

Decision-making support for adults with impaired capacity

A guide for those who are part of the adult's support network



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About this guide

Supporting an adult with impaired decision-making capacity is a significant responsibility. As part of their support network, you may feel concern about how they will continue to be supported when you are no longer able to assist. While these decisions can feel overwhelming, taking proactive steps now can provide peace of mind and help safeguard the adult’s well-being, decision-making autonomy, and financial security both now and in the future.

Every adult has the legal right to make decisions about their lives. However, adults with impaired capacity may sometimes need support to make certain decisions. Under Queensland law, an adult’s capacity is assessed as decision-specific, meaning their ability to make a specific decision may depend on its timing and complexity. While they might lack capacity for one decision, they could still make other decisions or the same decision at another time.

In Queensland, decision-making support can be provided informally or through formal arrangements such as an enduring power of attorney (EPOA) or the guardianship and administration system.

This guide provides practical information to help you plan for the adult’s changing decision-making needs over time.

Section 1 — Overview of Legal Frameworks outlines their legal rights and the available support systems.

Section 2 — Planning Support Guidance offers practical tips to help you and the adult establish decision-making support that may be needed now and in the future.

When considering options, it is important to recognise that formal guardianship is the most restrictive pathway and should only be considered as a last resort. Reasonable steps should always be taken to explore and utilise alternative support options before turning to formal guardianship or administration arrangements.

This guide is a practical resource but should not replace professional legal advice. For guidance tailored to your specific circumstances, you should consult a qualified legal professional or relevant experts. Additionally, it's important to recognise that the adult has the right to independent advocacy, regardless of any impairment.

Key terms used throughout the guide are **highlighted in green** and further explained on **page 15** for your reference.

Helpful resources and who to contact for support

You can access additional support and resources online.

Visit **Queensland Public Trustee website** www.pt.qld.gov.au/decision-making or scan the QR code using your phone to explore a variety of helpful resources, including:



Planning resources including tools and checklists to assist you in documenting important information and supporting you throughout your planning journey.



Support contacts including information on organisations that provide advice and assistance on topics such as:

- disability advocacy and support
- guardianship and administration services
- financial advice
- legal services.

Section 1 — Overview of legal frameworks

Key legislation

This section provides an overview of the two primary laws that govern adult decision-making in Queensland.

The Powers of Attorney Act 1998 (QLD)

The *Powers of Attorney Act 1998* (Qld) establishes the legal framework for creating **enduring power of attorney** (EPOA) documents in Queensland.

An EPOA is a legal instrument that allows an adult (known as the **principal**) to appoint one or more trusted individuals (known as **attorneys**) to make decisions on their behalf for personal and/or financial matters during their lifetime, including if they lose **decision-making capacity**.

However, attorneys cannot make decisions about:

- special health matters, such as termination of pregnancy
- special personal matters, such as consenting to marriage
- matters that override an existing **Advance Health Directive** made by the principal before losing capacity
- making or revoking a Will on behalf of the principal.

An EPOA is a proactive way for an adult to appoint trusted individuals to make decisions on their behalf and support them according to their values and preferences. It can only be made while the principal has capacity to create it.

For personal matters, the EPOA only takes effect when the principal loses capacity. These matters include decisions about health care and daily living.

For financial matters, the principal can choose when the EPOA takes effect. This might be from the date the EPOA is created, from a specific future date as instructed by the principal, or when the principal loses capacity to manage financial decisions.

This flexibility allows principals to customise their EPOA to suite their individual circumstances and preferences, while ensuring their financial affairs can be managed according to their wishes, both now and in the future.

Guardianship and Administration Act 2000 (QLD)

The *Guardianship and Administration Act 2000* (Qld) safeguards adults with impaired decision-making capacity by providing a formal framework for appointing guardians to make personal and health care decisions, as well as administrators to manage financial matters on their behalf. These appointments are usually made by the **Queensland Civil and Administrative Tribunal (QCAT)**.

