



**ACT**  
Government  
Health

# Mental Health, Justice Health and Alcohol & Drug Services (MHJHADS)

## Decision Making Capacity



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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):

- 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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## What is supported decision-making?

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Supported decision-making means providing a person with whatever 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 or close friend) in helping the person understand and make decisions about their treatment and care.

Decision making capacity is not a criterion for Emergency Apprehension, or for 3 or 11 day Emergency Detention orders.

## Features of decision-making capacity

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The Act 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:

- A separate assessment of decision-making capacity needs to be made for each type of decision that needs to be made.
  - For example, a person may be assessed as not having decision-making capacity regarding what type of intervention is best used to treat their mental health condition. However, this does not necessarily mean that they do not have decision-making capacity regarding where they should live.
- People must be supported to make decisions about their treatment, care or support to the best of their ability;

- A person needs to be assisted to make decisions through all available steps. If they still do not have capacity, only then may they be treated as not having decision-making capacity for that decision;
- Making an unwise or bad 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 (eg *Guardianship and Management of Property Act 1991*), does not mean that a person should be treated as having impaired decision-making capacity under The Act.
- 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 capacity to make decisions. A person must be given the opportunity to make a decision at a *time when they have capacity*.
  - For example, a person may be experiencing a manic state, commences treatment in hospital when a decision needs to be made about where they will live once they are discharged. The Act requires mental health services, if possible, wait for the person's mental state to improve in order for the person to make the decision about where they are going to live.

## **What happens if a person does not have capacity?**

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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.

## How are the person's best interests determined?

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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.

Things that are considered in a best interest's 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.
- 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).

- Consultations with the person's close friends, close family and other decision-makers involved in their life (e.g. Attorney, health attorney or guardian).

## **Principles for assessing decision making capacity**

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Decision making capacity is the ability to give consent to a particular treatment at a particular time.

Factors that may impact on decision making capacity Include (but not limited to):

- Being under the influence of alcohol or other drugs
- Dementia
- Intellectual disability
- Brain Injury
- Mental illness or mental disorder including psychosis, depression, hypomania and some anxiety states.

The presence or history of mental illness or mental disorder does not automatically mean a person does not have decision making capacity. A person's decision making capacity may change from time to time.

## **Assessing decision making capacity**

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The assessment of a person's decision making capacity will be undertaken by a Psychiatrist.

A person's decision making capacity will be used to determine if they can consent to a particular treatment, be part of the criteria for a Psychiatric Treatment Order, Forensic Order (Correctional patient), and if they can make other treatment related decisions.

## What happens if a person does not have capacity?

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If a person does not have decision making capacity to make a decision on a particular treatment, a psychiatrist may make the treatment decision for that person.

The person must be provided information and supported to participate in the decision to the greatest extent possible.

As a minimum, the psychiatrist must consider the person's views and preferences about their treatment, care or support, including any views expressed by their family or carer.

## Feedback

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Mental Health, Justice Health and Alcohol and Drug Services encourage and support consumer and carer participation and feedback. If you wish to provide comments your first point of contact should be the team leader of the Mental Health Team you are working with. This will allow you to confidentially discuss the matter, and in the case of a complaint seek a resolution at this point. If your complaint is not resolved to your satisfaction at this point, the Team Leader will provide you with the Consumer Listening and Learning Feedback Form. The form should then be sent to the Consumer Engagement and Feedback Team.

If assistance is required to complete the form and ensuring the relevant information is provided, please contact the Consumer Engagement Feedback Team.



**Phone** 6244 2740



**Fax** 6244 4619



**Hours** 8.30 am to 5.00 pm Monday to Friday



**Mail** Consumer Engagement Feedback Team, GPO Box 825 Canberra ACT 2601



**Email** [HealthFeedback@act.gov.au](mailto:HealthFeedback@act.gov.au)

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**Translation Services:** MHJHADS is committed to providing services that are culturally sensitive and which are easily accessible by consumers from diverse cultural and linguistic backgrounds. Access to interpreter facilities is available throughout the service with 24 hours notice. If an interpreter is required, or you have specific cultural care requirements, please contact your regional team.

**Mental Health Justice Health Alcohol and Drug Services (MHJHADS) is a smoke free environment in line with the ACT Health's Smoke Free Workplace Policy.**

For more information on the smoke-free environment initiative go to:

<http://www.health.act.gov.au/health-services/mental-health-act/smoke-free-environment>

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