

FINANCIAL DECISION- MAKING CAPACITY - A CHALLENGE FOR ADVISORS



How do we establish when a lack of decision-making capacity is impacting an individual's ability to independently make informed financial decisions? How do we support advisors who may be unsure about a client's decision-making capacity? Increasingly as a society we are being faced with these challenges. The following outlines a major research initiative aimed at addressing these issues and more.

The challenge

It was estimated that in 2020 there were more than 400,000 Australians with dementia and over 700,000 Australians had some form of brain injury which limits their activities in some way. Recent regulatory reforms in the wake of the Hayne Royal Commission require providers of financial advice to ensure that their clients demonstrate informed consent with the consequence that client's decision-making capacity becomes a fundamental part of providing advice. As a result, providers of financial advice are confronted with a growing number of incidents and disputes involving questions of clients financial decision-making capacity.

Financial knowledge and skills can vary widely among cognitively normal individuals due to their experience and background.

Rather than a binary concept, financial decision making, can be thought of as a spectrum with complete autonomy at one end and substitute decision making at the other. In the centre there exists a realm of supported decision making that requires individuals to be able to demonstrate their understanding of the consequences of their proposed action.

From the perspective of a financial advisor the question is how to determine whether a client has the capacity to make the specific financial decision they are confronted with and what should be done if they don't.

The problem is that there is no standardised approach to determining financial decision-making capacity. Common custom has been to refer clients to a general practitioner where they employ a brief cognitive screening test.

The problem is that this approach does not identify the client's ability to make financial decisions or determine if a client has the capacity to make the specific decision they are confronted with. Newer conceptual approaches have been developed which examine a client's decision making ability in the context of their individual circumstances, behaviours and abilities and decision being faced. Studies using such approaches have been theoretical or based on small clinical samples until now.

The research

This research project will empirically assess various screening approaches, including simple cognitive tools and conceptual approach to determine the financial decision-making capacity of consumers of financial products and services.

We will examine the responses of 600 Australians across all ages who are faced with a variety of financial decisions with the aim of identifying a better method of attesting to client financial decision-making capacity.

We will contextualise our findings with a survey of financial advisor's experiences and practices with respect to client capacity issues and examine the relevant federal and state legislation, court cases and guidance issued by professional bodies.

Results will be used to develop industry guidance and recommendations for legislative reform and will be disseminated through workshops, conferences as well as industry and academic publications.

Project timeline - Research formally commences November 2021 and ends November 2023

Project outputs

- Monthly project updates on project webpage
- Publication legislation and court cases on financial capacity - Feb 2022
- Publication financial advice and decision-making survey results - July 2022
- Experimental research Commences - April 2022
- Interim project report - November 2022 at the Society of Trust and Estate Practitioners Conference
- Practice guidance paper - June 2023
- Final report including recommendations for legislative reform - November 2023 at Society of Trust and Estate Practitioners Conference

What we need to make this happen

We seek to partner with a range of financial service organisations with an interest in issues associated with an individual's decision-making capacity to evaluate effective mechanisms to protect individuals and those supporting them. We need two things to facilitate this project. Firstly, financial sponsorship to complete proper peer reviewed research that can stand up to scrutiny. Secondly, we need financial service firms to assist us by recommending to their clients they participate in the research.

Total Project budget \$260,000 comprising:

November 2021 - November 2022 \$150,000

December 2022 - December 2023 \$110,000

A detailed research plan is available on request. If you have any further questions, please feel free to contact me.

Sincerely,

Adam Steen

Adam Steen, BEc (Hons), Dip Ed, MCom, PhD, TEP
Professor of Practice
Deakin Business School
Email a.steen@deakin.edu.au