

**GUIDE TO THE
MENTAL CAPACITY ACT
FOR DEPUTIES**

OFFICE OF THE
**PUBLIC
GUARDIAN**

CONTENTS

Foreword	03
PART A WHAT IS THE MENTAL CAPACITY ACT AND WHAT DO I NEED TO KNOW ABOUT IT?	04
What is mental capacity?	04
A1. What is the Mental Capacity Act and why do we need this Act?	04
A2. The Code of Practice	06
PART B WHAT DOES THE OFFICE OF THE PUBLIC GUARDIAN DO?	07
B1. The Public Guardian	07
B2. The functions of the Public Guardian	07
B3. The Office of the Public Guardian	08
B4. The role of Board of Visitors	08
PART C WHAT HAPPENS TO EXISTING MEMBERS OF THE COMMITTEE OF THE PERSONS/ESTATES?	09
PART D HOW DO I BECOME A DEPUTY?	10
PART E WHAT ARE THE POWERS, DUTIES AND RESPONSIBILITIES OF DEPUTIES?	11
E1. When will a deputy be required?	11
E2. What are the actions or decisions which I can make?	12

E3.	What are the dos and don'ts for a deputy?	12
E4.	Other restrictions	13
E5.	What are the excluded decisions?	14
E6.	When does a deputy's powers end?	15
E7.	Will I be reimbursed for expenses incurred in carrying out my duties?	15
E8.	What happens if the decisions I need to make are not covered under the court order?	15
E9.	What kind of protection is there for deputies?	16
E10.	Do I have to keep records?	16
PART F	WHAT ARE THE 5 PRINCIPLES UNDER THE MENTAL CAPACITY ACT AND HOW DO I APPLY THEM?	17
PART G	G1. What happens if anyone suspects a vulnerable adult is being abused?	26
	Who to alert?	26
	G2. Whistle-blower protection	27
PART H	WHERE CAN I FIND MORE INFORMATION?	28
	List of useful contacts	28
	Glossary	30

FOREWORD

This booklet provides guidance for people who would like to take on the role of a deputy. It will provide you with an overview of your duties.

As a deputy, you are responsible for acting and making decisions on behalf of a person who lacks capacity to make those decisions for themselves.

If you experience difficult or complicated decision-making involving financial matters, medical treatment or personal welfare matters, we recommend that you seek independent legal and/or other professional advice.

The scenarios and examples in this guide are for illustration only and use fictitious characters and situations. They are not a substitute for professional advice in appropriate cases and are not in any way to be taken as precedents for decisions that need to be made in similar situations. They are also not indicative of how a court would decide any particular case, as that would depend on the actual facts of each case before the court, which may include relevant facts that are not considered in the examples.

PART A

WHAT IS THE MENTAL CAPACITY ACT AND WHAT DO I NEED TO KNOW ABOUT IT?

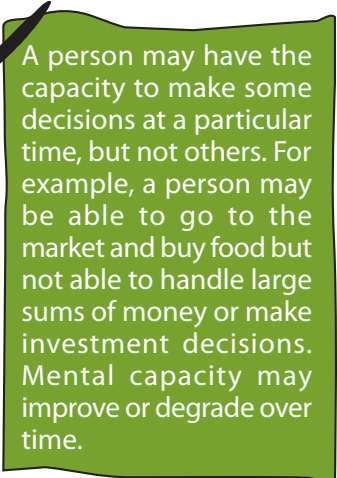
WHAT IS MENTAL CAPACITY?

- *Mental capacity is the ability of the person to make a specific decision at a particular time.*

A1. WHAT IS THE MENTAL CAPACITY ACT AND WHY DO WE NEED THIS ACT?

The Mental Capacity Act enables people to plan ahead and gives them the power to make choices for their future before they lose their mental capacity. It addresses the need to make decisions for persons who are 21 years or older when they lack mental capacity to make those decisions for themselves. The Act also:

- Allows people to voluntarily make a Lasting Power of Attorney to appoint one or more persons (donees) to act and make decisions on their behalf if and when they lack mental capacity in the future.



A person may have the capacity to make some decisions at a particular time, but not others. For example, a person may be able to go to the market and buy food but not able to handle large sums of money or make investment decisions. Mental capacity may improve or degrade over time.

