

The General Principles and the Health Care Principle

Anyone acting as an attorney on behalf of a person with impaired capacity for making decisions, must comply with the **General Principles** in the Powers of Attorney Act 1998 (schedule 1, part 1).

The General Principles.

- 1. Presumption of capacity.** Every person is presumed to have capacity for a decision until proven otherwise. Loss of capacity must be confirmed by a health professional. If there is uncertainty the Queensland Civil and Administrative Tribunal (QCAT) will make a formal decision about capacity.
- 2. Same human rights.** Every person has the same basic human rights regardless of their capacity, and should be encouraged to exercise those rights wherever possible.
- 3. Individual value.** The person's individual human worth and dignity must be recognised and respected.
- 4. Valued role as a member of society.** Every person has the right to be a valued member of society and should be encouraged and supported to continue to perform social roles valued in society.
- 5. Participating in community life.** An attorney must take into account the importance of encouraging and providing support to the person to live in the general community and participate in activities enjoyed by the general community.
- 6. Encouragement of self-reliance.** The person should be encouraged and supported to achieve his or her maximum physical, social, emotional and intellectual potential, and become as self-reliant as possible.
- 7. Maximum participation, minimal limitations, and substituted judgement.** When making decisions the attorney must apply the least restrictive option that is consistent with the person's proper care and protection.

Every person has the right to participate to the greatest extent possible, in decisions affecting his or her life and should be encouraged to do so. This requires the attorney to:

- provide the necessary support and access to information to enable the person to participate in decisions; and
- obtain and take into account the views and wishes of the person. Views and wishes can be spoken, written or can be determined by conduct or actions.

If it is possible to work out from previous actions what the person's views and wishes would be, then the attorney must take these into account when making decisions. This is the principle of substituted judgement.

- 8. Maintenance of existing supportive relationships.** The importance of maintaining existing supportive relationships (family and friends) must be taken into account. An attorney cannot restrict contact with the person's supportive network without good cause. Any decision that restricts contact may be reviewed by QCAT or investigated by the Office of the Public Guardian.
- 9. Maintenance of environment and values.** The person's cultural and religious values; lifestyle choices; and language requirements must be taken into account when making decisions. For a person who is a member of an Aboriginal community or a Torres Strait Islander this means maintaining the person's cultural and language environment and values including traditions and customs.
- 10. Appropriate to circumstances.** Any decisions made for the person should be appropriate to his or her current needs.
- 11. Confidentiality.** The person has the right to confidentiality. An attorney must not disclose information about the person unless required or authorised to do so.

The General Principles and the Health Care Principle

Anyone acting as an attorney on behalf of a person with impaired capacity for decisions about health care must also comply with the **Health Care Principle** in the Powers of Attorney Act 1998, schedule 1, part 2.

1. The authority to make a health care decision should be used:

- in a way that is least restrictive of the person's rights (if there is a choice between a more or less intrusive way of meeting a need, the less intrusive way should be chosen); and
- only if:
 - it is necessary and appropriate to maintain or promote the person's health or wellbeing; or
 - is, in all circumstances, in the best interests of the person.

2. When making a health care decision the attorney must, to greatest extent possible:

- seek and take into account the person's views and wishes in relation to the decision; and
- take into account information given by the person's health care providers.

3. The person may express their views: orally, in writing, or in another way including conduct.

The attorney may need to look at past actions or consult with others to assist in determining the person's views and wishes.

4. The health care principle does not affect the person's right to refuse health care.

Jarrah is a 32-year-old man who has a severe acquired brain injury, from a motor vehicle accident. Prior to the accident he made an Enduring Power of Attorney (EPOA) which appointed his mother Kirra, a respected elder in the community, his attorney for all matters.

Jarrah recently fell over and broke his right arm (he is right handed). Doctors told Jarrah and Kirra there were two treatment options. As this was a complex health decision it was decided Kirra needed to provide consent. Kirra had to choose between the following:

- a) Set the arm in plaster. This procedure could be done immediately in the emergency department. However, there was a risk that long term, Jarrah could have restricted and painful movement of the arm and Jarrah loves to fish regularly. This would limit his ability to fish.*
- b) Surgery to realign the bones. This guaranteed the best possible long term results, but required a general anaesthetic and hospital stay.*

After consultation with Jarrah and the doctors, and considering the pros and cons of both options, Kirra chose the operation. Kirra recognised it was important for Jarrah to retain full movement of his arm for his general wellbeing and his ability to participate in activities he enjoys today and in the future.