

Inquiry into Elder Abuse in Queensland

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Elder Abuse Inquiry

Office of the Public Guardian submission

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About the Office of the Public Guardian

The Office of the Public Guardian (OPG) is an independent statutory office which promotes and protects the rights and interests of adults with impaired decision-making capacity and children and young people in the child protection system or staying at a visitable site.

OPG provides individual advocacy services to children and young people through child advocacy and community visiting services.

OPG also promotes and protects the rights and interests of adults with impaired decision-making capacity for a matter through the following functions:

- The guardianship function undertakes structured decision-making in relation to personal matters where the Public Guardian is appointed as decision maker by the Queensland Civil and Administrative Tribunal (QCAT) or when acting as an attorney, by taking all steps practicable to ensure adults participate in decisions about their life and acknowledging their right to live as a valued member of society.
- The investigations function investigates allegations that an adult with impaired decision-making capacity is being neglected, exploited or abused or has inappropriate or inadequate decision-making arrangements in place.
- The community visiting function independently monitors visitable sites (authorised mental health services, the Forensic Disability Service, places where specified NDIS participants reside, residential services with level 3 accreditation (boarding houses/hostels), and other places prescribed by regulation), to inquire into the appropriateness of the site and facilitate the identification and escalation of complaints for resolution by or on behalf of adults with impaired decision-making capacity staying at those sites.

When providing services and performing functions in relation to adults with impaired decision-making capacity, OPG will seek the person's views wishes and preferences, and encourage and advocate for the adult to participate in decision-making where possible.

The *Public Guardian Act 2014* and *Guardianship and Administration Act 2000* provide for OPG's legislative functions, obligations and powers. The *Powers of Attorney Act 1998* regulates the authority for adults to appoint substitute decision makers under an advance health directive or an enduring power of attorney.

Position of the Public Guardian

The Public Guardian welcomes the opportunity to provide a submission on elder abuse to the Education, Arts and Communities Committee. The views of the Public Guardian contained in this submission do not represent the views of the Queensland Government.

This submission and the Public Guardian's recommendations address elder abuse where it relates to the experiences of OPG and the people we support. A summary of the Public Guardian's recommendations appears below.

The Public Guardian recommends:

1. The Public Guardian should be provided with legislative powers to require information to determine whether an investigation is warranted, similar to section 48 of the *Health Ombudsman Act 2013*.
2. Investigations should be viewed as a last resort action, with preference instead for community based investment in early intervention strategies.
3. Enduring Power of Attorney (EPOA) laws should be harmonised at a national level and supported by accessible and easily understood resources and training to ensure attorneys understand their role and obligations.
4. That there is a system developed that identifies when an EPOA becomes active.

Queensland's guardianship system

Legislative frameworks

The Public Guardian is established under the *Public Guardian Act 2014* (PGA) and is vested with a range of safeguarding functions under the *Guardianship and Administration Act 2000* (GAA) and *Powers of Attorney Act 1998* (POAA) to promote and protect the rights and interests of adults with impaired decision-making capacity. In turn, these functions and powers contribute to the Queensland Government's wider response to prevent, safeguard and respond to elder abuse.

Queensland's guardianship and administration system plays an important role in preventing, safeguarding, identifying and responding to elder abuse including by providing a framework:

- for persons to be appointed to make personal (including health) and financial decisions on behalf of adults who do not have capacity to make decisions about certain matters themselves
- where adults can plan ahead and appoint persons of their choice to make personal (including health) decisions and give directions about their future health care
- for decisions to be made about health matters for adults with impaired decision-making capacity, including in relation to the withdrawal and withholding of life-sustaining treatment
- where the Public Guardian has a statutory function to promote and protect the rights and interests of adults with impaired decision-making capacity through a community visiting program and investigations of alleged abuse, neglect and exploitation, or inadequate decision-making arrangements
- where there are remedies (including compensation) available to adults where a substitute decision-maker fails to comply with their duties and obligations, which may occur in situations of financial abuse.

The GAA and POAA provide frameworks to authorise substituted decision-making for adults with impaired decision-making capacity for a matter.

As the Department of Justice has provided the Committee with a comprehensive outline of Queensland's guardianship and administration laws in its written briefing of 29 January 2025 and published on the Committee's webpage, OPG has not duplicated that information in this submission.

