**The Medical Treatment Planning and Decisions Bill (Victoria): Abridged Minister’s Speech**

This includes enabling a person to plan for their future treatment by giving statutory recognition to advance care directives. The bill gives effect to the government's election commitment to simplify current practice and protect advance care directives in law.

Putting people at the centre of medical treatment decision-making

The Medical Treatment Planning and Decisions Bill 2016 will create a comprehensive framework for medical treatment decision-making for people who do not have capacity. A person has a right to make informed decisions about their treatment, in accordance with their culture, beliefs, preferences and values. This bill will ensure these decisions continue to direct and guide a person's medical treatment when they lose capacity.

The Medical Treatment Planning and Decisions Bill will ensure Victorian law supports this practice by giving advance care directives clear legal status.

The Medical Treatment Planning and Decisions Bill is designed to consolidate existing laws.

Clarifying obligations

The bill applies to all health practitioners under the Health Practitioner Regulation National Law and to paramedics, rather than just medical practitioners.

Advance care directives

The bill allows a person with capacity to make an advance care directive. An advance care directive will only come into effect if the person loses capacity to make a medical treatment decision. A person will be able to consent to, or refuse, medical treatment.

An advance care directive may include an **instructional directive** and a **values directive**. An instructional directive will allow people to provide binding instructions about their future treatment. In an instructional directive a person may refuse treatment or consent to treatment. A health practitioner must comply with a refusal of treatment in an instructional directive. If a person consents to treatment in an instructional directive a health practitioner may provide treatment as though the person had capacity and gave consent. This does not allow a person to demand treatment.

If it is intended that a directive apply as an instructional directive, this will need to be explicitly stated on the document. Values directives allow people to describe their preferences and values more generally and explain what is important to them and why. A values directive may also include a statement of medical treatment outcomes that the person regards as acceptable. A health practitioner will not be able to rely solely on a values directive to administer treatment and will be required to turn to a medical treatment decision-maker if there is not a relevant instructional directive. Values directives will ensure that the treatment provided is consistent with the person's views, even if the person does not make a statement about a particular treatment.

The bill instead requires that a person understand the nature and effect of each statement in their advance care directive.

An advance care directive is not required to be in a prescribed form, however, to ensure certainty there are a number of formal requirements for creating a valid advance care directive. This is because an advance care directive will be a legal document in which a person may make critically important decisions about their life.

As long as a person has capacity, they may amend their advance care directive at any time. A key component of the implementation of the bill will be the development of messages and triggers to encourage people to regularly review their advance care directive to ensure that it remains consistent with their current preferences and values. A person may also revoke their advance care directive at any time if they have capacity to do so.

The Victorian Civil and Administrative Tribunal may also declare an advance care directive valid, even if it does not fulfil the formal requirements.

Medical treatment decision-makers

The bill will also allow a person to appoint a medical treatment decision-maker. A medical treatment decision-maker will have the power to make medical treatment decisions a person would make themselves if they had capacity. Medical treatment decision-makers will be able to make a decision in consultation with others.

Support persons

To ensure that people can be supported adequately, the bill allows people to appoint a support person. A support person does not have the power to make decisions on behalf of the person, but they will be able to access medical records relevant to a decision, assist the person to make their own decisions and have a role in ensuring the person's decisions are implemented. A support person may, for example, coordinate care or obtain and consolidate treatment information. The role is about ensuring that a person has everything they need to make decisions and that these decisions are known and followed by relevant health practitioners.

Medical treatment decision-making

As is the case in the Medical Treatment Act 1988, the bill excludes palliative care from the medical treatment decision-making process. Many health practitioners expressed unease about people refusing palliative care in advance, or medical treatment decision-makers being able to refuse palliative care. Health practitioners highlighted anxieties about potential situations where they may be forced to 'do nothing' in response to considerable pain or suffering of a patient because palliative care has been refused. While these situations may be infrequent, they would be highly distressing for both health practitioners and families to stand idle while a person suffered.

A person with capacity will continue to be able to refuse palliative care. However a medical treatment decision-maker will not be able to refuse palliative care. The bill will allow a person to make a values directive about palliative care.

The bill also excludes 'special procedures' from the medical treatment decision-making process. In order to perform a 'special procedure' on a person without capacity, a health practitioner will continue to be required to apply to VCAT under the Guardianship and Administration Act 1986. A person may, however, refuse a 'special procedure' through an instructional directive.

A medical treatment decision must be made at any time a health practitioner offers to administer a course of treatment. This offer may either be accepted or refused by consenting to, or refusing, the treatment. If a treatment is refused a health practitioner must withdraw or withhold that treatment.

If a person does not have capacity to make a decision, the bill provides a framework for determining how that decision should be made. What constitutes a reasonable effort may vary depending on a range of factors, including the urgency of the treatment required and the risk of harm to a person in delaying treatment. It must be recognised though that people make advance care directives because they want them to be considered and inconvenience is not a sufficient reason to not search for a directive.

The bill recognises that in an emergency, treatment that is urgently required to save a person's life, prevent serious damage to the person's health, or to prevent significant pain or distress may be provided without consent. The bill does not require a health practitioner to search for an advance care directive that is not readily available in these circumstances. Nevertheless, a practitioner must not provide treatment that they know the person has refused in an advance care directive.

The bill also provides a framework for determining who should be a medical treatment decision-maker if no one has been appointed. The bill provides that the first person listed with a 'close and

continuing' relationship who is available and willing will be a person's medical treatment decision-maker if they lose capacity.

The bill provides that the Office of the Public Advocate will be the 'decision-maker of last resort' for significant medical treatment decisions if none of the people listed as medical treatment decision-makers are available.

To ensure that treatment is provided in a timely manner, consent will only need to be obtained from the public advocate if the treatment is significant. If a health practitioner is unable to locate a medical treatment decision-maker they may provide routine treatment without consent. To ensure this decision is reviewable, the health practitioner must make a note of this in the clinical record, along with information about their efforts to locate a medical treatment decision-maker.

If an advance care directive is located, a health practitioner is required to provide, or not provide, treatment that is consistent with the directive. If there is a relevant instructional directive, this may constitute consent to treatment and a health practitioner may provide clinically indicated treatment. If treatment is refused in a relevant instructional directive, a practitioner must withhold or withdraw the treatment refused. If there is not a relevant instructional directive, a health practitioner must identify the medical treatment decision-maker. The medical treatment decision-maker must either consent to or refuse the treatment offered by the practitioner.

Amendments and consequential amendments

The Medical Treatment Act 1988 will be repealed.

The bill amends the Guardianship and Administration Act 1986 to remove all of part 4A 'Medical and Other Treatment' except provisions relating to “special procedures”. The 'special procedures' provisions relate to a discrete set of procedures that require VCAT approval. The nature of these procedures means that the protective oversight of VCAT is necessary. As a result of this, these provisions will remain in the Guardianship and Administration Act 1986, which is focused on protecting the welfare interests of people without capacity.

The bill amends the Mental Health Act 2014 in relation to approval procedures for electroconvulsive treatment of adults who do not have capacity.

The bill amends the Powers of Attorney Act 2014 to remove references to 'health'. The Powers of Attorney Act 2014 will govern substitute decision-making for financial and lifestyle decisions and the Medical Treatment Planning and Decisions Bill will govern substitute decision-making for medical treatment decisions.

The bill makes a range of consequential amendments to these and other relevant acts.