



**OFFICE OF THE DEPUTY MINISTER  
IN THE PRIME MINISTER'S DEPARTMENT  
(Law and Institutional Reform)**

**SPEECH BY**

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**AT THE**

**FORUM ON THE MENTAL CAPACITY ACT**

**21 MAY 2024, 10:00AM  
ASIAN INTERNATIONAL ARBITRATION CENTRE,  
KUALA LUMPUR**

## **SALUTATIONS**

i. **MS. REGINA CHANG**

Public Guardian

Office of the Public Guardian, Singapore

ii. **DR. PUNITHA SILIVARAJOO**

Deputy Director-General

(Policy and Development)

Legal Affairs Division of the Prime Minister's  
Department

iii. **MS. SHANTI ABRAHAM**

President of the

Medico-Legal Society of Malaysia

iv. Ladies and gentlemen.

Good morning.

## INTRODUCTION

1. Article 8(1) of the Federal Constitution of Malaysia makes a bold proclamation:

*All persons are equal before the law and entitled to the equal protection of the law.*

2. As constitutional scholar and a senior legal practitioner, Dato' Dr. Cyrus V. Das aptly put it, article 8(1) is both an ideal and a goal. It embodies the very concept of the rule of law that ensures that *all persons* are subject to law and equal protection of the law.<sup>1</sup>
3. Being the *grundnorm*, the most basic law of our land, it is trite that we stand guided by the

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<sup>1</sup> Dato' Dr. Cyrus V. Das, 'Life Under Article 5(1): What Should It Be?' [2002] INSAF XXXI No. 4 68.

Federal Constitution—our illuminating lamp—in all that we undertake as government. This includes law reform.

4. Thus, in accordance with the spirit of equal protection of the law enshrined under article 8(1), it has come high time that we as government pay due attention to upholding the legal needs of a vulnerable segment of our society — the mentally incapacitated.

## **MENTAL INCAPACITY**

5. It is plain what constitutes mental incapacity is yet to be defined in Malaysia. However, drawing from the United Kingdom's Mental Capacity Act 2005 and Singapore's Mental Capacity Act 2008, mental incapacity is defined as an inability to make a decision for oneself in relation to the matter because of an

impairment of, or a disturbance in the functioning of, the mind or brain.

6. We can appreciate from this broad definition of mental incapacity that it can befall anyone, regardless of age. It is not problem of only the elderly or the aged, but something that anyone—even you or me—can unfortunately experience at any given time.

## **AGEING, AGED AND SUPER AGED SOCIETY**

7. Be that as it may, from an international snapshot, data from the Global Health Data Exchange of the Institute of Health Metrics and Evaluation, relied upon by the World Health Organisation, reveals that some 14% of adults aged 60 and above live with a mental disorder.<sup>2</sup>

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<sup>2</sup> 'Mental Health of Older Adults' (*World Health Organisation*, 20 October 2023) <<https://www.who.int/news-room/fact-sheets/detail/mental-health-of-older-adults#:~:text=Approximately%2014%25%20of%20adults%20aged,disability%20for%20this%20age%20group.>>

Mental illnesses are therefore of a serious concern in the aged.

8. According to the United Nations, there are three categories of ageing: an ageing society, an aged society, and a super-aged society, defined by the population aged 65 and above reaching 7%, 14%, and 20%, respectively.
9. Estimates from the Department of Statistics Malaysia show that the proportion of the population aged 65 and over increased from 7.2% in 2022 to 7.4% in 2023, totaling 2.5 million people.<sup>3</sup> This indicates that Malaysia is experiencing population ageing. We are an ageing nation.

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<sup>3</sup> 'Current Population Estimates, Malaysia, 2023' (*Department of Statistics Malaysia*, 31 July 2023) < <https://www.dosm.gov.my/portal-main/release-content/current-population-estimates-malaysia---2023>>

10. Additionally, a 2020 World Bank study projected that by 2044, at least 14% of the Malaysian population will be aged above 65, transitioning Malaysia to an aged nation. This age group is expected to exceed 20% of the population by 2056, thus categorising Malaysia as a super-aged nation.<sup>4</sup>

## **MENTAL CAPACITY ACT**

11. To address this rapidly approaching transition in Malaysian society—where with age an increase in situations of mental incapacity can be expected—there is an urgent need to formulate laws and policies to cater to the legal needs of an ageing, aged and super aged nation.