- b. Allows the court to appoint a deputy to act and make decisions on behalf of a person who lacks mental capacity where a decision is required but there is no a proxy decision maker.
- c. Allows parents of children with intellectual disabilities to apply to the court to appoint themselves as deputy for their children and another person as a successor deputy to plan for an event the parents pass away or lose their own mental capacity.
- d. Gives legal protection for acts done by anyone in connection with the care and treatment of a person who lacks mental capacity if certain conditions are met, including the requirement that the act is done in the best interests of that person.
- e. Provides safeguards to protect persons who lack mental capacity.



A2. THE CODE OF PRACTICE

The Code of Practice serves to elaborate on the Mental Capacity Act. It provides further explanation on how the Act should be applied in practice. It helps people

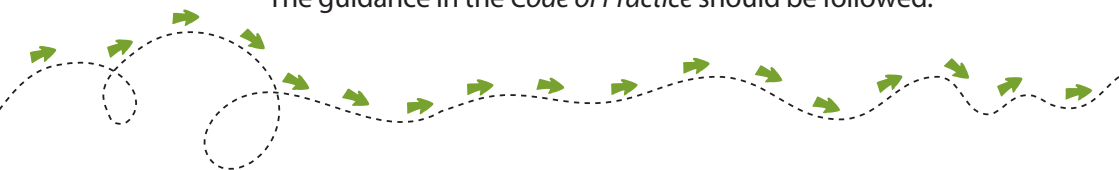
- understand their roles and responsibilities under the Act.
- understand the steps you can take to prepare for a time in the future should you lack capacity.
- understand the principles to be applied when caring for persons lacking mental capacity.

The Code of Practice is a guide of best practices for everyone who interacts with a person lacking mental capacity. This includes those who are under a formal duty to offer care, such as professionals and paid caregivers as well as informal caregivers, such as family and friends of the person who lack capacity.

The following individuals must consider the Code when acting for a person lacking mental capacity:

- a. Donee of a Lasting Power of Attorney,
- b. Court appointed Deputy,
- c. People who act in a professional capacity, e.g. a lawyer, health care professional, accountant, ambulance crew, and
- d. People who act for remuneration, e.g. a paid caregiver, therapist.

The guidance in the *Code of Practice* should be followed.



PART B

WHAT DOES THE OFFICE OF THE PUBLIC GUARDIAN DO?

B1. THE PUBLIC GUARDIAN

The Public Guardian works towards protecting the dignity and interests of individuals who lack mental capacity and are vulnerable. He is the head of the Office of the Public Guardian.

B2. THE FUNCTIONS OF THE PUBLIC GUARDIAN

The Public Guardian carries out various functions towards enabling and protecting persons who lack capacity. These functions include:

- a. To maintain a register of Lasting Powers of Attorney and a register of court orders that appoint deputies,
- b. To supervise deputies,
- c. To receive reports from donees and deputies,
- d. To investigate any alleged violation of any provision in the Mental Capacity Act, including complaints about the way in which donees and deputies are exercising their powers.

B3. THE OFFICE OF THE PUBLIC GUARDIAN

- The Office of the Public Guardian (“OPG”) supports the Public Guardian in carrying out his functions.
- The OPG is a division of the Ministry of Community Development, Youth and Sports.

B4. THE ROLE OF BOARD OF VISITORS

The roles of the Board of Visitors are to:

- visit persons who lack capacity, donees or deputies as may be requested by the Public Guardian or the court, and
- check on the well-being of the person who lacks capacity.



There are 2 types of visitors:

- a. Special Visitors – who are registered medical practitioners or persons who have the relevant expertise about impairment of, or disturbance in, the functioning of the mind or brain.
- b. General Visitors – who need not be medically qualified.

PART C

WHAT HAPPENS TO EXISTING MEMBERS OF THE COMMITTEE OF THE PERSONS/ESTATES?

Members of the committee of the person and/or the estate appointed under the Mental Disorders & Treatment Act shall be deemed as deputies appointed by the Court under the *Mental Capacity Act* on and after the commencement date, 1st March 2010.

These individuals

- will have the same powers and functions that were previously conferred by the Supreme Court as a member of the committee, and
- may wish to approach the parties (such as banks) that they are currently dealing with in their capacities as a member of a committee of person and/or estate, to enquire on administrative changes that may arise.

This will minimise any possible disruptions as they continue to act as a deputy with effect from 1st March 2010.

