

General principles and health care principles under Queensland's guardianship framework

The general principles and the health care principles set out the principles underpinning Queensland's guardianship framework and provide guidance to any person or entity performing a function or exercising a power under Queensland's guardianship legislation (the [Guardianship and Administration Act 2000](#) and the [Powers of Attorney Act 1998](#)).

When making decisions on behalf of an adult with impaired decision-making capacity, **attorneys, guardians, administrators and statutory health attorneys** must apply the general principles, and the health care principles (in relation to health matters). A **person making a decision for an adult on an informal basis** must also apply the general principles.

The **Supreme Court** and the **Queensland Civil and Administrative Tribunal** are also required to apply the general principles and health care principles, for example, when determining whether an adult has capacity for a matter or considering whether to appoint a guardian or administrator for a matter.

The **community** is encouraged to apply and promote the general principles.

The General Principles

1. Presume the adult has capacity

This principle recognises the presumption of capacity. Capacity refers to the ability to make and communicate decisions about a matter.

It must be presumed that every adult has capacity to make a decision about a matter until proven otherwise. Capacity is specific to the type of decision to be made and the time the decision is made.

For more information about capacity, see the [Queensland Capacity Assessment Guidelines 2020](#).

2. Same human rights and fundamental freedoms

This principle recognises that all adults (regardless of whether or not the adult has decision-making capacity) has the **same human rights and fundamental freedoms** as others in the community.

In recognising and taking into account these rights and freedoms the following principles should be taken into account:

- **respect** for the adult's **inherent dignity** and **worth, autonomy** (including the freedom to make one's own choices) and **independence**;
- **non-discrimination**;
- full **participation and inclusion** in society;
- **respect for difference** including acceptance of persons with impaired capacity as part of human **diversity**;
- **equality** of opportunity;
- **accessibility**;
- **equality** between all persons regardless of gender.

3. Empowering and supporting an adult to exercise their human rights

This principle recognises the importance of empowering and supporting an adult to exercise their human rights and fundamental freedoms.



Adults should also be encouraged and supported to live a life in the general community, including taking part in community activities and performing valued social roles. They should also be **provided with support** so they can achieve their **maximum physical, social and emotional potential and become as self-reliant as practicable**.

This principle also recognises the importance of adults with impaired capacity **participating to the greatest extent practicable in the development of policies, programs and services for adults with impaired capacity**.

4. Maintaining supportive relationships

This principle recognises the importance of **maintaining an adult's existing supportive relationships** and acknowledging and respecting their role in supporting an adult to make decisions. It is important to continue to acknowledge and respect the role of family, friends, informal carers and other persons who currently assist the adult to make decisions on an informal basis. This may include consulting with members of the adult's support network

5. Maintaining culture, language, values and beliefs

This principle recognises the importance of **maintaining an adult's cultural and linguistic environment and set of values, including religious beliefs**, must be taken into account. It is important for adults to continue to enjoy their culture, declare and practice their religion, and use their language. It is important to recognise that Aboriginal peoples and Torres Strait Islander peoples have distinctive and diverse cultural and language environment, including traditions and customs.

6. Respect for privacy

This principle recognises the importance of respecting an **adult's privacy** and protecting their **personal (including health) information**.

7. Right to liberty and security

This principle recognises that all adult have an **right to liberty and security**. This means that all adults should not be deprived of their liberty unless authorised by law.

8. Participation in decision-making

This principle recognises an adult's **right to participate**, to the greatest extent practicable, in decisions affecting their life. An adult's **views, wishes and preferences** (however communicated) must be sought to the greatest extent practicable and taken into account in decisions that affect their life.

This principle recognises that an adult is not to be treated as unable to make a decision about a matter until all practicable steps have been taken to provide the adult with the necessary support and information to make and communicate a decision.

9. Performance of functions and exercise of powers

This principle provides that whenever a person or entity performs a function or exercises a power under Queensland's guardianship legislation, they must do so in a way that:

- **promotes and safeguards the adult's rights, interests and opportunities**
- is **least restrictive of the adult's rights, interests and opportunities**.

10. Structured decision-making

This principle sets out the following steps to be followed, by a person or entity that performs a function or exercises a power under Queensland's guardianship legislation, or in making a decision for an adult on an informal basis in order to comply with general principle 9:

Step 1 – recognise and preserve, to the greatest extent practicable, the **adult's right to make their own decisions** and **support the adult** to make a decision, if possible.



Step 2- recognise and take into account the **adult's views, wishes and preferences** expressed or demonstrated by the adult.

Step 3 - If the adult's views, wishes and preferences cannot be determined, **ascertain what the adult's views, wishes or preferences would likely be** (for example, by considering the views, wishes or preferences demonstrated by the adult when they had capacity).

Step 4 – make a decision or exercise a power or function for or about the adult taking into account the above matters.

Health care principles

The health care principles provide further guidance about applying the general principles in relation to health matters and special health matters.

1. Apply the general principles

This principle recognises that both the general principles and the health care principles must be applied when any person or entity performs a function or exercises a power in relation to health care or special health care under Queensland's guardianship legislation.

2. Same human rights and fundamental freedoms

This principle provides further guidance about applying general principle 2 in relation to health matters or special health matters.

In recognising and taking into account **non-discrimination**, all adults, regardless of whether or not they have impaired capacity, must be offered appropriate health care, including preventative care. When consenting to or refusing health care for an adult the principles of **respect for inherent dignity and worth, individual autonomy** (including the freedom to make one's own choices) **and independence of persons** must be taken into account.

3. Performance of functions or exercise of powers

This principle provides further guidance about applying general principles 9 and 10 in relation to health matters or special health matters. When making a decision or exercising a power about an adult's health care or special health care, the following must be taken into account:

- information given by the adult's health care provider
- the nature of the adult's medical condition and prognosis
- any available alternative health care treatments
- significant risks of the proposed health care or alternative health care
- whether the health care could be postponed because a better option may become available within a reasonable time or the adult is likely to become capable of making their own decision about the health care
- the consequences if the proposed health care is not carried out
- the advantages and disadvantages of the proposed health care
- the effect of the health care on the adult's dignity and autonomy.

4. Substituted judgement

This principle provides further guidance about applying general principle 10 in relation to health matters or special health matters, when it is not possible to determine the adult's views and wishes at the time. It clarifies that the **adult's views, wishes or preferences expressed** when the adult had capacity, may also have been expressed in their advance health directive; or any previous decision by the adult to consent to or refuse health care.

