

# Decision making and consent

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## Introduction

*Consent* is the permission given by a person or substitute decision maker concerning decisions that affect a person's life. Consent requires a person to be informed about what they are giving consent to or for. Consent requires an understanding of the decision at hand which is referred to as *capacity*. When a person has the capacity to make a particular decision, they can:

- ◆ understand the facts and choices involved weigh up
- ◆ the consequences, and communicate the
- ◆ decision.

Some people may need support to exercise their capacity to make decisions that affect them, and to increase their decision making skills and confidence. Participants are always presumed to have the capacity to make their own decisions and give consent when it is required, unless there is evidence otherwise. We don't assume a person lacks capacity because of their age, appearance, disability, behaviour, language skills or any other condition or characteristic.

## Applicability

### When consent is required

- ◆ when a participant provides us sensitive personal information when
- ◆ providing supports and services to participants
- ◆ when creating or reviewing plans for participants before a participant begins a planned activity before a participant undertakes a health assessment
- ◆ when supporting participants to have medical or dental treatment when
- ◆ supporting participants to take medicine
- ◆ if we intend to share a participant's personal information with a third party before
- ◆ planning the use of any of the participant's funds
- ◆ before commencing a restrictive practice as part of a behaviour support plan when
- ◆ images or video of the participant is to be used for promotional purposes when a forensic
- ◆ procedure is required for a police investigation.
- ◆
- ◆

### When consent is not required

- ◆ any routine treatment or non-intrusive examination for diagnostic purposes, such as a visual examination of the mouth, throat, nose, eyes or ears
- ◆ first aid medical or dental treatment
- ◆ when urgent medical treatment is required to save the person's life, to prevent serious damage to a person's health or to alleviate significant pain or distress.
- ◆

### Who

- applies to all representatives including key management personnel, directors, full time workers, part time workers, casual workers, contractors and volunteers.

## Consent for medical treatment

- the medical practitioner must advise the participant about the general nature and effects of the proposed treatment
- the medical practitioner must advise the participant any risks associated with the proposed treatment
- the medical practitioner must advise the participant the general nature, effects, benefits and risks of alternative treatments or of not having treatment.

## Autonomous decision making

- for participants with the capacity to make their own choices without support, all decisions must be referred to them
- participants with the capacity to make their own choices can talk to family or friends, or carry out their own research before making any decisions
- participants are supported to make informed choices about the benefits and risks of decisions under consideration.

## Supported decision making

- participants that need help to make decisions and give consent will be supported in ways that best suits the individual, e.g. arranging an interpreter, supporter or advocate, getting information, communication tools, or arranging a certain time or place that best supports the participant
- where a participant has been assessed as not having the capacity to make his or her own decisions, we will support substitute decision makers, either informal or formal
- participants are always assumed to have capacity to make their own decisions no matter if their decision-making capacity is only small
- at any stage, participants are provided sufficient time to consider and review their options and seek advice if required, e.g. during assessment, planning, provision, review and exit.

## Impaired decision-making capacity

- if a participant is assessed to have impaired decision-making capacity, substitute decision making is required
- decision-making capacity is when a person is unable to make decisions at a particular time because they are incapable of either:
  - understanding any information that may be relevant to the decision

- retaining such information
  - using such information in the course of making the decision
  - communicating his or her decision in any manner
  - by reason of being comatose or otherwise unconscious, is unable to make a particular decision about this or her medical treatment.
- ◆ a participant's capacity can be lost or regained depending on a number of factors.

## Informal decision making

- ◆ informal decision making is where a person making a decision on behalf of another person has not been legally appointed
- ◆ informal decision makers can include the person's family, friends, carer or nominated support, and can help make decisions on behalf of a participant about who the participant wishes to see, their work, leisure, recreation, holidays or accessing services
- ◆ details for informal decision makers is recorded for each participant and this information is available to all relevant workers.

