

POLICY STATEMENT

Operationalisation of the investigation power after the death of an adult with impaired capacity

Purpose

To outline OPG's policy approach to operationalising the 2020 legislative amendment to [section 19 Investigate complaints](#) of the *Public Guardian Act 2014*, considering the statutory purpose, financial accountability obligations and finite resources of the agency.

Background

On 30 November 2020, implementation of Phase 1 of the Public Guardian's policy statement commenced regarding the extension of OPG's investigations power after the death of an adult with impaired capacity. The evaluation of phase 1 focused on the effectiveness and impact of the outcomes for:

- the deceased adult with impaired capacity; and
- the agency's resources in addressing the Public Guardian's core function to protect adults with impaired capacity.

The evaluation identified the following:

- No feedback was received from interested parties regarding the benefit to the deceased adult of a posthumous investigation. Any perceived benefit appeared to relate to the potential beneficiaries of the deceased adult's estate. This 'benefit' was not directly provided by the Public Guardian as it relied upon court action being taken by the beneficiary.
- Demand for the Public Guardian to conduct investigations regarding alleged (current) abuse, neglect and exploitation of adults with impaired capacity continues to exceed available investigation resources. As such, the Public Guardian prioritised investigations in which there was a risk of ongoing, or future, abuse, neglect or exploitation of adults with impaired capacity in line with the Public Guardian's [purpose](#) and [role](#), as set out in sections 5 and 10 of the *Public Guardian Act 2014*.

Public Guardian's policy statement

The Public Guardian will cease an investigation upon an adult's death and will not commence an investigation relating to a deceased adult with impaired capacity, unless there is an overriding public interest to commence or continue the investigation. A decision on whether there is an overriding public interest would be informed by, but not solely limited to, such things as:

- **Whether there is a risk to another, living adult with impaired capacity** – where there is readily available information that the formal decision maker, for example an attorney, administrator, or guardian, is a formal decision maker for another, living person with impaired capacity; and/or
- **Whether there is an opportunity to discourage abuse, neglect, or exploitation** – where an investigation may obtain sufficient readily available information to establish whether a referral should be made to the Queensland Police Service or Office of the State Coroner. When sufficient information is identified that a matter warrants referral, the OPG investigation will cease and the referral will be made, avoiding interference with an investigation or enquiry.