



# **Options for legislating against coercive control and domestic violence**

**Submission to the Women's Safety  
and Justice Taskforce**

**July 2021**



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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 out-of-home care or staying at a visitable site. The purpose of OPG is to advocate for the human rights of our clients.

The OPG promotes and protects the rights and interests of adults with impaired decision-making capacity for a matter through its guardianship, investigations and adult community visiting and advocacy functions:

- The guardianship function undertakes both supported and substituted decision-making in relation to legal, personal and health care matters, supporting adults to participate in decisions about their life and acknowledging their right to live as a valued member of society.
- The investigations function investigates complaints and 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 adult community visiting and advocacy function independently monitors visitable sites (authorised mental health services, community care units, government forensic facilities, disability services and locations where people are receiving NDIS supports, and level 3 accredited residential services), to inquire into the appropriateness of the site and facilitate the identification, escalation and resolution of complaints by or on behalf of adults with impaired decision-making capacity staying at those sites.

When providing services and performing functions in relation to people with impaired decision-making capacity, the OPG will support the person to participate and make decisions where possible, and consult with the person and take into account their views and wishes to the greatest practicable extent.

The *Public Guardian Act 2014* and *Guardianship and Administration Act 2000* provide for the 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.

The OPG also provides individual advocacy services to children and young people through the following functions:

- the child advocacy function, which offers person-centred advocacy for children and young people in the child protection system, and elevates the voice and participation of children and young people in decisions that affect them; and
- the child community visiting function, which monitors and advocates for the rights of children and young people in the child protection system including out-of-home care (foster and kinship care), or at a visitable site (residential facilities, youth detention centres, authorised mental health services, and disability funded facilities).



# Submission to the Taskforce

## Position of the Office of the Public Guardian

The OPG welcomes the opportunity to provide a submission to the Women's Safety and Justice Taskforce's (the Taskforce) *Discussion Paper 1 – Options for legislating against coercive control and the creation of a standalone domestic violence offence*. The views of the OPG contained in this submission do not represent the views of the Queensland Government.

This submission and recommendations address the issues raised in the discussion paper where they relate to the experiences of the OPG and the people served by the OPG.

### The Office of the Public Guardian recommends:

1. The Taskforce examine the experiences of coercive control perpetrated against adults with impaired decision-making capacity by family members, with a specific focus on elder abuse.
2. Education be provided to communities and disability support services who engage with people with impaired decision-making capacity on the signs of coercive control and the strategies for intervention.
3. Outreach activities be undertaken to educate service providers, carers and aged care facilities on the availability of support services for adults with impaired decision-making capacity, who they suspect may be subject to coercive control.
4. Health service providers and police receive targeted training on understanding the nature and dynamics of coercive control experienced by adults with impaired decision-making capacity.
5. Banking staff receive targeted training on how to detect coercive control and the appropriate responsive action to take.
6. Changes be made to QCAT proceedings that would enable the views and wishes of an adult with impaired decision-making capacity to be obtained away from the direct influence of family and with the appropriate supports in place specific to the communication needs of the victim.
7. Enduring documents and advance planning be recognised and promoted as a valuable preventative strategy against coercive control.
8. Heightened awareness by those involved in the preparation and witnessing of Enduring Power of Attorneys and other advance planning documents on the signs of coercive control.
9. Restorative justice be considered as an alternative to the criminal justice system in certain cases of coercive control, with supports in place for adults with impaired decision-making capacity.

## Coercive control by an intimate partner

Coercive control against women by an intimate partner is an issue of great concern to the OPG and one warranting stringent examination. In exercising our range of functions, the OPG has observed the vulnerability of women with impaired decision-making capacity to coercive control and the impact this can have on their physical and emotional wellbeing. The OPG notes that the discussion paper identifies the vulnerability of women with a disability to this kind of abuse and welcomes further discussion on this issue.



## Coercive control by family members

Beyond the experiences of women under coercive control in domestic partnerships, the OPG draws the Taskforce's attention to the adults with impaired decision-making capacity who experience coercive control by other family members. The existence of an impairment, such as an intellectual disability or dementia, can leave an adult vulnerable to coercive control. Situations where an older person experiences coercive control at the hands of their adult children and other family members can constitute elder abuse.

Through our investigations function, the OPG has observed coercive control manifest in different ways when exercised by a relative against an elderly family member. For example, an investigation was conducted into the conduct of an adult son whose ageing mother experienced dementia and declining decision-making capacity. The evidence indicated that the son controlled her access to support services and insisted on accompanying his mother to appointments with medical professionals (such as her general practitioner and specialists) as well as meetings with lawyers and financial institutions. At these appointments the son dominated the conversation, purporting to speak on behalf of his mother and controlled the information being provided to his mother's detriment. Further investigation revealed the adult son was neglecting the care and support to his mother, and there was evidence of significant financial mismanagement of her affairs.