## Formal decision making

- ◆ formal decision making is where a legally appointed guardian or person responsible can make decisions for a participant
- ◆ formal decision making can assist if there is conflict over decisions being made about the person
- ◆ formal decision making can assist if that person's safety or the safety of others is at risk and a guardianship order is in place by the relevant state or territory authority
- ◆ formal decision making can assist where there is specific legislation that requires it, such as consent for medical treatment
- ◆ details for formal decision makers is recorded for each participant and this information is available to all relevant workers
- ◆ details of formal decision makers are recorded for participants, if relevant, and are available to all relevant workers.

## Substitute decision makers

- ◆ if there is uncertainty over who can provide consent when a participant with an impaired decision-making capacity requires it, the order of priority is:
  - a. a guardian (including an enduring, private or public guardian) who has been appointed with a medical and dental consent function
  - b. a spouse, de facto spouse, or partner who has a close and continuing relationship with the person
  - c. the carer or person who arranges care regularly and is unpaid (the carer's pension does not count as payment)
  - d. the carer of the person before they went into residential care, or
  - e. a close friend or relative
- ◆ if a person above is not capable of consenting for the participant, or they refuse to consent, the next person in the hierarchy can consent
- ◆ if we think it is in a participant's best interest to get help from a substitute decision maker, we should: explain to the
  - participant why we think someone needs to make a decision for them

- ◊ ask the relevant state or territory authority (usually a civil administrative tribunal) to look at whether or not to appoint a guardian or administrator
- ◆ an application for consent by the relevant state or territory authority is required for participants with impaired decision-making capacity for medical treatments which include:
  - ◊ special medical treatment (e.g. termination of pregnancy, treatment likely to result in significant side effects, or for removal of an tissue for transplanting to another person)
  - ◊ significant medical or dental treatment, and there is no person responsible or the person responsible is not available, or
  - ◊ significant or routine medical treatment when the patient is objecting and there is no appointed guardian authorised to override such objection.

## Consent rights for participants

- ◆ consent is required every time a participant seeks access to services to ensure they are fully informed of their rights and our obligations
- ◆ participants have the right to make decisions about things that affect their lives and to take calculated risks children and young
- ◆ people have a right to be involved in decisions that affect them in ways appropriate to their age and stage of development
- ◆ each participant must have sufficient time to consider and review their options and seek advice if required, at any stage of support provision, including assessment, planning, provision, review and exit
- ◆ each participant has the right to withdraw or amend their consent if they wish.

## Our consent responsibilities

- ◆ encourage and support participants to make informed decisions when their consent is required
- ◆ ensure consent arrangements for participants, including any legal authorisations required, are recorded in the participant's file, and are reviewed and updated regularly
- ◆ ensure consent for financial matters is obtained from the participant, or legally appointed financial manager or person appointed under a Power of Attorney
- ◆ obtain consent from the participant or legally appointed guardian, for life decisions such as accommodation, medical and dental treatment, forensic procedures, and behaviour support
- ◆ obtain consent from the participant prior to collecting, using and storing a participant's information and provide reasons why the information is needed
- ◆ obtain consent before disclosing any of a participant's personal information (such as case notes, management plans or assessments) to other parties
- ◆ only disclose participant information without consent if we believe the person is at risk of harm, an unlawful act has occurred or as otherwise required by law
- ◆ not influence or limit decision making and self-determination with our interests, beliefs or values when providing decision making support.

## How we obtain consent

- ◆ consent from a participant or a substitute decision maker should always be in writing but if this is not practicable, verbal consent is acceptable providing it is later confirmed in writing.

## When consent is refused

- a note of a participant's refusal to consent must be stored in the participant's file there are no
- consequences for a participant in terms of receiving services.

## When consent is not possible

- informal decision making can help make decisions for the participant when there is no legal arrangement
- formal decision making may be required if there is conflict over decisions about the participant, the participant's safety or the safety of others is at risk, or the law requires it.