



# Canberra Health Services

## Procedure

### Assessment of Decision-making Capacity and Supported Decision-making for people being treated under the *Mental Health Act 2015*

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## Purpose

This procedure provides guidance to staff for assessing decision-making capacity of people being treated under the *Mental Health Act 2015*. It also explains the rights, roles and responsibilities of staff in providing people with the help they may require to allow them to make decisions about their treatment, care or support.

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## Alerts

Staff should always refer to the *Mental Health Act 2015* for the most definitive understanding, interpretation and explanation of the Act itself, particularly when making any decisions in relation to the Act.

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## Scope

This procedure is relevant to all Canberra Health Services (CHS) staff providing care or treatment to people with a mental disorder or mental illness being treated under the *Mental Health Act 2015*.

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## Section 1 –Decision Making Capacity

### 1.1 Definition of decision-making capacity

Under the *Mental Health Act 2015*, a person has capacity to make a decision in relation to their treatment, care or support for a mental disorder or mental illness (**decision-making capacity**) if the person can do *all* of the following (with assistance if needed), see Section 1.2 Supported Decision-making for further information):

- understand when a decision needs to be made about their treatment, care or support
- understand the facts of the decision
- understand the main choices available to the person in relation to the decision
- weigh up the consequences of the main choices
- understand how the consequences affect the person
- make the decision on the basis of the above information, and
- communicate the decision in whatever way they can.

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**Note:**

There is no specific form for documenting a Decision-making capacity assessment as this should be part of the person’s medical or general mental health assessment. However, the information that addresses the seven key points above must be documented in the person’s Digital Health Record (DHR) .

**1.2 Supported Decision-making**

Supported decision-making means providing a person with the help they need to allow them to make decisions about their treatment, care or support. This may involve providing information about treatment and care in different ways (e.g. the use of an interpreter or translation service) and involving other people that the person trusts (e.g. a family member, carer, close friend, nominated person) in helping the person understand and make decisions about their treatment and care.

Refer to the *Advance Agreements, Advance Consent Directions and Nominated Persons under the Mental Health Act 2015 Procedure* on the Policy and Guidance Documents Register for more information on how people can ensure their preferences for treatment, care and support are respected.

**1.3 Principles of Decision-making Capacity**

The *Mental Health Act 2015* provides a set of principles that **must** be used when assessing the decision-making capacity of people for each decision about their treatment, care, support, detention or movement.

This includes consideration of the following:

- A separate assessment of decision-making capacity needs to be made for each decision.
- For example, a person may be assessed as not having decision-making capacity in terms of the best form of intervention to treat their mental health condition. However, this does not necessarily mean they do not have decision-making capacity regarding where they should live.
- A person must be assumed to have decision-making capacity unless it established that they do not.
- People with decision-making capacity must be supported to make decisions about their treatment, care or support to the best of their ability.
- A person needs assistance through all available steps to make decisions. If they still do not have capacity, only then may they be treated as not having decision-making capacity.
- Making an unwise or not well considered decision does not mean that a person does not have capacity to make that decision.
- Being found to have impaired decision-making capacity under a different law (e.g. *Guardianship and Management of Property Act 1991*), does not mean that a person should be treated as having impaired decision-making capacity under the *Mental Health Act 2015*.

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- Accepting treatment, care or support does not mean that a person has decision-making capacity. On the other hand, if a person rejects treatment, care or support, they may still have decision-making capacity.
- People move between having and not having the capacity to make decisions. A person must be given the opportunity to make a decision **at a time when they have capacity**.

**1.4 Case study of Decision-making Capacity**

Mary, a 47 year old lady, has a diagnosis of bipolar disorder and has been brought to hospital by her husband for review. Mary has not slept for the past three days; she claims to have special powers and has been sharing these ideas with other people. Mary has also been spending excessive amounts of money and displaying disinhibited behaviour. She ceased her medication two weeks ago. Mary was then offered an alternative medication at the hospital; however she declined as she believes she is not unwell.