Under Section 12 of the *Guardianship and Administration Act 2000*, QCAT must consider a range of factors when appointing a guardian or administrator. This ensures that decisions are made in adult's best interests, while upholding their rights, interests and overall wellbeing.



Queensland Guardianship and Administration System

This system exists to safeguard the rights and interests of adults who have impaired decision-making capacity, ensuring they receive appropriate support where needed.

Key entities in the system are detailed below.

Queensland Civil and Administrative Tribunal (QCAT)

QCAT is an independent tribunal responsible for making declarations about an adult's capacity to make decisions, and appointing guardians and administrators for adults with impaired capacity.

Visit the **QCAT website** www.qcat.qld.gov.au for information about the steps involved in making an application for an adult who may have impaired decision-making capacity, and information about what to expect from a QCAT hearing.

Office of the Public Guardian (OPG)

OPG can be appointed by QCAT as a decision-maker of last resort for personal and health matters, but only when no other appropriate individual is available.

Visit the **OPG website** www.publicguardian.qld.gov.au for information about guardianship responsibilities, and decisions OPG make when appointed as guardian.

Queensland Public Trustee (QPT)

QPT, legally known as the Public Trustee of Queensland, can be appointed by QCAT or the Supreme Court as an administrator to manage financial matters if necessary.

Visit the **QPT website** www.pt.qld.gov.au for information about financial administration responsibilities, and the services QPT provides when appointed as financial administrator.



Section 2 — Planning support guidance

Tips for effective planning

Planning for the future helps ensure the adult you support continues to receive appropriate care as their needs and circumstances change.

The following principles can guide your discussions, encouraging the adult to actively participate in decisions about their future to the greatest extent possible.

Engage in conversations with the adult

- ✔ **Empower their own decision-making.** Encourage the adult to actively participate in and maintain as much independence in decision-making as possible. Prioritise their ability to make their own decisions, ensuring their views, wishes, and preferences remain central to the process.

Be mindful of any potential influence from yourself or others they trust (now or in the future), ensuring the adult's decisions truly reflect their own choices and preferences.
- ✔ **Provide clear and up-to-date information.** Ensure the adult has access to accurate, relevant and current information, along with support to understand and navigate it. Clear information empowers them to make well-informed decisions about their future.
- ✔ **Communicate openly.** Promote open, honest and respectful conversations and involve appropriate members of the adult's **support network**. Collaboration ensures that everyone is working together in the adult's best interests, particularly when making important or big decisions.
- ✔ **Seek independent representation.** Where appropriate, support the adult in accessing independent advice and representation from professionals, such as legal, financial or health experts. This approach fosters independence and helps ensure their preferences and needs are considered thoughtfully and impartially.

It is important to recognise that an adult retains the right to independent advocacy, regardless of any impairment. Some of this advice may be available free of charge through community and advocacy services.

Understand the types of decisions required

- ✔ **Understand the quality of life to be safeguarded.** Become familiar with the adult's desires, preferences and essential needs. This may include things like their living arrangements, personal relationships, lifestyle activities and other factors important to their wellbeing. Use this understanding to guide long-term decisions and ensure these align with their best interests.
- ✔ **Understand the level of support they need now and in the future.** Assess the specific level of support they require, recognising that their needs may vary depending on the type and complexity of each decision. Plan for long-term and potential changes in their circumstances by developing arrangements that are adaptable, enduring and flexible to carry them through various life stages.
- ✔ **Identify who will make decisions with and for the adult.** Work with the adult to determine trusted individuals who can help them make decisions or act on their behalf when necessary. Document these preferences in legally binding arrangements such as an EPOA or a formal appointment through QCAT for guardianship or administration if informal arrangements aren't sufficient.
- ✔ **Help the adult understand what to do if something is not working.** Talk with the adult and other members of their support network about options if a solution or arrangement no longer meets the adult's needs. It's important for both the adult and their support network to be informed about the steps they can take to address issues and ensure the adult's wellbeing is being maintained.

