

Capacity



What is 'capacity'?

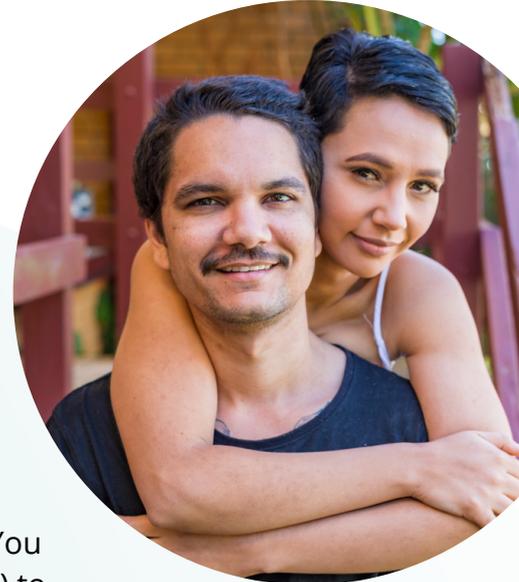
You have capacity if you can:

- understand the nature and effect of a decision
- freely and voluntarily make the decision
- communicate the decision in some way

In deciding if you have capacity, the focus is on your ability to make decisions and not the decisions you have made.

Who determines 'capacity'?

All adults are presumed to have capacity to make all decisions. You can ask the Queensland Civil and Administrative Tribunal (**QCAT**) to make a decision that you DO have capacity. Your capacity can change. You can have capacity for some things and not others.



What happens if QCAT decides you have impaired 'capacity'?

If you cannot make decisions by yourself, and you do not have informal decision-making support (family or friends) to assist you, QCAT can appoint an administrator or guardian to make decisions for you on:

1. Financial Matters (administration order): e.g. paying bills and managing property;
2. Personal Matters (guardianship order): e.g. where you live, what services you receive.

How you can help to show you have 'capacity': Financial matters

You can demonstrate to QCAT that you have capacity to make decisions regarding your finances by:

- Preparing a draft budget which shows your spending, how much you spend, and what you spend it on. Your expenses should not be more than your income and it would be helpful if you can show you have some savings.
- Being aware of any assets or debts you might have, for example, property or motor vehicles, credit card or SPER debts, etc.
- Asking for a reviewing of your bank statements and being aware of any decisions that the appointed administrator has made, for example, a decision by the Public Trustee to transfer savings from one bank account to another.
- Demonstrating a pattern of responsible behaviour, for example, making sensible purchases and saving money to cover unexpected expenses.
- Having a doctor (for example a GP or a specialist) complete a 'Health Professional Report' (this form is on QCAT's website) and comment on your ability to make your own financial decisions. The doctor who completed this report should know you well.

How you can help to show you have ‘capacity’: Personal matters

You can demonstrate to QCAT that you have capacity to make decisions regarding your personal affairs by:

- Having a doctor (for example a GP or a specialist) complete a ‘Health Professional Report’ (this form is on QCAT’s website) and comment on your ability to make your own personal decisions. The doctor who completed this report should know you well.
- Being aware of any health care treatments you are on or medication you are taking.
- Being aware of any support services you may have in place, for example, home visitors etc.
- Demonstrating stable living arrangements and employment (where relevant).

The importance of support

Your capacity can be increased with appropriate support. The support you have and the environment you are in can change your capacity.

Can you obtain a declaration of capacity?

You or an interested party (i.e. family member) can request that QCAT make a declaration about your capacity regarding a particular area. For example, your capacity to make health care decisions. However, you should speak to a lawyer before making an application for a declaration about capacity.

If QCAT makes a declaration that you DO have capacity, then any existing administration or guardianship order may be revoked or changed to reflect the declaration.



This factsheet has been prepared by Queensland Advocacy for Inclusion (QAI), an independent, community-based advocacy organisation for people with disability in Queensland (www.qai.org.au).

This publication is for general information only. It must not be relied on as legal advice.

You must seek legal advice about your own particular circumstances.