Any pending application to Court to appoint a committee of the person or a committee of the estate will be treated as an application to appoint deputies to act jointly when making decisions for the person who lacks capacity.

PART D

HOW DO I BECOME A DEPUTY?



There are two ways to become a deputy. You may apply to the court to seek a court order to be appointed as a deputy, or become a deputy through your prior appointment as a committee of the persons/estates. You may wish to consult a lawyer for further assistance.



PART E

WHAT ARE THE POWERS, DUTIES AND RESPONSIBILITIES OF DEPUTIES?

E1. WHEN WILL A DEPUTY BE REQUIRED?

A deputy should be appointed if a decision(s) has to be made on behalf of a person who has lost his mental capacity and he does not have any donee under an LPA to act for him. An application may be made to the court for someone to be appointed his deputy.

Parents of children with intellectual disability may also apply to court to be appoint themselves as deputy for their children and another person as a successor deputy to plan for the event the parents themselves lose capacity or pass away.

Scenario



Ida had a stroke three months ago. She is in a coma. Her condition is stable but unchanged. She owns a HDB flat and has \$50,000 in her bank account.

Ida's husband died 5 years ago. Ida's daughter, Rohani, is a 22-year-old university student. Rohani does not have any income.

The doctors have told Rohani that they do not know when Ida will regain consciousness. In the meantime, ongoing expenses for Ida's hospitalisation and household need to be paid.

A decision also has to be made to move Ida into a nursing home. Ida has not made an LPA.

Rohani cannot withdraw the money from Ida's account to meet those expenses nor decide about moving Ida to a nursing home.

In this situation, Rohani should apply to the court to make a decision about moving Ida to a nursing home and to appoint a deputy to manage Ida's property and affairs. The court is likely to appoint a suitable family member as deputy.

E2. WHAT ARE THE ACTIONS OR DECISIONS WHICH I CAN MAKE?

The type of actions and decisions you can make as a deputy are covered specifically in the court order appointing you. Please note that you cannot delegate your authority or responsibility to another person.

E3. WHAT ARE THE DOS AND DON'TS FOR A DEPUTY?



Dos

The role of the deputy is elaborated in the *Code of Practice*. Here are some of the key points that the deputies must bear in mind:

- Follow the statutory principles.
- Act in the best interests of the person who lacks capacity.
- Have regard to the guidance in the *Code of Practice*.
- Follow the court's directions and not exceed the scope of authority as laid down by the court.
- Keep records and accounts.
- Keep the money of the person separate from the deputies' personal accounts.



Here are some key points that deputies must bear in mind:

You should refer to paragraph 9.8 of the *Code of Practice* for more guides on the dos and don'ts for a deputy.

- Do not take advantage of your position to benefit yourself.
- Do not pass your authority to someone else.
- Avoid situation of possible conflict of interest.

E4. OTHER RESTRICTIONS

There are restrictions on the deputies under the *Mental Capacity Act*. Some of the highlights are:

General Restrictions

Deputies cannot make a decision on behalf of the person who lacks mental capacity for whom they have been appointed (referred to as “P”) if the deputies know or reasonably believe that P has the capacity to make that decision.

Please see chapter 4 of the Code of Practice on assessments of capacity.

Specific Restrictions

Deputies may not –

- prohibit any particular individual from having contact with P.
- change the person responsible for P’s health care.
- make gifts of P’s property.
- execute a will or make/revoke any CPF or insurance nomination for P.
- consent or refuse the carrying out or continuation of life-sustaining treatment or any other treatment to prevent a serious deterioration in P’s condition.



Acts of Restraint

Deputies cannot do an act that is intended to restrain P unless all of the following four conditions are met:

- they are acting within the scope of authority expressly granted by the court,
- P lacks or they reasonably believe that P lacks capacity to decide the matter in question,
- the deputies reasonably believe that the act is necessary to prevent harm to P, and
- the restraining act is a proportionate response to the likelihood of P suffering harm and the seriousness of that harm.

E5. WHAT ARE THE EXCLUDED DECISIONS?

