

# Healthcare Decision-Making Law in Queensland

## Who decides about receiving or refusing healthcare?

### Presumption of Capacity



#### The Person

All adults are presumed to have capacity to decide whether or not to receive health care. They must have the opportunity to give valid consent or refusal.<sup>1</sup>



Person's decision must be upheld

#### Has Capacity

Understands the nature and effect, makes decision freely and can communicate decision in some way.<sup>2</sup>

Unsure

#### Gives Valid Consent or Refusal

Has capacity for this decision at this time, is given voluntarily and communication with health practitioner is clear.<sup>3</sup>

#### Emergency

Consent is not required in an emergency.<sup>4</sup>

### Capacity Assessment & Supported Decision-Making



#### Has Capacity

#### Capacity in Question

#### Lacks Capacity



Conduct assessment (at the relevant time for each decision).<sup>5</sup>

#### Still unsure re capacity

#### Supported Decision-Making

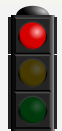
Provides the person with information and support they need to enable them to make a decision

#### Adequate for consent or refusal?

Yes

No

### Substitute decision-making hierarchy<sup>6</sup>



Include the person in any decision making

#### Advance Health Directive

Check for Advance Health Directives in Patient records or ask supporters

#### Healthcare Guardian appointed by QCAT

Family members, close friends over 18 and not paid carer, public guardian

#### Enduring Documents

Enduring power of attorney for health matters, available in patient clinical records or ask supporters

#### Statutory Health Attorney

Spouse, unpaid carer, close friend or relation, public guardian last resort

### Legal Reference

*This is for general information only and does not constitute legal advice*

1. Guardianship & Administration Act 2000 (Qld) Section 11B; Powers of Attorney Act (Qld) 1998 Schedule 3 (Dictionary)  
 2. Powers of Attorney Act 1998 (Qld) Schedule 3; Guardianship & Administration Act 2000 (Qld) Schedule 4  
 3. Case law; Queensland Capacity Assessment Guidelines Sections 2 & 3  
 4. Guardianship & Administration Act 2000 (Qld) Section 63 (1); Civil Liability Act 2003 (Qld) Section 26; Human Rights Act 2019 (Qld) Section 37 (2)  
 5. Queensland Capacity Assessment Guidelines  
 6. Guardianship & Administration Act 2000 (Qld) Section 66; Human Rights Act 2019 (Qld) Section 15 (3) and (4)