



FORM HCDM2

COVERSHEET AND GUIDELINES FOR REPORT BY MEDICAL PRACTITIONER OR OTHER HEALTH PRACTITIONER

Health Care Decision Making Act 2023

SECTION A - PERSON WHO IS THE SUBJECT OF THE APPLICATION ('THE ADULT')

File Number:

First Name/s:

Surname:

Date of Birth:

SECTION B - YOUR DETAILS

First Name/s:

Surname:

Postal Address:

E-mail:

Landline Phone:

Mobile Phone:

SECTION C - YOUR RELEVANT PROFESSIONAL QUALIFICATIONS

[Here set out a short statement of the training and/or experience that mean you are qualified to express the opinions in the attached report. You may, instead, include such a statement in the report.]

SECTION D – DETAILS OF PERSON WHO REQUESTED YOUR REPORT

First Name/s:

Surname:

Organisation (if applicable):

Postal Address:

E-mail:

Landline Phone:

Mobile Phone:

SECTION E – DECLARATION

I _____ declare that:

- I have prepared the attached report having considered the guidelines below; and
- I have mentioned in the report all matters known to me that I believe may be relevant to NTCAT's assessment whether the adult has impaired decision-making capacity.

Date: _____

Signature _____

GUIDELINES

Overview

You have been requested to provide an expert opinion to assist NTCAT in determining whether orders should be made for or in relation the adult under section 41 of the *Health Care Decision Making Act 2023*.

These guidelines are designed to assist you in the preparation of your report. The guidelines:

- identify the issues NTCAT must consider in reaching a decision whether a person has decision making incapacity; and
- include suggestions regarding the structure your report should take.

This document is also intended to act as a coversheet for your report. You will need to fill out sections A to E above and attach the completed document to your report.

Impaired Decision Making Capacity

Decisions may only be made under the *Health Care Decision Making Act 2023* in cases where an adult has impaired decision making capacity. Section 8(2) to (8) of the Act provides as follows:

- (2) An impairment in any of the following is relevant in determining whether an adult's capacity to make the health care decision is impaired:
 - (a) understanding and retaining information relevant to the health care decision;
 - (b) weighing information relevant to the health care decision in order to make the health care decision;
 - (c) communicating the health care decision in some way;
 - (d) understanding the effect of the health care decision.

- (3) For subsection (2)(a), an adult is taken to understand information relevant to a health care decision if the adult understands an explanation of the information given to the adult in a way that is appropriate to the adult's circumstances, whether by using modified language, visual aids or other means.
- (4) For subsection (2)(c), an adult is taken to communicate the health care decision if the adult communicates the decision in a way that is appropriate to the adult's circumstances, whether by using modified language, visual aids or other means.
- (5) An adult may have impaired decision making capacity in relation to some matters and not others.
- (6) The degree to which an adult has impaired decision making capacity may vary over time.
- (7) The cause of the impairment of the decision making capacity is immaterial.
- (8) An adult does not have impaired decision making capacity merely because the adult:
 - (a) has a disability, illness or other medical condition, whether physical or mental; or
 - (b) requires the use of practicable and appropriate support, including additional time for explanation, modified language, visual or technological aids or other means of communication; or
 - (c) engages in unconventional behaviour or another form of personal expression; or
 - (d) chooses a living environment or lifestyle with which other people do not agree; or
 - (e) makes decisions with which other people do not agree; or
 - (f) does not have a particular level of fluency in English; or
 - (g) does not have a particular level of literacy or education; or
 - (h) engages in particular cultural or religious practices; or
 - (i) does or does not express a particular religious, political or moral opinion; or
 - (j) is of a particular sexual orientation or gender identity or expresses particular sexual preferences; or
 - (k) takes or took, or is or was dependent on, alcohol or drugs, unless the alcohol or drugs are causing actual impairment in relation to the health care decision; or
 - (l) engages or engaged in illegal or immoral conduct.

Examples for subsection (8)(b)

- 1 *Using information or formats tailored to the particular needs of the adult.*
- 2 *Communicating or assisting a person to communicate the adult's decision.*
- 3 *Giving a person additional time and discussing the matter with the adult.*
- 4 *Using technology that alleviates the effects of an adult's disability.*

Expert Evidence and the Assessment of Impaired Decision-Making Capacity

NTCAT will usually rely upon evidence from a number of sources in reaching a decision whether an adult has impaired decision-making capacity. The type and quantity of available evidence is likely to vary according to the affected adult's particular circumstances.

Apart from observational evidence (for example in the form of carers' reports or evidence of family members), expert opinion evidence will usually be essential to any assessment of decision making capacity.

From NTCAT's point of view, the critical considerations in evaluating expert opinion evidence regarding decision-making capacity are these:

- whether the expert has training or experience that means he or she is qualified to express an opinion regarding the adult's decision making capacity; and
- whether the expert has clearly identified the basis for his or her opinion including any matters that might affect the reliability of that opinion.

The level of training and expertise required of an expert, as well as the level of detail NTCAT will wish to see in a report, is likely to vary. For adults affected by unusual conditions, or in cases where an adult's capacity may be impaired in particular respects only, there is likely to be a greater requirement for specialist expertise and detailed analysis.

Your report

NTCAT does not insist that your report follow a particular form.

You should, however, ensure that your report includes:

- details of the **consultations, tests and investigations** undertaken in relation to the adult;
- your **diagnosis** or assessment based on those consultations, tests and investigations;
- an **explanation** of the way/s (if any) in which the diagnosed condition/s affects the adult's ability to:
 - (a) understand and retain information about the adult's personal matters and financial matters; and
 - (b) weigh the information in order to make reasoned and informed decisions about those matters; and
 - (c) communicate those decisions in some way.
- a **forecast**, including having regard to the adult's prognosis, of whether those effects are likely to continue, worsen or abate;
- identification of any matters that might affect the **reliability** of the conclusions you have drawn; and
- a statement of your **qualifications** (if not already set out in section C above).

If you wish, you could use the words in bold text above as subject headings for your report.

PLEASE ATTACH YOUR REPORT FOLLOWING THIS PAGE.