



*Protecting the human rights of adults
with a decision-making disability*

The Public Advocate of Western Australia
Annual Report 2012/13



Government of **Western Australia**
Department of the **Attorney General**

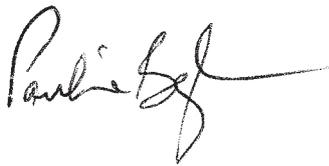


Hon. Michael Mischin MLC
ATTORNEY GENERAL

In accordance with Section 101(1) of the *Guardianship and Administration Act 1990* of Western Australia, I am pleased to submit the Annual Report of the Public Advocate for the year ending 30 June 2013.

This report records the operations and performance of the Office of the Public Advocate during 2012/13. It outlines the issues and general trends impacting upon the human rights of Western Australian adults who have a decision-making disability and come into contact with this Office.

The Office of the Public Advocate reports on financial and administrative matters to the Director General of the Department of the Attorney General.



Pauline Bagdonavicius
PUBLIC ADVOCATE
30 August 2013

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Overview

The Year in Review

During 2012/13, the Office of the Public Advocate (the Office) continued its core function to protect and promote the rights of adults with decision-making disabilities, by providing quality advocacy, investigation, guardianship and education services to the community.

Year-on-year there is mounting pressure on the Office as a result of the growing incidence of dementia in Western Australia's ageing population. Almost 42 per cent of the new appointments of the Public Advocate as guardian of last resort in 2012/13 were for a person with dementia. Similarly, of the 923 new investigations carried out in 2012/13, 45 per cent concerned a person with dementia. This consistent trend is one which will continue in future years. The Public Advocate is also being appointed as guardian for a smaller number of people with a mental illness, a statistic which increases year on year.

As at 30 June 2013, the Public Advocate was guardian of last resort for 1065 people, an increase of 15 per cent over the number as at 30 June 2012, and new investigations were referred by the State Administrative Tribunal for 923 people, a small increase of over four per cent on the previous year.

In recognition of the need to meet the growing demand for advocacy and investigation, and guardianship services, \$5 million of additional funding over four years was allocated to the Office in the 2011/12 State Budget. Four additional staff members were employed during financial year 2012/13 to meet the current demand.

The community education function continued to promote the alternatives available for individuals to appoint substitute decision-makers of their choosing. Over the past four years the Office has been very active in providing education and information sessions to promote awareness of enduring powers of guardianship and advance health directives following changes to the *Guardianship and Administration Act 1990*, introduced into Western Australia in February 2010.

This dedicated community education program was possible due to additional State Government funding of \$1 million over four years which concluded on 30 June 2013. The community education program resulted in the successful delivery of almost 350 information sessions to people across Western Australia during the four year program.

There are now many more community members, as well as health, aged-care and disability sector workers, who have a greater understanding of how these pre-planning documents work.

Educating the community about ways to make provision for their own wellbeing in later life is a key strategy in trying to reduce the need for a formally appointed guardian or administrator in future years.

The Community Guardianship Program matches adults who currently have the Public Advocate appointed as their guardian, with volunteers from the community who are willing and able to take over that guardianship role. At 30 June 2013, the Community Guardianship Program had 19 volunteers, 15 of whom had been appointed by the State Administrative Tribunal as guardian.

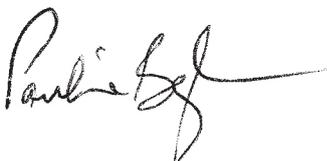
During the year staff worked closely with colleagues at the Public Trustee to see if any of our clients were eligible for compensation under the 'Past abuse and the Country High School Hostels *Ex Gratia* Scheme'. The Public Advocate considered the potential eligibility of more than 300 proposed represented persons or represented persons, beyond the 1400 considered by the Public Trustee. Both offices also worked together to make 17 applications for Aboriginal people who were eligible for Stolen Wages, 16 of which were successful.

As well as the Public Trustee, the Office of the Public Advocate worked with several government and non-government agencies throughout the year. These formal and informal collaborative efforts enabled the Office to make best use of resources and improve services by implementing cross-government department strategies or facilitating community cooperation.

Another significant change for the Office took place in early June 2013, with its relocation to International House at 26 St Georges Terrace. The Office is now located closer to the State Administrative Tribunal, the Public Trustee's Office, and Courts in Perth's central business district.

I would like to acknowledge and thank Cheryl Gwilliam, Director General of the Department of the Attorney General, for her continuing support throughout the year, as well as the many agencies and services which address the needs of people with a decision-making disability.

I would also like to take this opportunity to thank the management team, staff and volunteers at the Office. Their dedication and commitment in their challenging and varied job roles means that the work of the Office happens seamlessly, and together we work to protect and promote the human rights of adults with a decision-making disability.



Pauline Bagdonavicius
PUBLIC ADVOCATE

Overview of the agency

Operational Structure

The Public Advocate is an independent statutory officer appointed by Government under the *Guardianship and Administration Act 1990* which is:

“An Act to provide for the guardianship of adults who need assistance in their personal affairs, for the administration of the estates of persons who need assistance in their financial affairs, to confer on the State Administrative Tribunal jurisdiction in respect of guardianship and administration matters, to provide for the appointment of a public officer with certain functions relative thereto, to provide for enduring powers of attorney, enduring powers of guardianship and advance health directives, and for connected purposes.”

In 2012/13 the Office of the Public Advocate reported on financial and administrative matters to the Director General of the Department of the Attorney General. In accordance with this arrangement, the financial statements of the Office have been published in the Department’s annual report.

In addition to the *Guardianship and Administration Act 1990*, other legislation applies to the Office of the Public Advocate (see Appendix 1).

Mission

The Public Advocate protects and promotes the human rights of adults with a decision-making disability to reduce their risk of abuse, exploitation and neglect.

A person’s ability to make reasoned decisions in their own best interests can be affected by dementia, an intellectual disability, an acquired brain injury, or a mental illness.

Functions

Section 97 of the *Guardianship and Administration Act 1990* sets out the primary functions of the Public Advocate. They include:

- information, advice and training on how to protect the human rights of adults with a decision-making disability
- investigation of concerns about the wellbeing of adults with a decision-making disability and whether there is a need for an application for a guardian or administrator
- investigation of specified applications made to the State Administrative Tribunal to assist it to determine whether a guardian or administrator should be appointed
- guardianship (for personal, lifestyle and treatment related decisions) when the State Administrative Tribunal determines that there is no one else suitable, willing and available to act as the person’s guardian.

Values

Five principles set out in Section 4 of the *Guardianship and Administration Act 1990* guide the Office of the Public Advocate in the provision of all services. Broadly they are:

- **Presumption of competence**

Every person is presumed to be capable of managing their own affairs and making reasonable judgements about themselves, their safety and their finances unless this is proved to the contrary.

- **Best interests**

The primary concern is the best interests of the person with the decision-making disability.

- **Least restrictive alternative**

A guardian or administrator is only appointed when a person's needs can no longer be met in a less restrictive way, without impacting on their freedom of decision and action.

- **Limited versus plenary**

The authority of an appointed guardian or administrator will be limited to those areas in which the person with a decision-making disability needs the greatest decision-making support.

- **Current wishes and previous actions**

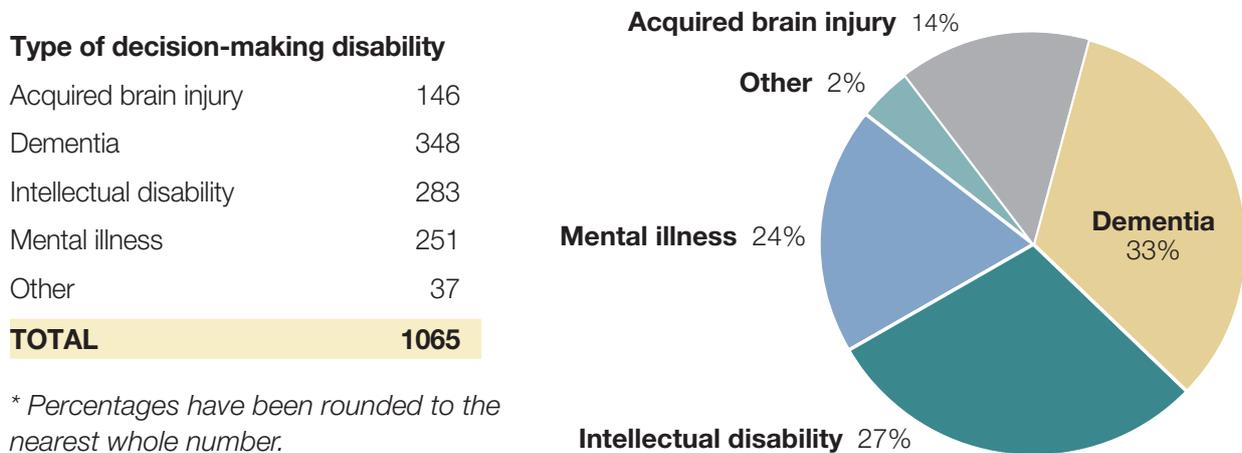
The views and wishes of the person concerned are sought to the extent possible and expressed in whatever manner, either at the time or gathered from the person's previous actions.

