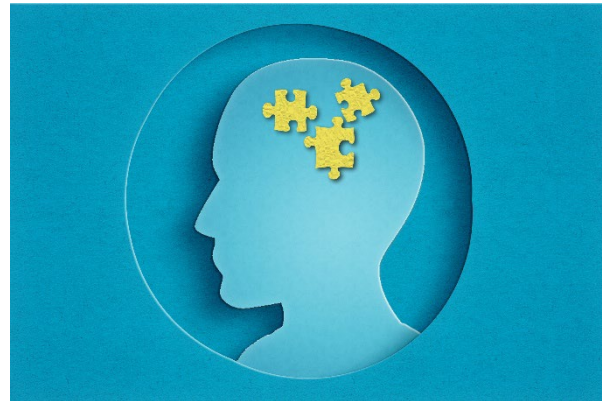


NAVIGATING OUR AGEING SOCIETY: RISING DEMENTIA AND DIMINISHING MENTAL CAPACITY

"A diagnosis does not automatically mean the loss of mental capacity"



INTRODUCTION

By 2030, around 1 in 4 Singaporeans will be aged 65 or older¹. With longer life expectancies and persistently low birth rates, Singapore is undergoing a significant demographic shift that will reshape how we live, work and care for each other.

An ageing population brings with it a range of complex challenges. Among the most pressing is the rise in cognitive decline, particularly in dementia diagnoses. Dementia is a progressive cognitive impairment that affects a person's cognitive functions and abilities including changes in mood, emotional control, behaviour and motivation².

A study conducted in 2023 found that while the proportion of older adults with dementia has slightly declined, the absolute number has increased from 51,934 in 2013 to 73,918 in 2023³, reflecting the growing size of Singapore's senior population. A separate 2021 study conducted by the Ministry of Health, projects this number to rise to about 152,000 people living with dementia by 2030⁴. This growing trend brings renewed attention to the concept of mental capacity, which refers to a person's ability to make a specific decision at a particular time.

¹ <https://www.moh.gov.sg/others/resources-and-statistics/action-plan-for-successful-ageing>

² <https://www.aic.sg/wp-content/uploads/2023/06/Dementia-Colabs-Report.pdf>

³ <https://www.straitstimes.com/singapore/health/prevalence-of-dementia-in-singapore-falls-to-1-in-11-among-older-adults-imh-study>

⁴ <https://www.aic.sg/wp-content/uploads/2023/06/Dementia-Colabs-Report.pdf>

As society prepares to confront the realities of ageing, understanding how mental capacity is assessed and protected by law is essential. This article explores the concept of mental capacity through the lens of the Mental Capacity Act 2008, with a particular focus on its relevance to dementia. It aims to provide a clear understanding of the legal framework and to encourage early planning for a future in which diminished capacity may become a reality for many.

The Mental Capacity Act 2008

The Mental Capacity Act 2008 (“**MCA**”) provides a legal framework to help people plan ahead and make informed decisions about their future while they still have the ability to do so.

Importantly, the MCA is not designed to restrict or control. Rather, it seeks to support and empower decision-making while providing safeguards for when capacity is compromised.

Under the MCA, a person is considered to lack mental capacity if they are unable to make a specific decision because of an impairment of, or a disturbance in the function of the mind or brain. A person is considered as unable to decide if they cannot:

- Understand the information relevant to the decision;
- Retain the information;
- Use or weigh the information as part of the decision-making process; or
- Communicate his decision (whether by talking or using sign language or any other means).

Every person is presumed to have capacity unless proven otherwise at the time a decision needs to be made. Age, condition, appearance or behaviour alone are not enough to conclude that someone lacks capacity.

This is particularly relevant for people living with dementia. A diagnosis does not automatically mean the loss of mental capacity. Since dementia is progressive in nature, a person living with dementia may retain the ability to make decisions in the early stages and only lose capacity over time⁵. Capacity can also fluctuate, even within a singly day, and depending on the complexity of the decision at hand⁶.

⁵ <https://www.dementiahub.sg/living-well-with-dementia/lasting-power-of-attorney/>

⁶ <https://www.alzheimers.org.uk/get-support/legal-financial/dementia-mental-capacity-act#:~:text=As%20their%20condition%20progresses%2C%20a,difficult%20financial%20or%20medical%20ones.>

Accessing Mental Capacity

Despite the presumption of mental capacity, there may be situations where a person's ability to make decisions is questioned. In such cases, capacity must be assessed.