Social isolation tactics are commonly observed, with perpetrators controlling contact with other family and friends. Through this process of coercive control, perpetrators can convince their ageing parent that members of their existing support networks have abandoned them, perpetuating their social isolation and vulnerability to further manipulation and coercion. The OPG has conducted investigations which involve adult children restricting telephone calls or forcing their elderly parent to put telephone calls on speaker so the perpetrator can monitor conversations or speak on their behalf. In one investigation, an adult child restricted his elderly mother's access to the phone and prevented her seeing visitors or attending appointments on her own. The investigation identified that the adult child was receiving a carers allowance which would cease if his mother went into residential aged care, and that he was using a portion of his mother's funds for his personal expenses. Isolating his mother from family and friends allowed him the opportunity to continue to exert control over her and maintain his own financial stability.

In another example, an elderly man with an intellectual impairment who lived alone was being supported by his attorney, a family member, who assisted him with aspects of his daily living. The OPG was contacted regarding concerns that the elderly man was making expensive purchases for his family member, was having contact with other family members restricted and may have been suffering from malnutrition. Investigations revealed that several bank transfers, totalling a substantial sum, had been made directly into the attorney/family member's account from the victim over more than a year. There had also been an instance of the victim wandering the streets and displaying erratic behaviour which led to a hospital admission. The matter was subsequently referred to Queensland Police Service and the attorney/family member has been charged with fraud. This example demonstrates the impact that coercive control tactics, such as social isolation, can have far-reaching effects in all aspects of life for persons with impaired decision-making capacity.

Perpetrators of elder abuse have also taken advantage of their family member's reliance on services and financial support, such as NDIS funding and Centrelink support payments, by threatening the withholding of these resources to regulate the behaviour of the adult. Without access to the funds required to sustain their much-needed support services, an adult with impaired decision-making



capacity can be further isolated from the community. Such financial control also denies the adult the opportunity to enact their own protective action, further cementing the perpetrator's power and control over their victim.

Investigations conducted by the OPG indicate that older adults with impaired decision-making capacity can also be exposed to emotional manipulation by an adult child and made to feel guilty for the time taken to care for them. In one instance, an older client was told by their adult grandchild that if they reported any abuse to the OPG they would be refused contact with his grandchildren. Perpetrators have also been known to have intentionally administered inappropriate medication to an adult with impaired decision-making capacity as a form of control, including overmedicating to sedate the adult. In one example, a family member withheld medication from an elderly relative as a form of control, causing unnecessary pain and distress to the victim.

## Housing availability

The shortage of affordable, accessible, well-located housing can leave adults with impaired decision-making capacity vulnerable to coercive control. With home ownership not available for many of the OPG's adult clients, there can be a limited availability of suitable residential options to meet their accommodation needs. The OPG has clients with significant behavioural concerns that make obtaining appropriate housing a challenge. These clients typically require specialised disability accommodation or environments (such as compatible co-tenants and neighbours) to help meet their support needs. In many cases, the shortage of appropriate housing can leave these adults with little choice but to remain living with their perpetrator or face homelessness.

Homeless and domestic violence shelters can be an option of last resort for some adults with impaired decision-making capacity who want to escape coercive control situations. However, OPG clients often struggle to temporary accommodation at shelters because staff often lack the training required to support the complex care needs of people with a physical and/or cognitive impairment.

Elderly people with impaired decision-making capacity face the additional obstacle of finding and sourcing the funds for an appropriate aged care placement. Given the incidences of below standard care in aged care homes, adult children have used the threat of aged care to exert control over elderly parents.

## Reluctance to report

Adults with impaired decision-making capacity who are subjected to coercive control may fear reporting an issue due to their reliance on the perpetrator for mobility, food, personal care, support and/or transport. There can also be community stigma and insufficient police training on the credibility of adults with impaired decision-making capacity as witnesses, and a lack of support to ensure their experiences of abuse are communicated and believed. Further, some adults with impaired decision-making capacity may not be aware that the coercive control or elder abuse they are experiencing is wrong and are unable to access information on their rights.

This reluctance to report is exacerbated for elderly parents being subjected to coercive control who are frequently reticent to take police or legal action against their own child, particularly one providing their personal care and disability supports.



