



Singapore  
Institute of Legal Education

# Probate & Succession Planning

## Mental Capacity Act 2008

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# Topics

1. Introduction to the Mental Capacity Act 2008 (“**MCA**”)
2. Lasting Power Of Attorney
3. Appointment Of Deputies
4. Public Guardian

# **1. Introduction to the MCA**

# OVERVIEW

1. General Principles (Section 3 MCA)
2. Lack of Capacity (Sections 4 & 5 MCA)
3. Best Interests (Section 6 MCA)

# GENERAL PRINCIPLES

## Section 3, MCA

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**Section 3(2)** Assume person has capacity

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**Section 3(3)** Take all practical steps to help person make a decision

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**Section 3(4)** Unwise decision does not equate to lack of capacity

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**Section 3(5)** Decision made for or on behalf of a person lacking capacity must be in person's best interests

**& 3(6)** Regard must be had to whether the purpose for which act / decision is needed can be as effectively achieved in a way that is **less restrictive of the person's rights and freedom of action**

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# LACK OF CAPACITY

## Sections 4 & 5, MCA

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**Section 4(1)** A person lacks capacity in relation to a matter if at the material time he is **unable to make a decision for himself** in relation to the matter because of an impairment of, or a disturbance in the functioning of, the mind or brain.

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**Section 5(1)** A person is unable to make a decision for himself if he is unable to: -

1. **Understand** the information relevant to the decision;
2. **Retain** that information;
3. **Use or Weigh** that information; **or**
4. **Communicate** his decision (e.g. talking, sign language)

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# LACK OF CAPACITY

## Sections 4 & 5, MCA

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**Section 4(2)** It does not matter whether the impairment or disturbance is **temporary or permanent**

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**Section 4(3)** Not established merely by (a) age or appearance, or (b) condition or aspect of behavior which leads to unjustified assumptions

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# LACK OF CAPACITY

## Sections 4 & 5, MCA

The test for the lack of mental capacity is **time-specific** and **decision-specific** – i.e. in relation to a specific matter, at the material time; not a “*blunt, all-or-nothing*” test (referred to in *Re BKR* [2013] SGHC 201 )

1. Time-specific

- a. Recall **Section 4(2)** – may be temporary or permanent
- b. Person may have good days and bad days

2. Decision-specific

- a. Unable to make a decision in relation to the matter
- b. Person may have mental capacity to make some decisions, not all

**Standard of proof: Balance of Probabilities (Section 4(4))**



# LACK OF CAPACITY

## *Re BKR* [2015] SGCA 26

### 1. Functional Component

A **functional inability to make a decision** in relation to a specific matter at the material time

### 2. Clinical Component

Involves **impairment of the mind**

### 3. Causal connection

There must be a **causal connection** between the impairment of the mind and the inability to make decisions

- a. “*But-for*” causation sufficient
- b. No need to be sole cause – Inability to make decisions can be due to a product of a number of effective causes (e.g. undue influence), but suffices if mental impairment is one of those causes

# LACK OF CAPACITY

## Practical Tips

1. To avoid doubt, solicitor may ask for a medical report / certificate from a doctor certifying that the person has mental capacity to make the decision in question
  - ◆ The Court of Appeal ruled that courts must take into account a person's actual circumstances in assessing his mental capacity under the MCA. As a matter of prudence, the solicitor should not rely totally on medical report / certificate, but should also have sight of the person to satisfy himself / herself of the person's mental capacity – especially if solicitor is Certificate Issuer for Lasting Power of Attorney. Read the Court of Appeal's decision.
2. Take detailed attendance notes

# BEST INTERESTS

## Section 6, MCA

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*If a person (“P”) lacks capacity, how does a person determine if something is in P’s “best interests”?*

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### Section 6(1)

Determination cannot be made on the basis of P’s (a) age or appearance, or (b) condition or aspect of behavior which leads to unjustified assumptions

### Section 6(2) Section 6(12)

Person making determination must consider **all relevant circumstances** and take steps set out in Sections 6(3) – 6(9)

- “relevant circumstances” are those (a) of which the person making the determination is aware and (b) which it would be reasonable to regard as relevant

# BEST INTERESTS

## Section 6, MCA

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### *Considerations in Sections 6(3) – 6(9)*

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**Section 6(3)** (a) Whether it is **likely that P will at some time have capacity**; and  
**Future Capacity** (b) If it appears likely that P will, **when** that is likely to be

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**Section 6(4)** Person making the determination must, so far as is reasonably  
**Encourage participation** practicable, **permit and encourage P to participate, or to improve his ability to participate, as fully as possible** in any act done for him and any decision affecting him

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# BEST INTERESTS

## Section 6, MCA

### *Considerations in Sections 6(3) – 6(9)*

**Section 6(5)** Where the determination relates to life-sustaining treatment, person making the determination **must not be motivated by a desire to bring about P's death**

Life-sustaining treatment

**Section 6(6)** Where the determination relates to the giving, refusal or revocation of appropriate consent of P under the Human Biomedical Research Act 2015 (HBRA) or relating to a clinical trial, the person making the determination **must take into account such matters, considerations and procedures as may be prescribed in the HBRA or written law**

Human Biomedical Research Act / clinical trials

# BEST INTERESTS

## Section 6, MCA

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### *Considerations in Sections 6(3) – 6(9)*

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#### **Section 6(7)**

Disposition  
of  
property

of

Where the determination relates to the disposition or settlement of the person's property, person making determination must be motivated by a desire to ensure, so far as is reasonably practicable, that **P's property is preserved for application towards the costs of the P's maintenance during P's life**

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# BEST INTERESTS

## Section 6, MCA

### *Considerations in Sections 6(3) – 6(9)*

- |  |  |
|--|--|
| <b>Section 6(8)</b><br>P's subjective<br>views | <ul style="list-style-type: none"><li>(a) P's <b>past and present wishes and feelings</b> (and any relevant written statement made by P when he had capacity)</li><li>(b) P's <b>beliefs and values</b> that would likely influence his decision</li><li>(c) Other factors that P would likely consider</li></ul>                |
| <b>Section 6(9)</b><br>Others' views           | <ul style="list-style-type: none"><li>(a) Anyone named by P as someone to be consulted on the matter in question or on matters of that kind</li><li>(b) Anyone engaged in caring for P or interested in his welfare</li><li>(c) Any donee of a lasting power of attorney granted by P or deputy appointed by the Court</li></ul> |

# BEST INTERESTS

## Section 6, MCA

### **NOTE:** Section 6(11) MCA:

In the case of an act done, or a decision made, by a person other than the court, there is sufficient compliance with this section if (having complied with the requirements of subsections (1) to (9)) the person **reasonably believes** that what the person does or decides is in the best interests of the person concerned.

