

#### 1 INTRODUCTION

- 1.1 Every person has the right to consent– this is a basic human right.
- 1.2 Every adult has the right to choose what they want and to make their own decisions, for example, about health, legal or financial issues or to participate or withdraw from activities and actions. It will be taken for granted that they have the mental capacity to do so unless it can be proved that they cannot.
- 1.3 In most countries, people with an intellectual disability who are aged 18 or over have the same legal rights as any other adult. It is particularly important that people with an intellectual disability have these rights protected and promoted.
- 1.4 This policy explains how INAS will promote these rights, however it should be noted that these are general guidelines; Member Organisations will be governed by their own legislation about how these rights should be upheld.
- 1.5 It is important that these guidelines are read in conjunction with the national guidance and legislation applicable in a particular nation.

#### 2 CONSENT

- 2.1 For an individual's consent to be valid, the person must be:
  - a) capable of taking that particular decision ('competent')
  - b) acting voluntarily (not under pressure or duress from anyone)
  - c) provided with enough information to enable them to understand the decision they are making.
- 2.2 Seeking consent from a person with an intellectual disability is part of a respectful relationship and should usually be seen as a process, not a one-off event. When seeking a person's consent to engage in a particular activity there should be sufficient time and support to make their decision (unless the urgency of a medical condition or the existence of risk to themselves or others prevents this).
- 2.3 People who have given consent to a particular intervention or activity are entitled to change their decision and withdraw their consent at any point, if they have the capacity (ie. are competent) to do so. Similarly, an individual can change their decision and consent to an intervention/activity which they have earlier refused. It is important to let the person know this, so that they feel able to change their decision.
- 2.4 Consent is a process. Legally, it can make no difference whether people sign a form to indicate their consent, or whether they give consent orally or even non-verbally. A

### 4.10 INFORMED CONSENT

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consent form is only a record, not proof that genuine consent has been given. However, it is good practice to seek written consent.

- 2.5 If the person has the capacity to consent to an intervention or care for which written consent is usual but cannot write or is physically unable to sign a form, a record that the person has given oral or non-verbal consent should be made in their notes or on the consent form.

### 3 CAPACITY

- 3.1 Adults are always presumed to be capable of making decisions, unless the opposite has been demonstrated. This applies just as much to people with an intellectual disability as to any other adult. Where any doubt exists, it is important to assess the capacity of the person to take the decision in question, drawing on both the individual's carers and the assistance of specialist colleagues.
- 3.2 For people to have the capacity to take a particular decision, they must be able to:
- comprehend and retain information relevant to the decision, especially as to the consequences of taking or not taking part, and
  - use and weigh this information in the decision making process.
- 3.3 It is very easy for an assessment of capacity to be affected by organisational factors such as pressure of time, or by the attitude of the person carrying out the assessment. It is your professional responsibility to ensure that you make as objective a judgement as you can, based on the principle that the person should be assisted to make their own decision if at all possible. It is essential that the information available for people with an intellectual disability is appropriate and accessible.
- 3.4 Methods of assessing comprehension and ability to use information to make a choice include:
- exploring the person's ability to paraphrase what has been said (repeating and rewording explanations as necessary)
  - exploring whether the person is able to compare alternatives, or to express any thoughts on possible consequences other than those which you have disclosed
  - exploring whether the person applies the information to his or her own case