Engage potential supports

- ✔ **Understand the requirements for formal decision-making arrangements.** Formal decision-making roles for adults with impaired capacity carry significant responsibilities and cannot be assumed, even by family members. While some support may be provided informally, formal arrangements such as an EPOA or appointments through QCAT must follow established legal procedures to ensure proper authorisation. These processes safeguard the adult's best interests and ensure decision-makers fully understand their legal, ethical, and practical responsibilities. Family ties or prior involvement do not grant automatic authority to take on these roles.
- ✔ **Ensure the individual understands their role and responsibilities.** Clearly outline the nature of the role, including the types of decisions they may be required to make such as health care, finances, living arrangements, or general welfare. Discuss the time commitment and emotional responsibilities involved in making decisions in the best interests of the adult, particularly those that may involve complex or sensitive situations.

- ✔ **Seek their willingness and comfort with the role.** Ensure the person fully understands the responsibilities involved before confirming their willingness to take on the role. Provide them with opportunities to ask questions and express concerns. It's equally important to give them sufficient time to carefully consider the commitment and responsibilities. Reassure them that declining the role will be respected without judgment or negative consequences.
- ✔ **Discuss the adult's views and needs.** Encourage conversations between the adult and the potential support (where appropriate) to develop a clear understanding of the adult's values, goals and preferences for their care and life. Use this opportunity to establish a shared understanding of the adult's specific wishes, preferences, and priorities to ensure decisions are guided by their own views, rather than assumptions or outside influences.
- ✔ **Provide access to independent advice and guidance.** Encourage potential supports to seek professional advice if they are unsure about their responsibilities or the implications of taking on the role. Legal advice can help clarify obligations under an EPOA or similar arrangements, while financial advice can prepare them to manage financial decisions effectively.

Additionally, provide information about free or low-cost community and advocacy resources, such as those outlined in this guide, to ensure they feel supported and well-informed.
- ✔ **Respect their views and circumstances.** Understand that each individual has unique priorities, limitations, and life circumstances that may influence their capacity to take on the role. Be mindful that feelings of obligation or guilt may surface and provide reassurance in such situations. Respect their decision, whether they choose to accept or decline the role, and ensure they do not feel pressured into taking on responsibilities they may not be able to manage.
- ✔ **Document agreements and understandings.** Once an individual agrees to take on a supportive role, establish a clear and mutual understanding of their responsibilities and formalise the arrangement in writing. Proper documentation ensures clarity and helps everyone involved clearly understand their role and responsibilities.

Questions to guide your discussions

The following questions can help you create arrangements that balance supporting the adult's independence while ensuring assistance is provided when needed.

Question 1 — What decision-making support does the adult need?

An adult's capacity to make decisions is both:

1. **time-specific** — assessed at the time when the decision is made, and
2. **decision-specific** — dependent on the type and complexity of the decision.

An adult's decision-making capacity may be strengthened through a reliable support network that acts in their best interests. While an adult may be capable of making decisions in some aspects of their life, they may require assistance in others.

For instance, they may confidently decide where they wish to live but require help managing investments to support their living arrangements. Other examples of where support may be needed to make informed decisions include:

- navigating a complex contract
- managing banking or government services
- understanding detailed medical information and treatments.

If there is uncertainty about the adult's capacity to make a specific decision, it may be helpful for them to have a formal capacity assessment by a professional.

These assessments are usually carried out by health professionals such as general practitioners, geriatricians, neuropsychologists or psychiatrists, who can provide valuable insight into the adult's capacity to make decisions at a point in time.

The goal is to identify ways the adult can participate in making their own decisions where possible, rather than decisions being made on their behalf.

ADA Law has helpful resources and information for how adults with impaired capacity can be supported with different health, personal, financial, and legal decisions. For more information visit the **ADA Law website** at www.adalaw.com.au.

Question 2 — What support services are available for the adult and their support network?