Stakeholders

The Office of the Public Advocate's primary stakeholders are adults with a decision-making disability. A decision-making disability can result from dementia, an intellectual disability, an acquired brain injury or a mental illness.

At 30 June 2013, 1065 adults with a decision-making disability were represented by the Public Advocate as their guardian of last resort. Of these 1065 adults – referred to as represented persons – 33 per cent had dementia, 27 per cent an intellectual disability, 24 per cent a mental illness, 14 per cent an acquired brain injury and two per cent had some other form of decision-making disability (see Figure 1).

Figure 1 Profile of all guardianship orders appointing the Public Advocate by type of decision-making disability as at 30 June 2013



The number of people for whom the Public Advocate is guardian, has more than doubled over the past four years, from 484 in June 2009 to 1065 in June 2013 (see Figure 2).

Figure 2 People under guardianship orders appointing the Public Advocate by type of decision-making disability as at 30 June 2013

Type of decision-making disability	2009	2010	2011	2012	2013
Acquired brain injury	62	87	114	130	146
Dementia	157	195	249	297	348
Intellectual disability	156	176	221	263	283
Mental illness	86	114	154	207	251
Other	23	24	21	31	37
Total	484	596	759	928	1065

While the most significant demographic trend impacting on the growing rate of represented persons is the ageing of the population, mental illness continues to emerge as an area of growth. The number of people with a mental illness for whom the Public Advocate is guardian, has almost trebled over the past four years, from 86 in June 2009 to 251 in June 2013 (see Figure 2).

Dementia

A 2012 report by the Australian Institute of Health and Welfare entitled '*Dementia in Australia*¹' estimated that 298,000 Australians had dementia in 2011, of whom 62 per cent were women, 74 per cent were aged 75 and over, and 70 per cent lived in the community.

1 Australian Institute of Health and Welfare 2012. *Dementia in Australia*. Cat. no. AGE 70. Canberra: AIHW. ISBN 978-1-74249-349-7. Pages ix, 21, 22, 99 & 147

Although projection methods vary, the report notes that the number of people with dementia is projected to reach almost 400,000 by 2020, and around 900,000 by 2050. The projected rates of prevalence suggest that the Office of the Public Advocate can expect continued and significant growth in the number of represented persons.

The same report also estimated that the number of Western Australians with dementia will grow from 26,900 in 2011 to 38,800 in 2020, an increase of 44 per cent. The extent of change in the number of people in Australia estimated to have dementia by 2020 varied considerably across the jurisdictions, with the greatest increase (51 per cent) expected to be seen in the Northern Territory, followed by relatively large growth in Western Australia and Queensland (both 44 per cent).

In the previous '*Dementia in Australia*' report (AIHW 2007), information from Western Australia was used to estimate that 5 per cent of Home and Community Care (HACC) funding was for people with dementia. Using data from 2010 based on the assessment of 12,000 clients by Silver Chain (a major provider of HACC services in Western Australia), the Australian Institute of Health and Welfare estimates that 10.2 per cent of HACC clients aged 60 years and over had dementia in 2009/10.

Intellectual disability

The most commonly reported disability in Western Australia for people who received services under the National Disability Agreement is intellectual disability.² The Disability Services Commission of Western Australia funded and provided services to 22,808 people, of which 7,960 were Western Australians with intellectual disability as their primary condition in 2012/13.³

Acquired brain injury

An acquired brain injury results in deterioration of cognitive, physical, emotional or independent functions and can occur as a result of trauma, hypoxia, infection, alcohol and substance abuse, degenerative neurological disease or stroke. In 2007, the Australian Institute of Health and Welfare estimated that people aged 65 years or over were more than twice as likely as those aged less than 65 years to have an acquired brain injury with activity limitations or participation restrictions.⁴

In 2012/13 the Disability Services Commission funded and provided services to 818 Western Australians with an acquired brain injury reported as their primary disabling condition.⁵

Mental illness

In the 2007 National Survey of Mental Health and Wellbeing Survey, it was estimated that approximately 20 per cent of all Australians aged 16-85 years had experienced mental

2 SCRGSP (Steering Committee for the Review of Government Service Provision) 2009. *Report on Government Services 2009*, Productivity Commission, Canberra. p.14.15 and Table 14a.13 Use of CSTDA Services by Primary Disability Group.

3 Disability Services Commission, 2013. Data request; Disability Services Commission methodology in calculation of numbers was amended in 2010/11. The data does not include users of Community Aids and the Equipment Program.

4 Australian Institute of Health and Welfare 2007. *Disability in Australia: acquired brain injury*. Bulletin no.55. Cat. No. AUS96. Canberra:AIHW, p.1.

5 Disability Services Commission, 2013. Data request; Disability Services Commission methodology in calculation of numbers was amended in 2010/11. The data does not include users of Community Aids and the Equipment Program.

disorders in the previous 12 months. The prevalence of mental disorders declines with age from more than one in four (26.4 per cent) in the youngest age group (16-24 years) and to around one in 20 (5.9 per cent) in the oldest age group (75-85 years).⁶

This remains consistent with earlier reports such as the 1997 National Mental Health and Wellbeing Survey,⁷ in which it was estimated that around 19 per cent of people in Western Australia had experienced a mental disorder in the previous 12 months, with the prevalence being highest amongst those aged 18-24 years and decreasing with age. Six percent of Western Australians aged 65 years and over reported some form of mental disorder. The prevalence of high or very high psychological distress in Western Australia was 9.2 per cent in 2004.⁸

Secondary stakeholders

The people and organisations who provide support and/or assistance to adults with a decision-making disability, make up the Office of the Public Advocate's secondary stakeholders. These include:

- unpaid carers (this can include family and friends who provide ongoing support and assistance in an unpaid capacity⁹)
- paid carers
- government and non-government organisations.

Potential stakeholders

Adults who do not have a decision-making disability but who seek to safeguard their future decision-making by completing an enduring power of attorney and/or an enduring power of guardianship, make up the Office of the Public Advocate's potential stakeholders.

People who have been appointed as attorney (under an enduring power of attorney) or an enduring guardian (under an enduring power of guardianship) are also potential stakeholders.

Agency stakeholders

These are government and non-government agencies and organisations in the disability, aged, health, legal, financial, justice and community sectors with an interest in protecting the human rights of adults with a decision-making disability.

Resources

The role and functions of the Public Advocate in 2012/13 were supported by:

- approved establishment of 46.8 (full-time equivalent) staff
- expenditure of \$5,933,000¹⁰

6 Slade, T., Johnston, A., Teesson, M., Whiteford, H., Burgess, P., Pirkis, J., Saw, S. 2009. *The Mental Health of Australians 2. Report on the 2007 National Survey of Mental Health and Wellbeing*. Department of Health and Ageing, Canberra. p.xii.

