

# Dementia ECHO Capacity Discussion

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**Dementia** **Project ECHO**® *Improving dementia care with First Nations peoples—  
in regional, remote and urban communities*

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*My Dyinguranang (My Grandmother). © Mandy-Lea Draper, 2021*

*I acknowledge and pay respect to the Yuggera and Turrbal people as the Traditional Owners of the land. I pay respect to the Elders, past, present and emerging and acknowledge the different nations across the many regions from where we gather today.*

# Today:

- (where to find) Definitions & Legislation in QLD + resources
- Why this legislations itself can be problematic
- Higher level comment on when & how to assess capacity
- Some common capacity dilemmas/pitfalls
- Finally some slides with example tools which we won't cover today

# Definition in QLD:

By Legal Definition, Capacity means a person is able to go through the process of reaching a decision and putting it into effect. There are three elements to making a decision :

**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

Guardianship and Administration Act 2000, p.225

# For QLD legislation around this:

<https://www.legislation.qld.gov.au/view/pdf/2013-08-29/act-2000-008>

<https://www.legislation.qld.gov.au/view/pdf/2017-03-05/act-1998-022>



## Guardianship and Administration Act 2000

Current as at 29 August 2013

**Reprint note**

A technical error resulted in an incorrect section reference in s 210B and sch 4 defs *confidential information* para (a) and *information*.

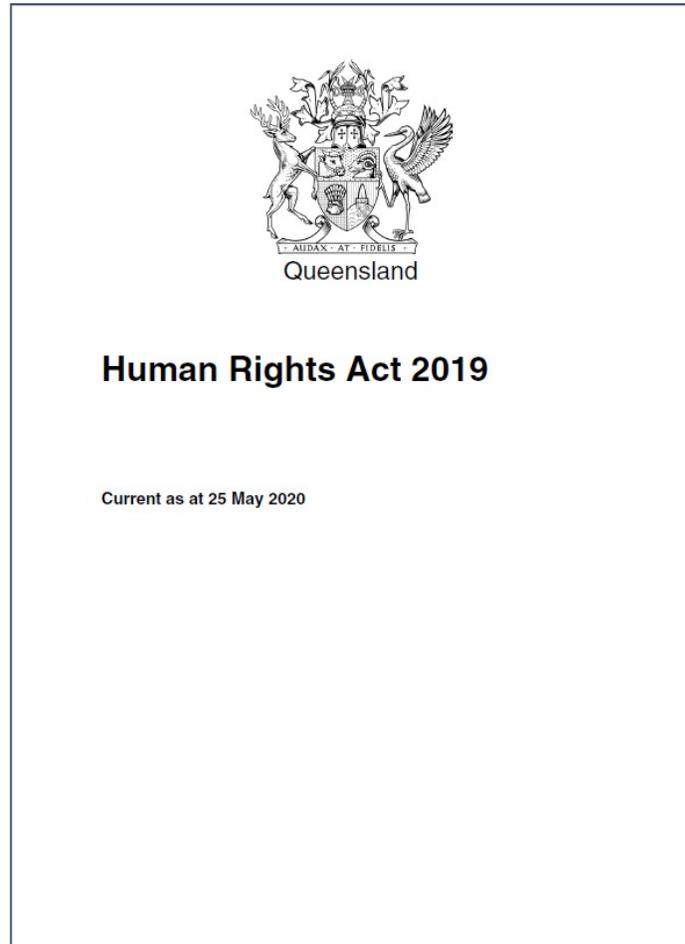


## Powers of Attorney Act 1998

Current as at 5 March 2017

# Human Rights Act QLD:

<https://www.legislation.qld.gov.au/view/pdf/inforce/2020-05-25/act-2019-005>



<b>Part 3: Rights protected under the Human Rights Act and their relevance to the work of public entities</b> .....	<b>13</b>
Right to recognition and equality before the law .....	15
Right to life .....	16
Right to protection from torture and cruel inhuman or degrading treatment .....	17
Right to freedom from forced work .....	18
Right to freedom of movement .....	18
Right to freedom of thought, conscience, religion and belief .....	19
Right to freedom of expression .....	20
Right to peaceful assembly and freedom of association .....	20
Right to take part in public life.....	21
Property rights .....	21
Right to privacy and reputation .....	22
Right to protection of families and children .....	23
Cultural rights - generally .....	24
Cultural rights – Aboriginal peoples and Torres Strait Islander peoples.....	25
Right to liberty and security of person .....	25
Right to humane treatment when deprived of liberty .....	26
Right to fair hearing .....	26
Rights in criminal proceedings .....	27
Rights of children in the criminal process .....	28
Right not to be punished more than once.....	28
Protection from retrospective criminal laws .....	29
Right to education .....	29
Right to health services .....	30

