



Australian Government

Department of Health

COVID-19 Vaccination - Guidance for health professionals on consent, capacity, substitute decision making and providing individualised advice

Determining individual capacity to consent to or refuse a COVID-19 vaccine

Health professionals have a legal and professional responsibility to obtain valid informed consent before treating any person. To provide valid informed consent to COVID-19 vaccination, the person giving consent must have the legal capacity to do so. In other words, the consent giver needs to be able to understand the nature and effect of the decision to consent and demonstrate their understanding by communicating this in some way.

In practice, this requires a general practitioner to communicate relevant information and assess if the person understands the risks and benefits of the choice they are making. If a patient can communicate the choices they are making clearly, it's a good indication they understand those risks and benefits.

If a person has difficulty in demonstrating legal capacity to make a decision about their treatment, you should first work out the reasons for their difficulty. This may include reasons other than lack of capacity, such as: health literacy; cultural differences; education levels; or physical issues (for example hearing or speech impairment). Information must be presented in ways that overcome these difficulties. More information on supported decision making is provided below.

The Australian Commission on Safety and Quality in Health Care has [a useful factsheet for clinicians on informed consent](#).

Providing support for decision making – *supported decision making*

Supported decision making is a human right: all adults have the right to make their own decisions. A person's ability to make decisions varies according to the specific decision being made, as well as their own health and any other factors currently impacting them. The quality of support offered to a person can significantly assist them to make decisions.

Providing information in an accessible way, providing choices and experiences, and ensuring the person has support to make decisions, plays a critical role in upholding their right to make decisions. For people who rely on others to interpret their will and preferences, support plays a critical role in upholding their right to be as involved in decisions as possible. A person should be given the opportunity to choose a support person, such as a carer, to be part of discussions.

Substitute decision-making

Substitute decision-making, where a person is given legal authority to make a decision on behalf of another person, is an option of last resort. Rules on who can be a substitute decision maker vary by state.

Where the person who will be undergoing treatment is unable to give consent, healthcare providers need to be fully aware of the legal requirements for proceeding with the treatment (for example, in an emergency), or obtaining substitute consent, and whether the person who will undergo the treatment objects to such treatment, prior to providing or administering the treatment or procedure.

Each state and territory has guardianship and/or medical treatment legislation about capacity and consent. It is the responsibility of all healthcare providers to know and understand their legal obligations in whichever state or territory they are practising. State and territory information on substitute decision-makers can be obtained through the contacts and websites listed below.

State/territory	Contact
ACT	Public Trustee and Guardian 02 6207 9800 www.ptg.act.gov.au
NSW	NSW Civil & Administrative Tribunal Guardianship Division 1300 006 228 and press 2 13 14 50 (interpreter service) Email: gd@ncat.nsw.gov.au www.ncat.nsw.gov.au
NT	Office of the Public Guardian 1800 810 979 Email: public.guardian@nt.gov.au http://publicguardian.nt.gov.au
QLD	Office of the Public Guardian 1300 653 187 Email: publicguardian@publicguardian.qld.gov.au www.publicguardian.qld.gov.au
SA	South Australian Civil and Administrative Tribunal 1800 723 767 Email: sacat@sacat.sa.gov.au www.sacat.sa.gov.au
TAS	Guardianship and Administrative Board Tasmania 1300 799 625 Email: guardianship.board@justice.tas.gov.au www.guardianship.tas.gov.au
VIC	Office of the Public Advocate 1300 309 337 mail: opa_advice@justice.vic.gov.au www.publicadvocate.vic.gov.au
WA	Office of the Public Advocate 1300 858 455 or 08 9278 7300 Email: opa@justice.wa.gov.au www.publicadvocate.wa.gov.au

Providing individualised advice to patients on COVID-19 vaccination

Individualised advice on the medical safety/risk of vaccination relative to the risk of contracting COVID-19

It can be difficult to communicate with patients about risk. Using concrete examples to describe risks can help convey information to patients in a more appreciable way. It can be helpful to think about examples you might use to prepare for conversations with patients.

Information about an individual patient's circumstances will be required to provide individualised advice on the risk of COVID-19 vaccination relative to the risks associated with contracting COVID-19. A patient's age, medical history (including any contraindications to COVID-19 vaccines), social risk factors, and capacity to implement 'COVID Safe' actions may need to be considered in your assessment.

There are two MBS items (10660 and 10661) to support GPs and other medical professionals to provide in-depth clinical assessments of patients regarding their individual health risks and benefits associated with receiving a COVID-19 vaccine. The items are available to all Medicare eligible patients who are seeking to receive a COVID-19 vaccination and who require in-depth medical assessment and advice regarding their individual risks and benefits associated with receiving a vaccine. More information on these items [can be accessed here](#).

Individualised advice on which vaccine(s) a patient could/should receive

Part of a health professional's role is to provide individualised advice relating to different types of medical care or treatment. In the context of COVID-19 vaccination, this extends to providing individualised advice on what vaccine(s) a patient could or should receive. Individualised advice may take into account:

- a patient's eligibility for different vaccines
- a patient's contraindications to particular vaccinations, and
- how side effects of vaccination may affect the patient.

The Australian Technical Advisory Group on Immunisation has published [clinical guidance on the use of COVID-19 vaccines in Australia](#). This provides recommendations on the use of Comirnaty (Pfizer), Spikevax (Moderna) and Vaxveria (Astra Zeneca) vaccines.

Disclaimer: This fact sheet is for general information purposes and is not a substitute for professional legal advice in individual circumstances and cases.