Under section 19 of the MCA, the court has the authority to determine whether a person lacks capacity. The legal test for capacity, as clarified in the landmark case of ***Re BKR [2015] SGCA 26 ("Re BKR")***, comprises of two components: (1) a functional component; and (2) a clinical component.

While the functional component is concerned with whether a person is able to make a specific decision, the clinical component requires this inability to be caused by an impairment of, or a disturbance in, the functioning of the mind or brain. The decision, ultimately, rests with the court as to whether or not the person is able to make the specific decision in question.

Case Study: Re BKR

Re BKR involved an application by family members to appoint deputies for their elderly matriarch, BKR, who they believed could no longer make decisions due to dementia. Her family members cited memory loss, impaired judgement and false and/or paranoid beliefs.

Expert evidence confirmed that BKR suffered from a mental impairment falling between Mild Cognitive Impairment and dementia. However, the court emphasised that suffering from a mental impairment does not automatically mean someone lacks capacity. The key question was whether the impairment affected her specific decision-making abilities. In this case, BKR's decisions to set up a Trust and moving her assets from UBS to DBS.

On appeal, the Court of Appeal overruling the High Court, found that while BKR could understand some information, she was unable to use and weigh the relevant information due to reduced executive functions and paranoid beliefs caused by her mental impairment. Her ability to retain information was also impacted. As a result, the court concluded she lacked mental capacity for those decisions, and deputies were appointed to act on her behalf.

Planning Ahead: Lasting Power of Attorney

The case of **Re BKR** illustrates the difficult realities of dealing with issues concerning mental capacity. While the law provides safeguards to protect those who can no longer make decisions for themselves, the processes involved can be lengthy and complex, especially when there is uncertainty or conflict within the family.

Fortunately, much of this can be avoided by planning head. Individuals can retain control over their future through the creation of a Lasting Power of Attorney (LPA).

An LPA is a legal document that allows a person (the donor), who is at least 21 years of age, to voluntarily appoint one or more donees to make decisions and act on their behalf, should they lose mental capacity in the future.

A donee can be appointed to act in two areas, concerning the personal welfare and/or the property and affairs of the donor. Creating an LPA allows a person to make a considered and personal choice of a trusted proxy decision-maker who is reliable and competent⁷. The donee is entrusted by the donor and obliged by the MCA to act in the donor's best interests in the exercise of the powers conferred by the LPA.

The customisable nature of an LPA allows donors to tailor the document to suit their needs. For individuals who prefer something more straightforward, LPA Form 1 is a standard form that grants general powers and basic restrictions. Those with more complex and specific needs may use LPA Form 2 to grant donees with specific powers and impose restrictions, the clauses of which are to be drafted by a Singapore lawyer⁸.

Reducing the Burden: Benefits of an LPA

When mental capacity is lost and there are no prior arrangements in place, families are often caught off guard. In such situations, they cannot automatically step in to make decisions on their loved one's behalf. An application must be made to the court to appoint a deputy which is often lengthier and a more expensive process than creating an LPA in advance.

⁷ <https://www.msf.gov.sg/what-we-do/opg/lasting-power-of-attorney/what-is-a-lasting-power-of-attorney>

⁸ <https://www.msf.gov.sg/what-we-do/opg/lasting-power-of-attorney/what-is-a-lasting-power-of-attorney>

Unlike an LPA, a court-appointed deputy may not be someone of the person's choosing. The deputy's powers are usually also more limited and subject to closer supervision by the court. This can put additional stress on families, particularly when there are disagreements over who should be appointed deputy or what decisions should be made.

Making an LPA not only reduces the burden on families, but the person also retains control over their future. Even when they eventually lose capacity, they are afforded peace of mind in knowing that someone they trust to understand their values is legally empowered to act in their best interests.

Conclusion

As Singapore undergoes a reshaping of the population pyramid⁹, society must learn to adapt to its evolving needs.

This includes recognising how mental capacity may change with age or illness and preparing for the effects of conditions like dementia. Being informed helps avoid unnecessary stress and confusion later on, and one of the best ways to get ahead is by planning early. Taking proactive steps, such as creating an LPA, ensures that important decisions remain in trusted hands. The process of creation is straightforward and accessible through the government website of the Office of the Public Guardian.

At **INFINITY LEGAL LLC**, we assist and represent clients on all issues relating to the Mental Capacity Act 2008.

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⁹ <https://www.moh.gov.sg/newsroom/speech-by-mr-ong-ye-kung-minister-for-health-and-chairman-of-the-ministerial-committee-on-ageing-at-the-launch-of-the-2023-action-plan-for-successful-ageing-30-january-2023-900am>