There are certain decisions that the deputies are not allowed by law to make on behalf of P. These decisions are:

a.	Consenting to marriage.
b.	Consenting to touching of a sexual nature.
c.	Consenting to divorce on the basis of 3 years' separation.
d.	Consenting to a making of an adoption order.
e.	Adopting or renouncing a religion.
f.	Receiving treatment for change of gender.
g.	Consenting or revoking consent to treatment for sexual sterilisation.
h.	Consenting or revoking consent to abortion.
i.	Registering or withdrawing an objection regarding the removal of an organ from any person upon death.
j.	Making or revoking an advance medical directive.
k.	Making or revoking a gift of a body or any part of a body.

E6. WHEN DOES A DEPUTY'S POWERS END?

The court can cancel a deputy's appointment or vary the powers granted if the deputy:

- a. Has behaved or is behaving in a way that violates the authority given by the court or is not in the best interests of the person for whom he is appointed as deputy, or
- b. May behave in a way that would violate the authority given by the court or would not be in the person's best interests.

E7. WILL I BE REIMBURSED FOR EXPENSES INCURRED IN CARRYING OUT MY DUTIES?

You can be reimbursed for reasonable expenses incurred when performing your duties as a deputy.

The court may direct you be paid a remuneration out of the property of the person who lacks capacity for performing your duties.

E8. WHAT HAPPENS IF THE DECISIONS I NEED TO MAKE ARE NOT COVERED UNDER THE COURT ORDER?

You can only make decisions of your authority given under the court order. You apply to the court to make further order to allow you to make other decisions.

E9. WHAT KIND OF PROTECTION IS THERE FOR DEPUTIES?

Mental Capacity Act offers legal protection if:

- before doing the act, you take reasonable steps to establish whether the person lacks capacity about the matter in question, and
- you reasonably believe that the person lacks capacity and the act to be done is in the person's best interests.

However, the legal protection does not extend to all acts. Please refer to paragraph 7.2.2 and 7.4 of the *Code of Practice* for matters not covered.

E10. DO I HAVE TO KEEP RECORDS?

It is good to practice to keep records of important decisions you have made as a deputy. This will also be useful in the event of a dispute.

From time to time, OPG may request for records from you.

PART F

WHAT ARE THE 5 PRINCIPLES UNDER THE MENTAL CAPACITY ACT AND HOW DO I APPLY THEM?

The statutory principles help the individual to take part in the decision-making process as far as possible, and protects him when he lacks capacity to do so.

When acting or taking decisions on behalf of a person who lacks mental capacity, these principles should be read alongside the provisions in the Act to ensure that the appropriate action or decision is taken in each case.

Principle 1: Presumption of Capacity

- *It must be assumed that a person has capacity to make a decision for himself*
- *unless there is proof that he lacks capacity to make the decision at the time it needs to be made.*

The assessment of a lack of capacity cannot be based simply on the person's appearance, age, condition or behaviour. So, people should be allowed to make their own decisions where they can.

Scenario

Shanti Sandhu is a 66-year-old divorcee who lives alone in a walk-up apartment. Her children were tragically killed in a road traffic accident six months ago.

Shanti used to be active in the community, taking part in local activities and volunteering at Resident Committee activities. Since the accident, she does not speak to anyone.

The apartment block committee is organising a health talk and free health screening activity. The committee is considering excluding Shanti as they feel she does not have capacity to contribute to organising the activities.

The organising committee should not assume that, just because Shanti lives alone and does not talk with anyone, it means that she lacks mental capacity. A person is presumed to have capacity unless it is proven otherwise. The organising committee should consider inviting Shanti. Whether she chooses to be involved is her choice.

Principle 2: Giving All Practicable Help

- *Caregivers, family members, donees, deputies and professionals who care for or treat a person who may have difficulty in making a particular decision should take all practicable steps to help the person to make his own decision.*

They should not exert pressure or impose their views on the person they are supporting when helping him to make a decision.

- *The type of support the person should receive depends on the type of decision he has to make and the circumstances.*

The individual should not make a decision on behalf of a person simply because that person has difficulty communicating. Instead, the individual should provide support, for example, by providing information in more accessible formats such as large font and drawings, and using different forms of communication such as sign-language, Braille, etc.

Scenario


Several police officers find a middle-aged man living underneath a bridge on the Pan Island Expressway. He is very dirty and has a big cut on his leg, which looks infected. They take him to the hospital.

The hospital staff asks for his personal details and relatives they could contact. To help the man to communicate, these enquiries are made in several languages. The man remains silent and does not want to cooperate with the doctor who wants to examine his injury.