To assess Mary’s decision-making capacity, mental health staff work with her to help her to:

- understand when a decision about treatment, care or support needs to be made
- understand the treatment choices that are available to her at this time and the facts that relate to her decision
- weigh up the consequences of those choices
- consider how the consequences will affect her, and
- communicate her decision.

After this support, Mary still refuses to accept the new medication as she continues to believe that she is not unwell. At this point she is assessed not to have decision-making capacity.

**1.5 What happens if a person does not have decision-making capacity?**

Where someone is found not to have decision-making capacity about their mental health treatment, care or support, there are a range of processes to support decision-making in the best interests of the individual. These include the use of Advance Agreements, Advance Consent Directions, Mental Health Orders as well as the involvement of Guardians, Carers, Nominated Persons (please refer to the *Mental Health Act 2015* and relevant policies and procedures on the CHS Policy and Guidance Documents Register for more detail).

**1.6 How are the person’s best interests determined?**

Deciding what are in the best interests of the person is based on an assessment. This involves weighing up the advantages and disadvantages of making a particular decision for treatment, care or support. These include the person’s broader welfare interests, abilities, impacts on their family and likely future outcomes for having (or not having) the treatment, care or support. Best interests are specific to the person for whom the decision is being made.

A decision in the best interests of a person is generally one that a person would make themselves, if they had the capacity to do so at that point in time. It is not necessarily the same decision that another person would make.

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Information that should be considered in a best interests assessment:

- what the person has said in the past about their decisions on the topic when they did have capacity. For example, what treatment, care or support the person identified previously should be considered. This may be articulated in an Advance Agreement or Advance Consent Direction
- presently expressed views of the person for whom the decision is to be made
- the nature of the different treatment, care or support that is available. This includes what it involves and its prospects of success
- the advantages and disadvantages of each available course of action (including not receiving treatment, care or support)
- the likely outcomes (for the person’s whole life) of each available course of action (including not receiving treatment, care or support), and
- consultations with the person’s close friends, close family, Nominated Person and other decision-makers involved in their life (e.g. Attorney, health attorney or guardian).

**Note:**

There is no specific form for documenting a best interests assessment but information that addresses the six key points above should be documented in the person’s DHR.

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## Evaluation

### Outcome

- There is documented evidence in each person’s DHR of an assessment of decision-making capacity regarding significant treatment, care, and support decisions.
- All MHJHADS clinical staff have received training in supported decision-making.

### Measures

- Clinical Documentation including assessment of decision-making capacity is reviewed through regular audits.
- Completion rates of Supported Decision-making Training provided through HRIMS.

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## Related Policies, Procedures, Guidelines and Legislation

### Policies

- Informed Consent (Clinical)
- Clinical Records Management

### Procedures

- Emergency Detention in the Inpatient Setting and Persons Rights under the *Mental Health Act 2015*

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- Advance Agreements, Advance Consent Directions, and Nominated Persons under the *Mental Health Act 2015*
- Language Services – Interpreters and Translated Materials Procedure

**Legislation**

- *Mental Health Act 2015*
- *Health Records (Privacy and Access) Act 1997*
- *Human Rights Act 2004*
- *Work Health and Safety Act 2011*
- *Guardianship and Management of Property Act 1991*
- *Medical Treatment (Health Directions) Act 2006*
- *Powers of Attorney Act 2006*
- *Official Visitor Act 2012*
- *Carers Recognition Act 2021*

**Standards**

National Standards for Mental Health Services 2010  
National Safety and Quality Health Service Standards

**Other**

Australian Charter of Healthcare Rights  
ACT Charter of Rights for People who Experience Mental Health Illness

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**Search Terms**

Decision making, Support decision making, Capacity, Mental Health Order, Advance Agreement, Advance Consent Direction, Consent, Nominated Person.

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*Policy Team ONLY to complete the following:*

<i>Date Amended</i>	<i>Section Amended</i>	<i>Divisional Approval</i>	<i>Final Approval</i>

*This document supersedes the following:*

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