Please also see Chapter 6 of the Code of Practice which provides a guide, factors and examples to be considered in determining what is in the best interests of a person lacking capacity to make a specific decision at a particular time.



## **2. Lasting Power of Attorney (“LPA”)**

# OVERVIEW

1. Introduction
  - a. The Donor
  - b. The Donees – Powers, restrictions & duties
  - c. Certificate Issuers
2. Procedure
3. Revocation of LPA

# LPA

## Introduction – Section 11, MCA

An LPA is a power of attorney under which the **donor** (“**P**”) confers on the **donee (or donees)** authority to make decisions about all or any of the following: -

- (a) P’s **personal welfare** or specified matters concerning P’s personal welfare;
- (b) P’s **property and affairs** or specified matters concerning P’s property and affairs,

when P no longer has capacity to make such decisions.

# LPA

## The Donor – Who can create an LPA?

### Section 11(2)

The donor (“P”) can only create a valid LPA if: -

- (a) Section 12 is complied with (i.e. **Appointment of Donees**);
- (b) An instrument conferring authority of the kind mentioned in subsection (1) is made and registered in accordance with the First Schedule (i.e. **LPA Form 1 & Form 2**); and
- (c) At the time when P executes the instrument, P has **attained the age of 21 years** and has capacity to execute it.

\* RECALL: **Sections 4 & 5, MCA** – Test for capacity

# LPA

## Form 1

1. Prescribed format that can be self-filled by donors
2. For individuals with straightforward requirements and who wish to grant general LPA powers to their donee(s)
3. Only basic conditions / restrictions may be attached to the general powers – exhaustive checklist prescribed in Form 1

### Important Information you must read

**You may submit a hardcopy application form if any of the following scenarios apply:**

- a. The Donor/Donnee/Replacement Donee is unable to use OPGO due to his/her physical disability or other circumstance;
- b. OPGO is unavailable;
- c. The Donor does not have an electronic device to receive messages via SMS to create and access his Singpass account/National Digital Identity (NDI); or
- d. The Donor/Donnee/Replacement Donee is not eligible for a Singpass account/NDI.

**Please include a cover letter stating the reason(s) for making a hardcopy LPA application and include relevant supporting documents (if any). The acceptance of the hardcopy application form is subject to the Public Guardian's approval.**

Thank you for taking the time to make your LPA. You are the Donor and the default applicant of this LPA. Your Donee(s) must be aged 21 and above. You may grant your Donee(s) the authority to make personal welfare and/or property and affairs decisions on your behalf when you lack mental capacity, or when they have reason(s) to believe you lack such capacity. **Please choose your Donee(s) wisely and appoint Donee(s) you know well and whom you can trust.**

Your Donee(s) must exercise their powers in accordance with the Mental Capacity Act Code of Practice, which requires that they act in your **best interests**. Examples of powers that your Donee(s) may have relating to your personal welfare and/or property and affairs include making decisions on the following:

Personal Welfare	Property and Affairs
<ul style="list-style-type: none"><li>• Where you should live</li><li>• Day to day care decisions (what to wear and eat)</li><li>• Handling your letters / mail</li><li>• Who you may have contact with</li><li>• Healthcare and medical treatment decisions</li></ul>	<ul style="list-style-type: none"><li>• Buying, selling, renting and mortgaging your property</li><li>• Operating your bank accounts</li><li>• Managing your Central Provident Fund monies</li><li>• Paying household expenses</li><li>• Purchasing any equipment you may need</li></ul>

You may appoint a Replacement Donee to replace your existing Donee(s) if any of these events occur:

- your Donee gives notice to the Office of the Public Guardian (OPG) that he disclaims his appointment when he does not wish to be appointed anymore;
- your Donee is made bankrupt (this will only terminate his power in relation to your property and affairs);
- you and your Donee divorce or your marriage has been annulled; or
- your Donee has passed on or lost mental capacity.

As the Donor, you are required to complete this form and **sign every page**. Your Donee(s) are required to sign pages 8 to 10. Please have your Donee(s)' particulars ready before you start. It should take you approximately 30 minutes to complete the form.

After completing sections 1 to 7, you will need to visit an LPA Certificate Issuer (CI). The CI's role is to certify that you understand the purpose of making an LPA, including your intention to appoint the Donee(s), the powers to be granted to the Donee(s), and that you are not forced or deceived into making an LPA. You can find a list of CIs at OPG's website: [www.msf.gov.sg/opg](http://www.msf.gov.sg/opg).

After visiting the CI, please send this form and a photocopy of your Donee(s)' and your NRIC/FIN/Passport (for foreigners) to the following address:

20 Lengkok Bahru #04-02  
Family@Enabling Village  
Singapore 159053

Please note that **no refund** will be given once the LPA application is submitted to OPG regardless of the application outcome, including rejection.

You may cancel the LPA at any time as long as you have the mental capacity to do so. For more information, please refer to the Revocation form at: [www.msf.gov.sg/opg/Pages/Forms.aspx](http://www.msf.gov.sg/opg/Pages/Forms.aspx).

*<sup>1</sup> Before acting on your behalf, your Donee is required to obtain a medical report from a registered medical practitioner, certifying that you lack mental capacity to make personal welfare and/or property and affairs decisions.*

FOR OFFICIAL USE

LPA Ref / Reg No.

Signature of Donor **(Please sign on every page)**

# LPA

## Form 2

1. Prescribed format that contains text-free spaces for contents to be drafted by solicitors
2. For individuals with more detailed requirements and who wish to grant specific LPA powers to their donee(s)

### Important Information you must read

**You may submit a hardcopy application form if any of the following scenarios apply:**

- a. The Donor/Donee/Replacement Donee is unable to use OPGO due to his/her physical disability or other circumstance;
- b. OPGO is unavailable;
- c. The Donor does not have an electronic device to receive messages via SMS to create and access his Singpass account/National Digital Identity (NDI); or
- d. The Donor/Donee/Replacement Donee is not eligible for a Singpass account/NDI.

**Please include a cover letter stating the reason(s) for making a hardcopy LPA application and include relevant supporting documents (if any). The acceptance of the hardcopy application form is subject to the Public Guardian's approval.**

Thank you for taking the time to make your LPA. You are the Donor and the default applicant of this LPA.