The doctor tells him that if the injury is not treated, he may lose his leg and makes a sawing motion over his leg in an attempt to explain the situation to him. The man appears to pay more attention after that and starts pointing at his mouth and ears while shaking his head.

A nurse realises that he may be a deaf mute, so she gives him a paper and pen, and calls in a person who knows sign language. The man calms down and starts communicating to the hospital staff in writing.

The man may not have been able to communicate orally, but that does not mean he cannot make a decision about his treatment. The medical team should not conclude that he does not have the capacity to decide about treatment before giving him all the practicable help to make and communicate his decision.



In emergency situations, for example, serious injury from an accident, it may not be practicable to take as many steps to support a person to make his own decisions. All that can be done may be to keep the person informed of what is going on and why procedures are being done.

Principle 3: Unwise Decision

- *A person is free to make his own decisions even if those decisions are unwise in the view of others.*

- *This recognises the right of a person to make his own choices. Just because a decision is unwise does not mean that the person has lost mental capacity.*

However, there is a difference between a person making an unwise decision (which the person who decides may make) and his making a decision when he lacks the ability to understand, remembers or uses the information necessary to make the decision.

If a person makes several decisions which are unusual bearing in mind his usual behavior, or makes decisions which make it easy for him to be exploited or harmed, then further investigation into that person's capacity should be conducted.

Scenario

Ah Huat is 73 years old. He is a widower and lives alone.

Last week, a window installer named Paul visited Ah Huat at his home. Paul convinces Ah Huat to change the window in his bathroom because it is rusty. The next day, Paul returns and advises Ah Huat to change the windows in his bedroom. Paul charges Ah Huat \$500.

Ah Huat's son, Ah Seng, is concerned about his father. Ah Huat is normally careful with his finances because he is retired.

Paul returns for a third time and Ah Huat agrees to change the remaining windows in his flat for \$1500. Ah Seng, who examined the windows earlier, noticed that they are still in good condition and did not need to be changed. He believes that Paul has taken advantage of his father and wonders whether Ah Huat is capable of making similar purchasing decisions.

Ah Huat explains that he prefers to get the windows replaced all at once because he gets a better bargain. He believes that all the windows will need to be replaced in one or two years' time.

Ah Seng cannot just assume that because his father, Ah Huat, is 73 years old and has decided to change all the windows in his flat, he lacks mental capacity. If Ah Huat's usual pattern of behaviour continues to change and causes concern, then Ah Seng should consider getting his mental capacity assessed by a doctor.

Principle 4: Best Interests

- *Every act or decision made on behalf of a person who lacks capacity must be made in his best interests.*
- *Whether a decision is in the person's best interests will depend on the circumstances of the case.*

Scenario

Kevin Khoo and his wife, Rishima Rajah, have three children. Their eldest, Ron, who is 23 years old, has an intellectual disability and has been working at a sheltered workshop operated by a charity.

The charity also has a programme which offers temporary residence to persons like Ron to acquire basic life skills for more independent living. With some support, they are also taught how to take public transport. These life skills help them to be better suited for open employment.

A place in the residential programme becomes available and the social workers at the charity recommend that Ron take up the offer.

Kevin and Rishima know that Ron will like to become more independent. However, they are worried that if Ron takes up the offer, they won't be able to look out for him and he will spend less time with them.

If Ron has the mental capacity to make the decision on the residential programme, then Kevin and Rishima should not decide for him. If Ron lacks the capacity to make this decision, Kevin and Rishima must remember that they should be acting in Ron's best interests and not their own.



Principle 5: Less Restrictive

- When acting or making a decision on behalf of a person who lacks capacity, the action or decision taken should be one which is less restrictive on that person's right and freedom to act.

The less restrictive option is usually also the option that is in the best interests of the person.

- Sometimes, that includes not taking any action or decision at all. All actions taken or decisions made, or decisions not to take any actions, must be taken in the person's best interests.

Scenario

Ah Mei lives with her 80-year-old mother, Madam Kwong Siew Moi, who has dementia.

When Ah Mei goes to work, she locks her mother in her room to prevent her from injuring herself or wandering off. She leaves food and water in the room. Madam Kwong wears adult diapers.

