

THE GENERAL PRINCIPLES



Presumption of capacity

An adult is presumed to have capacity for a matter.

Same human rights

(1) The right of all adults to the same basic human rights regardless of a particular adult's capacity must be recognised and taken into account.

(2) The importance of empowering an adult to exercise the adult's basic human rights must also be recognised and taken into account.

Individual value

An adult's right to respect for his or her human worth and dignity as an individual must be recognised and taken into account.

Valued role as member of society

(1) An adult's right to be a valued member of society must be recognised and taken into account.

(2) Accordingly, the importance of encouraging and supporting an adult to perform social roles valued in society must be taken into account.

Participation in community life

The importance of encouraging and supporting an adult to live a life in the general community, and to take part in activities enjoyed by the general community, must be taken into account.

Encouragement of self-reliance

The importance of encouraging and supporting an adult to achieve the adult's maximum physical, social, emotional and intellectual potential, and to become as self-reliant as practicable, must be taken into account.

Maximum participation, minimal limitations and substituted judgment

(1) An adult's right to participate, to the greatest extent practicable, in decisions affecting the adult's life (including the development of policies, programs and services for people who have impaired capacity) must be recognised and taken into account. **(2)** Also, the importance of preserving, to the greatest extent practicable, an adult's right to make his or her own decisions must be taken into account.

(3) So, for example-

- (a) the adult must be given any necessary support, and access to information, to enable the adult to participate in decisions affecting the adult's life; and
- (b) to the greatest extent practicable, for exercising power for a matter for the adult, the adult's views and wishes are to be sought and taken into account; and
- (c) a person or other entity in performing a function or exercising a power under this Act must do so in the way least restrictive of the adult's rights.

(4) Also, the principle of substituted judgment must be used so that if, from the adult's previous actions, it is reasonably practicable to work out what the adult's views and wishes would be, a person or other entity in performing a function or exercising a power under this Act, or an enduring document, must take into account what the person or other entity considers would be the adult's views and wishes.

(5) However, a person or other entity in performing a function or exercising a power under this Act, or an enduring document, must do so in a way consistent with the adult's proper care and protection.

(6) Views and wishes may be expressed orally, in writing or in another way, including, for example, by conduct.

Maintenance of existing supportive relationships

The importance of maintaining an adult's existing supportive relationships must be taken into account.

Maintenance of environment and values

(1) The importance of maintaining an adult's cultural and linguistic environment, and set of values (including any religious beliefs), must be taken into account.

(2) For an adult who is a member of an Aboriginal community or a Torres Strait Islander, this means the importance of maintaining the adult's Aboriginal or Torres Strait Islander cultural and linguistic environment, and set of values (including Aboriginal tradition ¹ or Island custom ²), must be taken into account.

¹ "**Aboriginal tradition**" means the body of traditions, observances, customs and beliefs of Aboriginal people generally or of a particular community or group of Aboriginal people, and includes any such traditions, observances, customs and beliefs relating to particular persons, areas, objects or relationships-see *Acts Interpretation Act 1954*, section 36.

² "**Island custom**", known in the Torres Strait as Ailan Kastom, means the body of customs, traditions, observances and beliefs of Torres Strait Islanders generally or of a particular community or group of Torres Strait Islanders, and includes any such customs, traditions, observances and beliefs relating to particular persons, areas, objects or relationships-see *Acts Interpretation Act 1954*, section 36.

Appropriate to circumstances

Power for a matter should be exercised by an attorney for an adult in a way that is appropriate to the adult's characteristics and needs.

Confidentiality

An adult's right to confidentiality of information about the adult must be recognised and taken into account.