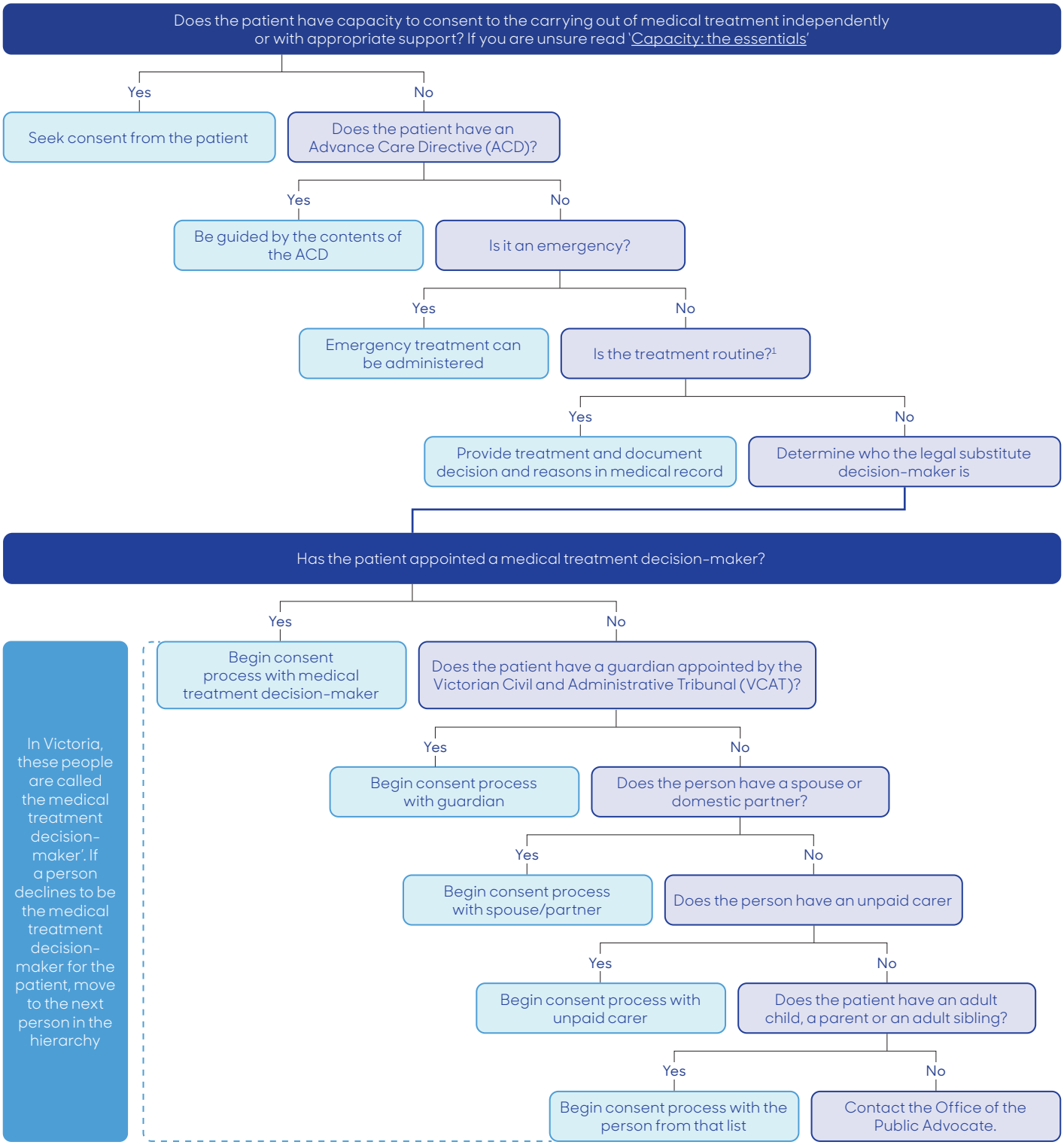
Substitute decision-makers for healthcare Victoria

You may need to provide care for a patient who has limited or no capacity to make healthcare decisions for themselves. For these situations, the law has established mechanisms for you to seek consent to provide treatment. You need to understand which person, document or institution to turn to in these circumstances. Use this decision-making flowchart to assist you.



[1] Routine treatment is treatment that is not "significant treatment" under the Act, generally meaning it is minor, low risk, part of ordinary clinical care, and unlikely to have significant or lasting adverse consequences.

Emergencies

You should assess whether urgent treatment is required. Where the patient is unable to give consent, treatment may be provided without consent if, on reasonable grounds, it is necessary to save life, prevent serious injury to the patient's health, or relieve significant pain or distress.

This is subject to any applicable instructional directive in an Advance Care Directive (ACD) or an informed refusal of treatment. Where urgent care is required, you are not required to search for an ACD if it is not readily available.

Advance Care Directives

An ACD is a formal record of a person's preferences for future healthcare if they lose capacity.

If your patient does not have capacity, you should take reasonable steps to determine whether an ACD exists and whether it applies to the decision being considered.

In Victoria, an ACD may include an instructional directive, which gives specific directions about medical treatment and must be followed, or a values directive, which outlines a person's preferences and values to guide decision-making.

If an ACD does not contain a relevant instructional directive, you will need to seek consent from the patient's medical treatment decision-maker.

In Victoria, a person cannot appoint a medical treatment decision-maker within an ACD. This must be done through a separate appointment document.

An ACD should be completed in accordance with the legislative requirements. While a form is available to assist, it is not mandatory.

Advance care planning documents made under previous legislation may still apply, such as a Refusal of Treatment Certificate.

Decision-makers

In Victoria, if a patient does not have decision-making capacity, you will need to identify the appropriate person to make decisions on their behalf. This is not automatically the patient's next of kin.

A patient may appoint a medical treatment decision-maker to make decisions about their healthcare if they lose capacity.

A guardian may also be appointed by the Victorian Civil and Administrative Tribunal to make decisions on the patient's behalf.

If there is no appointed medical treatment decision-maker or guardian, the law sets out a hierarchy to determine which family member or carer should act as the decision-maker.

A decision-maker must make the decision they reasonably believe the patient would have made in the circumstances. This includes considering any ACD and the patient's known values and preferences. Where these are not known, the decision-maker should act in a way that promotes the patient's personal and social wellbeing.

Limits on decision-making

In Victoria, a medical treatment decision-maker can make a broad range of medical treatment decisions on behalf of a patient. This includes consenting to life-sustaining treatment and refusing the commencement or continuation of medical treatment.

A decision-maker cannot consent to certain 'special medical procedures', including sterilisation, termination of pregnancy and tissue donation. Approval for these procedures must be obtained from the Victorian Civil and Administrative Tribunal.

A health practitioner cannot be compelled to provide particular medical treatment by an ACD or a decision-maker. A practitioner is also not required to provide treatment they consider to be futile or not clinically appropriate.

Where there is no available or appropriate medical treatment decision-maker, routine treatment may be provided without consent. If the treatment is significant, consent must be obtained from the Office of the Public Advocate.

Additional resources

For more information on

- assessing capacity, please see the Avant factsheet: Capacity: the essentials
- advance care planning in Victoria, including forms and resources, see the Victorian Department of Health website
- advance care directives and planning in Victoria, see the Office of the Public Advocate
- advance care planning in all states and territories, see QUT End of Life Law for Clinicians or Advance Care Planning Australia

For more information or immediate medico-legal advice, call us on **1800 128 268**, 24/7 in emergencies.
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