LPA Form 2 is for Donors who wish to appoint either more than 2 Donees, more than 1 Replacement Donee, or grant specific and customised powers to Donees which cannot be addressed in LPA Form 1. LPA Form 2 must be drafted by a lawyer<sup>1</sup>.

Your Donee(s) must be aged 21 and above. You may grant your Donee(s) the authority to make personal welfare and/or property and affairs powers to make decisions on your behalf when you lack mental capacity, or when they have reason(s) to believe<sup>2</sup> you lack such capacity. Your Donee(s) may be an individual or a Licensed Trust Company (for property and affairs only). **Please choose your Donee(s) wisely and appoint Donee(s) you know well and whom you can trust.**

Your Donee(s) must exercise their powers in accordance with the Mental Capacity Act Code of Practice, which requires that they act in your **best interests**.

You may appoint Replacement Donee(s) to replace your existing Donee(s) if any of these events occur:

- your Donee gives notice to the Office of the Public Guardian (OPG) that he disclaims his appointment when he does not wish to be appointed anymore;
- your Donee is made bankrupt (this will only terminate his power in relation to your property and affairs);
- you and your Donee divorce or your marriage has been annulled; or
- your Donee has passed on or lost mental capacity.

After this form has been drafted by your lawyer, you will need to visit an LPA Certificate Issuer (CI). The CI may also be your lawyer. The CI's role is to certify that you understand the purpose of making an LPA, including your intention to appoint the Donee(s), the powers to be granted to the Donee(s), and that you are not forced or deceived into making an LPA. You can find a list of CIs at OPG's website: [www.msf.gov.sg/opg](http://www.msf.gov.sg/opg).

After visiting the CI, please send this form and a photocopy of your Donee(s)' and your NRIC/FIN/Passport (for foreigners) to the following address:

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<sup>1</sup> This excludes lawyers registered under section 36E of the Legal Profession Act 1966.

<sup>2</sup> Before acting on your behalf, your Donee is required to obtain a medical report from a registered medical practitioner, certifying that you lack mental capacity to make personal welfare and/or property and affairs decisions.

FOR OFFICIAL USE

LPA Ref / Reg No.

Signature of Donor (Please sign on every page)

# LPA

## Mode of submission

1. Default: online submission via the Office of the Public Guardian Online (“OPGO”) system. Singpass is required.
2. Exception: hardcopy submission if it falls within certain exceptional situations (Section 11(2A), MCA):
  - a. the donor is unable to make the instrument using the electronic transaction system due to the donor’s physical disability or other circumstance;
  - b. the donee is unable to sign the instrument using the electronic transaction system due to the donee’s physical disability or other circumstance;
  - c. the electronic transaction system is unavailable;
  - d. any other prescribed circumstances.

# LPA

## Mode of submission

If you fall under any of the exceptional situations below and wish to make a Lasting Power of Attorney (LPA) application using the hardcopy form i.e. not using the Office of the Public Guardian Online (OPGO) system, please complete this cover letter and submit it together with your hardcopy LPA application to the Office of the Public Guardian.

#### A. To be completed by the Donor

To the Public Guardian,

I, (Name) \_\_\_\_\_, (last 4 characters of NRIC/FIN/Passport No.\*) \_\_\_\_\_,  
am unable to use OPGO to make an LPA due to the following reason(s): *(Please tick the reason box below)*

- ☐ The Donor/Donnee/Replacement Donnee\* is unable to use OPGO due to his/her physical disability or other circumstances as follows *(please provide details and medical report as proof of physical disability or supporting documents)*:

\_\_\_\_\_  
\_\_\_\_\_

- ☐ OPGO is unavailable on \_\_\_\_\_ *(date/time)*  
☐ The Donor does not have an electronic device to receive messages via SMS to create and access his Singpass account/National Digital Identity (NDI)  
☐ The Donor/Donnee/Replacement Donnee\* is not eligible for a Singpass account/NDI

*\*Delete as appropriate*

**Note:** Please include photocopies of relevant supporting documents. OPG may contact you for further clarifications.

Other remarks (if any): \_\_\_\_\_

#### B. Statement and Signature by Donor

I understand that my request is subject to the Public Guardian's approval. I declare that all statements, documents, and information given above are true and correct.

\_\_\_\_\_  
Signature (or marking) of Donor

\_\_\_\_\_  
Date

#### C. Statement and Signature by Certificate Issuer

Full name of Certificate Issuer: \_\_\_\_\_ MCR/AAS no.: \_\_\_\_\_

I confirm to the best of my information and knowledge, that this LPA falls under the exceptional situation(s) indicated in paragraph A above.

\_\_\_\_\_  
Signature of Certificate Issuer

\_\_\_\_\_  
Date and Professional Stamp



# LPA

## The Donee(s) – Who can be one?

### Section 12(1), MCA:

(a) where the power relates only to P's property and affairs –

- (i) an individual who has attained the age of 21 years and provides to P the services of a donee without remuneration;
- (ii) an individual who is a professional donee and is not related to P by blood or marriage; or
- (iii) a professional donee who is not an individual; and

(b) in any other case –

- (i) an individual who has attained the age of 21 years and provides to P the services of a donee without remuneration; and
- (ii) an individual who is a professional donee and is not related to P by blood or marriage.

### Section 12(2), MCA:

A person who is an undischarged bankrupt may not be appointed as donee of a lasting power of attorney in relation to P's property and affairs.

# LPA

## The Donee(s) – How many may there be?

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**Section  
12(3)**  
Number of  
Donees

There may be **more than one donee**.

- Form 1: Maximum 2 Donees and 1 Replacement Donee
  - Form 2: No Limit
-

# LPA

## The Donee(s) – How many may there be?

If there is more than one donee, the LPA may appoint the donees to act: -

**1. Jointly** – i.e. act together and not separately.

- Failure by one to meet requirements / comply with formalities prevents the LPA from being created (Section 12(6) MCA)
- If one of the donees dies / lacks capacity / becomes bankrupt / disclaims the appointment, this terminates the donee's appointment and revokes the power (Section 15(4) subject to Section 15(6) MCA)

**Section 12(4) &  
(5)**

**Section 15(5) to  
(7)**

**Jointly and/or  
Severally**

**2. Jointly and severally** – i.e. act together or separately.

- Failure by one to meet requirements / comply with formalities will not prevent LPA from being created for other donees who comply (Section 12(7) MCA)
- If one of the donees dies / lacks capacity / becomes bankrupt / disclaims the appointment, does not terminate the appointment of the other donee (Section 15(6)(b) MCA)

**3. Jointly in respect of some matter and severally in respect of others.**

If the LPA does not specify whether they are to act jointly or jointly and severally, the LPA is assumed to appoint them to act jointly (Section 12(5) MCA)

# LPA

## The Donee(s) – Powers & Restrictions

### Section 11(4), MCA:

The authority conferred by a lasting power of attorney is subject to —

- (a) the provisions of this Act and, in particular, sections 3 (principles) and 6 (best interests); and
- (b) any conditions or restrictions specified in the instrument.