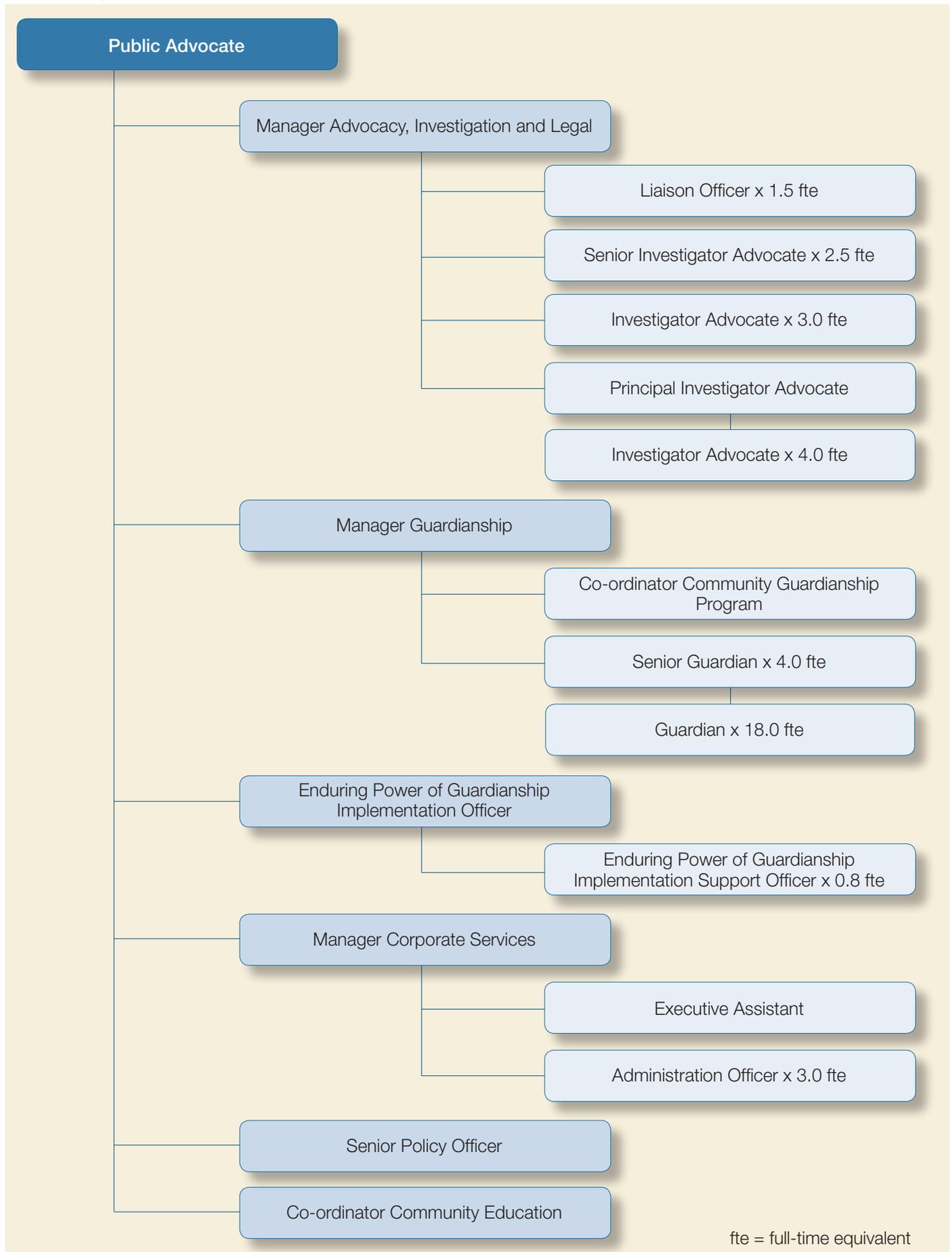
7 This survey was repeated in 2007 but no state or territory data was obtained.

8 Australian Bureau of Statistics, 1999. *Mental Health and wellbeing: profile of Australian Adults. Western Australia 1997-1998*. ABS Catalogue No. 4326.5 Canberra: ABS reported in Health Measures 2005: a report on the health of the People of Western Australia; Department of Health, 2005, p.222.

9 *Carers Recognition Act 2004*.

10 Expenditure includes shared Department of the Attorney General corporate support.

Organisational Chart



Performance Management Framework

The performance of the Public Advocate is assessed under the Performance Management Framework established by the Department of the Attorney General.

Government goal

The work of the Office of the Public Advocate reflects the State Government goal of:

Results-based service delivery: greater focus on achieving results in key service delivery areas for the benefit of all Western Australians.

Department of the Attorney General purpose

The Department of the Attorney General provides high quality and accessible justice, legal, registry, guardianship and trustee services which meet the needs of the community and government.

This supports justice outcomes and opportunities for current and future generations.

In particular, the Department directly contributes to a greater focus on achieving results in key service delivery areas for the benefit of all Western Australians.

Office of the Public Advocate services

Within the above framework, the Office of the Public Advocate provides access to advocacy, guardianship and administration services which protect and promote the financial interests and welfare of adults with a decision-making disability by providing:

- advocacy and investigation services
- advocacy for the appropriate appointment of guardians and administrators and appropriate interventions in relation to enduring powers of attorney and enduring powers of guardianship
- community education services regarding the guardianship and administration system
- guardianship and administration services provided by the Public Advocate.

Cross-agency initiatives

The Office of the Public Advocate works closely with the Public Trustee with regard to administration matters. The two offices work together in providing training for private administrators, so that they can better understand their role and responsibilities.

Throughout 2012/13 the collaborative work continued with the Department of Health in relation to the introduction of enduring powers of guardianship and advance health directives, following changes to the *Guardianship and Administration Act 1990*, in February 2010. The Office of the Public Advocate is responsible for the implementation of enduring powers of guardianship and the Department of Health is responsible for advance health directives.

Other cross-agency initiatives are discussed in the Systemic Advocacy section of this report.

Agency Performance

Advocacy and Investigation

The Public Advocate investigates, advocates and provides recommendations on the need for guardianship and administration in the best interests of adults with a decision-making disability.

The investigation and advocacy functions of the Office of the Public Advocate include:

- examining and reporting at hearings of the State Administrative Tribunal on whether it is in the best interests of an adult with a decision-making disability to have a guardian or administrator appointed
- advocating for the appointment of a guardian or administrator when appropriate and in the best interests of the person with the decision-making disability when there is no other way of meeting the person's needs
- investigating any complaint or allegation from the public that a person with a decision-making disability may be at risk of abuse, exploitation or neglect and may be in need of a guardian or administrator or is under an inappropriate order
- investigating whether a person held in custody under the *Criminal Law (Mentally Impaired Accused) Act 1996* is in need of a guardian or administrator
- providing on-site assistance to the State Administrative Tribunal through the liaison officers, by conducting brief investigations and providing advice to Tribunal staff
- informing and advising government, community and business organisations on the best interests of adults with a decision-making disability in the development of legislation, policies and services.

In carrying out their enquiries, investigator advocates interview family, friends and service providers and seek the views of the person who is the subject of the application. They often prepare a detailed report to assist the State Administrative Tribunal with its deliberations about what is in the person's best interests.

Throughout the investigation, investigator advocates advance the best interests of the person with the decision-making disability. They explore whether there are less restrictive means for resolving the concerns outlined in an application for the appointment of a guardian or administrator, including advising which community services could assist the person with a decision-making disability.

The Year in Review

In 2012/13, the Public Advocate carried out 1264 investigations into the personal or financial welfare of adults with a decision-making disability. These included new matters and matters carried over from 2011/12. Of these, 1098 needed investigation and advocacy relating to applications for, or reviews of, administration or guardianship orders before the State Administrative Tribunal. The remaining 166 investigations were referred directly to the Public Advocate by a member of the public or a community-based organisation, or another government agency or body.

An additional 469 preliminary investigations were carried out by liaison officers, a decrease on the 567 preliminary investigations carried out in 2011/12.

Investigations referred by the State Administrative Tribunal

There were 923 new investigations referred by the State Administrative Tribunal. These comprised of applications regarding guardianship, administration, enduring powers of attorney, enduring powers of guardianship and reviews of administration or private guardianship orders.

As in 2011/12 guardianship order reviews where the Public Advocate was appointed as a guardian have been captured in the guardianship statistics and are reported in that section of the report.

New investigations have risen from 884 in 2011/12 to 923 in 2012/13 – representing an increase of 4.4 per cent. In the previous financial year an increase of 17.7 per cent had been reported.