# Capacity Assessment Foremost Principle:

Adults are presumed to have capacity unless evidence is to the contrary

- Under Duty of Care, we are required to assess for capacity in a specific manner IAW Acts and Guidelines when suspicion of lack of capacity in a domain is triggered
- This domain must be requiring a 'decision' about something & needs to be well defined

# Queensland Civil and Administration Tribunal (QCAT):

<http://www.qcat.qld.gov.au/guardianship-for-adults-matters.htm>

## Guardianship:

- A **guardian** is someone appointed by the Tribunal to deal with the day-to-day affairs of an adult with impaired decision-making capacity or **whose informal arrangements are inadequate**. Guardians make decisions about personal matters, such as medical treatment, accommodation, employment and support services.

## Administration:

- An **administrator** is someone appointed by the Tribunal to manage the financial matters of an adult who is unable to make these decisions or **whose informal management arrangements are inadequate**.

# Values and Culture:

Both under- and overprotection can be damaging:

- Under-protection can lead to gross financial exploitation or loss and affect every aspect of the adult's life, including the ability to pay for essential resources
- Overprotection can be equally costly: most adults have strong needs for autonomy and control, and to unnecessarily limit autonomy can cause anxiety and depression and damage the quality of their relationships

Authors from GU CQU JCU (2011). Impaired Decision-Making Capacity and Indigenous Queenslanders Final report. Funded by the Office of the Public Advocate Queensland. [https://www.justice.qld.gov.au/\\_data/assets/pdf\\_file/0011/153398/final-report-december-2011.pdf](https://www.justice.qld.gov.au/_data/assets/pdf_file/0011/153398/final-report-december-2011.pdf)

Lichtenberg, P.A. (2015). A Person-Centered Approach to Financial Capacity Assessment: Preliminary Development of a New Rating Scale. *Clinical Gerontologist*, 38, 49–67.

# Common Dilemmas/Pitfalls

- Not needing to assess capacity at all
- Score on a screen does not tell you about capacity – especially if screen is inappropriate
- Diagnosis of e.g. Dementia does not tell you necessarily about capacity
- Not taking into account pre-existing levels of functioning – what's changed
- Not accessing collateral information and views from family and friends or health professionals who know the person well
- Not including specific examples of observations/behaviours structured deliberately around the specific capacity question
- Not considering reversibility e.g. during acute illness

# e.g. Formal Instruments for evaluating capacity to consent to medical treatment:

- **Vignette-based**
  - Capacity to Consent to Treatment Instrument (CCTI)
  - Competency Interview Schedule (CIS)
  - Decision Assessment Measure (DAM)
  - Hopemont Capacity Assessment Interview (HCAI)
  - Thinking Rationally about Treatment (TRAT)
  - Understanding Treatment Disclosure (UTD)
- **Structured or Semi-structured**
  - MacCarthur Competence Assessment Tool-Treatment (MacCAT-T)
  - Aid to Capacity Evaluation (ACE)
  - Capacity Assessment Tool (CAT)
  - Assessment of the Capacity to consent to Treatment (ACCT)
  - & many more UBACC-T, DCS,
  - & general Health Literacy targeted - REALM, BHLS

## e.g. Financial capacity assessment tools:

- **Independent Living Scales** (ILS; Loeb,1996);
- **Financial Capacity Instrument** (FCI; FCI-SF Marson et al., 2000; Gerstenecker et al 2016);
- **Financial Assessment & Capacity Test** (FACT; Black, Ross, Flanagan, Rabheru, & Breiter, 2007);
- **Financial Competence Assessment Inventory** (FCAI; Kershaw & Webber, 2008);
- **Assessment of Capacity for Everyday Decision-making** (ACED; Lai & Karlawish, 2008).
- **Financial Capacity Assessment Instrument** (IACFin; Sousa et al.,2015)

Gerstenecker, A. et al. (2016). Age and education corrected older adult normative data for a short form version of the financial capacity instrument. *Psychological Assessment*, 28(6), 737-749.

Pachana, N.A. et al. (2014). Predictors of financial capacity performance in older adults using the Financial Competence Assessment Inventory. *International Psychogeriatrics*, 26(6), 921-927.

Sousa, L.B. et al. (2015). Financial Capacity Assessment Instrument (IACFin): Development and Qualitative Study Using Focus Groups. *Psychiatry, Psychology and Law*, 22(4), 571-585.