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**Sections  
13 & 14** Restrictions.

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**Section  
26** Excluded decisions (applicable across the board under MCA; not only in relation to LPA)

# LPA

## The Donee(s) – Powers

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### Personal Welfare

#### *Code of Practice, Section 8.3*

- Where P will live
- Who P will live with
- Day-to-day care decisions (e.g. what P will eat, drink, wear)
- What social activities to take part in
- Handling P's correspondence
- Who P may have contact with

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### Property & Affairs

#### *Code of Practice, Section 8.4*

- Dealing with property (subject to restrictions under LPA)
  - Opening, closing & operating bank accounts
  - Making payments for general expenses (e.g. household, medical expenses; rent; loans)
  - Receiving payments due to P (e.g. dividends, income, other financial entitlements)
  - Handling tax matters
  - Purchasing vehicles or other equipment
-

# LPA

## The Donee(s) – Restrictions

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**Section 13(1)** A donee must not make a decision on behalf of P if the donee knows, or has reasonable grounds to believe, that P has the capacity to make the decision.

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# LPA

## The Donee(s) – Restrictions

### Personal Welfare

*Sections 13(2)-(8), MCA*

- **Cannot** make decisions on life-sustaining treatment / treatment preventing a serious deterioration in condition
- **Cannot** do any act to restrain donor (unless donee has authority to do so, it is necessary to prevent harm to donor and it is a proportionate response)

### Property & Affairs

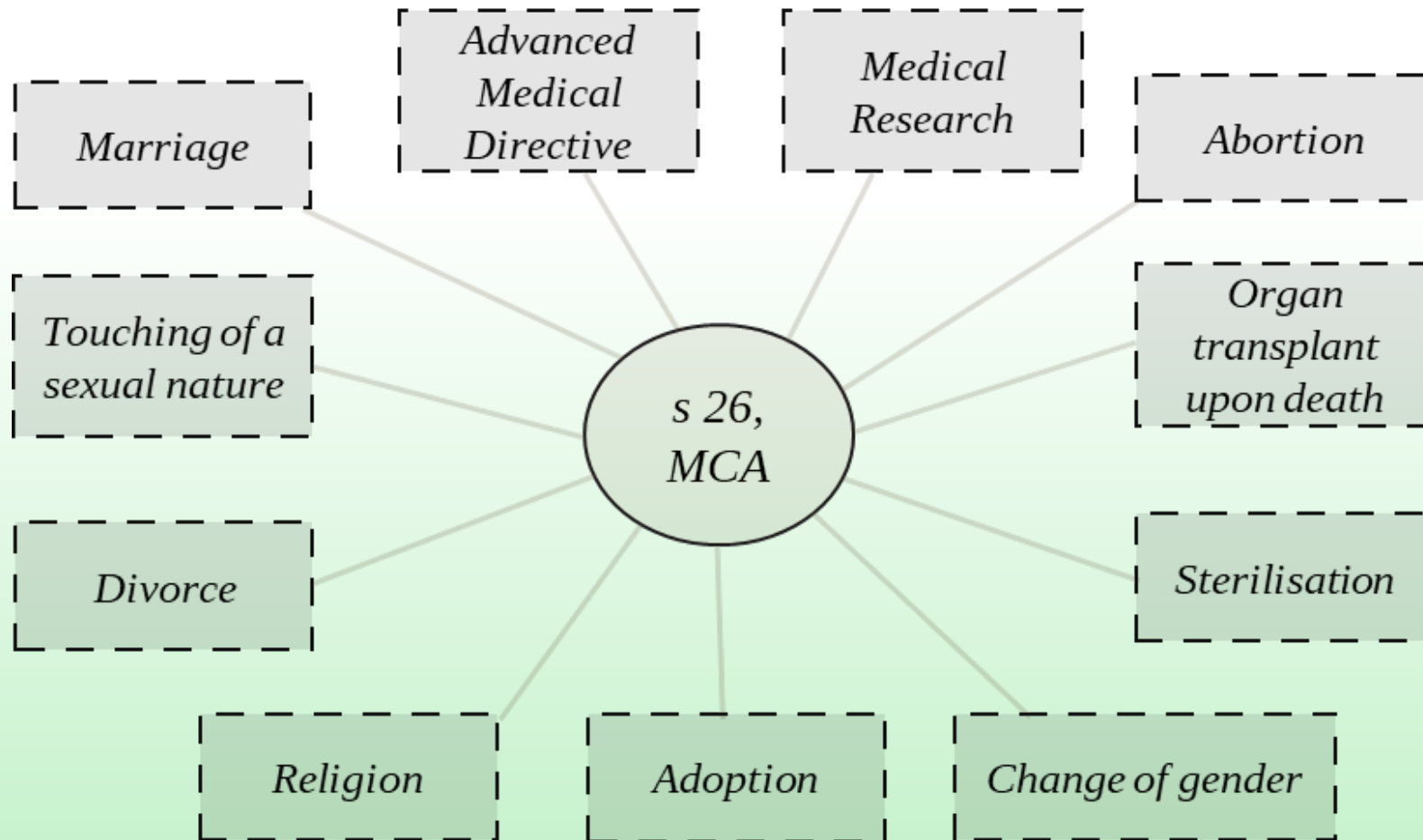
*Sections 13(9)-(9A) & 14, MCA*

- **If prohibited by Form 1, cannot** sell property without court order
- **Cannot** execute will for donor
- **Cannot** execute or revoke CPF memorandum, CPF / insurance nomination
- **Cannot** make cash gifts (unless expressly authorised in LPA) (note: Section 14(3), MCA)

**See also: Code of Practice (MCA), Section 8.6**

# LPA

## The Donee(s) – Other Excluded Decisions\*



\* These excluded decisions apply across the board under the MCA, not just to LPAs



