the terms) the document may not reflect your current wishes.

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### **What happens if you haven't appointed a *Medical Treatment Decision Maker*?**

The following hierarchy is followed to establish the person who can lawfully make decisions regarding your medical treatment. It is the first person in the following list who is *reasonably available and able* to make the medical treatment decision:

- (a) An appointed medical treatment decision maker;
- (b) A guardian appointed by VCAT to make medical decisions;
- (c) The first of the following who is in a close and continuing relationship with the person:
  - (i) A spouse or domestic partner;
  - (ii) The primary carer of the person;
  - (iii) The first of the following where more than one then the oldest:
    - Adult children of the person;
    - Parent of the person;
    - Adult sibling of the person.

You need to consider, is this the appropriate person to be making medical decisions for you? Do they know your wishes and will they respect your values? Can they cope with making important decisions regarding your health under stressful and emotional circumstances? For example, the eldest child may not be the right person, however your third child may be very level headed, keeps their emotions in check and is capable of making decisions under pressure.

To recap:

1. if you have an instructional advance care directive your medical treatment decision maker and doctor must follow your instructions;
2. if your advance care directive is values based then it serves as a guide to your medical treatment decision maker; and
3. if you have neither then your medical treatment decision maker must make the decision that they reasonably believe you would have made.

### **So where do you start?**

If you are considering making an Advance Care Directive, the starting point is to consult with your GP. Discuss your concerns with your doctor to ascertain whether this is the right thing for you to be doing. Talk about your current medical condition, prognosis, treatments available and what they involve. Analyse the risks and benefits.

Our role as lawyers is to assist with drafting the wording of the document to ensure that your wishes are stated correctly and are not ambiguous. Once the document has been drafted, only your doctor can witness your signature on it. Your doctor has a duty to ensure that you understand the meaning of each statement.

Wollerman Shacklock Lawyers are happy to answer any further questions you may have about the following information. Please do not hesitate to contact us on (03) 9707 1155 or send us an email to [admin@wslegal.com.au](mailto:admin@wslegal.com.au)