

Protecting and Supporting Persons without Mental Capacity – the Singapore story

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Philosophy and principles

- Individual responsibility as much as possible
- Family First – the first line of support in the care of their elderly and mentally-incapable
- National-level:
 - Facilitate individual/family planning ahead
 - Tiered subsidies
 - “no one left behind”

Protective legislation in Singapore

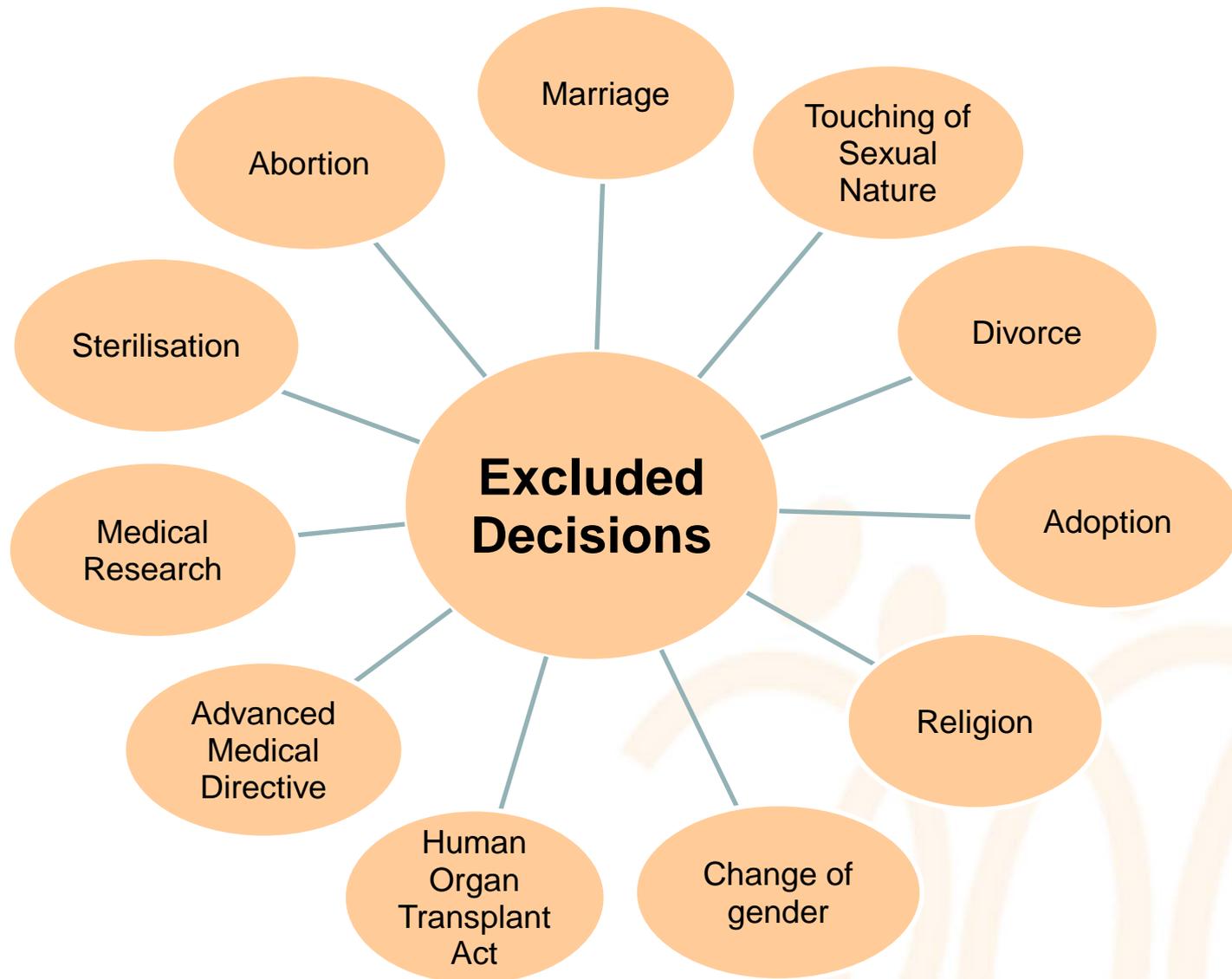
Statute	Key protective features
Mental Capacity Act (Cap. 177A)	<ul style="list-style-type: none"> • Created a framework for the making and registration of a Lasting Power of Attorney • Provided for the appointment of a Deputy by the Court • Established the office of the Public Guardian
Vulnerable Adults Act	<ul style="list-style-type: none"> • Empowered the State to step in and remove the vulnerable adult (VA) to a place of safety after meeting stringent safeguards • Application for protection orders for VA against perpetrators • Enhanced punishment for certain Penal Code offences against a VA (x1.5)
Penal Code (Cap. 224)	<ul style="list-style-type: none"> • Enhanced the punishment for specific offences where the victim is known to be mentally incapacitated • Recognition that persons with diminished mental capacity may benefit from alternative sentencing and treatment options.
Women's Charter (Cap. 353)	<ul style="list-style-type: none"> • Provides for maintenance of an incapacitated husband • Imposes a duty on parents to maintain an adult child who has a mental or physical disability.

