



**Office of the Public Guardian –  
*promoting and protecting adults with  
impaired decision-making capacity***

Disability Support Workers Conference  
21 February 2018

**We acknowledge the traditional owners of this land.**

The Office of the Public Guardian respectfully acknowledges the Aboriginal and Torres Strait Islander peoples as the Traditional Owners and Custodians of this land and acknowledges their Elders, both past and present.

# The Office of the Public Guardian (OPG)



Promoting and protecting the rights, interests and wellbeing of adults with impaired decision-making capacity, ***and*** children and young people in the child protection system.



## About OPG

- In July 2014 the Office of the Public Guardian (OPG) commenced as a result of the Carmody Inquiry and the *Public Guardian Act 2014*.
- The OPG has all the functions and powers of the former *Adult Guardian*, the visiting functions of the former *Commission for Children, Young People and Child Guardian (CCYPCG)*, **and** a new legal advocacy function for children.
- Independent statutory officer – current Public Guardian is Natalie Siegel-Brown.



Natalie Siegel-Brown, Public Guardian

# Our legislative framework

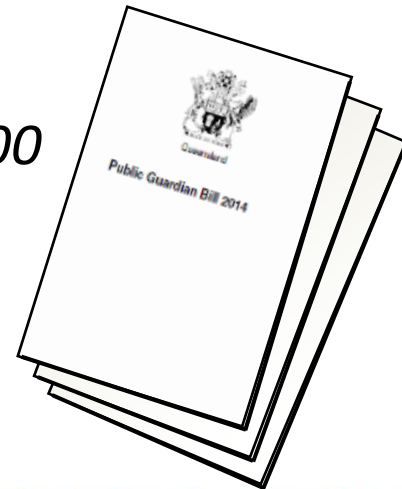
**Universal Declaration of Human Rights**

**United Nations Convention on the Rights of  
Persons with Disabilities**

*Public Guardian Act 2014*

*Guardianship and Administration Act 2000*

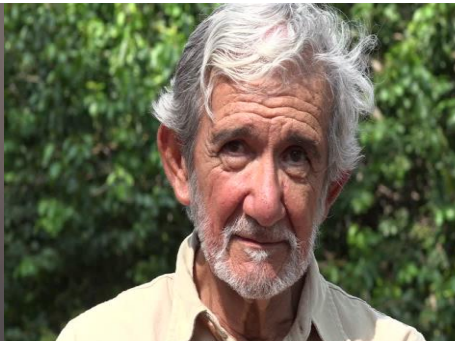
*Powers of Attorney Act 1998*



## Our role

*“The Public Guardian’s role in relation to **adults who have impaired capacity** for a matter is to protect their **rights and interests.**”*

***Public Guardian Act 2014 – section 10 (1)***



## Our functions

Our functions for adults with impaired decision making capacity is to:

- make personal and health decisions if appointed as their guardian or as an attorney under an Enduring Power of Attorney;
- provide consent regarding restrictive practices;
- advocate for their rights, access to services, independence and choice as part of a *supported* decision-making model.
- the OPG also provides an important protective role in Queensland by running a **community visitor program** to protect the rights and interests of an adult if they reside at a visitable site.

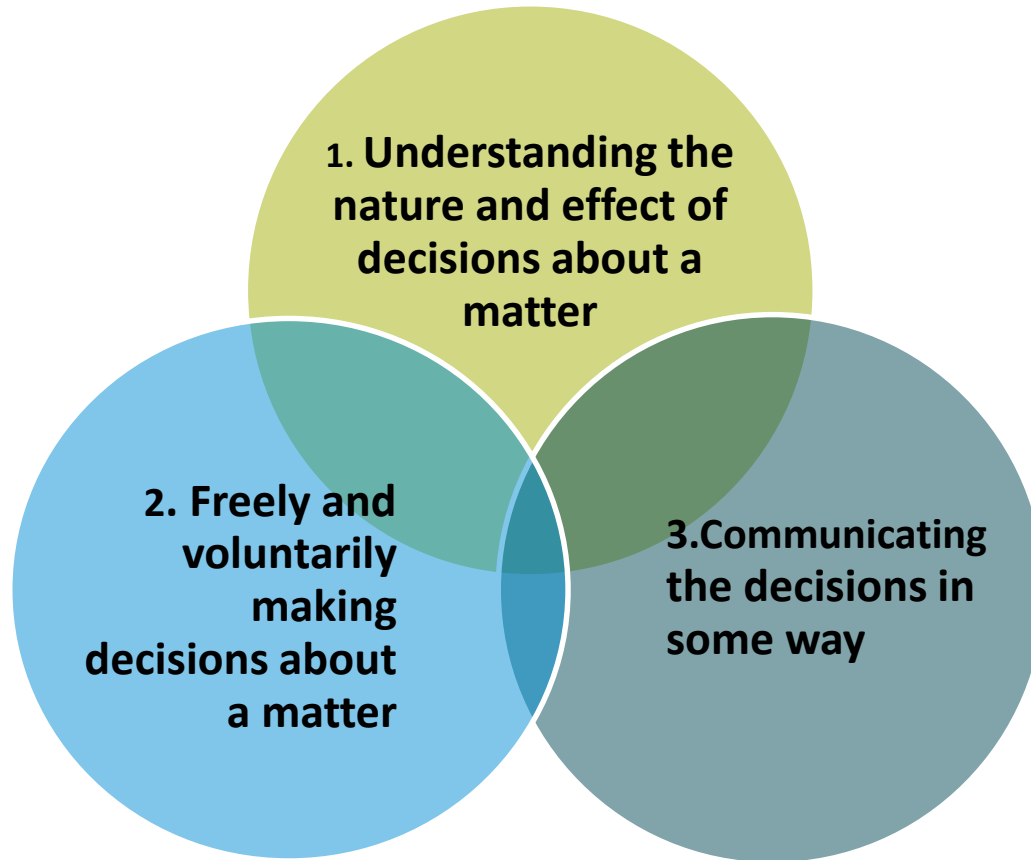
- The Public Guardian encourages adults with impaired decision making capacity to have *maximum participation and minimal limitations* in decisions affecting their lives.
- The Public Guardian is a **formal decision maker** and does not provide case management, service provision or co-ordination of services.
- We do not replace family members and/or carers or take over the roles and responsibilities of other government agencies or service providers.
- Involvement of the guardianship system is **not a “just in case”** option. It is **a last resort** and is **least-restrictive**.