The State Administrative Tribunal requested the attendance of an investigator advocate at 113 urgent hearings in 2012/13. There was a continued demand on the Office's resources to attend hearings at short notice to represent the best interests of proposed represented persons.

Investigator advocates are confronted with many and varied issues in their investigations, and they require a range of skills in order to identify and respond to the situations which arise in the course of their investigations. The following case study titled 'Assisting families to remain in the community' provides an example of an Investigator Advocate's work in relation to an investigation referred to the Office by the State Administrative Tribunal.

Case Study

Assisting families to remain in the community.

A community organisation made applications to the State Administrative Tribunal for the appointment of a guardian and administrator for Ms B who was living at home with her mother and adult brother and expressed a clear wish to remain living with them.

In the application it was reported that Ms B had a progressive neurological condition causing memory loss and decreasing Ms B's ability to manage in the home.

The State Administrative Tribunal referred the applications to the Public Advocate for investigation, and to gather more information prior to the hearing.

When the investigator advocate visited Ms B and her family it was found that due to non-payment of bills there was no power in the home. The house was also very cluttered, putting all the occupants at risk of falling and possible hospitalisation.

In meeting with Ms B the investigator advocate became concerned about how decisions were being made in the best interests of all family members. It was apparent that they may all have some level of cognitive impairment and as a result were unable to make decisions in their own best interests.

The investigator advocate provided a report to the Tribunal in relation to Ms B and continued to conduct a community referred investigation in relation to the rest of the family. The Public Advocate and Public Trustee were appointed for Ms B.

After gathering further information the Public Advocate submitted applications for the appointment of a guardian and administrator for Mrs B and her son, Mr B. At the Tribunal hearing the Public Advocate and Public Trustee were appointed for Mrs B and her son, Mr B.

The Public Advocate's authority included the authority to make decisions about the services to which the family should have access. Through working with the family and liaising with various community support agencies, sufficient supports were put in place to enable all three family members to continue living at home in accordance with their wishes.

Note: In all case study examples, names and details have been changed to protect confidentiality. Bullet points denote a reference to the *Guardianship and Administration Act 1990*.

Liaison officers

The role of the Office of the Public Advocate's liaison officers is to respond to requests from the State Administrative Tribunal with advice regarding applications, and make recommendations to the Tribunal about the options available, including referral to the Public Advocate for further investigation. Since the State Administrative Tribunal began operating in 2005, the Office of the Public Advocate's liaison officers have been located at the Tribunal to facilitate this service.

The liaison officers may advise and liaise with Tribunal Members, Tribunal administrative staff, family members, service providers and other interested parties involved in the application process.

With the introduction of a new case management approach in the Human Rights stream, the number of referrals from the Tribunal has decreased slightly from the previous financial year. In 2012/13, the liaison officers conducted preliminary investigations into 469 applications for guardianship, administration and intervention in enduring powers of attorney and enduring powers of guardianship.

Following the introduction of enduring powers of guardianship in February 2010, the liaison officers have been involved in ten investigations regarding possible intervention into the powers during 2012/13, compared to nine in 2011/12.

Community-referred investigations

Section 97 (1)(c) of the *Guardianship and Administration Act 1990* gives the Public Advocate the power to conduct investigations into matters referred by the community, about a person of concern where they may have a decision-making disability. Referrals come from a wide variety of sources and in 2012/13, they came from people including family members, friends and neighbours of adults with impaired or suspected impaired decision-making ability; members of the community; human service support agencies; and government and non-government agencies.

In total 166 such referrals were reviewed by the Office in 2012/13, an increase of 24 referrals from the previous year. Of those 166, 104 were closed during the financial year and 62 remained open at 30 June 2013. In most cases, the focus of the community-referred investigation was to establish whether the person required a guardian or administrator, or was under an inappropriate order.

Some investigations take considerable time to obtain critical information such as medical records, to enable the Public Advocate to establish whether an application to the State Administrative Tribunal should be made. The legislation does not provide the Public Advocate with the power to demand information from parties and this can constrain some investigations in which claims of financial or other forms of abuse, cannot be substantiated.

Occasionally the Public Advocate is asked to investigate the concerns of family members who are unable to resolve longstanding disputes or disharmony themselves.

The following case study titled 'Where family conflict does not always mean an independent appointment' provides an example of an investigator advocate's work in relation to a case which involved a dispute between family members.

Case Study

Where family conflict does not always mean an independent appointment.

Mr Y has an acquired brain injury following an assault.

Mrs O had made an application to be appointed guardian for her brother, Mr Y. The State Administrative Tribunal then referred the application for guardianship to the Public Advocate for investigation.

Mr Y was fully dependent on carers for all his personal needs, and his wife had been his primary carer since he returned home. In the application Mrs O said that her brother's wife was the appointed administrator and had been doing well in the role.

Mrs O reported that circumstances had recently changed and she was concerned that Mrs Y may be wishing to separate from her husband, which would have an impact on his living arrangements. There appeared to be some conflict between family members, and Mrs O indicated she now had less confidence in Mrs Y.

Mrs O sought to be appointed as guardian for her brother to make decisions about his care and support. In particular, she wanted to make sure he did not go into residential care as she was agreeable to Mr Y living with her if alternative accommodation were needed.

In conducting the investigation the investigator advocate met with Mr and Mrs Y, as well as Mrs O and other relatives of Mr Y.

It was apparent in the meetings that while there was some conflict between people they all had the best interests of Mr Y as their main concern. It was also apparent that all the family were to some degree experiencing carers' stress and grief about the events which had led to Mr Y having an acquired brain injury.

Mr Y was able to tell the investigator advocate that he did not wish to move into residential care. Further exploration of this matter with Mrs Y revealed that she was not planning to move Mr Y into residential care but had been talking to him and his family about some further rehabilitation.

This would take place in a residential facility but was not proposed as a permanent living arrangement. Some misunderstanding had occurred, and alongside the possibility of the couple separating, some conflict had arisen.

In relation to her role as administrator, Mrs Y no longer wished to continue. In light of a possible separation there was a perceived conflict of interest. At the hearing the Public Trustee was appointed plenary administrator.

In relation to guardianship, initially it was considered that the Public Advocate should be appointed due to conflict. With further exploration of the views of all the parties at the hearing it was decided that Mr Y's sister could be appointed his guardian.

The hearing was able to bring clarity to the discussion about where Mr Y should live, and all parties demonstrated a greater understanding of each others' perspectives and accepted that they all wanted the best for Mr Y.

It was necessary to consider who to appoint – and in doing this section 44 of the *Guardianship and Administration Act 1990* identifies the areas for consideration as:

- someone who will act in the person's best interests
- someone who does not have any conflicting interests
- preserving existing relationships
- the wishes of the person concerned
- the ability of the proposed persons to perform the functions of guardian.

As the investigation and hearing process had clarified concerns and enabled a greater understanding of each party's situation the Tribunal decided to appoint Mrs O as the guardian. It was determined that she would act appropriately, and she understood the need to maintain the relationships Mr Y had with his wife and their daughter.

Despite the initial conflict there was no need to appoint the Public Advocate as guardian as family members were able to demonstrate they would act in the best interests of Mr Y.

Advocacy

In addition to conducting investigations, it is the role of investigator advocates to advocate in the best interests of people for whom a guardianship and/or administration order is being proposed (proposed represented persons), at hearings before the State Administrative Tribunal. In 2012/13, they did so at a total of 923 hearings; a 35 per cent increase on the 684 hearings in the previous financial year.

Collaboration with other States and Territories

Throughout the year, both the guardianship team and the advocacy and investigation team were contacted by interstate counterparts regarding vulnerable adults who were either under guardianship orders in that State or Territory, or were the subject of an application proposing that they have a guardian appointed. These people had left their State or Territory without notice and were reported to be residing in Western Australia. Where possible, staff try to assist their counterparts to ensure the safety and protection of these vulnerable adults.

Issues for Advocacy and Investigation

Financial abuse of the elderly

The continued demand for the Office of the Public Advocate to conduct investigations into the personal or financial welfare of adults with a decision-making disability can largely be attributed to Western Australia's ageing population.