Mental Capacity Act

- Enacted in 2008 and came into effect on 1 March 2010. Amended on 14 March 2016
- A law which protects the mentally incapable and recognises that mental capacity fluctuates and may be decision-specific
- Respects the dignity of the individual
- Established the office of the Public Guardian

- **5 Statutory Principles**

- 1 **Assumed to have mental capacity** unless it is established that he lacks capacity.
- 2 Give all **practicable help** in decision - making.
- 3 **An unwise decision** does not mean a lack of mental capacity
- 4 An act or decision must be done in the person's **best interests**
- 5 The act or decision must be **less restrictive** for the person



Functions of OPG

Registry

Establish and maintain a registry of:

- Lasting Power of Attorney (LPAs)
- Court orders appointing deputies

Public Education

Create awareness of MCA / LPA

Stakeholder outreach and education

Public information

Supervision (s31)

Supervise deputies

Manage & direct Board of Visitors

Reporting to court

Investigation (s42)

Investigate into alleged ill-treatment of a person without mental capacity

AH MAH VIDEO

Making an LPA under the MCA, section 11

OFFICE OF THE
PUBLIC
GUARDIAN

LASTING POWER OF ATTORNEY
FORM 1 (2014)

Hotline: 1800-226-6222
Website: www.publicguardian.gov.sg

PRESCRIBED INFORMATION

Important Information You Must Read

Purpose of the lasting power of attorney

1. A lasting power of attorney is a legal document that gives authority to the person you appoint (called your "donee") to make decisions and act for you when you lack mental capacity. You may authorise your donee(s) to make decisions about your

- personal welfare (which may include health care) and/or
- property and affairs (including financial matters).

2. This is the lasting power of attorney (LPA) Form 1. It gives your donee very wide powers. Your donee may act as fully as you can, subject to basic restrictions set out in the lasting power of attorney and the Mental Capacity Act (Cap. 177A) ("the Act"). If you do not want to give such wide powers and want to give restricted or specific powers instead, you should use LPA Form 2 (which has to be drafted by a lawyer).

This document must be registered

3. This document must be registered with the Office of the Public Guardian (OPG). The application to register must be made in the prescribed form within 6 months from the date you (the person giving the power) sign this document.

When your donee can act for you

4. Your donee can use the lasting power of attorney only after it has been registered and only where you lack mental capacity or your donee reasonably believes you lack such capacity.

What your donee can and cannot do

5. Your donee's authority is governed by the terms of this document and the provisions of the Act.

6. Your donee must follow the principles of the Act, which include the principle that your donee must act in your best interests.

7. Your donee cannot make certain decisions as provided in the Act, such as make a will on your behalf.

8. Guidance about the Act is found in the Mental Capacity Act Code of Practice, which is available from the OPG or at www.publicguardian.gov.sg. Your donee must have regard to the Code of Practice.

Revoking (terminating) the lasting power of attorney

9. You can revoke your lasting power of attorney at any time as long as you have mental capacity to do so. You must inform your donee in writing so he/she will know you have terminated his/her authority. You must also inform the Public Guardian in writing for the registration of the lasting power of attorney to be cancelled.