Investigations

The PGA safeguards against elder abuse by providing the Public Guardian with discretionary powers to investigate allegations of abuse, neglect or exploitation of adults with impaired decision-making capacity, or the adequacy or appropriateness of their decision-making arrangements. In order to commence an investigation, the Public Guardian requires sufficient information to establish a reasonable suspicion that the adult has impaired decision-making capacity for the matter(s) in question. As the adult subject to the alleged abuse, neglect or exploitation has impaired decision-making capacity, consent is not required from the adult for the investigation to commence; however, investigators do speak to them early in the process to ensure their views, wishes and preferences are understood to the best extent possible.

The threshold for commencing an investigation may be satisfied by obtaining information regarding previous medical assessments completed for the adult, coupled with observations of behaviours that correlate with impaired decision-making capacity. Information regarding a diagnosis of cognitive impairment such as dementia alone would not meet this threshold. The Public Guardian acknowledges that an investigation process is an intrusive process. For this reason, it is important that investigators gather robust reliable information regarding an adult's decision-making capacity and the concerns raised to ensure an investigation is warranted and lawful. It also ensures OPG avoids commencing an investigation that is then ended after discovering the person has decision-making capacity.

Obtaining robust and reliable information when assessing disclosures is problematic, as the Public Guardian's powers cannot be used before an investigation is formally commenced. In the absence of legislative authority to require information, medical and health practitioners are understandably unwilling to provide reports or information regarding an adult without their consent. OPG therefore recommends the Public Guardian be provided legislative powers to seek information to determine whether an investigation is warranted, similar to section 48 of the *Health Ombudsman Act 2013*. This would help to ensure that OPG's finite resources are used to investigate matters within the legislative scope and intent of the Public Guardian's investigation function, being adults with impaired decision-making capacity. Information required by notice also affords those providing the documents and information with clear guidance of what is required and comfort in the legal basis for the provision of this information.

Recommendation 1:

The Public Guardian should be provided with legislative powers to require information to determine whether an investigation is warranted, similar to section 48 of the *Health Ombudsman Act 2013*.

During the course of an investigation, the Public Guardian has the power to:

- require people to produce financial records and accounts
- access any relevant information, such as medical records, and
- require a person to attend to give information or answer questions and/or produce documents.

Prompt action can be taken to protect adults with impaired decision-making capacity when there is an immediate risk to their health or welfare. Protective actions include suspending all or some of an attorney's powers for up to three months, making an urgent application to QCAT to consider the need for a formal substitute decision maker to be appointed, or in extreme cases, applying to QCAT for a warrant to enter a place and remove a person where the Public Guardian considers there are reasonable grounds for suspecting there is an immediate risk of harm because of neglect (including self-neglect), abuse or exploitation.

OPG's investigation role does not replace the role of the Queensland Police Service in responding to domestic and family violence, such as coercive control of an older person, or other suspected criminal behaviour. If an investigator identifies these issues, they are referred to the police to investigate. Protective powers primarily relate to securing the immediate safety of the adult with impaired decision-making capacity and addressing their decision-making arrangements.

If during an investigation an investigator identifies that there is less immediate risk presented to an adult, investigators will work with all parties involved to identify options to provide an effective and timely response to allegations raised, such as allegations of incompetence by decision makers, rather than serious abuse. Investigators will aim to identify barriers that may be preventing decision makers from fulfilling their duties and provide advice and education to the adult, their decision maker/s and support networks about their legislative obligations and practical ways to meet them. This includes linking them with other support services in the community such as mediation, legal advice and advocacy agencies which can provide support and education specific to the adult or carer's needs, such as Dementia Australia or Carers Queensland, and health care providers.

Investigations data

In 2023-24:

- 410 investigation requests were received
- 70 requests were accepted
- 239 requests were declined, and
- 101 requests were still being assessed (at the end of 2023-24).

In the 2023-24 financial year, 69% of the matters investigated by OPG related to older people. This number has grown 7% in the last two years, from 62% in 2021-22 to 69% in 2023-24. OPG uses the Australian Institute of Health and Welfare's definition of an older person, which is over 50 years for First Nations people and over 65 years for the non-Indigenous population.

Many requests for an investigation are declined on the basis that there is insufficient information that the adult has impaired decision-making capacity, or the allegations are more appropriately responded to with advice and information.