When Ah Mei returns home in the evening, she bathes and feeds her mother. Even though Ah Mei is acting out of concern for the safety of her mother, and is a filial daughter, this form of care is not the less restrictive option. She must make some other more suitable care arrangement such as placing Madam Kwong in a dementia day-care centre.



If there is more than one option available, then the options must be weighed up and the decision taken must be determined by both the best interests and less restrictive option principles.

PART G

G1. WHAT HAPPENS IF ANYONE SUSPECTS A VULNERABLE ADULT IS BEING ABUSED?

WHO TO ALERT?

- *Anyone who knows, suspects or believes that a person who lacks capacity is not properly looked after, needs care or protection may report this to the Public Guardian and the appropriate bodies (see the table below).*

If there is good reason to suspect that a crime has been committed against the person, the report should be made to the police.

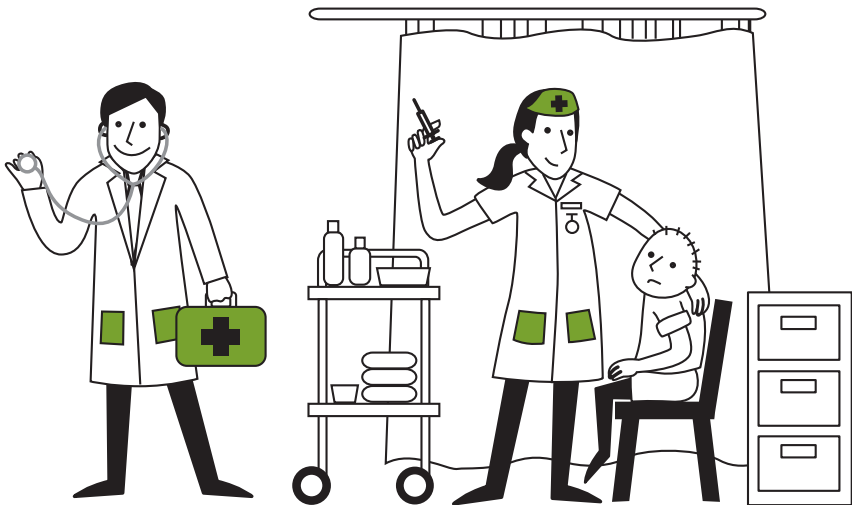
Types of abuse	Who to contact for help
1. Physical	<ul style="list-style-type: none"> • Police • Family Service Centre • Office of the Public Guardian
2. Sexual	<ul style="list-style-type: none"> • Police • Office of the Public Guardian
3. Financial	<ul style="list-style-type: none"> • Police • Family Service Centre • Tribunal for the Maintenance of Parents (failure to financially support parents) • Office of the Public Guardian (where it involves a donee or deputy)
4. Psychological	<ul style="list-style-type: none"> • Police • Family Service Centre • Office of the Public Guardian
5. Neglect and acts of omission	<ul style="list-style-type: none"> • Police • Office of the Public Guardian

G2. WHISTLE-BLOWER PROTECTION

Persons who lack mental capacity are a vulnerable group. Often, they do not even know when they are being abused and are not able to report the abuse. They need family members, neighbours and the community to look out for them.

To encourage individuals to report to the Public Guardian suspected ill-treatment, the Mental Capacity Act provides whistle-blower protection. The whistle-blower's identity may not be disclosed in court proceedings. No one can be forced to disclose the identity of whistle-blowers in court proceedings.

For healthcare workers who act in good faith in making the notification to the Public Guardian, the Act gives protection and he would not incur any civil liability for making such notifications.



PART H

WHERE CAN I FIND MORE INFORMATION?

Sometimes caregivers (including deputies) may disagree over matters such as care or treatment for the person, or how financial matters should be handled.

Most of these disputes should be settled amicably using other methods, such as case conference, mediation or formal complaint procedures.

These alternatives, as compared to going to Court, are cost effective and may resolve the dispute fairly and quickly.

Here is a list of possible organisations to help you in resolving a dispute.