In a significant proportion of the investigations carried out in 2012/13, financial abuse was the main reason for the application being made to the State Administrative Tribunal. Other reasons included disputes within families about where a person should reside or what medical treatment they should receive. Many older Western Australians do not have support networks such as family and friends to assist them when they lose the capacity to make their own decisions. This often results in the appointment of the Public Advocate and/or the Public Trustee being necessary.

The information collected by this Office indicates that elder abuse was a concern in 117 of the 923 investigations, and of this 66 per cent related to financial abuse (see Figure 6). This abuse occurred in the absence of a substitute decision-maker – and by a person who saw the opportunity to exploit an individual. Often this occurs where a person is socially isolated or dependent on their family for support.

This Office looks at the importance of balancing the possibility of abuse with the protection afforded by appointing someone to oversee the individual's care and support.

Transition of young people leaving State care

A key role for the Office's principal investigator advocate is to work collaboratively with the Department for Child Protection and Family Support and other related service providers, to assist in the planning for young people with a decision-making disability, who are transitioning from State care at 18 years of age.

Wherever possible, the principal investigator advocate attends leaving care planning meetings for young people aged 16 years and over, and provides advocacy at the State Administrative Tribunal, where applications have been made for the appointment of a guardian and/or an administrator. This involvement is consistent with the memorandum of understanding between the two agencies.

Of the 19 applications by the Department for young people turning 18 years of age in 2012/13, the Tribunal appointed the Public Advocate as guardian of last resort for 17 young people, an increase from nine young people in 2011/12.

Court referrals

The Children's, Family, Magistrates and Supreme Courts continue to seek the advice of the Public Advocate when there are concerns that a person appearing before the court (in civil matters) is unable to understand proceedings and may need a guardian to assist.

While the number of court referrals received by the Office are few, the investigation work involved requires considerable time and effort to seek evidence about the proposed represented person's background and their capacity to participate in the matter before the court. In most cases the court has very little information about the person's capacity and therefore considerable effort is taken to gather this information, and respond within the courts' timeframes. The powers afforded under the *Guardianship and Administration Act 1990* do not authorise the Public Advocate to compel parties to provide information.

Our Customers

Of the 923 new matters referred to the Public Advocate for investigation by the State Administrative Tribunal in 2012/13, 419 of them (45 per cent) involved a person with dementia, while 19 per cent had a mental illness, 16 per cent an acquired brain injury, 14 per cent an intellectual disability and six per cent had another decision-making disability (see Figure 3).

Guardianship matters (personal, lifestyle and treatment) were once again the dominating factor in investigations this year, with 68 per cent of applications reporting decisions about matters such as accommodation, medical treatment and service provision, being required for the proposed represented person. Financial concerns (including enduring powers of attorney) accounted for 32 per cent of investigations (see Figure 4).

The introduction of enduring powers of guardianship (in February 2010) allowed adults to choose who would make their personal, lifestyle and treatment decisions if they lost capacity, therefore avoiding potential conflict.

Avoiding conflict altogether however, is not possible and subsequently a small number of applications, where an enduring power of guardianship had been made, went to the State Administrative Tribunal. Generally these focused on the capacity of the person to make the power and whether (or not) the enduring guardian was acting in the person's best interests.

People with a decision-making disability are vulnerable to abuse. Allegations of abuse were made in 193 of the 923 new investigation matters received by the Office of the Public Advocate in 2012/13 (see Figure 5). Again this year, the most commonly reported form of abuse was financial, accounting for 57 per cent of all allegations. This was followed by psychological abuse (15 per cent), neglect (14 per cent), physical abuse (eight per cent), sexual abuse (six per cent), some of which relates to historical abuse which was revealed during the investigation.

In 117 of the investigations of alleged abuse, the victim was 65 years or older (see Figure 6). Financial abuse of those 65 or older, was significantly higher (66 per cent) than other reported forms of abuse.

Most new investigations (75 per cent) were carried out in the metropolitan area (see Figure 7). Seven per cent of the 923 new matters referred for investigation in 2012/13 were regarding a person of Aboriginal or Torres Strait Islander descent (see Figure 8).

Figure 3 Profile of new investigations by type of decision-making disability 2012/13

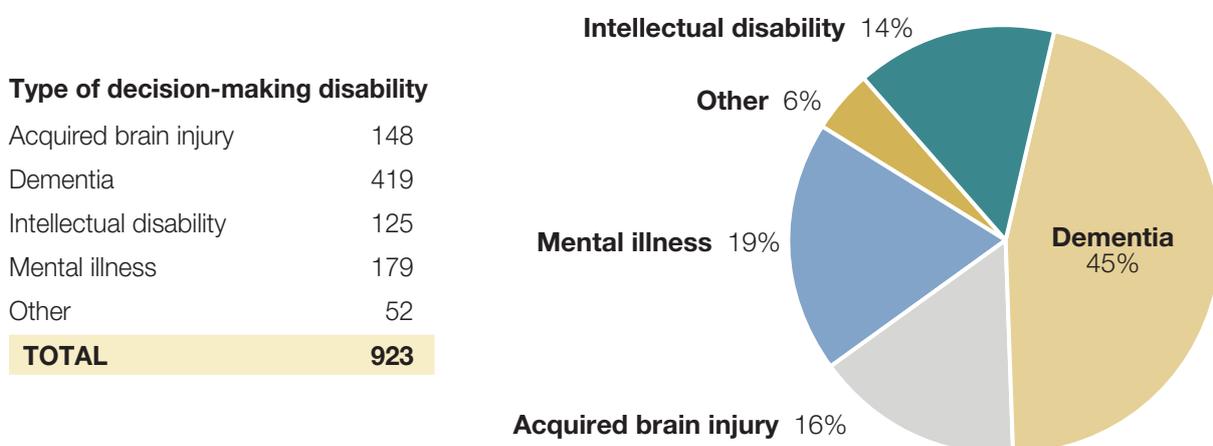
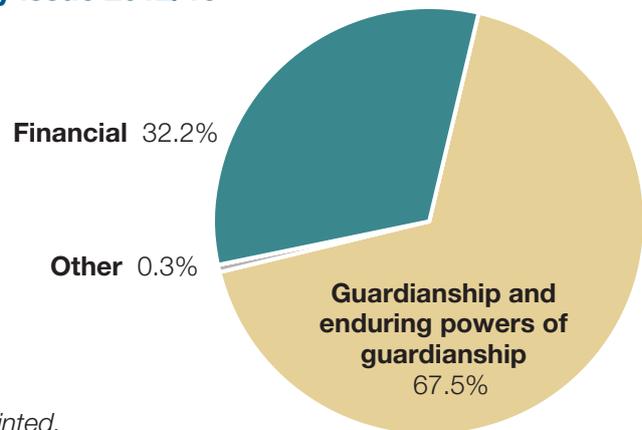


Figure 4 Profile of new investigations by issue 2012/13

Issue

Financial (administration and enduring powers of attorney)	298
Guardianship* and enduring powers of guardianship	623
Other	2
TOTAL	923

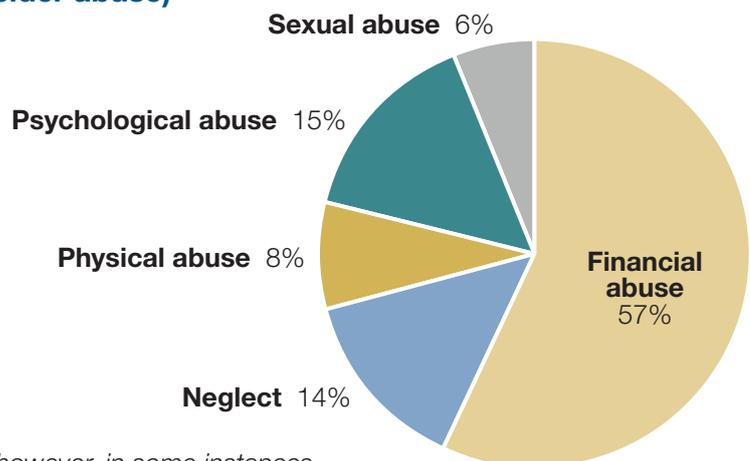


*including reviews of guardianship orders where someone other than the Public Advocate was appointed.

