



QADA – supporting you to be heard

Queensland Aged & Disability
advocacy Inc.

Advocating for clients with impaired capacity

Queensland Aged and Disability Advocacy Inc. (QADA) are often asked about the role that QADA plays in providing advocacy support to people with impaired decision-making ability.

QADA identifies people with impaired capacity (dementia, in particular) as a special group needing advocacy support.

What is “capacity”?

“Capacity” and “impaired capacity” refer to terms as defined by the Queensland guardianship regime. The definition of “capacity” is drawn from legislation that states that “capacity” is to be considered in relation to the specific decision (matter) to be made, and if the person is capable of:

- ✦ understanding the nature and effect of decisions about the matter; and
- ✦ freely and voluntarily making decisions about the matter; and
- ✦ communicating the decisions in some way.

QADA is guided by Queensland laws, including the right of an adult to make decisions as being fundamental to inherent dignity.

Supporting clients with impaired capacity

QADA recognises that presentation of capacity can be influenced by medical, personal, physical and environmental factors, and assumes capacity exists until proven otherwise.

Our practice is influenced by an adult’s basic human rights – irrespective of capacity. QADA promotes the importance of:

- ✦ empowering an adult to exercise their rights;
- ✦ making decisions and achieving their potential;
- ✦ being as self reliant as possible, with the least possible interference; and
- ✦ the provision of appropriate support with decision making.

It is not QADA’s role to assess a client’s capacity; however we follow a process to ensure potential clients do not have their right to access advocacy support compromised by their lack, or perceived lack, of ability to give clear instruction.

The capacity to make decisions can fluctuate or differ according to the decision to be made. When an advocate meets a person who may have limited decision making abilities, we consider whether capacity is:

- ✦ impaired in all areas, or
- ✦ is limited only to one particular area.

QADA will look at whether the person is able to make a decision regarding the particular matter. For example, a person’s capacity to make financial decisions may be impaired, yet he/she can make lifestyle decisions.



Advocating for clients with impaired capacity

The legislation dictates the way we view our ability to take direction from a client.

The question posed is no longer: *“Can we take direction from this person?”* but rather *“Can we take direction from this person regarding the particular matter for which a decision needs to be made?”*

Some issues require a greater level of capacity to give instruction than other issues. *For example, the decision to leave a high care facility in order to live independently in the community will require a higher level of capacity than a decision to address a care matter with a service provider.*

Determining capacity

If we have any doubts about a client’s capacity, before taking direction an advocate may:

- ✦ visit the client on several occasions before deciding if we can take instruction from the client;
- ✦ ask if we can speak with one of the client’s health care professionals to gain further insight;
- ✦ seek advice from the Office of the Adult Guardian.

Substitute decision makers

Depending upon the information obtained we may take direction from the client, or we may need to see if someone can give direction on behalf of the client. At this stage, advocates may ask the following questions:

- ✦ is there a formal substitute decision maker?
- ✦ is there a current Enduring Power of Attorney (EPA) covering the areas of decision making in question?
- ✦ is there an appointed guardian for this person?

QADA can sometimes take instruction through an informal representative, provided the person is acting in the client’s best interest. QADA can offer support to this person to advocate on behalf of the client. If family and friends can not agree upon what is in the client’s best interests (and in the absence of a formal substitute decision maker), a QADA advocate will seek advice from the Queensland Civil and Administration Tribunal (QCAT).

In some circumstances the Adult Guardian may become the substitute decision maker for personal matters and/or the Public Trustee for financial matters.

Family and friends of clients without formal arrangements can apply to the QCAT to become the client’s guardian and/or administrator. A client without formal or informal support, who cannot give instruction, would be referred to the QCAT.

QADA acknowledges the complexity of advocating for clients with impaired capacity. However, we are committed to providing advocacy support to all people in our client group – irrespective of capacity.

For further information call QADA on **1800 818 338**.

QADA offices are located in:

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|--------------|---------------|
| ✦ Brisbane | ✦ Gold Coast |
| ✦ Hervey Bay | ✦ Rockhampton |
| ✦ Townsville | ✦ Cairns |
| ✦ Mackay | |