# LPA

## The Donee(s) – Duties

### Code of Practice, Section 8.5

- Follow the statutory principles
- Act in P's best interests (Section 6, MCA)
- Have regard to the guidance in the Code of Practice
- Carry out P's instructions and make decisions within the scope of authority stated in the LPA
- Carry out duties with reasonable care and skill
- Not to take advantage of their position and not benefit themselves, but to benefit P
- Not to pass on their authority to someone else
- Act in good faith
- Respect confidentiality
- Follow any directions from the Court
- Keep accounts
- Keep the money and property of P separate from the donees'
- Not give up the role without telling P (if P has capacity) and the Public Guardian
- Inform the Public Guardian of any change of contact details and certain circumstances

# LPA

## The Certificate Issuer

1. **Role:** Assess and certify that donor understands the purpose of the LPA and scope of authority conferred upon the donee(s)
2. Persons who may issue certificates (**Reg 7(1), Mental Capacity Regulations 2010 (“MCR”)**): -
  1. Psychiatrists registered under the Medical Registration Act (Cap 174)
  2. Medical practitioners accredited by OPG to issue certificates
  3. Advocates & solicitors of the Supreme Court with a practicing certificate & qualified to practice Singapore law in a Singapore practice

# LPA

## The Certificate Issuer

### Persons disqualified to issue certificates (Reg 7(2), MCR): -

- Family member of donor / donee(s)
- Donee(s) in the LPA or any other registered LPA previously executed by donor
- Director, employee of licensed trust company acting as donee
- Business partner or employee of donor or donee(s)
- Owner, director, manager, employee (or their family members) of care facility where donor lives or is cared for, or their family member

#### NOTE:

- Family member (Reg 2, MCR): -
  - (a) a spouse of the person;
  - (b) a child of the person, including an adopted child and a stepchild;
  - (c) a father or mother of the person;
  - (d) a father in law or mother in law of the person;
  - (e) a brother or sister of the person; or
  - (f) any other individual who is related by blood or marriage and who is living in the same household as the person
- ‘Donees’ also includes replacement donees

# LPA

## The Certificate Issuer – Duties

### **Para 2(e), Part 1 of First Schedule to MCA: -**

A certificate issuer must certify that, at the time when the donor executes the instrument: -

1. The donor understands the purpose of the instrument and the scope of the authority conferred under it;
2. No fraud or undue pressure is being used to induce the donor to create a lasting power of attorney; and
3. There is nothing else which would prevent a lasting power of attorney from being created by the instrument.

# LPA

## The Certificate Issuer – Duties

### *Law Society of Singapore v Sum Chong Mun [2017] 4 SLR 707*

A solicitor who issues an LPA certificate must take reasonable care to advise and ensure that the donor understands the implications of his actions: -

1. Should only certify **after meeting the donor**, explaining the legal effect of the LPA, and satisfying himself / herself that the donor has mental capacity before witnessing the donor's signature on the LPA
2. When in doubt, refer the donor to a psychiatrist
3. Should not rely on third parties to discharge duties
  - a. N/B: A solicitor who falsely attests to the signature of a person on a consent document commits a disciplinary offence even if s/he was certain that the document was signed by that person
  - b. Risk of being cross-examined if a dispute arises

# LPA

## Procedure – electronic copy through OPGO system

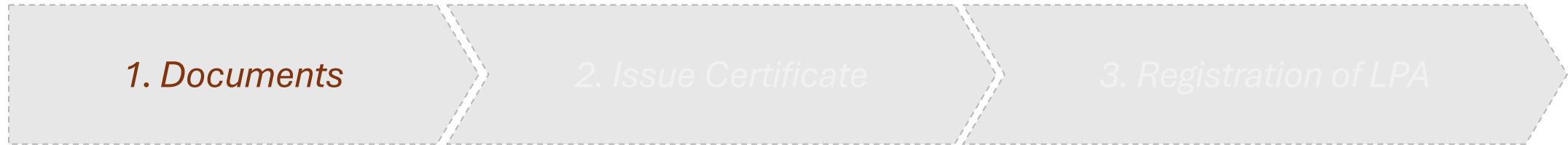


### 1. LPA Form 1

- i. The donor is able to login to the OPGO system via Singpass, complete the fields prescribed in the form and notify his donee(s)/ replacement donees through the OPGO system.
- ii. The donee(s)/ replacement donees may then accept their appointment(s) on the OPGO system via Singpass.

# LPA

## Procedure – electronic copy through OPGO system



### 1. LPA Form 2

- i. The donor should first consult with his solicitors.
- ii. With the donor's instructions, the donor's solicitors will be able to prepare a draft of the LPA Form 2 on the OPGO system.
- iii. The donor will need to login to the OPGO system via Singpass, review and confirm the contents of the draft, and notify his donee(s)/ replacement donees through the OPGO system.
- iv. The donee(s)/ replacement donees may then accept their appointment(s) on the OPGO system via Singpass.

# LPA

## Procedure – electronic copy through OPGO system

*1. Documents*

*2. Issue Certificate*

*3. Registration of LPA*

1. If solicitor is certificate issuer, to meet with donor to ensure that donor has capacity, and take reasonable care to advise and ensure that the donor understands the implications of his actions
2. To verify identity of donor
3. Certificate issuer to sign digitally through the OPGO system



# LPA

## Procedure – electronic copy through OPGO system

1. Documents

2. Issue Certificate

3. Registration of LPA

**1. Office of the Public Guardian** to notify donor to make payment of registration fee (if required): -

	LPA Form 1	LPA Form 2
Singapore Citizens	<b>\$0</b> (fee of S\$70 waived until 31 March 2026)	<b>\$185</b>
Singapore PRs	<b>\$90</b>	<b>\$230</b>
Foreigners	<b>\$230</b>	<b>\$275</b>

# LPA

## Procedure – electronic copy through OPGO system

1. Documents

2. Issue Certificate

3. Registration of LPA

2. Mandatory waiting period of **3 weeks** (beginning from the last date that the Office of the Public Guardian notifies the donee(s) that the LPA has been accepted for registration).
3. If no valid objections are received during this time, the LPA will be registered.
4. An LPA application may be withdrawn any time before it is registered.

