

Fact sheet

Residents with impaired capacity

This fact sheet has been developed to provide information for when residents with impaired capacity rent rooms in rooming accommodation covered by the *Residential Tenancies and Rooming Accommodation Act 2008* (the Act). The rented rooms may be in a private residential service, such as a hostel or a boarding house, government-run accommodation or other rooming accommodation.

What is impaired capacity?

Impaired capacity refers to a person's ability to make a sound decision in a particular area of their life. Impaired decision-making capacity may be due to an intellectual disability, acquired brain injury, mental illness, dementia or some other cause. In Queensland, the law recognises an adult's right to control their own lives. People are presumed to have capacity to make decisions for themselves, unless their incapacity is established.

What is an indication of impaired capacity?

In order for a person to have capacity to make a decision, a person must:

- understand the nature and effect of the decision
- be making the decision freely and voluntarily, and
- be able to communicate the decision in some way.

If a person does not demonstrate sufficient ability to do this, it is advisable to seek further clarification from the person's carer, family, friend or health professional as to whether an attorney, guardian or administrator has been appointed. Advice can also be sought from the Guardianship and Administration Tribunal. Care should be taken not to assume impaired capacity on limited evidence or brief encounters.

Who assists people with impaired decision-making capacity?

Informal arrangements

The *Guardianship and Administration Act 2000* and the *Powers of Attorney Act 1998* recognise that most decisions for lifestyle matters can be made for adults with impaired capacity on an informal basis by members of the adult's existing support networks. In addition, informal arrangements of a financial nature, such as being appointed as an independent nominee (family member or close friend) for a person's pension, may be sufficient to deal with the person's financial matters.

Appointment of an attorney

An adult with impaired capacity may have appointed an attorney under the *Powers of Attorney Act 1998*. An attorney may be authorised to make decisions on behalf of the adult in regard to health, personal and financial matters depending on the nature of the appointment.

Appointment of a guardian and/or administrator

The *Guardianship and Administration Act 2000* provides for the appointment of guardians (for personal matters) and/or administrators (for financial matters). An application can be made to the Guardianship and Administration Tribunal to determine whether or not a person with impaired decision-making capacity needs a guardian or administrator appointed.

Impaired capacity and entering into a *Rooming accommodation agreement*

Under the Act providers/agents of rooming accommodation must enter into a written *Rooming accommodation agreement* (Form R18) with each resident

A resident's impaired capacity may affect their ability to understand, negotiate and sign an agreement. In these cases a written agreement with special conditions may not be enforceable. However, the standard conditions under the Act apply, even if a written agreement is not in place

On the *Rooming accommodation agreement*, the resident can nominate a person as a representative to receive copies of any notices given about the agreement. This can be an informal arrangement. For example, a resident may nominate a friend, carer or advice worker to receive notices (such as about

alleged breaches of the agreement). The provider is required to issue a copy of the notice to the resident and their representative, who will help ensure the resident understands the matter.

For more information about what is required in a *Rooming accommodation agreement*, refer to the RTA's *Rooming accommodation agreements* fact sheet.

Tips for providers/agents

When a provider/agent thinks a resident may not have sufficient capacity to sign a *Rooming accommodation agreement* they can:

- determine if the person has appointed an attorney or had a guardian or administrator appointed
- explain the agreement, its terms and consequences to the resident in simple terms, in the presence of their carer, family member, friend or health professional where possible
- ask for a representative from an organisation which gives the resident support e.g. Disability Services Queensland, Queensland Health or a community support agency, to explain the agreement to the resident
- put the resident in contact with their local or neighbourhood or community centre to provide assistance
- ask the resident's family, friend, support worker or third person to witness the resident's signature to confirm the person understood the nature and effect of the agreement
- contact the Office of the Adult Guardian and discuss whether or not the person may require a guardian or administrator
- keep file records and make notes documenting what actions and steps they have taken to ensure the person understood the nature and effect of the agreement, and/or
- document the actions and steps they have taken in instances when an issue or dispute has arisen (such as contacted family, contacted case worker, or suggested dispute resolution).

Useful contacts

Adult Guardian	1300 653 187
Public Trustee of Queensland	3213 9288 (refer to White Pages for regional offices)
Queensland Civil and Administrative Tribunal (QCAT) (for guardianship and administration matters)	1300 QLD CAT (1300 753 228)

Further information

For more information contact the Residential Tenancies Authority on 1300 366 311.

Accessing RTA forms

The RTA's forms can be obtained electronically or in person by:

- rta.qld.gov.au
- 1300 366 311
- Level 23, 179 Turbot St Brisbane



If you need interpreting assistance to help you understand this information, contact TIS on 13 14 50 (for the cost of a local call) and ask to speak to the Residential Tenancies Authority (RTA).

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Disclaimer

This fact sheets is prepared for information only. The Residential Tenancies and Rooming Accommodation Act 2008 is the primary source on the law and takes precedence over this information should there be any inconsistency between the Act and this fact sheet.