

Speech-language therapists' role in assessment of mental capacity

SLTs play a key role in determining a person's mental capacity (their ability to make decisions) and supported decision-making



New Zealand
Speech-language
Therapists' Association

*Te Kāhui Kaiwhakatikatika
Reo Kōrero o Aotearoa*

An increasingly important issue

SLTs protect and promote the interests of people with communication needs by supporting them to demonstrate whether or not they have decision-making capacity. They promote inclusion, dignity, choice, and equality of access to services and reduce the potential risk of people with communication needs being wrongly deemed as lacking capacity.

Who does this impact?

Speech-language therapists work with a wide range of people for whom mental capacity assessments may be necessary. These include people with:

- head and neck cancer
- learning disabilities
- traumatic brain injury
- mental health problems
- progressive neurological conditions such as dementia, Parkinson's disease, motor neurone disease, and multiple sclerosis)
- aphasia and dysarthria

All of these can have a significant impact on an individual's communication and thinking skills

Jo had a stroke in 2014. She was only 42 with 2 small children. She had severe receptive and expressive aphasia (language difficulties). Her marriage ended and due to her communication difficulties, she was not well represented legally. She felt she could not get her needs across or fight her cause. Jo lost access to her children and her home. This caused great distress and impacted her well-being.

With time and support life has improved.

Jo now drives, has a part time job and a good relationship with her girls. One of her best achievements has been skydiving



Communication and thinking difficulties can impact on:

A person's capacity

They may also have cognitive difficulties due to the nature of their condition (e.g. dementia).

These cognitive difficulties may mean the person lacks the capacity to make certain decisions.

Other people's perceptions of capacity

A person with a communication disability may be at risk of being determined not to have capacity if people working with and caring for them mistake their communication disability for a lack of capacity.

A person's ability to demonstrate they have capacity

A person with a communication disability may have capacity to make decisions, but not the means to communicate it if their disability is unsupported.

The role of the speech-language therapist

Speech-language therapists are qualified health practitioners who support people with communication and swallowing needs. They are uniquely trained and qualified to

- Undertake in depth assessment of an individual's current, and likely future, ability to communicate, including their ability to understand, express themselves, retain and recall information, and reason (weigh up different options)
- Contribute to multidisciplinary capacity assessments of people with communication needs
- Support people with communication needs to demonstrate their decision-making capacity
- Support people to express their preferences and wishes in relation to any decision made on their behalf regardless of whether they are deemed to have capacity.
- Advise and train people on the best means by which someone with a communication disability might overcome their disability so they can make and communicate informed decisions about their treatment and care
- Support people to understand how to communicate with individuals who have been found to lack decision-making capacity
- In New Zealand, speech-language therapists can be appointed as Communication Assistants in the court, which ensures that communication adjustments are made to enable people to participate fairly in the court process. For more on this role, see the Court Appointed Communication Assistant Guideline

SLTs are experts in inclusive communication. They remove barriers to communication and train others to do so too. This includes encouraging people to adapt their communication styles to meet an individual needs. Augmentative and Alternative Communication can support some needs by using writing, gestures, signing, symbols and pictures, word boards, communication boards, and other forms of technology to support or replace spoken communication.

Peter sustained a traumatic brain injury at 25. He had severe cognitive communication disorder affecting his attention, working memory, organisation and planning skills. This ultimately meant that he was unable to carry on with his work as an engineer. He attended his injury compensation assessment to determine his entitlements, however was not able to fully participate as his communication needs weren't taken into consideration. This impacted upon the monetary decision of his entitlements, and subsequently his family life.

Legal information for Aotearoa/New Zealand

The Protection of Personal and Property Rights Act 1988 (“PPPR Act”) aims to protect the personal and property rights of people who cannot fully manage their own affairs. The PPPR Act covers situations where a person is able to make their own decisions but may need some help dealing with their affairs now or in the future (through an enduring power of attorney) and also when the person has lost all mental capacity (Court orders)

Te Tiriti o Waitangi

An understanding of Māori tikanga, including underlying world views, is critical for those involved in capacity assessment and supported decision-making involving Māori patients and their whānau.

Te Tiriti o Waitangi recognises the obligations and the relationship between the Crown and Māori as tangata whenua. It values indigeneity and upholds a set of rights that Māori ought reasonably to expect to exercise in contemporary times, respecting Tino Rangatiratanga and one's autonomy over their own health journey



Key Practice Points (Douglas et al., 2020)

- A person is presumed to have the capacity to make a decision unless there are good reasons to doubt this presumption.
- In general, capacity is assessed with respect to a specific decision at a specific time.
- Assessment is of a person's ability to make a decision, not the decision they make. A person is entitled in law to make unwise or imprudent decisions, provided they have the capacity to make the decision.
- Supported decision-making involves doing everything possible to maximise the opportunity for a person to make a decision for themselves
- Capacity assessment procedures need to consider tikanga Māori and cultural diversity.
- Legal Test for Capacity
- A person lacks capacity if they are unable to:
 - Understand the nature and purpose of a particular decision and appreciate its significance for them;
 - Retain relevant, essential information for the time required to make the decision;
 - Use or weigh the relevant information as part of the reasoning process of making the decision and to consider the consequences of the possible options, (and the option of not making the decision); or
- Communicate their decision, either verbally, in writing, or by some other means.



SLTs can also reduce the potential risk of people with communication needs being wrongly deemed as lacking capacity

Maqymseahē is a 27 year woman who lives with cerebral palsy. Maqymseahē uses an AAC device to communicate and to type documents, access the internet and much more. Through her life, she has asserted her independence and autonomy over her own life, she changed her name by deed poll despite her family not supporting the idea. She has a Bachelor of Communications and a Master of Business Studies. She loves sailing, skiing and going to the gym....but she was unable to open a bank account



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<https://www.rcslt.org/speech-and-language-therapy/guidance-for-delivering-slt-services/supported-decision-making-and-mental-capacity/>