Of the allegations received for non-Indigenous older people in 2023-24:

- 39% related to financial abuse or incompetence
- 22% related to inadequate care, and
- The remaining 39% was made up of coercive control, neglect, invalidity of an EPOA, and incompetence of a decision maker.

Of the allegations received for First Nations people aged over 50 in 2023-24:

- 28% related to financial abuse or incompetence
- 17% related to inadequate care
- 17% related to neglect, and
- The remaining 38% was made up of physical abuse, verbal abuse, emotional abuse, self-neglect and social isolation.

In 2023-24, OPG finalised 102 investigations, of which 21 related to people aged 65 years and over and 6 related to First Nations people aged 50 and over. The outcomes achieved in investigations not relating to First Nations people included suspending the powers of 13 attorneys and making 4 applications to QCAT

for consideration of the appointment of a formal decision-maker for the older person. The outcomes for investigations relating to First Nations people included suspending the powers of 1 attorney, 2 applications to QCAT for consideration of the appointment of a formal decision maker, and 1 instance of the provision of advice and information.

OPG investigations for older people are commonly for females (66%), and the alleged perpetrator is usually a relative, most commonly the victim's son or daughter.

Most investigation requests were received from members of the public, followed by family members, with service providers such as banks, medical professionals and legal professionals following in third place.

Decision makers investigated by OPG in 2023-24 were:

- attorneys (59%)
- informal decision-makers (28%)
- private guardians (3%)
- private administrators (1%)
- The remainder of matters had no formal or informal decision supporter identified (9%).

Data analysis

OPG receives a large number of allegations, primarily from members of the public, of which approximately half are accepted and substantiated. A number of these allegations were declined on the basis that the adult may not have impaired decision-making capacity and OPG could more appropriately respond by providing advice and information. Most accepted investigations related to older people, which has increased in recent years.

Investigations relating to older people primarily involve allegations of financial abuse, followed by inadequate care. Issues such as coercive control, neglect, invalidity of an EPOA, and incompetence of a decision maker account for a smaller proportion of investigations relating to older people.

The common victim profile for OPG investigations into elder abuse is a mother being allegedly abused, exploited, or neglected by her adult son who may be an attorney under the mother's EPOA, or may be a formally appointed guardian, or informal decision maker.

OPG investigations and elder abuse

Investigations have their place in the elder abuse prevention and protection system. However, an investigation into allegations of elder abuse or neglect is a reactive activity – it occurs after harm has occurred, or at a time where there is sufficient evidence of imminent harm to warrant an intervention. Investigations are not preventative and can impact on relationships between the older person and others against whom allegations of abuse and neglect are made, which is usually their family, friend, or carer. The case studies below demonstrate the effectiveness of the Public Guardian's investigations function in responding to allegations of elder abuse.

OPG discourages any discourse that our investigative function is a strong safeguard against elder abuse – rather, it is an important intervention after elder abuse has occurred. Prevention of harm occurring, rather than reacting to allegations of significant harm should always be a priority. This requires a concerted effort by the community and a coordinated service response approach by all agencies involved. A multi-agency response is much more effective if there is a community-based case manager role to coordinate and oversee it.

Case study – Gladys*

Gladys was a 73-year-old woman who had been placed in a nursing home after being diagnosed with dementia. She had an ample source of income through multiple properties that she owned and was therefore ineligible for a pension. However, instead of these properties producing an income for Gladys, two were occupied rent-free by Gladys' son and daughter and their families, and a third property that had been earning a rental income was untenanted, leaving Gladys with little money.

Gladys' son was her attorney under an EPOA, but he was unable to pay her nursing home fees because no income was available. The unpaid nursing home fees quickly reached \$17,000. Rather than arranging for income to be earned from her real estate holdings or to sell one of the properties, Gladys' son removed her from the nursing home and relocated her to a locked room under the house he lived in.

Someone in the community became concerned about Gladys' living conditions and contacted OPG's investigations team. OPG investigators found evidence that Gladys' son was spending her small income on himself. Gladys' dementia had progressed to the point that she needed prompting with critical daily care tasks such as drinking water and using the bathroom. When support services visited, they frequently found her locked in the room by herself and unable to use the bathroom.