# Understanding “capacity”

(as defined by the *Guardianship and Administration Act 2000 - Schedule 4, s3*)

Capacity is...



If an adult needs to make a decision, and is unable to carry out any part of this process, they have impaired decision-making capacity.



## A loss of capacity can happen at any time

- A loss of capacity can happen at anytime in a person's life. This loss may be ***temporary, permanent or fluctuate***.
- A person with a disability or medical impairment can still have decision-making capacity.
- Capacity is not being ignorant, having specific cultural or religious beliefs or making decisions others may not necessarily agree with.
- A person can have decision-making capacity for some decisions but maybe not others (decision specific).
- People can be assisted or supported to make their own decision without the need for a formal appointment.

# Who can support an adult with impaired decision making capacity to make decisions?

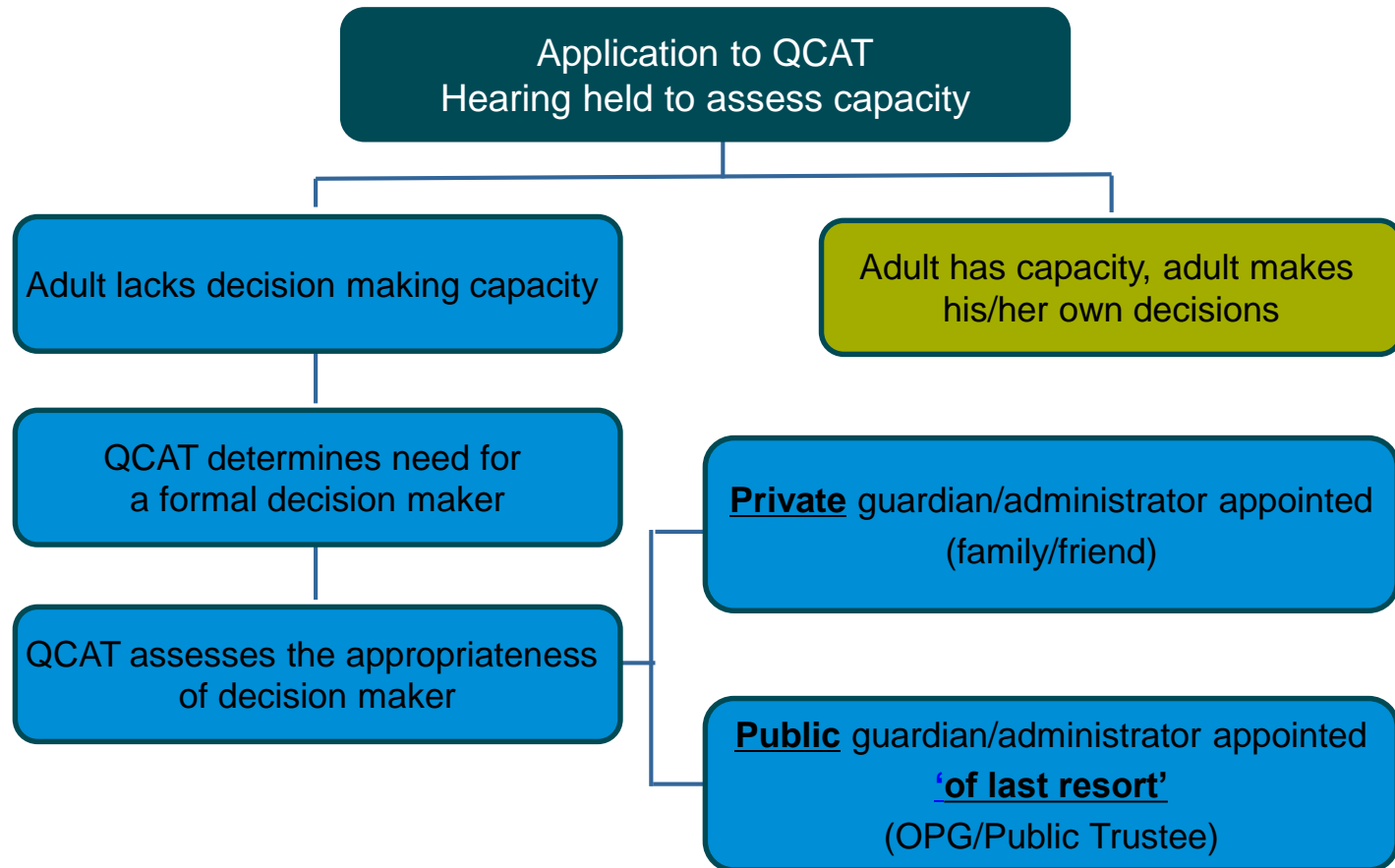
1. Informal decision making by family and/or interested parties if suitable;
2. Formally appointed Guardian and/or Administrator (appointed by the Queensland Civil and Administrative Tribunal - QCAT);
3. Statutory Health Attorney (SHA) (for health care matters only) (S63 POA Act 1998). The Public Guardian is the Statutory health attorney of last resort **although this will not apply to consents sought under the new MHA act.**