List of Useful Contacts

Organisation	Telephone	Address	Website
Office of the Public Guardian	1800 226 6222	SLF Building #16-01 510 Thomson Road Singapore 298135	www.publicguardian.gov.sg
Singapore Association of Social Workers	6778 7922	Blk 324, Clementi Avenue 5 #01-209, Singapore 120324	www.sasw.org.sg
Singapore Dental Council	6372 3087	16 College Road, #01-01 College of Medicine Building, Singapore 169854	www.sdc.gov.sg
Singapore Dental Association	6220 2588	2 College Road, Level 2 Alumni Medical Centre, Singapore 169850	www.sda.org.sg

Organisation	Telephone	Address	Website
Community Mediation Centre	6325 1600	URA Centre, East Wing, 45 Maxwell Road #01-13 Singapore 069118	www.mlaw.gov.sg/cmc
Singapore Mediation Centre	6332 4366	1 Supreme Court Lane, Level 4, Singapore 178889	www.mediation.com.sg
Singapore Medical Council	6372 3065	16 College Road, #01-01 College of Medicine Building, Singapore 169854	www.smc.gov.sg
Singapore Medical Association	6223 1264	2 College Road, Level 2 Alumni Medical Centre, Singapore 169850	www.sma.org.sg
Singapore Nursing Board	6372 3082	16 College Road, #01-01 College of Medicine Building, Singapore 169854	www.snb.gov.sg
The Legal Aid Bureau	1800 325 1424	URA Centre, East Wing, 45 Maxwell Road #08-12 Singapore 069118	www.mlaw.gov.sg/lab
The Law Society	6538 2500	39 South Bridge Road, Singapore 058673	www.lawsociety.org.sg

GLOSSARY

Acts in connection with care or treatment

These are tasks carried out by care-givers (paid or unpaid), healthcare staff and family members that involve personal care, healthcare or medical treatment for a person who lacks the capacity to consent to those acts.

Best interests

Decision-makers have a duty to consider many factors that focus on what is best for the person lacking capacity before making a decision on his behalf. Refer to chapter 6 of the Code of Practice for more information.

Code of practice

The Code supports the Act and provides further explanation on how the Act should be applied in practice.

Committee of the person or committee of the estate

The court appointed these Committees, under the *Mental Disorders and Treatment Act* (now repealed), to make certain decisions on behalf of a person suffering from a mental disorder. Persons serving on existing Committees when the Mental Capacity Act comes into force on 1st March 2010 will be automatically become deputies as if they had been appointed by the court under the *Mental Capacity Act*, with the same powers and functions they previously enjoyed under the Committees.

Decision-maker

The decision-maker is the individual or person who makes decisions on behalf of persons who lack capacity. They include caregivers, nurses, doctors, donees of a Lasting Power of Attorney (LPA) and court-appointed deputies.

Deputy

A deputy is appointed by the court to make certain decisions on behalf of a person who lacks mental capacity when the person has not made a Lasting Power of Attorney (LPA) or has no donee to decide on his behalf in respect of those decisions. A deputy can be an individual, a licensed trust company or an exempt person under the *Trust Companies Act* (Cap. 336), as prescribed by the Mental Capacity Regulations.

Donee

Donees are appointed by individuals to act and make decisions about their personal welfare and/ or property & affairs matters, on their behalf, when they lack mental capacity.

Donor

The person who is making the LPA, appointing donee(s) to take care of his matters in the event he loses mental capacity one day.

Jointly

The donees or deputies must act together and not alone.

Lasting Power of Attorney (LPA)

A legal document that allows a donor to voluntarily appoint another person, the donee and gives him powers or authority to take action or make decisions on behalf of the donor when the donor loses capacity to make decisions.

Mental capacity

Mental capacity is the ability of a person to make a specific decision at a particular time.

Mental Capacity Act

Provides safeguards to protect persons lacking capacity. The Act gives the Public Guardian supervisory and investigative powers and makes ill treatment of persons who lack capacity by their caregivers and decision-makers a criminal offence. The Act also prohibits certain decisions from being made on behalf of the person who lacks capacity.

Office of the Public Guardian (OPG)

The OPG has a wide range of responsibilities within the framework of the Mental Capacity Act. These include keeping a register of Lasting Powers of Attorney, supervising deputies and investigating allegations of ill treatment.

Statutory principles

There are 5 statutory principles that everyone must follow when dealing with persons who lack or may lack capacity. Refer to part F for more information.

Unwise decision

This refers to one of the statutory principles. A person who has mental capacity has the right to make a decision that is unwise in the view of others. Just because a decision is unwise does not mean that the person has lost mental capacity. Refer to part F for more information.

OFFICE OF THE PUBLIC GUARDIAN

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