

Can they decide for themselves?

Making decisions for oneself is a basic human right. If there is disability around decision-making then professionals have a responsibility to provide assistance and maximise capacity as far as possible.

Questions that may help in determining capacity

Does the person understand the nature and effect of the treatment at the time the decision is required?

Does the person know the 'nature' of the treatment? That means, do they understand broadly and in simple language:

- What the treatment is?
- What the procedure involves?
- Why it is proposed?
- That there are other options? If choosing between options, the person must understand what each option is, what it involves, the effect of each option, and the risks and benefits of each option.
- What will it mean if they don't have the treatment?

Does the person understand the 'effect' of the treatment? Are they aware, in simple terms, of the main benefits and risks of the treatment?

Does the person have the ability to indicate whether they want the treatment? Can they communicate any decision made, with assistance if necessary? A speech pathologist may be of assistance and communication can be non-verbal too.

Has the person made the decision freely and voluntarily?

A person has a right to refuse treatment. If they have refused, consider the following:

- Is refusal of treatment consistent with the person's views and values?
- Is this behavior usual for the person?
- Has all the relevant information been given to the person in a way they can understand?



What is capacity?

A person has decision-making capacity if they can:

- Understand information that may be relevant to the decision, including the consequences;
- Retain such information, even for a short time;
- Use information to make decisions; and
- Communicate the decision (in any way).

Capacity is time and decision specific – it depends on the particular decision being made. A person may have decision-making capacity for some decisions but possibly not for others.

A person's decision-making capacity may also depend on factors from the environment such as time of day, location, noise or who is present. It may also be affected by infection, medication, and anxiety.

Legally, a person's capacity to make their own decisions must be assumed unless there is evidence to the contrary.

Tips on questioning

Remember, when assessing whether a person has the capacity to make a decision, it is important you:

- Ask open-ended questions.
- Do not lead the person towards a certain response.
- Identify whether a person needs support or help to make the decision. In some circumstances the person may need support from a neutral person such as an advocate or an interpreter.
- Ensure it is the person being assessed who answers the question.
- Consider non-verbal responses.
- Avoid assumptions.

For more information

More information about assessing capacity can be found at:

- <http://capacityaustralia.org.au>
- www.justice.nsw.gov.au/diversityservices/Documents/capacity_toolkit0609.pdf

National Dementia Helpline: 1800 100 500 is available to assist consumers. The person's GP may undertake a capacity assessment.

Information about advance care planning, with links to state-specific information, can be found at:

- www.start2talk.org.au
- www.advancecareplanning.org.au

Local contact:

Other brochures in the series:

- Supporting a person to make their own decisions
- When you need to make a decision for someone – Information for substitute decision makers
- Who will speak for you if you can't?

Acknowledgements

Material for this brochure has been drawn in part from the SA Health factsheet: *Impaired Decision-making: a clear path to care*. We are also grateful for the valuable input of consumers in the development of these brochures.



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Questions to ask the person

Here are some specific questions you may ask as part of the assessment process to determine if the person has capacity to make a healthcare decision.

- Tell me about your health and why you need treatment?
- What is the treatment that you might be having?
- How will the treatment help you?
- Will there be any bad things about the treatment? What are they?
- How do you think you will be able to deal with these?
- What are the risks of having the treatment?
- Is there any other treatment you might be able to have?
- How would this other treatment help you?
- What are the risks of having this other treatment?
- Which do you think is the best treatment? Why?
- What would happen if you didn't have any treatment at all?
- What do your family and friends think of the treatment?
- What do they want you to do? Why?

You may need more than one discussion – aim to keep conversations stress-free.