## Impact of coercive control

The impact of coercive control on adults with impaired decision-making capacity can be profound, particularly when the perpetrator is a trusted family member. Through the investigations function, the OPG has observed that the emotional and psychological stress from this kind of abuse can lead to a worsening of an adult's cognitive ability and concerning behaviours, as well as significant physical deterioration. In some cases, the control can exacerbate behaviours associated with an adult's condition, adding to their isolation and vulnerability to further abuse. Beyond this, the degree of control can deprive an adult of their sense of autonomy and self-worth, which may already be fragile due to their reliance on others for everyday living.

### Recommendation 1

The Taskforce examine the experiences of coercive control perpetrated against adults with impaired decision-making capacity by family members, with a specific focus on elder abuse.

## Strategies for reform

### Community awareness

The OPG sees community awareness as being critical in preventing coercive control. It is our experience that there is widespread awareness around 'domestic violence' as an umbrella term; however, there remains a lack of awareness and identification around the experiences of other more specific forms of domestic violence, such as coercive control, gaslighting and other methods of manipulation. This is particularly the case when these specific forms of violence are committed by someone other than an intimate partner. If communities and service providers, such as banking institutions, medical practitioners, disability and mental health service providers, carers and aged care providers, were more aware of coercive control as a form of domestic violence, this is likely to have positive flow-on effects in identifying coercive control and increasing early intervention to support victims. This is particularly important in rural and remote areas of Queensland where social isolation is more prominent and support services less readily available.

Throughout the course of investigations into abuse against adults with impaired decision-making capacity, the OPG will often provide resources to service providers including banking institutions, services who provide counselling, support and education around all forms of domestic and family violence) and community legal centres. We see these resources as a critical mechanism to support our clients being subjected to, or at risk of, coercive control. The OPG recommends that outreach activities be undertaken to educate service providers, carers and residential aged care facilities on the availability of these services for adults with impaired decision-making capacity who they suspect may be subject to coercive control.

### Recommendation 2

Education be provided to communities, banking institutions and disability support services who engage with people who have impaired decision-making capacity on the signs of coercive control and the strategies for support and intervention.



**Recommendation 3**

Outreach activities be undertaken to educate service providers, carers and aged care facilities on the availability of support services for adults with impaired decision-making capacity who they suspect may be subject to coercive control.

**Training for health service providers and police**

Given the communication challenges faced by adults with impaired decision-making capacity, it is imperative that health service providers and police receive targeted training on understanding the nature and dynamics of coercive control for this cohort. This should include education on the signs of coercive control when experienced by an adult with impaired decision-making capacity and perpetrated by a family member who is not an intimate partner. Medical practitioners would benefit from training of this nature given their frequent contact with an adult with impaired decision-making capacity stemming from their health vulnerabilities, when frequently accompanied by their adult child at medical appointments. Targeted training on ways to identify indicators for coercive control and guidance on referral pathways for the victim would be invaluable to prevent this type of abuse and protect adults with impaired decision-making capacity from harm. While the Public Guardian has extensive legislative powers under the *Public Guardian Act 2014* to investigate abuse, neglect and exploitation of adults with impaired decision-making capacity, it does not have the power to replace the role of the police in relation to domestic violence and criminal behaviour. As investigations are referred to the Queensland Police Service in these instances, targeted police training may assist in more effective use of the existing criminal law in cases of coercive control being perpetrated against these adults (e.g. carriage service offences, stalking and threats to kill). The OPG has investigated matters that had a history of police involvement, but those matters have not been pursued by way of criminal charges.

**Recommendation 4**

Health service providers and police receive targeted training on understanding the nature and dynamics of coercive control when experienced by an adult with impaired decision-making capacity.

**Training for banking staff**

Financial abuse is a common manifestation of coercive control. OPG investigations into allegations of financial abuse will often uncover evidence of coercive control based on an examination of bank records which reveal unusual financial transactions and activity. Examples that may indicate coercive control include, frequent transfers to multiple accounts, excessive cash withdrawals and a rapid depletion in an adult's funds. When these transactions are identified and questioned by banking staff, they report that the adult is then 'brought into' the branch, accompanied by their family member, to make 'in person' withdrawals and that it appears the adult is coerced or controlled to say that they support the withdrawal of funds. Therefore, financial institutions are well placed to identify coercive control when an adult presents with a perpetrator to make a transaction in person. If banking staff are trained to identify the signs of coercive control, they may be able to prevent it and/or refer it at an early stage to an appropriate agency.

We draw the Taskforce's attention to the Australian Law Reform Commission's 2017 [Elder Abuse— A National Legal Response Final Report](#), which discusses the issue of financial abuse. The Commission noted that banks and other financial institutions are often in a prime position to detect and prevent financial abuse of older and at-risk customers. Among other things, it was recommended that staff be



trained in how to respond appropriately to elder abuse; set up software and technology to detect unusual transactions and other potential avenues for abuse; and check arrangements that purport to authorise a person to operate another person's bank accounts. The OPG is of the view that these mechanisms are an important part of protecting adults with impaired decision-making capacity from financial manifestations of coercive control.