# LPA

## Procedure – hardcopies

*1. Documents*

*2. Issue Certificate*

*3. Registration of LPA*

### **1. LPA Form 1 or LPA Form 2**

- a. (Form 2) The donor should first consult with his solicitors. Donor's solicitors to prepare a draft of the LPA Form 2 in accordance with the donor's instructions.
- b. Ensure that all boxes are checked and donor has signed on every page
- c. Donor & donees' signatures may be witnessed by a person above the age of 21 (need not be Certificate Issuer), and who is not the donor or the other donee(s)
- d. Donee(s) and donor may sign on different days, but donee must not sign later than donor

### **2. NRIC/ Passport of donor and all donees (copies)**

# LPA

## Procedure – hardcopies

*1. Documents*

*2. Issue Certificate*

*3. Registration of LPA*

1. If solicitor is certificate issuer, to meet with donor to ensure that donor has capacity, and take reasonable care to advise and ensure that the donor understands the implications of his actions
2. To verify identity of donor
3. Certificate issuer to sign and affix professional stamp on relevant page

# LPA

## Procedure – hardcopies

1. Documents

2. Issue Certificate

3. Registration of LPA

1. All documents to be delivered to the **Office of the Public Guardian** within 6 months of signing for registration
2. **Office of the Public Guardian** to notify donor to make payment of registration fee (if required): -

	LPA Form 1	LPA Form 2
Singapore Citizens	\$0 (fee of S\$70 waived until 31 March 2026)	\$185
Singapore PRs	\$90	\$230
Foreigners	\$230	\$275

# LPA

## Procedure – hardcopies

1. Documents

2. Issue Certificate

3. Registration of LPA

2. Mandatory waiting period of **3 weeks** (beginning from the last date that the Office of the Public Guardian notifies the donee(s) that the LPA has been accepted for registration.
3. If no valid objections are received during this time, the LPA will be registered.
4. An LPA application may be withdrawn any time before it is registered.

# Revocation & Termination of Donees' Appointment

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## Voluntary

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### *Section 15(2), MCA*

1. When donor has mental capacity, he can revoke the LPA.
2. Procedure:
  - a. Through OPGO: where donor reapplies for a new LPA
  - b. Revocation Form: Fill up **Revocation of LPA Form**, give written notice to all donee(s), give written notice to Public Guardian (Reg 21(1), MCR)
3. Revocation fee of \$30 applies

# Revocation & Termination of Donees' Appointment

## Automatic

### *Sections 15(3)-(8), MCA*

1. P's bankruptcy revokes the Property & Affairs powers only
2. Termination of the donee(s) appointment and revocation of the LPA is triggered when: -
  - a. The donee dies or loses mental capacity;
  - b. The donee (individual) is adjudged bankrupt (insofar as property & affairs powers only);
  - c. The donee (non-individual) is in liquidation, winding-up, dissolution or under judicial management
  - d. The donee disclaims the appointment

**UNLESS (a) there is a replacement donee, or (b) the donee is one of 2 or more persons appointed to act as donees jointly and severally in respect of any matter and, after the event, there is at least one remaining donee**



# LPA

## Activation of LPA

1. A donee is able to transact on a donor's behalf, only when the Donor has been certified by a registered medical practitioner to have lost mental capacity. That is when the LPA is activated.
2. To use the LPA to transact with third parties (banks, insurance companies, other government agencies etc):
  - a. Donee to login to the OPGO system and send a copy of the LPA to relevant third parties via the OPGO dashboard; and
  - b. Present a copy of the medical report certifying the donor's loss of mental capacity to the relevant third parties.
3. The medical report for activation of LPA is in a prescribed format. (Note: Section 13(10) MCA)



# LPA

## Activation of LPA – Medical Report

### MEDICAL REPORT FOR ACTIVATION/DEACTIVATION OF LASTING POWER OF ATTORNEY (LPA)

The LPA should be presented during the medical assessment. The entries in this form should be typed or neatly handwritten.

#### (A) Patient's Particulars

Name (in NRIC) : \_\_\_\_\_

NRIC/FIN/Passport : \_\_\_\_\_ Date of Birth (dd/mm/yyyy) : \_\_\_\_\_

LPA Reference No : \_\_\_\_\_

#### (B) Doctor's<sup>1</sup> opinion on Patient's Mental Capacity

Diagnosis (Please attach additional notes if needed):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

<sup>1</sup> Please refer to explanatory notes

#### (B-1) Personal Welfare<sup>2</sup> Matters

In your opinion, does the patient have mental capacity in respect of personal welfare<sup>2</sup> matters?

☐ Yes ☐ No ☐ Patient to be referred to a specialist for assessment

If **No**, in your opinion, is the patient's mental incapacity likely to be permanent?

☐ Yes ☐ No ☐ Patient to be referred to a specialist for assessment

Please state the basis of your opinion above in respect of the patient's mental capacity

(Please attach additional notes if needed):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

#### (B-2) Property and Affairs<sup>3</sup> Matters

In your opinion, does the patient have mental capacity in respect of property and affairs<sup>3</sup> matters?

☐ Yes ☐ No ☐ Patient to be referred to a specialist for assessment

If **No**, in your opinion, is the patient's mental incapacity likely to be permanent?

☐ Yes ☐ No ☐ Patient to be referred to a specialist for assessment

Please state the basis of your opinion above in respect of the patient's mental capacity

(Please attach additional notes if needed):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

<sup>2 & 3</sup> Please refer to explanatory notes

#### (C) Doctor's<sup>1</sup> Declaration

I have read and understood the provisions in sections 3, 4 and 5 of the Mental Capacity Act. I believe in the correctness of the opinion set out in this report and I am acting independently of the patient and the patient's next-of-kin.

Name : \_\_\_\_\_ MCR No. : \_\_\_\_\_

\_\_\_\_\_  
Signature Name/Clinic Stamp Date

\*This medical report is not to be used for deputyship application. The affidavit and medical report to be filed in support of the application for appointment of a deputy or deputies shall be in Form 224.

\*\*This medical report alone does not prove that the LPA is valid. This medical report is to be used together with a valid LPA. If you wish to check the validity of any LPA presented to you, please check against the [list of Revoked and Suspended LPAs](#) on OPG's website.

### **3. Appointment of deputies**

# OVERVIEW

1. Introduction
2. Procedure
3. Relevant Persons
4. Restrictions

# DEPUTIES

## Introduction

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### Section 20(1) & 20(2)

When a person (“P”) has **no mental capacity in relation to his personal welfare or property and affairs**, an application can be made to the court to appoint a deputy to make decisions on P’s behalf in relation to the matter(s).

**NOTE: P must not have donee(s) appointed under an existing LPA**

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### Section 21

P need not be 21 years old for court to appoint a deputy or to make decisions on P’s behalf, if **the Court considers that P will still lack mental capacity** to make such decisions when he attains the age of 21.

