

Capacity – What you need to know

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Independent Dispute Resolution with Commitment and Integrity



Guardianship and Administration Act 2000 (Qld)

Section 5 of the Act acknowledges that

- (c) the capacity of an adult to make decisions may differ according to—
 - (i) the type of decision to be made, including, for example, the complexity of the decision to be made;
 - (ii) the support available from members of the adult’s existing support network;
- (e) an adult with impaired capacity has a right to adequate and appropriate support for decision-making

Section 7

(a) An adult is presumed to have capacity for a matter

Section 11

Application of presumption of capacity

(1) If, in performing a function or exercising a power under this Act, the tribunal or the court is required to make a decision about an adult's capacity for a matter, the tribunal or the court is to *presume the adult has capacity for the matter until the contrary is proven.*

General Principles

Section 11B



GP1 – Presumption of Capacity

An adult is presumed to have capacity for a matter.

GP8-Maximising an adult's participation in decision making

- (1) An adult's right to participate, to the greatest extent practicable, in decisions affecting the adult's life *must be recognised and taken into account.*
- (2) An adult must be given the *support and access to information necessary* to enable the adult to make or participate in decisions affecting the adult's life.
- (4) To the greatest extent practicable, a person or other entity, in exercising power for a matter for an adult, *must seek the adult's views, wishes and preferences.*
- (6) An adult is *not to be treated as unable to make a decision* about a matter *unless all practicable steps have been taken* to provide the adult with the support and access to information necessary to make and communicate a decision.

General Principle 9

GP9 – Performance of Functions and Exercise of Powers

A person or other entity, in performing a function or exercising a power under this Act in relation to an adult, or in making a decision for an adult on an informal basis, must do so—

- (a) in a way that *promotes and safeguards* the adult's rights, interests and opportunities; and
- (b) in the way that is *least restrictive* of the adult's rights, interests and opportunities.

Capacity – Definition

Schedule 4 – Guardianship and Administration Act 2000

- **capacity**, for a person for a matter, means the person is capable of—
- (a) understanding the nature and effect of decisions about the matter; **and**
- (b) freely and voluntarily making decisions about the matter; **and**
- (c) communicating the decisions in some way.

Capacity can **fluctuate**

Capacity “**for the matter**”

Assessment of Capacity

- **Identify the matter** in respect of which the capacity determination is required
- Apply the **statutory presumption of capacity**
- Consider **medical and oral evidence** in the determination of capacity
 - a) **Medical history and current medical evidence**
 - b) **Nature and extent of illness**
 - c) Evidence from **adult and family**
 - d) Evidence from **interested parties – service providers, support persons**
 - e) **History of decision making – impulsivity**

- **QCAT Guardianship Bench Book**
- **Reference for Practitioners –
Queensland Handbook for Practitioners on Legal Capacity**

<https://www.qls.com.au/Content-Collections/Handbooks/Queensland-Handbook-for-Practitioners-on-Legal-Cap>

Thank You