

# What is mental capacity?

The law requires that a person has mental capacity (legal capacity) when making certain decisions in their life, in order for these decisions to be considered valid. These include making a Will, appointing an Enduring Power of Attorney, completing an Advance Care Directive.

A formal mental capacity assessment may be required if it becomes apparent a person is unable to make the majority of their daily decisions, even with the support of others. The need for a mental capacity assessment may be based on:

- onset of significant confusion or memory loss
- psychiatric symptoms, mood disturbance
- delusional thought, paranoia, hallucinations
- specific loss of language skills - dysphasia (comprehension or verbal fluency)
- inappropriate or out of character behaviour
- progressive decline in cognitive ability.

Knowing the exact time when a mental capacity assessment may be warranted is often complex and the decision to make an application for an assessment should be carefully considered.

If you are unsure, the [Office for the Public Advocate](#) can be contacted for confidential advice and support prior to making an application to the [South Australian Civil Administrative Tribunal](#) (if required).

Mental capacity assessments are usually conducted by trained professionals such as geriatricians, neurologists, psychiatrists and some general practitioners, neuropsychologists and social workers. Some allied health professionals such as speech pathologists or occupational therapists may be skilled to assess a person's mental capacity, or contribute historical knowledge about the person for the purposes of assessments.

Remember:

- > Mental capacity assessments should be completed when a person is medically stable.
- > A person is still entitled, even with suspected mental incapacity, to have language assistance and their cultural considerations and other wishes taken into account.
- > Documentation is required to contribute to a determination of the person's current mental incapacity.
- > Reports need to be accompanied by medical evidence of mental incapacity for the purposes of an application to the [South Australian Civil Administrative Tribunal](#).





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## For more information

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Public-I1-A1

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