#### Recommendation 5

Banking staff receive targeted training on how to detect coercive control and the appropriate responsive action to take.

### Support in legal proceedings

In matters before the Queensland Civil and Administrative Tribunal (QCAT), it is noted that an adult's views and wishes are usually sought only during the conduct of a hearing. A formal tribunal setting can often be uncomfortable for victims, particularly when an alleged perpetrator is present. Victims appearing in domestic and family violence matters, especially adults with impaired decision-making capacity, should be supported during these proceedings under the provisions of s 93A of the *Evidence Act 1977*. Accordingly, the OPG recommends changes to QCAT proceedings that would enable an adult's views and wishes to be obtained away from the direct influence of family and with the appropriate supports in place specific to the communication needs of the adult victim.

#### Recommendation 6

Changes be made to QCAT proceedings that would enable the views and wishes of an adult with impaired decision-making capacity to be obtained away from the direct influence of family and with the appropriate supports in place specific to the communication needs of the adult victim.

### Planning ahead

When a person has lost decision-making capacity and cannot advocate for their rights, they may be unable to make plans for their future. Having a person's views and wishes clearly articulated in an enduring document is a valuable mechanism to enable organisations such as the OPG, the Public Trustee, QCAT and non-government advocacy organisations to uphold an individual's views and wishes at a time when they cannot communicate them. For example, if an adult with impaired decision-making capacity has an enduring document in place which outlines their 'formal views and wishes' pertaining to various situations and events, OPG investigators have a valuable tool to ascertain whether the adult's decision makers have been upholding the adult's values, ethics and choices. This information could indicate whether the actions being taken by the family member reflected the adult's wishes or, if not, whether their actions were a red flag for coercive control. It is critical that enduring documents and other advance planning tools be recognised as a valuable preventative strategy against coercive control.

However, the OPG also recognises the risk that, in some circumstances, enduring documents can be used as a tool for coercive control, as opposed to a preventative mechanism. For example, an adult being subjected to coercive control may be pressured by a family member to nominate them as a decision-maker should the adult lose decision-making capacity. In such a scenario, a person witnessing the document could play a critical role in preventing the abuse being attempted by the perpetrator if alert to the signs that an adult is being pressured to make an enduring document.



This issue highlights the need for heightened awareness amongst those involved in the preparation and witnessing of EPOAs and other advance planning documents, such as lawyers, justices of the peace, commissioners of declarations, and notary publics, on the signs of coercive control.

#### Recommendation 7

Enduring documents and advance planning be recognised and promoted as a valuable preventative strategy against coercive control.

#### Recommendation 8

Heightened awareness by those involved in the preparation and witnessing of Enduring Power of Attorneys and other advance planning documents on the signs of coercive control.

## Restorative justice

In a family dynamic, a victim may be reluctant to pursue criminal charges against a family member, particularly if the perpetrator is their own adult child. In these circumstances, restorative justice could be an effective alternative to the criminal justice system. Restorative justice is an internationally recognised evidence-based response to criminal behaviour, which views a criminal offence as more than an act of breaking the law. It examines the harm caused to the victim, family relationships and the community. Restorative justice provides an opportunity for the victim to tell their story and to hold the person who caused the harm accountable for their actions. It also provides an opportunity for the person who caused the harm to take responsibility for their actions and take steps towards repairing that harm.<sup>1</sup> In order for restorative justice to be an effective tool in cases of coercive control, the specific communication needs of an adult with impaired decision-making capacity would need to be accommodated and if the victim is not able to participate, an independent advocate be available to appear to support and/or represent the victim.

#### Recommendation 9

Restorative justice be considered as an alternative to the criminal justice system in certain cases of coercive control, with supports in place for adults with impaired decision-making capacity.

## Conclusion

The Taskforce can play an important role in helping to mitigate future incidents of coercive control against adults with impaired decision-making capacity. The OPG thanks the Taskforce for the opportunity to provide feedback on the Taskforce's *Discussion Paper 1* and looks forward to the Taskforce's recommendations about improving system responses to coercive control perpetrated against adults with impaired decision-making capacity by family members.

<sup>1</sup> *About adult restorative justice conferencing*, viewed 7 July 2021, Queensland Government <https://www.qld.gov.au/law/legal-mediation-and-justice-of-the-peace/settling-disputes-out-of-court/restorative-justice/about>.