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<sup>4</sup> ‘A Silver Lining: Productive and Inclusive Aging for Malaysia’ (*The World Bank*, 24 November 2020) < <https://www.worldbank.org/en/country/malaysia/publication/a-silver-lining-productive-and-inclusive-aging-for-malaysia>>

12. In this regard, I am happy to share that, in line with the *Ihsan* or compassion principle of the Malaysia MADANI aspiration of Prime Minister Dato' Sri Anwar Ibrahim and the spirit of equal protection of the law encapsulated under article 8(1) of the Federal Constitution — the Legal Affairs Division of the Prime Minister's Department (“**BHEUU**”) has embarked on the path towards enacting a Mental Capacity Act for Malaysia.
13. This proposed legislation seeks to allow individuals to prepare in advance for the management of their affairs (such as advance medical directives, who may make legal decisions on their behalf, and management of their property) using a lasting power of attorney, in the event they ever become mentally incapacitated at any time in the future.



14. These decisions can be made by the person in advance, before becoming mentally incapacitated. Countries such as the United Kingdom and Singapore have enacted similar legislation in 2005 and 2008, respectively.
15. Hence, if a person is for example, suffering from Alzheimer's, or if they have a child who is autistic or mentally incapacitated and they would like to plan for the management of the child's affairs in the future, they will be able to do so through a lasting power of attorney using the provisions of the Mental Capacity Act.
16. In fact, I believe it is important that I state at this juncture mental incapacity does not only befall those who suffer from mental illnesses. It also includes situations where a person may be undergoing surgery or is suffering from temporary mental incapacity, in that sense.

17. This new legislation will therefore be a transformational new legal instrument in Malaysia to assist in the care and management of those who become mentally incapacitated.

### **MENTAL HEALTH ACT 2001**

18. As we speak about this new legislation, it is apposite to draw a comparison to the Mental Health Act 2001 which Malaysia has in force at present.
19. The Mental Health Act 2001 only allows for the court to set up a committee to look after the affairs and estate of a person with a mental disorder **after** the person is already mentally disordered. It hence deprives the said person of the right to make a plan of his choice for his affairs in the future. As I explained earlier, the proposed Mental Capacity Act will overcome

this by allowing advance planning before the mental incapacity and is hence much needed.

## **THE FORUM TODAY**

20. This forum is an important platform to initiate conversation with a large group of very relevant stakeholders to discuss several issues related to this new legislation that must be ironed out before policy decisions can be made in this regard.
21. This includes first, promoting awareness to all present here today of what the Mental Capacity Act is about. Second, identifying policy perimeters and potential challenges that must be overcome in enacting this new legislation for the betterment of all Malaysians.

22. I wish to thank and congratulate BHEUU in successfully organising this forum. I also wish to express my gratitude to the Medico-Legal Society of Malaysia led by Ms. Shanti Abraham for their assistance and cooperation in working together with BHEUU to bring this forum to fruition.
23. My heartfelt gratitude also goes to Ms. Regina Chang, the Public Guardian of Singapore who has expended time out of her busy schedule to be here with us to deliver a keynote on the Singaporean experience with their Mental Capacity Act 2008. The public guardian aspect to the said legislation is another cornerstone of the legislation that we must, in Malaysia, make possible to ensure that this legislation will be truly effective.

## **CONCLUSION**

24. Upon the conclusion of this forum, BHEUU will identify the policy parameters in deciding what further engagements are needed with other stakeholders. A policy paper will be tabled in Cabinet in due course to obtain policy approval before the drafting of the legislation can begin.
25. This proposed legislation is much needed to ensure of a Malaysia MADANI and to address various issues that are arising, and that will arise in the future, in an ageing, aged and super-aged society. As such, we hope to table this legislation in Parliament this year.

I hope you have a productive and insightful day ahead at this forum — thank you.