**NOTE: Court must have regard to the principle that an appointment of the parents or guardian of P as deputy is to be preferred to the appointment of any other person as deputy**

**NOTE: subject to Rule 176(A)(3) FJR – for uncontested application for specified matters under FJCPD 61A, P must be at least 18 years old at the time the application is made and every relevant person consents to the application.**

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# DEPUTIES

## Introduction

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### *Principles, Best Interests & Other Considerations*

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#### **Section 20(3)**

Principles & best  
interests

In exercising its power to appoint deputies, the Court will have regard to **the principles (Section 3)** and **best interests (Section 6)** of P

#### **Section 20(4)**

Other  
considerations

The Court must also have regard to the principles that: -

1. A decision by the court is to be preferred to the appointment of a deputy to make a decision;
2. The powers conferred on a deputy should be as limited in scope and duration as is reasonably practicable in the circumstances

# DEPUTIES

## Procedure



### Permission to commence proceedings (Rule 176(2) & (3) FJR)

1. The Applicant must apply to Court for permission to commence the application for deputyship **UNLESS** the applicant is **related by blood or marriage to P**.
2. Procedure **(48(2) FJCPD)**
  - a. Where permission is required, that prayer may be included in the main application itself.
  - b. The grounds upon which the plaintiff or applicant is relying to obtain such permission must be stated clearly in the supporting affidavit.

# DEPUTIES

## Procedure



### **Filing of application (46(1) FJCPD)**

1. Application for deputyship to be filed in Family Justice Courts

### **Notification of P (Rule 181 and 182 FJR; 52 FJCPD)**

1. Provide P with the requisite information in manner that is appropriate to P's circumstances
2. Certificate of notification: Form 223
3. Dispensation of notification by court



# DEPUTIES

## Procedure



**Form 217 to Appendix A, Family Justice Courts Practice Directions (“FJCPD”) (Rule 176(1), FJR; Para 54(1)-(6), FJCPD) – Originating Summons must state: -**

1. Whether the declaration sought in respect of P’s lack of capacity concerns P’s personal welfare or property & affairs or both;
2. If more than 1 deputy sought, whether they are acting jointly, or jointly & severally
3. Powers sought for the deputies, which are drafted appropriately to suit the purpose of the application at hand; and
4. Any other specific orders or reliefs required on the particular facts of each case

# DEPUTIES

## Procedure



Examples of fact-specific powers / orders: -

1. That the Applicant be appointed the **litigation representative** of P's minor child
2. That the Applicant be empowered to **withdraw DPS subsidies / apply to CPF to withdraw such subsidies**

# DEPUTIES

## Procedure



### **Form 218 OR 219 to Appendix A, FJCPD (FJCPD 54(7)-(8B))**

1. Form 219 - applications for direct payment of P's hospital and/or nursing home charges from P's funds or P's insurance and where no deputy is to be appointed; Form 218 – all other cases
2. If there is more than one applicant, a single affidavit should be made by all (i.e. they should not file separate supporting affidavits).

# DEPUTIES

## Procedure



### **Form 218 OR 219 to Appendix A, FJCPD (FJCPD 54(7)-(8B))**

The following search results must be exhibited in the supporting affidavit:

1. Office of the Public Guardian search result showing if P has registered an LPA;
2. Office of the Public Guardian search result showing if there is a past Mental Capacity Act or Mental Disorders And Treatment Act Order in respect of P; and
3. Wills Registry search result showing if P has registered a Will.

# DEPUTIES

## Procedure



### Relevant Persons (if any) (Para 50(7), 51(2), FJCPD)

1. The details of all relevant persons who should be served are to be listed clearly in the supporting affidavit. Where service would not be effected on relevant persons who should be served, the reason why this is so must be stated in the supporting affidavit.
2. If relevant persons have given their consent to the application and dispensation of service, this should be stated clearly in the supporting affidavit
3. See **4. Consents / Service on Relevant Persons** for elaboration

# DEPUTIES

## Procedure



### Medical Report (Para 54(9)-(9A), FJCPD)

1. Must distinguish doctor's own observations / conclusions on examination of P from conclusions based on information given to him
  2. Must contain a clear opinion as to: -
    - a. Whether P lacks capacity in relation to the matters specified in the application;
    - b. P's prognosis – i.e. whether he is likely to regain capacity
- ◆ **NOTE: The originating summons, the supporting affidavit and the doctor's affidavit exhibiting the medical report must be consistent as to whether P lacks capacity in relation to his personal welfare or his property and affairs or both**

# DEPUTIES

## Procedure



### **Medical Report (Para 54(9)-(9A), FJCPD)**

1. Must be current – not more than 6 months before the date of application
2. Should be based on a recent examination of P by the doctor making the report and it should contain sufficient information to justify the doctor's opinions and conclusions.
3. Must be exhibited to an affidavit sworn / affirmed by the doctor – **Form 224**

# DEPUTIES

## Procedure



### Who are “relevant persons”? (Para 50(1)-(3), (6), FJCPD)

1. Persons **who have an involvement in P’s life and/or who are likely to have an interest in the application.**
2. Often, P’s immediate family members, by virtue of their relationship to P, are likely to have an interest in being notified that an application has been made to the Court concerning P.
3. **Para 50(9), FJCPD:** An organisation providing residential accommodation to P is considered a relevant person



# DEPUTIES

## Procedure



### **Who are “relevant persons”? (Para 50(1)-(3), (6), FJCPD)**

1. Often includes immediate family members – P’s spouse, children (aged 21 and above), parents / guardians, brothers & sisters (aged 21 and above)
2. Persons who are likely to have an interest in the application: -
  - a. any other relatives or friends who have a close relationship with P;
  - b. any person who has a legal duty to support P;
  - c. any person who will benefit from P’s estate; and
  - d. any person who is responsible for P’s care.