Figure 5 Profile of new investigations alleging abuse by type of abuse 2012/13 (including statistics of elder abuse)

Abuse type 193 investigations*

Financial abuse	166
Neglect	41
Physical abuse	23
Psychological abuse	42
Sexual abuse	18
TOTAL	290



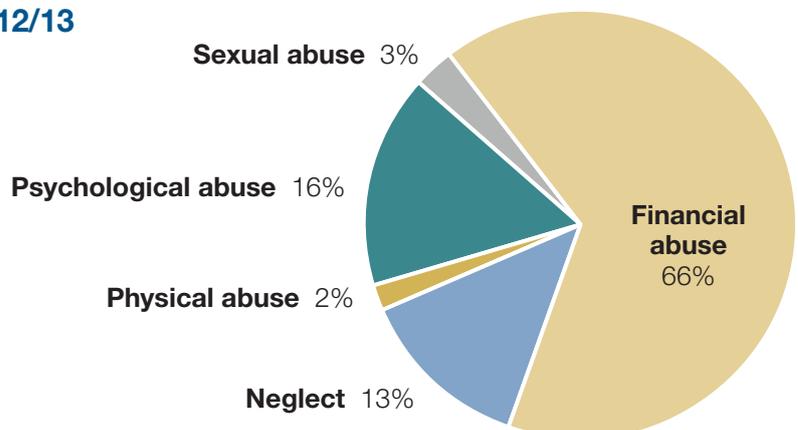
*Abuse was alleged in 193 investigations, however, in some instances more than one alleged abuse type was reported in the application.

Note - The abuse may relate to historical abuse which was revealed during the investigation.

Figure 6 Profile of new investigations alleging elder abuse (aged 65 or older) by type of abuse 2012/13

Abuse type 117 investigations*

Financial abuse	108
Neglect	22
Physical abuse	3
Psychological abuse	26
Sexual abuse	4
TOTAL	163

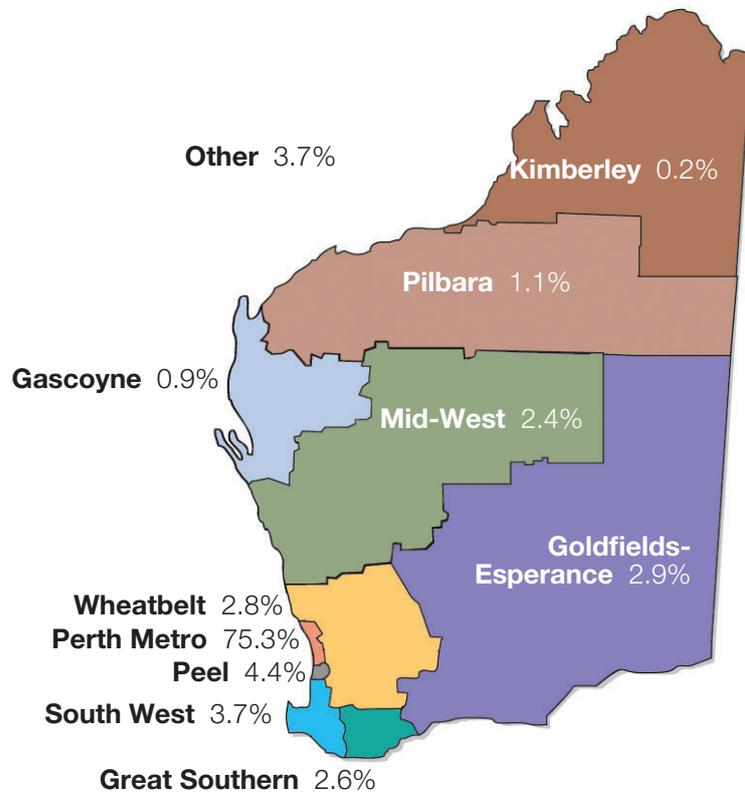


*Elder abuse was alleged in 117 investigations, however, in some instances more than one alleged abuse type was reported in the application.

Note - The abuse may relate to historical abuse which was revealed during the investigation.

Figure 7 Profile of new investigations by geographical location 2012/13**Geographical location**

Gascoyne	8
Goldfields-Esperance	27
Great Southern	24
Kimberley	2
Mid-West	22
Peel	41
Perth Metro	695
Pilbara	10
South West	34
Wheatbelt	26
Other	39
Total	923

**Figure 8 Profile of new investigations by Aboriginality or Torres Strait Islander descent from 2008/09 to 2012/13**

Year	Total	Non ATSI*	ATSI*	ATSI* as a percentage of total
2008/09	833	777	56	7
2009/10	896	808	88	10
2010/11	989	901	88	9
2011/12	884	818	66	7
2012/13	923	854	69	7

*ATSI = Aboriginal or Torres Strait Islander

Case Study

Where similar circumstances may not lead to the same outcome.

During the course of an investigation a service provider talked to the Office of the Public Advocate's investigator advocate about her concerns for another client who attended the day facility. The service provider subsequently put these concerns in writing and a community referred investigation was opened.

The person concerned was a young woman, Ms H, and the service provider was able to provide reports to confirm that she was diagnosed with an intellectual disability and as a result was seen as being unable to make decisions in her own best interests.

Information about the capacity of a person when a community-referred investigation is made is critical, since the Office of the Public Advocate may have a key role in protecting people with a decision-making disability from abuse or neglect.

The service provider had been monitoring Ms H for a period of months, and had concerns in a number of areas that suggested she was being neglected within the home and possibly did not have proper access to her money to pay for her daily needs.

The concerns included Ms H attending activities in old and dirty clothes and appearing not to have showered, and she was reporting others in the house were hitting her.

There was also uncertainty about how well she was being fed as lunch was not regularly sent and when it was the food was sometimes mouldy. The service provider reported when discussing concerns with Ms H's mother that she was quite vague about what was happening at home and about how the Ms H's money was managed.

In conducting the investigation the investigator advocate met with the mother of Ms H, and also found a number of other service providers who were in contact with the family. While the mother initially denied some of the reports of the appearance of her daughter, it was clear that there was a lack of oversight in relation to how her money was managed.

At the first meeting a second service provider was involved in supporting the mother and with her help the investigator advocate explored the issues and looked at how the matters could be addressed so that concerns about Ms H's well being would be reduced.

The investigation took a period of six months to enable the services to be engaged and trialled to see if this would improve Ms H's circumstances. In assessing the case to determine if it was necessary to apply for a guardianship order it was clear that the circumstances for Ms H had improved; there were processes in place to apply for support funding, and services had been engaged. Ms H now appeared at the day activity showered and in clean clothes, with a packed lunch.

It was determined that as a result of the Office of the Public Advocate's investigation process there were now appropriate less restrictive alternatives to the appointment of a guardian in place, through the oversight being provided by a range of services. As the situation had improved, and all services were aware of how to contact the Office of the Public Advocate should this change, there was no current need for a guardianship order.

In relation to administration the outcome of the community referred investigation was that there had been no improvement in how Ms H's money was managed. An application for administration was submitted, and as a result the Public Trustee was appointed as administrator.

The above case study demonstrates how, even where the situation suggests it will not be possible to improve the person's circumstances without the appointment of a guardian, the involvement of the Office of the Public Advocate can have very positive results without the need for a guardianship order.

However, in the same year the Office received another referral from the community where the person, Ms R, was in very similar circumstances.

The investigator advocate made several attempts to meet with the family of Ms R, but these were not successful. As it was not possible to discuss the situation with the family it was difficult for the investigator advocate to explore other ways to improve the person's circumstances.

There were continuing reports that Ms R was being neglected in the home environment. Due to the significant concerns presented, the Public Advocate made applications for guardianship and administration for Ms R. At the hearing the Public Advocate was appointed guardian and the Public Trustee administrator for Ms R.

As the allegations of neglect and abuse were serious the Public Advocate had been working with service providers to identify alternative accommodation for Ms R to move into should the Public Advocate be appointed.

After the appointment the delegated guardian met with Ms R who had already been told that there was a different place for her to live if she wished to move.

Ms R stated clearly that she did not want to remain at her current home and she said she was looking forward to being able to move out.