Connecting the adult with an advocacy organisation can provide valuable independent support to the adult, giving them a voice and empowering them to make decisions to the greatest extent possible. These services can often be accessed directly by the adult themselves, without needing the assistance of their support network. Additionally, members of the support network may also benefit from these services by gaining insights into how they can best support the adult.

In Queensland, numerous organisations offer free and independent advocacy services that are focussed on protecting the rights, interests and opportunities of adults who may need extra decision-making support. These organisations can assist with a variety of needs, including navigating legal arrangements, accessing the **National Disability Insurance Scheme** (NDIS), and advocating for equitable treatment and access to essential services.

Question 3 — Who does the adult want as their decision-maker?

Involving the adult to choose the people they want to support them in decision-making promotes their dignity and autonomy. You can assist them to explore whether family members, friends or professionals are suitable and willing to take on this responsibility now, and in the future. It's vital to prioritise individuals who will put the adult's needs, rights and interests first. Potential decision makers must also fully understand the responsibilities of the role and be able to act in the adult's best interests and avoid conflicts of interest.

Open and respectful conversations are key when involving the adult in this process, but it's important that personal opinions or preferences are not imposed. Instead, guidance should focus on supporting their choices.

If the adult has capacity, they may formally choose a substituted decision-maker by:

- creating an EPOA
- expressing a preferred financial administrator or guardian for QCAT appointments.

A substituted decision-maker for **personal matters** will need to:

- ✓ be readily available to assist with decisions on accommodation, healthcare and other personal matters
- ✓ be confident discussing the adult's healthcare needs with healthcare providers
- ✓ understand their legal obligations and duties as decision-maker for personal and health matters.

A substituted decision-maker for **financial matters** will need to:

- ✓ be capable of managing property and financial assets responsibly
- ✓ confidently be able to deal with entities such as the NDIS, Centrelink, financial institutions and property agents
- ✓ understand their legal obligations and duties when managing the adult's finances and making financial decisions.

Question 4 — Does the adult have the capacity to make an EPOA?

Determining whether an adult has capacity to make an EPOA can be complex. The legal test for capacity to make an EPOA is outlined in Section 17 of the *Powers of Attorney Act 1998* (Qld).

If there is any doubt about the adult's capacity to make an EPOA, it is recommended that the adult have a medical assessment conducted on the day the EPOA is made and to seek assistance from a lawyer when making the document to ensure the EPOA document is valid.

Although some adults may choose to create an EPOA themselves, obtaining legal advice is strongly recommended.

A legal professional can:

- ensure the execution of the document meets all legal requirements
- draft the document to include appropriate checks and balances to protect the adult's interests
- store copies of the EPOA document and make certified copies of it
- ensure, as much as is possible, that the EPOA will be considered valid and enforceable when it is needed in the future.

Visit the **Queensland Government website** www.qld.gov.au for more information about how to make an Enduring Power of Attorney.

Question 5 — Should QCAT proceedings be commenced to appoint a guardian or administrator?

QCAT deals with guardianship and administration matters for adults with impaired capacity. While the Supreme Court may appoint an administrator in certain situations (such as when the adult is receiving money from a legal settlement), this guide focusses on decisions by QCAT.

QCAT's role is to legally determine an adult's capacity to make decisions. It will only appoint a guardian or administrator for an adult if:

- the adult is determined to have impaired capacity for the matter in question
- a decision is required for that matter
- without the appointment, the adult's needs will not be met, or their interests would not be adequately protected.

The appointment of a guardian or administrator is ultimately QCAT's decision. However, the adult and members of their support network who QCAT permits to be 'active parties' may make recommendations or express support for preferred appointees.

Question 6 — What is needed to prepare for a QCAT proceeding?

When preparing for a QCAT proceeding, you may wish to seek advice from advocacy organisations or a legal professional to better understand your options and ensure the adult's best interests are presented.

If you plan to recommend a professional financial administrator as part of the adult's support network, it's important to:

- obtain a quote from the potential administrator for the cost of their services
- confirm their consent to take on the role as the financial administrator for the adult.