FOR OFFICIAL USE

LPA Reference Number	Registration Number	Date Registered

Signature of Donor

Sign Here Page 1 of 8

- Individuals with mental capacity (donors) can appoint family members / friends or unrelated professionals as LPA donee(s)
- Donor to decide what powers to give donees and manner of acting.
- Restrictions on donees' powers to make decisions and powers may be revoked / cancelled.
- LPA executed before a certificate issuer who ensures that Donor understands the purpose and scope of the LPA and was not pressured to make the LPA (NOTE: family members cannot be certificate issuers)

As part of the Singapore Government's efforts to encourage its citizens to pre-plan for their future, the following measures were introduced:

- Simplification of LPA forms

- Waiver of registration fees on LPA form 1 for Singapore citizens (from 1 Sep 2014 until 31 Aug 2020)

- Targeted public outreach efforts
 - Natural Touchpoints e.g. geriatric clinics
 - Doctors, healthcare and medical social workers
 - Legal profession

- All these measures have resulted in a 53 fold increase in the uptake of LPAs from 477 in 2010 to 25,604 in 2018.

Case study #1 – Certificate Issuer suspended for professional misconduct in wrongfully certifying LPA

Facts

- Robert (M/72 yrs) executed an LPA appointing his common law wife (Suzy) and her daughter as his donees.
- LPA was rejected by OPG because it was incomplete.
- Suzy submitted a fresh LPA form, claiming that Robert had instructed her to do so.
- Certificate issuer (CI) was a lawyer recommended by Suzy's sister, who was also a lawyer.
 - The **CI signed and returned the second LPA** to Suzy, through Suzy's sister, **without interviewing Robert or witnessing his signature**
 - The CI said Suzy's sister assured him that Robert had personally executed the second LPA in her presence, and read and understood the contents and purpose of the LPA.

Case study #1 – Certificate Issuer suspended for professional misconduct in wrongfully certifying LPA

Actions taken by OPG

- Applied to court to determine validity of LPA because CI did not comply with his duties as a certificate Issuer
- Lodged a complaint of professional misconduct with the Law Society of Singapore against CI and Suzy's sister because they had not verified that
 - Donor understood the contents of the second LPA; and
 - that there was no fraud / undue pressure used to induce him to create the LPA.

Outcome

- Donees agreed that the second LPA was not validly created. Court directed PG to cancel registration of LPA.
- Suzy's sister and CI were found guilty of professional misconduct and were suspended from practice by the Singapore Court of Appeal for 2.5 years and 1 year, respectively.

PG's supervisory & investigative powers under the MCA, sections 31 and 32



PG will supervise Deputies as directed by the Court and ensure that the court orders are complied with.



OPG will investigate complaints of ill-treatment or abuse of P made by “whistle-blowers”.



If there is sufficient evidence and no other family members or friends, PG may under s38 apply to Court to protect P and his assets.

PG's powers of investigation

1. Obtain information or documents relating to P without payment
2. To attend at OPG's office for an interview
3. Full and free access to all buildings, places, books, papers and electronic computing or storage devices
4. Take possession of any book, paper or electronic computing or storage device if there is possibility of interference or destruction

Failing to comply with PG's request	<ol style="list-style-type: none"> 1. Giving false or tampered information / document 2. Suppressing / concealing / destroying evidence
Maximum fine of \$5,000, or	Maximum fine of \$10,000, or
Imprisonment of up to 12 months, or	Imprisonment of up to 2 years, or
Both fine and prison as above	Both fine and prison as above

Prosecution of Deputy/Donee/Caregiver

Ill-treatment of person without mental capacity (s42)

Examples of ill- treatment:

- physical / sexual / emotional abuse
- endangering P's safety
- Abandonment
- Failing to provide adequate food, clothing, medical aid, lodging and other necessities of life
- Where act results in death – max \$20,000 or 7 years' imprisonment or both. In any other case – max \$4,000 or 4 years or both

Case study #2 – Revocation of Deputy’s personal welfare powers over concerns of abuse

Facts

- Stella was diagnosed with severe dementia and was incapable of caring for herself or making any decisions. Her husband, Stephen applied to court and was appointed as her deputy to make decisions on personal welfare (PW) and property and affairs on her behalf
- After the Deputyship order was made, Stephen decided to care for Stella himself and several areas of concern emerged:
 - Online posts of Stella in various stages of undress in the course of being “cared for” .
 - Use of unorthodox “rehabilitation” methods e.g. he constructed a traction board and tied her to it for several hours in order to “straighten” her.
 - Undignified living conditions e.g. she was made to sleep with her lower half of her body in the bathroom on a bed pad, so that it is easier to clean her when she soiled herself.
 - Stephen refused help from welfare services and insisted on caring for Stella using his methods and defied medical instructions.
 - Stephen showed signs of care-giver stress e.g. expressing wishes for Stella’s death.
- OPG received an alert of the case from Adult Protective Services (APS) and the mental health institution which was treating Stella.

