

## **General Principles – Guardianship and Administration Act 2020 – current from 30 November 2020<sup>1</sup>**

### **11B General principles**

- 1) The principles (the *general principles*) set out below must be applied by a person or other entity that performs a function or exercises a power under this Act.
- 2) Also, a person making a decision for an adult on an informal basis must apply the general principles in making the decision.
- 3) The community is encouraged to apply and promote the general principles.

#### **General principles**

##### **1 Presumption of capacity**

An adult is presumed to have capacity for a matter.

##### **2 Same human rights and fundamental freedoms**

- (1) An adult's inherent dignity and worth, and equal and inalienable rights, must be recognised and taken into account.
- (2) The rights of all adults to the same human rights and fundamental freedoms, regardless of a particular adult's capacity, must be recognised and taken into account.
- (3) The principles on which an adult's human rights and fundamental freedoms are based, and that should inform the way those rights and freedoms are taken into account include-
  - (a) respect for inherent dignity and worth, individual autonomy (including the freedom to make one's own choices) and independence of persons; and
  - (b) non-discrimination; and
  - (c) full and effective participation and inclusion in society, including performing roles valued by society; and
  - (d) respect for difference and acceptance of persons with impaired capacity as part of human diversity and humanity; and
  - (e) equality of opportunity; and
  - (f) accessibility; and
  - (g) equality between all persons regardless of gender

##### **3 Empowering adults to exercise human rights and fundamental freedoms**

The importance of the following matters must be taken into account-

- (a) empowering an adult to exercise the adult's human rights and fundamental freedoms;
- (b) encouraging and support an adult-
  - i. to perform social roles valued in society; and
  - ii. to live a life in the general community and to take part in activities enjoyed by the community; and
  - iii. to achieve maximum physical, social, emotional and intellectual potential and to become as self-reliant as practicable;
- (c) an adult's right to participate to the greatest extent practicable in the development of policies, programs and services for people with impaired capacity for a matter.

##### **4 Maintenance of adult's existing supportive relationships**

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

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<sup>1</sup> The general principles are reproduced from the *Guardianship and Administration Act 2000*, current from 30 November 2020.

- (2) Maintaining an adult's existing supportive relationships may, for example, involve consultation with-
  - (a) the adult, to find out who are the members of the adult's support network; and
  - (b) any persons who have an existing supportive relationships with the adult; and
  - (c) any members of the adult's support network who are making decisions for the adult on an informal basis.
- (3) The roles of families, carers and other significant persons in an adult's life to support the adult to make decisions should be acknowledged and respected.

## **5 Maintenance of adult's cultural and linguistic environment and values**

- (1) The importance of maintaining an adult's cultural and linguistic environment and set of values, including religious beliefs, must be taken into account.
- (2) Without limiting subsection (1), for an adult who is an Aboriginal person or Torres Strait Islander, the importance of maintain the adult's Aboriginal or Torres Strait Islander cultural and linguistic environment and set of values, including Aboriginal tradition or Island custom, must be taken into account.

## **6 Respect for privacy**

- (1) An adult's privacy must be taken into account and respected.
- (2) An adult's personal information, including health information, must be protected on the same basis as other people's personal information is protected.

## **7 Liberty and security**

- (1) An adult's right to liberty and security on an equal basis with others must be taken into account.
- (2) An adult should not be deprived of the adult's liberty except in accordance with the law.

## **8 Maximising an adult's participation in decision-making**

- (1) An adults right to participate, to the greatest extent practicable, in decision affecting the adult's life must be recognised and maintained.
- (2) An adult must be given the support and access to information necessary to enable the adult to make or participate in decision affecting the adult's life.
- (3) An adult must be given the support necessary to enable the adult to communicate the adult's decisions.
- (4) To the greatest extent practicable, a person or other entity, in exercising power for a matter for an adult, must seek the adult's views, wishes and preferences.
- (5) An adult's views, wishes and preferences may be expressed orally, in writing or in another way, including, for example, by conduct.
- (6) An adult is not to be treated as unable to make a decision about a matter unless all practicable steps have been taken to provide the adult with the support and access to information necessary to make and communicate a decision.

## **9 Performance of functions and exercise of powers**

A person or other entity, in performing a function or exercising a power under this Act in relation to an adult, or in making a decision for an adult on an informal basis, must do so-

- (a) In a way that promotes and safeguards the adult's rights, interests and opportunities; and
- (b) In the way that is least restrictive of the adult's rights, interests and opportunities.

## **10 Structured decision-making**

- (1) In applying general principle 9, a person or other entity in performing a function or exercising a power under this Act in relation to an adult, or in making a decision for

- an adult on an informal basis, must adopt the approach set out in subsections (2) to (5).
- (2) First, the person or other entity must-
    - (a) recognise and preserve, to the greatest extent practicable, the adult's right to make the adult's own decision; and
    - (b) if possible, support the adult to make the decision.
  - (3) Second, the person or other entity must recognise and take into account any views, wishes or preferences expressed or demonstrated by the adult.
  - (4) Third, if the adult's views, wishes and preferences can not be determine, the person or other entity must use the principle of substituted judgement so that if, from the adult's views, wishes and preferences, expressed or demonstrated when the adult had capacity, it is reasonably practicable to work out what the adult's views, wishes or preferences would be, the person or other entity must recognise and take into account what the person or other entity considers the adult's views, wishes and preferences would be.
  - (5) Fourth, once the person or other entity has recognised and taken into account the matters mentioned in subsections (2) to (4), the person or other entity may perform the function, exercise the power or make the decision.