

## Capacity | Lynette (0 - 17 years)

In QLD minors (0-17years) must demonstrate their capacity to consent to treatment.

Within Queensland, there are two types of laws to assess the capacity of minors. The type of health care decision will determine which legal test must be satisfied.

For mental health treatment decisions the young person's capacity must be assessed using the capacity criteria outlined in section 14 of the Mental Health Act 2016.

For general health care decisions the young person must be able to satisfy the Gillick test (case law).

Capacity is specific to the decision being made.

A minor who is considered to have capacity to consent for mental health treatment must meet the following (section 14, MHA 2016):

- is capable of understanding in general terms:
  - that they have an illness or symptoms of an illness that affects their mental health and well being
  - the nature and purpose of the treatment for the illness and
  - the benefits and risks of the treatment and the alternatives to the treatment
- is capable of making a decision about the treatment and communicating the decision in some way.

If the young person lacks capacity, the Less Restrictive Way must be used. This involves providing mental health treatment voluntarily by using a substitute decision maker.

Under the MHA (2016) the substitute decision maker is the minor's "parent". Definition of parent is very broad under the MHA, e.g. for an Aboriginal minor, a person who under Aboriginal tradition is regarded as a parent of the minor; also includes a guardian of the minor.

*Mental Health Act 2016* - Treatment Authority criteria:

- the person has a mental illness
- the person does not have capacity to give or withhold consent to be treated for the illness
- because of the person's illness, the absence of involuntary treatment, or the absence of continued involuntary treatment is likely to result in:
  - imminent serious harm to the person or others
  - the person suffering serious mental or physical deterioration.

**Remember:** Capacity is NOT an assessment of the wisdom of the choices being made but relates to harm.