



# Legal Capacity

**This fact sheet has information on legal capacity, the reasons why you might not have capacity to make decisions for yourself and how Legal Aid WA can help.**

## What is legal capacity?

Legal capacity is an important legal concept. It means you are able to make reasoned decisions for yourself about personal, financial, and legal matters.

For older people, legal capacity is especially important because you need it to create legal documents such as wills, Enduring Powers of Attorney, Enduring Powers of Guardianship, and Advance Health Directives.

**“Legal capacity means you are able to make reasoned decisions for yourself about personal, financial and legal matters.”**

## What are some reasons you may not have legal capacity?

There are many reasons why you may not have the legal capacity to make decisions for yourself, including:

- » dementia,
- » acquired brain injury,
- » mental illness,
- » substance related brain damage, and
- » intellectual disability.

However, simply having a medical condition such as dementia does not automatically mean you lack the legal capacity to make decisions. It depends on your circumstances, the severity of your medical condition and the type of decision you want to make. Making a bad decision also does not automatically mean you lack legal capacity.

## What does the law say about legal capacity?

The rules about legal capacity are complex and are different in certain circumstances.

For example: the rules about whether you have the legal capacity to make a will are different from the rules about whether you have the legal capacity to make medical decisions for yourself.

In Western Australia, the law presumes you have the capacity to make your own decisions until that is shown not to be the case.

This fact sheet contains information only. It is not legal advice. If you have a legal problem, you should speak to a lawyer. Legal Aid WA aims to provide accurate information but does not accept responsibility if it is not.

You are welcome to copy, use and share the information from our website, including our resources and publications, if you are doing so for non-commercial or non-profit purposes. You must make it clear the content was created by Legal Aid WA.

## When should you get advice about legal capacity?

It is important that you get legal advice:

- » if you are worried that someone thinks you do not have capacity,
- » if you are concerned about the medical evidence given to the State Administrative Tribunal about your capacity, or
- » if you disagree with a decision that has been made about your capacity.

“

**It is important to get legal advice if you are worried about legal capacity.**

”

---

## How can Legal Aid WA help?

Older Western Australians can get advice on legal capacity through Legal Aid WA’s specialist service, Elder Rights WA .

Elder Rights WA operates from the Perth office at Legal Aid WA.

Lawyers with specialist experience in the laws that affect older Western Australians provide the Elder Rights WA service. Advice can be provided by phone, face to face and through community outreach. There is no cost in receiving advice from a lawyer at Elder Rights WA.

You can access Elder Rights WA by calling Legal Aid WA’s Infoline on 1300 650 579.

You can also email: [ElderRightsWA@legalaid.wa.gov.au](mailto:ElderRightsWA@legalaid.wa.gov.au).

To find out more about Elder Rights WA you can visit the Legal Aid WA website: [www.legalaid.wa.gov.au](http://www.legalaid.wa.gov.au).

**“Older Western Australians can get advice on legal capacity through Legal Aid WA’s specialist service, Elder Rights WA.”**