# DEPUTIES

## Procedure



**“Relevant persons” must be served (Para 49(1), 50(3), 50(4), 50(5), 50(9) & 51, FJCPD)**

1. The applicant should serve the application, the supporting affidavits and the Notice to Relevant Person in Form 222 in Appendix A, FJCPD on all relevant persons
2. If P resides at an organisation providing residential accommodation, these documents are to be served on such organization **as soon as possible and not more than 2 working days after the application is filed**
3. If any relevant person has consented to the application and dispensation of service, the consent in **Form 221** should be filed with the application

# DEPUTIES

## Procedure



### **Objection by relevant person (Para 53, FJCPD)**

A relevant person served with an application may object to the whole or part of the application – must apply to Court within 21 days after the date on which he or she was served with the application to be joined as a party

# Deputies

## Powers of Court – Section 20(2) read with 22 & 23

### Personal Welfare

#### *s 22(1), MCA*

- where P is to live
- P's contact with any specified person;
- prohibit named person from contact with P
- give/refuse consent to carry out/continue treatment & clinical trial (subject to AMD)
- give/refuse/revoke consent involving P under Human Biomedical Research Act 2015
- give a direction that a person responsible for P's health care allow a different person to take over that responsibility

(subject to section 25 (restriction on deputies))

### Property & Affairs

#### *s 23(1), MCA*

- control and management of P's property
- sale, exchange, charging, gift, disposition of P's property
- acquisition of property
- carrying on of any profession, trade or business
- dissolving a partnership which P is a member
- carrying out of contract entered into by P;
- discharge of P's debts/obligations
- settle P's property on trust (for P's / others' benefit)
- make/revoke CPF / insurance nomination
- execution for P of a will
- maintenance, education, benefit and advancement of P's spouse/parent/minor or intellectually disabled child
- exercise of any power vested in P (beneficially/as trustee)
- conduct of legal proceedings in P's name or on P's behalf

(subject to section 25 (restriction on deputies))

# DEPUTIES

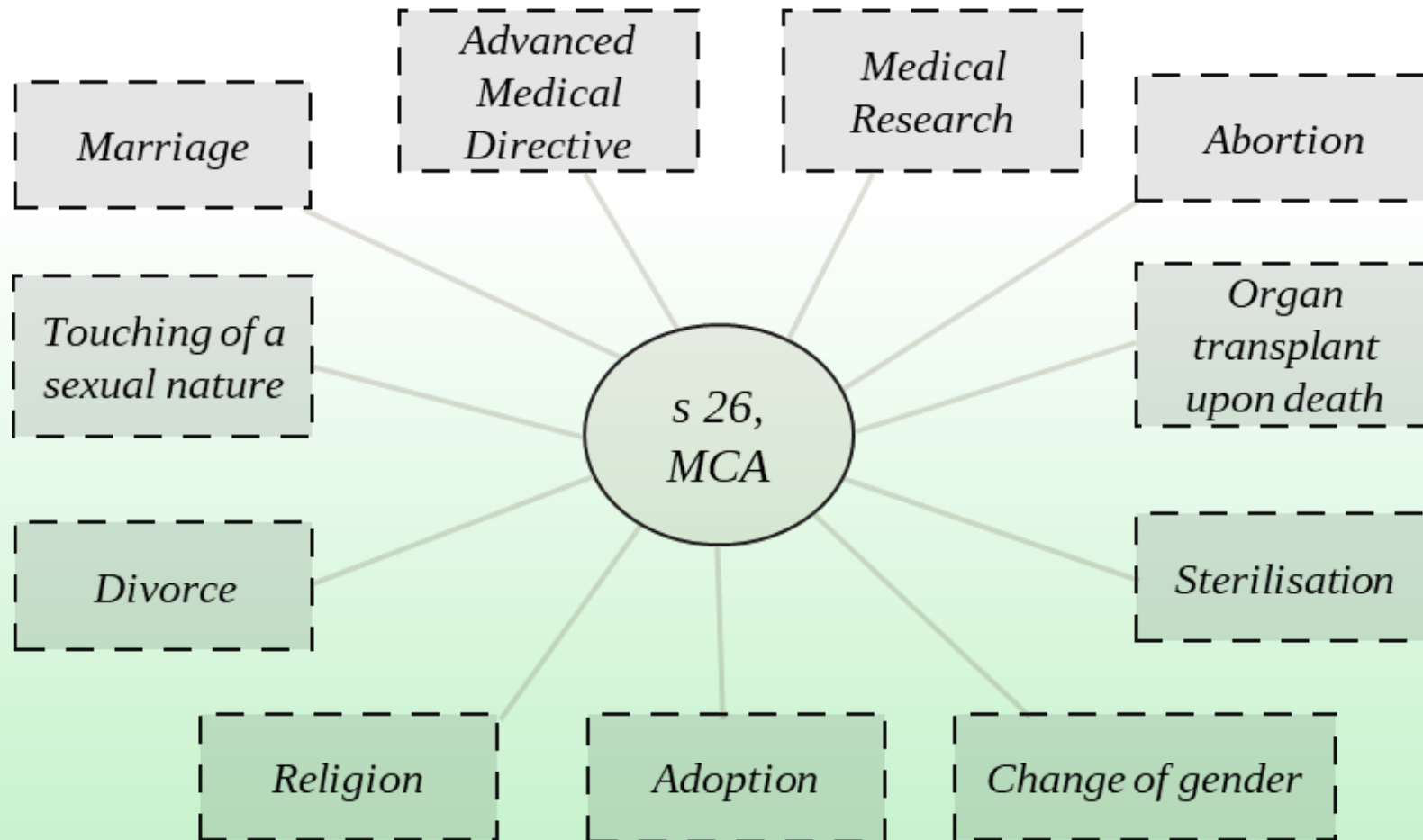
## Restrictions on powers of deputies – Section 25

### **A deputy may not be given powers to:**

1. Prohibit a named person from having contact with P
2. Direct a person responsible for P's healthcare to allow a different person to take over that responsibility
3. Dispose of P's property by making gifts (cf. powers under the LPA)
4. Make or revoke CPF / insurance nomination
5. Execute a will for P
6. Carry out or continue life sustaining treatment on P or any other treatment on P which a person providing health care reasonably believes is necessary to prevent a serious deterioration in P's condition.

# General

## Excluded Decisions under the MCA\*



## **4. The Public Guardian**

# THE PUBLIC GUARDIAN

## Functions & Powers

### Sections 31 & 32, MCA: -

1. Establishing & maintaining register of LPAs, orders appointing deputies, and professional deputies
2. Supervising court-appointed deputies
3. Directing a member of the Board of Visitors to visit (i) a donee, (ii) a deputy or (iii) P and make a report to the Public Guardian on specific matters
4. Receiving security which the court requires a person to give for the discharge of his functions
5. Receiving reports from donees and deputies
6. Reporting to the court on proceedings under the MCA
7. Dealing with representations / complaints about the way in which a donee or deputy exercise their powers and any act under Section 10, MCA
8. Investigating any contravention / alleged contravention of the MCA
9. Publishing information relating to the discharge of the Public Guardian's functions
10. Requiring any person who has any information or document which relates or is reasonably believed to relate to P to provide the information or copy of/extract from/actual document to the Public Guardian, and requiring them to attend at a specific time and place to furnish such information



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