Since moving Ms R has improved in health and is able to engage in more activities than previously. She also has more contact with her family with support from her carers. In this case, the improvement in Ms R's situation could not have been achieved without the appropriate authority in place.

Guardianship

The Public Advocate makes personal, lifestyle and treatment¹¹ decisions in the best interests of an adult with a decision-making disability when the State Administrative Tribunal determines there is no one else suitable, willing and available to be appointed as that person's guardian, and appoints the Public Advocate.

The guardianship functions of the Office of the Public Advocate include:

- ensuring that timely decisions are made in the best interests of the represented person
- protecting the represented person from abuse, exploitation and neglect
- ensuring wherever possible that the decisions made on behalf of the person with the decision-making disability:
 - o take into account the expressed wishes of the represented person or reflect their previous wishes and actions
 - o preserve personal autonomy
 - o enable the person to live and participate in the community
 - o encourage and assist the person to make judgments and become capable of caring for themselves
 - o are supportive of the person's relationships with others
 - o maintain familiar cultural, language and religious practices and contacts.

The Year in Review

In 2012/13 there were 371 new appointments of the Public Advocate as guardian of last resort, compared to 347 new appointments in 2011/12. The Public Advocate also accepted appointments on the death of a private guardian in three additional cases.

At 30 June 2013, the Public Advocate had responsibility as guardian of last resort for 1065 adults with a decision-making disability, compared to 928 at 30 June 2012, representing an increase of 14.8 per cent.

During the year, the Public Advocate made personal, lifestyle and treatment decisions for a total of 1593 people compared to 1351 in 2011/12. These decisions covered a range of personal circumstances including:

- treatment decisions in relation to medical treatment, palliative care, contraception and surgery
- locating appropriate accommodation for people with a range of support needs in the disability, aged-care and health care sectors
- determining the need for chemical or physical restraint
- acting as 'next friend' in relation to child protection matters on behalf of represented persons.

¹¹ Treatment refers to any medical, surgical, or dental treatment or other health care, including a life-sustaining measure or palliative care.

For the sixth year running, people with dementia accounted for the largest proportion of new appointments of the Public Advocate as guardian of last resort. Of the 371 people newly appointed in 2012/13, 157 had dementia (42 per cent) (see Figure 10). This is a reflection of the ageing population, the subsequent increasing prevalence of dementia in the community and the growing number of people without family or friends who are suitable, willing and available to take on the role of decision-maker.

The Public Advocate allocated a guardian to a represented person within one working day of notification of appointment in 96 per cent of cases. This exceeds the 95 per cent target set for this measure of timeliness.

To meet the needs of the Office's 144 represented persons of Aboriginal or Torres Strait Islander descent, guardians liaised with Aboriginal agencies, service providers, Aboriginal community members and their families to ensure culturally appropriate practices were adopted where possible.

Advocacy at reviews of guardianship orders appointing the Public Advocate

Guardians from the Office of the Public Advocate attend State Administrative Tribunal review hearings and advocate in the best interests of people for whom a guardianship order has been made, in which the Public Advocate has been appointed as their guardian.

In 2012/13, the guardianship team received 232 notices of hearing from the State Administrative Tribunal, for which they attended Tribunal hearings and advocated in the best interests of the represented person.

Community guardianship program

The Office of the Public Advocate's community guardianship program matches adults who currently have the Public Advocate appointed as their guardian, with volunteers from the community who are willing and able to take over that guardianship role.

The role of a community guardian is unique in terms of the long term commitment and responsibility a volunteer community guardian takes on. The process which leads to the matching and eventual appointment of a community guardian is one that focuses on selective recruitment and the provision of on-going training and support to volunteers.

At 30 June 2013, the program had 19 volunteer community guardians. Of these, 15 had been appointed by the State Administrative Tribunal as their represented person's guardian, replacing the Public Advocate and providing a more personal level of involvement in their life.

Since the program started in 2005, every volunteer guardian who has been appointed by the Tribunal continues to hold that legally appointed role.

The following case study titled 'Supporting a family reunion' provides an example of how the Community Guardianship Program operates to match volunteers with represented persons, and to provide beneficial outcomes.

Case Study

Supporting a family reunion: Community Guardianship Program volunteer assistance.

Mrs D has lived in care since she was a child. Initially she was deemed to have a mild intellectual disability. Later, she was diagnosed as having a mental health illness and received care in residential mental health facilities.

In 2010 an application was made to the State Administrative Tribunal for guardianship for Mrs D. The Public Advocate was appointed limited guardian to make decisions for her regarding accommodation, treatment and health care. The guardian consented to Mrs D moving into an aged care hostel where she settled very well.

As Mrs D was well settled in her accommodation and there were minimal decisions to be made, she was considered as someone suitable to be entered into the community guardianship program. In February 2012 Mrs D was matched with a Community Guardianship volunteer and they started to build a relationship with each other.

Shortly afterwards, one of Mrs D's daughters contacted the State Administrative Tribunal seeking to meet her mother, with whom she had not had contact for many years. Due to concerns regarding the possible impact of meeting her daughter, the Public Advocate was appointed with contact authority to oversee the reunion.

After consultation with relevant health professionals, it was decided that it would be in Mrs D's best interests to meet her daughter. As Mrs D had a close and trusting relationship with the Community Guardianship volunteer, it was agreed that she would accompany Mrs D. That meeting was very successful for Mrs D and her daughter and over time, in the company of the Community Guardianship volunteer, Mrs D gradually established a loving and trusting relationship with her daughter and her daughter's family.

Later in 2012 Mrs D's daughter expressed a strong desire to be the substitute decision-maker for her mother in relation to medical treatment and health care. Mrs D agreed to her daughter having this role. The guardianship order appointing the Public Advocate was revoked as Mrs D's daughter could make treatment decisions on her behalf without the need for a guardianship order, as the first available person in the hierarchy of treatment decision makers.

The Community Guardianship volunteer continues to maintain a warm friendship with Mrs D and her family and is invited to join them at special family events.

Issues for Guardianship

The growth in demand for guardianship services was influenced by a range of factors surrounding the protection of adults with a decision-making disability.

- While the majority of the Public Advocate's represented people live in the Perth metropolitan area, there are a number who live in regional locations. In 2012/13 some 92 of the 371 new appointments were for people who lived outside the Perth metropolitan area. Ensuring adequate support and services are provided to these clients, maintaining contact with them and conducting visits often poses challenges to the Office of the Public Advocate.
- In 2012/13 guardians and investigator advocates made more than 21 trips to regional areas. In some cases, the Public Advocate had to determine the suitability of accommodation options for represented persons living outside of Western Australia.
- The issues surrounding decisions which guardians are required to make may be complex, as a number of represented persons have multiple and complex needs. These people may have more than one diagnosed condition combined with a drug or alcohol problem and challenging behaviour. Sometimes as a result of their behaviour they come into contact with the criminal justice system. Making decisions for these people involves the guardian working with a number of agencies, which together, provide an intensive level of support.
- Due to the increasing number of elderly people for whom the Public Advocate is appointed guardian, decisions regularly have to be made regarding treatment decisions for people who have complex medical conditions, chronic illnesses or are terminally ill. The challenge for the Public Advocate is carefully weighing up the wishes of the represented person and those of their family members and friends, alongside the views of the treating physicians about what is in a person's best interests regarding treatment or end of life care.
- Guardians may experience pressure to locate services, seek funding and co-ordinate the provision of services for represented persons. The shortfall of appropriate services and the refusal of represented persons to accept help compound this problem. Where people have a dual diagnosis, for example, an intellectual disability and a mental illness, the task of encouraging an agency to take the lead role may be very difficult.
- Making decisions about whether a represented person remains in their own home or is placed in residential care, when concerns exist around their self-care, is often a source of conflict between guardians and represented persons and/or their relatives. Guardians must balance the rights of a represented person to remain at home and their need for care.