If no suitable person is available to act in this role, QCAT may appoint Queensland Public Trustee as the adult's financial administrator.

Visit the **QCAT website** www.qcat.qld.gov.au to learn more about what happens at a QCAT hearing.

Question 7 — What role does professional advice play for you and for the adult?

Independent advice from a legal professional who specialises in guardianship and administration law in Queensland will ensure you understand your options and receive tailored recommendations based on your circumstances.

If you plan to financially support the adult during your lifetime and beyond, legal professionals and financial advisors can provide guidance on the most effective ways to do so, ensuring the support aligns with your wishes.

This advice may include:

- **Financial and asset management** including strategies for managing money or property you provide to the adult. This can include arrangements for how these assets will be administered when you are no longer able to oversee them yourself.
- **Drafting or updating your Will** to clearly document your wishes for how the adult will be cared for and supported after your death. This helps ensure the adult's financial security and minimises potential disputes over your estate.

Key terms used in this guide

The following terms are explained in this Guide within the context of supporting a person with impaired decision-making capacity and are not intended to be legal definitions.

Advance Health Directive (AHD)

A legal document that allows a person to outline their healthcare preferences and instructions for future medical treatment, including end-of-life care, in case they lose the ability to make or communicate decisions. Governed by the *Powers of Attorney Act 1998* (Qld), it ensures individuals retain control over their healthcare choices.

Attorney (in an enduring power of attorney)

A person or organisation legally appointed by an individual (the principal) under an enduring power of attorney (EPOA) to make personal and/or financial decisions on their behalf.

Decision-making capacity

The ability to understand, evaluate, and communicate decisions about personal, financial, or legal matters. Capacity is decision-specific and may vary depending on the complexity of the decision and the individual's circumstances.

Enduring power of attorney (EPOA)

A legal document that allows a person (the principal) to appoint someone (the attorney) to make financial, personal, or health decisions on their behalf. It remains valid if the principal loses the capacity to make decisions.

Financial administrator

A person or organisation legally appointed to manage the financial affairs of someone who cannot do so themselves due to impaired decision-making capacity. A financial administrator is appointed through a legal process overseen by QCAT.

Guardian

A person or organisation legally appointed to make personal decisions, such as healthcare or living arrangements, for someone who cannot make those decisions due to impaired capacity.

Guardianship and Administration System

A legal framework that protects adults with impaired decision-making capacity by appointing guardians or administrators to help manage their personal, financial, or legal affairs while respecting their autonomy and dignity.

National Disability Insurance Scheme (NDIS)

An Australian Government program that provides funding and support to people with permanent and significant disabilities. It aims to improve independence, access to services, community participation, and overall quality of life.

Office of the Public Guardian (OPG)

An independent statutory body established under the *Public Guardian Act 2014* (Qld) to protect the rights and wellbeing of vulnerable adults with impaired capacity and children in the child protection system. It safeguards individuals at risk of abuse, neglect, or exploitation.

Principal

The term used in an enduring power of attorney is the person who creates the document and appoints one or more trusted people (attorneys) to make decisions on their behalf.

Quality of life

A person's overall sense of wellbeing and satisfaction with life, shaped by their physical health, emotional state, relationships, and environment. It is subjective and influenced by personal values and goals.

Queensland Public Trustee

An independent statutory authority established under the *Public Trustee Act 1978* (Qld) that provides financial, legal, and administrative services. It supports individuals who need help managing their financial affairs and acts as a legally appointed financial decision-maker when required.

Safeguarding

Protecting adults with impaired decision-making capacity from abuse, neglect, or exploitation while promoting their rights, wellbeing, and independence.

Substituted decision-maker

A person or organisation legally authorised to make decisions on behalf of someone who cannot make certain decisions themselves due to impaired capacity. They must act in the individual's best interests, prioritising their rights, preferences, and wellbeing.

Support network

A group of people, services, or organisations that provide guidance, and encouragement to help an individual make informed decisions and exercise their rights.

QPT

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