Case study #2 – Suspension of Deputy’s personal welfare powers over concerns of abuse

Actions taken by OPG

- Multi-disciplinary task force set up comprising OPG (PG), APS (the Protector), Office of Director of Social Welfare (DSW), hospital and Police
- PG applied and obtained a court order to suspend Stephen’s personal welfare (PW) powers within 24 hours of filing.
- PG also applied to revoke Stephen’s PW powers and to appoint DSW as a deputy of last resort for Stella’s personal welfare matters (order obtained within 4 weeks of filing)
- APS applied for a personal protection order to move Stella to the hospital.

Outcome

- Court ordered as follows
 - Stephen removed as Stella’s Deputy and replaced by DSW. DSW would consult Stephen on medical decisions but retained the right to make the final decision
 - Personal protection order obtained - additional layer of protection
 - Stephen would work with and accept help from the agencies and seek counselling for his care-giver stress
- Police worked with APS to move Stella from her home to hospital without incident
- Both Stella and Stephen are in better states now, both mentally and physically.



LPA Talks

- Pre-plan for the future
- Encourage people to make LPAs when they are able to
- Organise LPA talks in collaboration with other organisations across various sectors – Grassroots, Social Services, Healthcare, Corporates etc.



LPA and Deputy Workshops

- Conduct LPA workshops to brief members of the public on the LPA application process
- Conduct Deputy workshops to educate Court appointed Deputies on their roles and responsibilities within the MCA



Engage stakeholders

- Engage third-party organisations and brief their frontline staff
- Facilitate use of the LPA by providing guidelines
- Obtain feedback on LPA-related issues

Appointing a proxy-decision maker

Scheme	Target group	Key Features of Scheme
Professional Deputies & Donees	<ul style="list-style-type: none"> • Adults / elderly with no NOK / suitable NOK • Modest / substantial assets 	<ul style="list-style-type: none"> • Specified professionals e.g. lawyers, doctors, accountants, allied health professionals, nurses and social workers • Attended and passed certification course • Registered with OPG • Unrelated • May charge fees for services
Assisted Deputyship Application Programme (ADAP)	<ul style="list-style-type: none"> • Persons born with intellectual disabilities 	<ul style="list-style-type: none"> • Free / low priced legal support / assistance for family members (including parents) to apply to court to be appointed as deputies for their intellectually disabled children.
Panel Deputyship Scheme	<ul style="list-style-type: none"> • Adult / elderly with no NOK • limited assets 	<ul style="list-style-type: none"> • Pro bono deputies appointed by Court to unlock P's assets for his care • Pro bono lawyers filing court application • Community referrals to MSF for case assignment

Obtaining specific powers on P's behalf

Scheme	Target group	Key features
Access to Funds Scheme (ATFS)	Elderly persons residing in nursing homes with modest assets to be monetized for their long term needs.	<ul style="list-style-type: none"> • Nursing home apply to court for order giving them the power to access the seniors' assets to pay for their needs. • Limit placed on amount to be used • Supervision by OPG
Community Kin	Elderly persons residing in the community who have assets to be monetized for their care needs.	<ul style="list-style-type: none"> • Voluntary Welfare Organization (VWO) can apply to court for an order to manage a fixed and periodic sum of the seniors' assets to be used for daily care and living expenses. • Limit placed on amount to be used • Supervision by OPG
Integrated Family Application Management System (iFAMS) (specific orders track)	Family members who require authorization to make specific decisions e.g. consent to dental / medical treatment	<ul style="list-style-type: none"> • Online application using simplified forms • Orders may be granted without parties having to attend court • Applicant may act in person without a lawyer

Conclusion

- Assisting the Family Justice Courts through the provision of reports on P's and Deputy's circumstances and background
- collaboration with stakeholders to ensure that vulnerable adults are supported as far as possible in their decision-making.
- Review current legislative framework and propose reforms of processes aimed at improving the user experience.
- Encourage and facilitate the early resolution of disputes between family members
- Encourage pro-active planning for adults with mental capacity to pre-plan for the future. – **Make an LPA now.**

For More Information

 **Website:** www.publicguardian.gov.sg

Type in your queries at “Ask Jamie @ OPG” to get an instant reply



 **Hotline:** 1800 226 6222

If you require further clarification, you can call our hotline.

THANK YOU