Investigators attended the house to speak with Gladys and found her son and his partner had left for a holiday the previous day, leaving Gladys in the care of a young au pair who had no experience caring for a person with dementia. Investigators found Gladys locked in her room and she had soiled herself. With no one at home who could care for her properly, investigators called an ambulance and Gladys was transported to the local hospital.

The Public Guardian suspended Gladys' sons' powers under the EPOA. During the suspension period, decision making services for Gladys' financial matters were provided by the Queensland Public Trustee and decision making services for her personal and health matters were provided by the Public Guardian. QCAT subsequently appointed an administrator and guardian for Gladys.

**Name has been changed*

Case study – Neville*

OPG received concerns pertaining to Neville (94 years) in relation to decisions being made about his personal, health and financial matters. There were allegations of inadequate care, medication misadministration, tampering with Neville's catheter, that a house had been purchased in the name of Neville's attorney, and that he had no access to his bank account.

After establishing a reasonable suspicion that Neville had impaired decision making capacity, OPG commenced an investigation. It was reported that Neville had entered respite care and was stable. However, prior to this, there were significant health concerns such as recurrent infections and malnutrition.

A review of Neville's bank statements identified various transactions that did not appear to be for Neville's benefit. This included approximately \$50,000.00 in transfers to accounts owned by Neville's

attorney in a seven-month period, as well as various grocery and retail purchases which did not appear to align with Neville's circumstances (being in respite care).

Investigators learned that Neville's attorney intended to imminently remove Neville from the respite facility. As such, the Public Guardian took timely action to suspend the attorney's powers for both personal and financial matters as a protective measure. During the period of suspension, the Public Guardian and Public Trustee acted as decision makers for Neville pursuant to section 35 of the *Public Guardian Act 2014*. Following this, both the Public Guardian and Public Trustee were appointed by QCAT under the *Guardianship and Administration Act 2000* to be formal decision-makers for Neville.

**Name has been changed*

Recommendation 2:

Investigations should be viewed as a last resort action, with preference instead for investment in community based early intervention strategies.

Guardianship

Guardianship is also an important safeguarding mechanism in situations where an older person has impaired decision-making capacity and is at risk of abuse, neglect, or exploitation. In the absence of another appropriate and competent guardian, the Public Guardian may be appointed as a last resort by QCAT or the Supreme Court to make substitute decisions in relation to a person's personal matters. Personal matters include decisions for a person's accommodation, provision of services, health care and some legal matters. For example, guardians can make decisions to secure safe living arrangements and the provision of support services.

The Public Guardian can also be appointed as an attorney under an EPOA and can make health care decisions as statutory health attorney of last resort for any adult in Queensland who has impaired decision-making capacity.

Guardians and attorneys are required by legislation to follow a structured decision-making framework when making decisions for another person to ensure their rights are upheld to the maximum extent possible. This reflects the importance of decisions being made in line with a person's views, wishes and preferences unless there is an unreasonable risk in doing so.

Guardianship data

In the 2023-24 financial year, the Public Guardian provided decision-making services to 4,490 people with impaired decision-making ability. Of these, 1,323 people were aged 65 and over, and 238 people identified as First Nations and were aged 50 and above.

43% of applications made to QCAT proposing the appointment of the Public Guardian related to people aged 65 years or over.

The number of clients where the Public Guardian acted under an EPOA:

- Total: 70
- Aged 65 years and over: 62
- First Nations aged 50 years and over: 4

The number of clients where the Public Guardian acted as statutory health attorney of last resort:

- Total: 637
- Aged 65 years and over: 81
- First Nations aged 50 years and over: 16

The number of clients where the Public Guardian made a decision about withdrawing/withholding life sustaining treatment:

- Total: 102
- Aged 65 years and over: 69
- First Nations aged 50 years and over: 6

Data analysis

OPG's decision-making services include acting under an EPOA, of which a majority of those decisions in 2023-24 were for older people. Health care decisions for clients included acting as a statutory health attorney of last resort, though older people accounted for only approximately 15% of these decisions, and withdrawing or withholding life-sustaining treatment, where the majority of these decisions were for older people in 2023-24.

Community visitors

OPG provides oversight of government funded services by administering a community visitor program to protect the rights and interests of adults with impaired capacity who reside at a visitable site.

Visitable sites are defined in the PGA and include the Forensic Disability Service, inpatient Authorised Mental Health Services, level 3 accredited residential services (boarding houses and hostels), and some places where NDIS participants live. Older people may reside at these sites and receive community visitor services.

