

## 3: Decision-making capacity

### What is decision-making capacity?

Decision-making capacity is your ability to make decisions for yourself about the treatment, care and support you receive, including for your mental illness or mental disorder. Decision-making capacity is situational and can involve help from others if needed.

You have capacity to make a decision in relation to your treatment, care or support for a mental disorder or mental illness, with assistance if needed, if you can:

- understand when a decision needs to be made about your treatment, care, and support
- understand the facts that relate to the decision
- understand the main choices available in relation to the decision
- weigh up the consequences of the main choices
- understand how the consequences affect you
- make a decision, based on the above information, and
- communicate the decision in whatever way you can.

You will always be assumed to have decision-making capacity unless it has been determined through an assessment, that you do not.

### What affects decision-making capacity?

Things that *may* affect your decision-making capacity include:

- alcohol or other drugs
- having dementia
- having an intellectual disability
- having a brain injury, and
- having a mental illness or mental disorder

Having a mental illness or mental disorder now or in the past does not automatically mean you don't have decision-making capacity.

Your decision-making capacity may change over time and you may also have capacity to make some, but not all, decisions.

### How can I be supported to make my own decisions?

Before you are deemed to have decision-making capacity or not, you will receive all the help you need to make decisions about your treatment, care, and support. This may mean you are given information about treatment, care, and support in different ways (e.g. using an interpreter or being provided with written material). You can also choose people that you trust to help you understand the decision you are making (e.g. a family member, close friend, or Aboriginal Liaison Officer (ALO)).

### How is my decision-making capacity assessed?

Sometimes an assessment is needed to determine your decision-making capacity. The assessment may be different for each situation or decision that needs to be made. When assessing decision-making capacity, the following are important considerations:

- whether, with support, you can make decisions about your treatment, care, and support
- whether you need help to make decisions, and
- whether a separate assessment needs to be made for each decision.

Only after these things have been carefully considered can you be considered as not having decision-making capacity. Making an unwise decision, in other people's eyes (e.g. not agreeing to treatment, care or support) does not automatically mean that you don't have capacity to make decisions.

Similarly, accepting treatment, care and support does not necessarily mean that you have decision-making capacity, just as declining treatment, care, and support does not automatically mean you don't have capacity to make decisions.

Being found to have impaired decision-making capacity under a different law does not mean that you will be treated as having impaired decision-making capacity under the *Mental Health Act 2015*.

Your decision-making capacity will continue to be assessed regularly and you must be given the chance to make decisions at a time when you do have capacity.

## What happens if I do not have decision-making capacity?

If you are found to not have decision-making capacity about your mental health treatment, care, and support then someone else may have to make decisions for you. This might include:

- your guardian
- the person who holds power of attorney for you (if you have one), or
- the Chief Psychiatrist or the Care Coordinator (or their delegates) if the ACT Civil and Administrative Tribunal (ACAT) makes a Mental Health Order for you.

Whoever makes these decisions for you must make decisions that are in your best interest.

## How are my 'best interests' determined?

A decision in your best interest is a decision that you would make yourself, if you had the capacity to do so at that point in time. It does not have to be the same decision that another person would make. Your interests are specific to you.

Deciding on your best interests involves an assessment by your treating team, including a psychiatrist. A best interests' assessment will consider many factors, including your welfare, abilities, how your future may be affected by having (or not having) treatment as well as potential impacts on your family, employment, and other important matters. Your treating team may also talk with significant others, including your family and carer.

When determining your best interests, the assessment will consider:

- what you have said or decisions you have made in the past when you had decision-making capacity, e.g. treatment you have chosen previously should be considered
- your current views
- what your Advance Consent Direction or Advance Agreement says
- the nature of the treatment, care and support options that are available
- the advantages and disadvantages of each option (including not receiving treatment, care, and support)
- the likely outcome of each option (including not receiving treatment, care, and support), and
- discussion with your close friends, family, and decision-makers (e.g. guardian)