## Introducing Peter

- Peter is 39 years old;
- lives with 3 other men in a house supported under NDIS;
- was born with an intellectual disability;
- Peter's only family is his mother who is unable to assist with any personal or financial decisions;
- The service provider feels there is an need for a guardian and administrator to be appointed to help with Peter's decisions.



# How a Guardian or Administrator is appointed





## Outcome for Peter

- In Peter's case the Office of the Public Guardian was appointed for service provision and health care;
- the Public Trustee of Qld was appointed to look after Peter's money and financial matters;
- These appointments were for a period of 2 years.



## The role of a delegate Guardian for Peter...

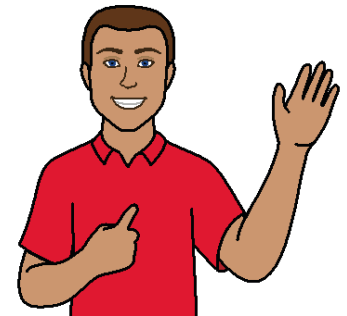
- OPG will liaise with service providers, health professionals and other agencies to ensure Peter's needs are being met (e.g. Peter's doctors, DSWs, Community Visitor);
- Support Peter in making decisions in areas of appointment and seek his views and wishes;
- Seek the views of Peter's mum and other interested parties;
- Attend QCAT hearings, stakeholder meetings and NDIS planning meetings;
- Visit Peter in his home to understand his views and wishes, and to ensure he is residing in a safe environment;
- Provide health care consents when required on behalf of Peter.

## The delegate Guardian does not....

- take Peter to appointments;
- make decisions around where he lives or whom he has contact with;
- deal with Peter's money or financial matters;
- make decisions on what Peter eats, drinks, if he gets a tattoo or piercings;
- **have enforcement powers - we are not able to force Peter to do something, if he is unwilling to do it.**

# How decisions are made on behalf of Peter

- Consider the General and Health Care Principles;
- Take into account Peter's views and wishes;
- Peter's right to participate in decisions affecting his life;
- Consider information provided by interested parties;
- When required the Guardian will seek financial approval from the Public Trustee of Qld.



s34, GAA 2000



# Restrictive Practices Decision Making



## Working together

- Communication is the key – ask us questions any time.
- **If we are appointed as an adult's Guardian please contact us *early* in the appointment.**
- If we aren't appointed as the adult's Guardian we can still offer advice to ensure the adults rights are protected.
- If you have any concerns for the rights and interests of an adult particularly where the Public Guardian is appointed, then please contact us immediately.
- We welcome feedback to improve our practice.

Thank you

# Questions



## Contact us

- Phone: 1300 653 187 or 07 3234 0870
- Email: [publicguardian@publicguardian.qld.gov.au](mailto:publicguardian@publicguardian.qld.gov.au)
- Website: [www.publicguardian.qld.gov.au](http://www.publicguardian.qld.gov.au)
- YouTube video: [Click here to find out about how the OPG can help adults with impaired capacity](#)