Community visitors inquire into and report on the adequacy and appropriateness of services and information provided and may assist a person in making a formal complaint to the relevant regulatory body.

Generally, community visits occur annually for NDIS-funded visitable sites where there are no restrictive practices in use and six-monthly for all other visitable sites. When determining our visiting schedule, we consider whether these sites are regulated or overseen by other agencies, such as the NDIS Quality and Safeguards Commission. We may increase the prioritisation or visiting frequency to sites when significant concerns are raised, or if there are ongoing issues raised by a community visitor from a previous visit which require further visits to resolve.

Community Visiting data

OPG cannot disaggregate data by age for our community visiting function, so the following figures relate to all adults in visitable sites and are not specific to people defined as an older person.

In the 2023-24:

- There were 2214 visitable sites.
- There were 7660 adults in visitable sites.
- OPG conducted 3507 visits to adult visitable sites.



- 2588 issues were raised on behalf of people at visitable sites.

In 2023–24, most visitable sites were in the disability sector (91%), with smaller proportions being authorised mental health services (4%), level 3 supported accommodation services (4%) and the Forensic Disability Service (one site).

The types of issues raised by community visitors in 2023–24 were:

- 24% - support for a person staying at a visitable site (e.g. the adequacy of services for the assessment, treatment and support of the person),
- 18% - wellbeing of a person staying at a visitable site (includes choice and consideration of personal wishes and preferences, personal effects, privacy, and prevention of abuse, exploitation and neglect),
- 18% - provision of least restrictive services (the use of unauthorised restrictive practices and provision of supports that are least restrictive of the person's human rights),
- 13% - accommodation of a person staying at a visitable site,
- 10% - treatment of a person staying at a visitable site,
- 7% - assessments of a person staying at a visitable site (about health care, decision-making ability, communication needs),
- 9% - health of a person staying at a visitable site,
- 1% - a person's access to information.

Enduring Power of Attorney law reform

It has been identified that while enduring documents are important tools that may protect a person who has lost decision-making ability from being exploited and abused by others, misuse of these documents can facilitate abuse by those appointed to protect the older person.

In OPG's experience, some people do not clearly understand their obligations as an attorney under an enduring document, especially for financial decisions, and this can lead to risks of mismanagement of funds and difficulties accounting for the principal's money. In turn this can raise suspicions and allegations of financial abuse.

Lengthy information is provided to attorneys at the time they accept an appointment, but for enduring documents, the instrument may not be activated until years, or decades, later. Therefore, provision of practical and easily accessible information when the attorney commences acting would be extremely beneficial. However, there is no easy way to do this at present.

A national register and harmonisation of legislation and the content of EPOAs (not limited to financial matters) could also assist with this. If an attorney was required to notify a register when an EPOA becomes activated, key education could be provided at this point and perhaps the attorney could sign a declaration that they understand their legislative role and responsibilities.

In response to the recommendations of the Australian Law Reform Commission (ALRC) *Elder Abuse – A National Legal Response* Report from 2017, and to address financial abuse involving EPOAs, the Standing Council of Attorneys-General (SCAG) has considered models for a national register of EPOAs, and greater harmonisation of laws involving EPOAs. The *National Plan to Respond to the Abuse of Older Australians (Elder Abuse) 2019–2023* commits state and territory governments to consider harmonisation of these laws. Achieving greater national consistency in EPOA laws continues to be a priority action in the draft *National Plan to End the Abuse and Mistreatment of Older People 2024–2034*.

OPG is generally supportive of this harmonisation and considers that this may contribute to safeguarding against elder abuse.

Recommendation 3:

That Enduring Power of Attorney (EPOA) laws are harmonised at a national level and supported by accessible and easily understood resources and training to ensure attorneys understand their role and obligations.

Recommendation 4:

That there is a system developed that identifies when an EPOA becomes active.

Conclusion

OPG welcomes this inquiry into elder abuse in Queensland. OPG is uniquely placed to identify and respond to elder abuse in some circumstances, with our most significant impact opportunity being through our investigations, guardianship and community visiting functions. OPG considers that proactively addressing the systemic and structural drivers of elder abuse will have a beneficial impact on the lives of older Queenslanders.