Investigating abuse against adults with impaired decision-making capacity

public guardian

www.publicguardian.qld.gov.au

How we can protect adults from harm

People with impaired decision-making capacity – whether it be due to an accident, dementia or an intellectual or psychiatric disability – are among societies most vulnerable citizens and are at a significantly increased risk of abuse.

In Queensland, the Office of the Public Guardian is able to investigate allegations of neglect, exploitation and abuse (including financial abuse) and also inadequate or inappropriate decision-making arrangements related to adults with impaired capacity.

Often the complaints we receive are about someone who is appointed as an attorney (as nominated in an Enduring Power of Attorney document), who is not acting in the interests of the person they are appointed to support. However we are also able to investigate allegations of abuse where there is an informal care arrangement, or no care arrangement at all (self-neglect).

We are unique in Australia in that not only are we able to investigate these allegations, we also have the legislative powers to take a range of actions to protect the adult from further harm.

When to refer to QCAT

If the adult at risk doesn't have a formal decision maker in place, and you have enough information about the adult to put in an application, it may be more appropriate to approach the Queensland Civil and Administrative Tribunal (QCAT) directly to apply for a guardian and/or administrator for the adult.
See *qcat.qld.gov.au* for more information.

What is abuse?

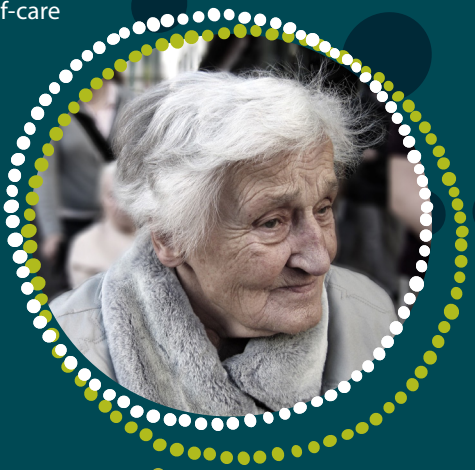
There are many different types of abuse:

- physical
- sexual
- psychological, such as threats and harassment or denying the adult access to important relationships or their community
- financial, such as misusing a person's money
- neglect, such as withholding medication or not providing regular food
- exploitation, such as taking advantage of someone.

Many of the cases we see involve a friend or family member using the adult's money for their own purposes. In more extreme cases this can result in an adult not receiving the necessities of life or living in squalor or an unsafe environment.

Other examples of abuse we have seen include (but are certainly not limited to) adults being kept isolated from friends and families, not having their care needs met, or being influenced to hand over money or other assets.

Self-neglect is also another form of abuse we can look into. This is where an adult is no longer able to perform essential self-care and may be at risk of harm if a suitable decision maker isn't appointed for them.



What is impaired decision-making capacity?

OPG can only carry out an investigation for adults who have what's known as 'impaired decision-making capacity'. This is a term that can cause some confusion, as a person's decision-making capacity relates to specific areas of decision making and is not a general state of being.

To be considered to have capacity to make a decision on a subject, an adult must be able to do all three of the below.

1. Understand all the factors that need to be considered before making the decision, the various choices, and the different consequences of each choice.
2. Make the decision freely and voluntarily, without being unduly influenced by another person.
3. Communicate the decision in some way. This isn't limited to just verbal communication.

Remember, decision making relates to specific situations, so an adult might have capacity to make decisions on some matters, but not others.

Who formally determines whether someone has capacity?

The Office of the Public Guardian isn't able to determine if an adult has capacity.

If you are unsure as to whether an adult has capacity, a doctor or health professional such as a GP, psychologist, psychiatrist or geriatrician can perform an assessment of the adult.

If there is any question or dispute about capacity, the Queensland Civil and Administrative Tribunal (QCAT) can make a determination of an adult's decision-making capacity.

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:

- require people to produce records and accounts
- gain access to any relevant information to investigate a complaint or allegation, such as medical files
- conduct audits
- give advice and impose supervision
- require an attorney to present a plan of management for approval
- cross examine witnesses
- issue a written notice ordering a person who has been uncooperative to attend at a stated time and place, give information, answer questions and produce documents
- execute a warrant to remove an adult who is at immediate risk of harm
- suspend an attorney's power.

Where a power of attorney is suspended for personal/health decisions, the Public Guardian is automatically appointed under legislation as guardian for up to three months. Where a power of attorney is suspended for financial decisions the Public Trustee is automatically appointed under legislation as financial administrator for up to three months. This three month period provides enough time for a hearing to be scheduled for QCAT to formally appoint a guardian and/or administrator.

The Public Guardian doesn't, however, have the power to replace the important role the police fulfil in relation to domestic violence and criminal behaviour, and where appropriate, investigations will be referred to the Queensland Police Service.

The investigations process

Anyone who suspects an adult with impaired decision-making capacity may be at risk of abuse, neglect or exploitation can make a referral to OPG either by calling 1300 653 187 or via our website at *publicguardian.qld.gov.au*. You can choose to remain anonymous, but this may slow down the investigation, and you also won't be notified of the outcome. You should note that under the *Public Guardian Act 2014*, which governs the disclosure of information gathered by the Public Guardian via our investigations function, it would not generally be considered in the public interest to release the identity of the party who raises the initial concerns.

After receiving a referral our team will assess it to decide whether there are reasonable grounds to suggest the adult has impaired decision-making capacity, and that information we have received confirms the need for an investigation. This generally takes around two to three weeks.

If we accept an investigation an Investigations Officer will be assigned, and begin the process of gathering evidence. This can include:

- contacting banks to get financial records
- seeking information from other government and non-government agencies
- talking with friends, family and service providers of the adult
- visiting the residence of the adult
- getting a medical report to establish the adult's decision-making capacity.

How long does an investigation take?

The amount of investigation generally needed does mean an investigation is often not 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.

However where the balance of probability shows an adult is at immediate risk of harm, we can act quickly to suspend a power of attorney or remove an adult from an harmful situation.

What are the possible outcomes of an investigation?

Our investigations have different outcomes depending on the evidence collected and findings of the investigator. The actions are also dependent on the situation and severity of the abuse. There are several possible outcomes.

- An application to QCAT to have a guardian and/or administrator appointed, or a replacement guardian and/or administrator appointed if our investigation has established that the current decision maker was acting in an inappropriate or inadequate fashion.
- A decision to supervise an attorney, guardian or administrator for a reasonable period of time, or ask a financial administrator or attorney to present a plan of management for approval.
- An informal resolution, which generally involves us giving information or advice to an existing attorney highlighting their responsibilities under the law and how their current actions may be in breach of the law.
- No action, where we do not find evidence of abuse, or where the adult is found to have decision-making capacity.

Additionally, in rare and extreme circumstances where there is an immediate risk of harm because of neglect (including self-neglect), exploitation or abuse of an adult, we may apply to QCAT for a warrant to enter a place and remove the adult.

As noted previously, we also refer investigations to the Queensland Police Service where appropriate, which may result in criminal charges being laid.

Contact OPG

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