

## What if I am assessed as lacking capacity?

If you are assessed as not being able to make a decision even though you have had support, you may need someone else to make the decision for you. This might be someone from your family, a friend or another person. They are called a 'substitute decision-maker'. They should also ask you what you want, but may need to make a decision you don't like.



## What can I do if I am unhappy?

Help is available if you are unhappy about the decisions made about your capacity because:

- the person assessing you isn't using the capacity assessment principles properly or
- you feel you can make a decision when someone else thinks that you can't.

You can get help by talking to the Guardianship Tribunal:

Phone: (02) 9555 8500

Toll free: 1800 463 928

TTY: (02) 9552 8534

Website: [www.gt.nsw.gov.au](http://www.gt.nsw.gov.au)

This information can be provided in alternative formats such as Braille, audiotope, large print or computer disk. Please contact Diversity Services on (02) 8688 8460 (voice), (02) 8688 7733 (TTY – for people who are Deaf or have a speech impairment) or [diversity\\_services@agd.nsw.gov.au](mailto:diversity_services@agd.nsw.gov.au)

You will find a copy of the Capacity Toolkit and this Factsheet on the internet at: [www.lawlink.nsw.gov.au/diversityservices](http://www.lawlink.nsw.gov.au/diversityservices)

# Capacity Toolkit Factsheet



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**Is someone worried about your ability to make a decision for yourself?  
If so, find out about your rights.**

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## What is capacity?

The ability to make your own decisions is called 'capacity'.

When you have capacity you can make your own decisions about things that happen in your life.

These might be small decisions that you make everyday, like what to eat or who you want to see. Or they might be bigger decisions, like where you live, buying a car or whether you need to have an operation.

## What is capacity assessment?

Before another person decides that you can't make a decision for yourself, they must do a 'capacity assessment'. The person might talk with you about the decision that has to be made. They might tell you the reasons why there is concern about your ability to decide for yourself.

The person may be worried if decisions you make:

- put you, or others, in a lot of danger or
- are very different from those you have made in the past.

The person will want to ask if you know what the decision is about and why you are making certain choices. They will decide if you:

- can make your own decision
- can make the decision with some help, or
- can't make a decision at this time.

The person who assesses your capacity may be a:

- family member, friend or carer
- doctor or other health care worker
- government worker, lawyer or bank manager or
- person who provides you with services.



## How should capacity be assessed?

When a person is doing the capacity assessment they should think about some important things that protect your rights. These are called **Capacity Assessment Principles**, and are listed below.

- 1 The person assessing you should always start an assessment by assuming you have capacity to make decisions.**
- 2 The person assessing you should understand that if you can't make a decision about one thing, you may still be**

**able to make other decisions.**

For example, you may be able to decide what to buy at the grocery store, but not decide when to buy a house.

- 3 The person assessing you should never assume that you lack capacity because of how you look or act, or because of your cultural or religious beliefs.**



- 4 The person assessing you should look at your ability to understand the decision and not judge if the decision is good or bad.** Everyone has his or her own likes and dislikes. You might think that a decision is a good one, but someone else might worry that it is unwise. For example, eating chocolate cake for breakfast may be judged as unwise but it does not mean you do not have decision-making capacity.

- 5 The person assessing you should respect your privacy.**

- 6 The person assessing you should support you or get support for you to help you make a decision, before they decide you can't make it.** Sometimes you may just need some help, or assistance, to make the decision yourself. The support you may need will depend on why it is hard for you to make a decision. You might need:

- the information explained to you or in another language
- an advocate to support you to say what you want
- to be assessed at a specific time of day, in a quiet place or in a place you feel comfortable.

When a person is giving you support they shouldn't tell you what to do or pressure you to make the decision they want you to make.

Make sure you ask for the help you need, to help you to make a decision yourself.