

OPG's investigations function

Information for Residential Aged Care Facilities on how to help protect residents from abuse by family and friends.

People with impaired decision making capacity – whether it be due to dementia, an accident, or some type of intellectual or psychiatric disability – are among some of society's most vulnerable citizens. They have significantly increased risk of being subject to neglect, exploitation and abuse, including financial abuse. That's why in Queensland any suspicions of this type of activity can be referred to the Office of the Public Guardian (OPG) for investigation.

While residents in residential aged care facilities are generally not subject to physical abuse or neglect at the hands of family or friends, they can still be vulnerable to other types of abuse, especially financial. Staff at these facilities are therefore ideally placed to spot abuse and report it to us. There are also strategies facilities can put in place to help stop abuse from happening.

What powers does the Public Guardian have?

The Public Guardian has extensive legislative powers under the *Public Guardian Act 2014* to investigate abuse, neglect and exploitation of people with impaired decision making capacity. These are the powers to:

- access all information in connection with an adult with impaired capacity
- cross-examine the accused person
- execute a warrant to remove a person who is at immediate risk of harm
- suspend any current power of attorney while an investigation is underway
- insert the Public Guardian as attorney for personal and healthcare matters (and appoint the Public Trustee for financial affairs) for a period of up to three months

- refer the matter to the Queensland Civil and Administrative Tribunal (QCAT) for the revocation of an Enduring Power of Attorney and the appointment of a more appropriate administrator and/or guardian.

What does 'impaired decision making capacity' mean?

Capacity is defined as a person being capable of:

- understanding the nature and effect of decisions about the matter
- freely and voluntarily making decisions about the matter, and
- communicating the decision in some way.

If one or more of these elements is missing, the person does not have capacity for that matter.

Note that the Public Guardian doesn't manage an adult's finances. If an attorney is suspended, the Public Trustee will be appointed as interim administrator until QCAT makes a formal appointment. This means that we cannot chase up any debt owing to a facility due to financial mismanagement by an attorney.

When to report abuse to OPG

The biggest sign that financial abuse may be occurring is non-payment of fees, as this is a sign that an adult's funds aren't being used for their own care. We therefore actively encourage facilities to report non-payment to us as early as possible for investigation. Often we aren't contacted until arrears have reached tens of thousands of dollars.

If it is left too long the money may be irretrievable, which can lead to both the adult losing all their funds and being evicted – not to mention your facility may

well end up being out of pocket. In a worst case scenario for an adult, they may find that not only are they evicted, but the family then chooses to bring them home and allow them to be neglected and live in conditions of squalor.

Please note that there is no fixed time for an investigation, but the amount of information that needs to be gathered generally does mean that it isn't a fast process. A typical investigation can take from several months to more than a year, with about half our cases taking more than six months to complete.

We do understand that the length of time taken may be frustrating, especially for staff who have to deal with family of the resident while an investigation is ongoing. However, we must ensure that our investigations are independent, thorough and procedurally fair for all those people who are impacted by them.

Understanding the scope of the attorney's role

Frontline staff in facilities will very often find themselves interacting with family members of residents who are acting as the adult's attorney under an Enduring Power of Attorney, and making requests that staff may find unreasonable or not in the best interest of your resident. Generally these are around contact and visiting – i.e. telling a facility that certain people can't visit a resident.

For that reason it can be helpful to understand exactly what the scope of an attorney is. Firstly, an adult can request that someone act as an attorney for financial matters from any point of time, even if they still have decision making capacity. However an attorney's powers for personal and health care matters do not

become effective until the adult has lost capacity.

So if a resident still has capacity but have asked their adult son to manage their financial affairs through an Enduring Power of Attorney, their son cannot make any personal or health care decisions at this point, even if they have been nominated for personal and healthcare matters. This power will not take effect unless the resident loses capacity.

And if the adult has lost capacity, a facility doesn't automatically need to follow instruction from an attorney. By trying to restrict contact (which is often due to family conflict) an attorney may be acting outside of their role. This is because a key consideration in the role of an attorney is to consider the wishes of an adult, so if the resident still wishes to see these other people, these wishes should be considered.

We would therefore encourage residential aged care facilities to put processes in place to mediate in these situations – which could be as simple as raising your concerns with the adult's family. Generally this isn't a situation that requires an investigation to be opened, although if staff suspect someone is trying to isolate a resident in order to perpetrate financial abuse against them, this should be reported.

How to report abuse to OPG

Anyone can report abuse to OPG by calling 1300 653 187, or by using the online form on our website at publicguardian.qld.gov.au

More information on our investigations function can be found at publicguardian.qld.gov.au/investigations

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Contact us

t. 1300 653 187

e. publicguardian@publicguardian.qld.gov.au

w. www.publicguardian.qld.gov.au