- In many cases the Public Advocate has been required to determine the need for chemical and/or physical restraint for represented persons. This can involve seeking a guardianship review hearing before the State Administrative Tribunal. In some cases, the Public Advocate has had to consent to psychological programs for behavioural management of disruptive or self-injurious represented persons.
- The appointment of the Public Advocate can result in major disagreement within the family of the represented person. In cases where the represented person has experienced abuse, exploitation or neglect, contact between the person and their family may often need to be supervised. During the year, the Public Advocate arranged supervised access to represented persons where there was risk of abuse. In some cases, guardians must work with represented persons whose parents or relatives also have a decision-making disability.
- People with a decision-making disability may be extremely vulnerable to sexual assault and sexual exploitation. The Office of the Public Advocate intervenes in these matters and seeks Police involvement (usually via the Sex Assault Squad), referral to the Sexual Assault Resource Centre and medical and counselling services. The Public Advocate has noted the particular vulnerability of young people with intellectual disabilities and women with mental illnesses, to sexual assault. This group often lack adequate self protective behaviours and/or family and agency support services.
- Making decisions for represented people from an Aboriginal or Torres Strait Islander background requires an understanding of cultural differences. The family members of these represented people sometimes oppose or do not recognise the authority of the Public Advocate as their relative's guardian.
- The Public Advocate makes decisions for people who are frequent and sometimes serious offenders, whether detained in a psychiatric hospital or prison, or living in the community. These individuals can pose a risk to themselves as well as members of the community and often require intensive support and cross-agency collaboration which may involve the Police, Disability Services Commission, the Department of Corrective Services, Legal Aid, Mental Health Commission and the Department of Health's Mental Health Services.
- The Public Advocate continues to undertake the legal functions of 'next friend' and guardian *ad litem* which is to initiate or defend any civil legal proceedings respectively. This usually involves a guardian providing instructions to a lawyer during protection proceedings taken by the Department for Child Protection and Family Support on behalf of a represented person's child/children. This function is undertaken by the Public Advocate where the State Administrative Tribunal determines that the represented person is unable to conduct their own legal affairs due to a lack of decision-making capacity.

Case Study

Providing support when the person is opposed to having a guardian.

Mr A has a long history of chronic alcohol dependency with a resultant decision-making disability.

He was admitted to hospital with severe alcohol related symptoms. The hospital made an application to the State Administrative Tribunal for a guardian for Mr A, because he had no insight into the effect of his drinking and he was homeless.

At that time Mr A's brother, who was the only relative who had maintained contact with him, was very reluctant to be appointed as Mr A's guardian due to Mr A's resistance to treatment and intervention.

The Public Advocate was subsequently appointed Mr A's guardian with authority for accommodation, treatment and health care. Mr A was strongly opposed to the guardianship order. He believed he was capable of making his own decisions.

The hospital arranged for Mr A to be assessed by the Aged Care Assessment Team (ACAT), and he was found eligible for low level residential care. With the consent of the delegated guardian, Mr A was transferred to a placement awaiting care. Mr A walked out of this placement and was found by the police. He agreed to meet with the guardian but refused to cooperate with any assistance offered, and he was eventually readmitted to hospital due to the effects of his alcohol dependency.

Following this hospitalisation, the guardian consented to Mr A's placement in a secure low level care facility. He had several changes in accommodation before being placed in a permanent non-secure low care facility.

This placement did not last and Mr A was again admitted to hospital for severe alcohol related symptoms. He was non-cooperative with the treating team, and threatened to discharge himself. On the advice of the treating doctors, an application was made to the State Administrative Tribunal, and an order made giving the Public Advocate the authority to restrain Mr A in a controlled environment for treatment of his alcohol dependency.

Following a period of treatment, Mr A was transferred to a secure low care facility. He was given increasing levels of independence to which he responded well, and he was able to be transferred to a non-secure setting which he settled into.

Throughout this process the guardian liaised with Mr A's brother. Although his brother did not live in Western Australia, he maintained regular contact with Mr A and they had a good relationship.

Mr A continued to demonstrate a high level of self responsibility, and the guardian proposed that there was no longer a need for a guardianship order as Mr A's brother was willing to make any treatment decision needed, which was a less restrictive alternative to the appointment of the Public Advocate. Mr A and his brother accepted this and an application was made to the State Administrative Tribunal which resulted in the guardianship order being revoked.

Case Study

Working with Mental Health Services.

Mr C is an older man diagnosed with treatment resistant paranoid schizophrenia.

He lives in his own home, but due to a long history of aggressive and non compliant behaviour, most agencies have refused to provide services.

The Public Advocate was appointed to make treatment decisions for Mr C and to advocate on his behalf with other agencies including the Police and the Courts.

Due to Mr C's deep mistrust, the delegated guardian worked closely with the community support agency that had already managed to form a bond with him. The focus of the guardian's work with Mr C was to support him to remain in his own home, and through this a constructive relationship developed over a period of time.

A number of agencies were involved in Mr C's life and the guardian needed to work closely with them in collaboratively addressing Mr C's care and support needs. A critical issue in enabling Mr C to remain in his home was to attempt to understand and address the issues of neighbours and the local community.

The guardian was able to negotiate additional supports for Mr C from specialist mental health services. These assisted in reducing Mr C's antisocial behaviour, which mainly occurred due to his psychiatric condition. While concerns remain in the community, there is now far more acceptance of Mr C and with extra services it is easier to respond when issues are raised.

The outcome is that Mr C remains living in his own home in the community. He now has support seven days a week and close links with local mental health services. In addition he has a group of five community members who provide companionship and social support to fill the gaps of formal services, and to keep members of community informed with the intention of increasing awareness, tolerance and support for him.

Case Study

When the primary carer also has a disability: interagency cooperation.

In this situation a group of people with decision-making disabilities had lived together for a long time and had a close relationship with each other. One person had assumed the role of primary carer, however they were not suitable to take on the role of substitute decision-maker.

The Public Advocate was subsequently appointed guardian for two members of the group who had progressive dementia. While the Public Advocate's authorities differed according to the needs of each person, it was clear there were a number of issues to be addressed in supporting these people.

The group were very wary of changes, and were especially concerned that they would be separated from each other. While the Public Advocate's responsibility is to act in the represented persons' best interests, the guardian also had to balance the desire of the two people to remain with the others in the group. The guardian was able to develop a relationship of trust with the entire group, and having done so was able to work on supported living arrangements which could be considered.

A number of agencies were involved in providing services and supports, and it was necessary for the guardian to work collaboratively with them all. This was achieved through regular interagency meetings to coordinate and plan for future services.

It became apparent to the guardian that the primary carer was suffering carer's stress and was no longer able to continue in the role. This meant that it was necessary for other accommodation to be considered for one of the represented persons. Having identified this need, the guardian agreed to work closely with all members of the house and service providers to reach an agreement about alternative care options.

Everyone was able to see that one person required residential care and applications were submitted to suitable facilities. Subsequently, the person was offered a place at one of the facilities and moved into it with the agreement of all parties.

As a result, this person now has the care and support that they need, and the remainder of the group has been able to remain in their group living situation, with further support services for the primary carer. It has also been agreed that when the second member of the group who has a progressive dementia can no longer remain in the current setting, he will be moved to the same facility as the first member.

This will maintain the close links that the group forged through their years of living together, and the remaining members will continue to be supported within the current setting for as long as possible.

Case Study

Advocating with other agencies.

The Public Advocate was appointed limited guardian with authority to make decisions on accommodation, services and legal matters, for a parent who had been diagnosed with schizophrenia.

When the Department for Child Protection and Family Support wanted to place the person's child with a foster family, due to concerns that they were not able to provide appropriate parental care, the delegated guardian was able to advocate on the person's behalf. The guardian provided support for the parent in their desire to have ongoing and regular contact with the child. This was successful and through weekly contact the parent developed a constructive relationship with the foster family and a strong bond with the child.

The foster family subsequently wished to have the full care of the child, and the Department for Child Protection and Family Support supported their application to the Family Court for a Special Guardianship Order for full parental responsibility of the child until the age of 18. The parent was in agreement with this but wanted to continue to have regular contact.

The Department for Child Protection and Family Support and the foster family did not want to commit to weekly contact, preferring a monthly schedule instead. With the support of the guardian, access arrangements specifying a minimum monthly amount of access were agreed on, allowing weekly contact to be maintained through informal agreement between all parties. This was acceptable to the host family, the Department for Child Protection and Family Support and the Family Court, and was written into the Special Guardianship Order made by the Family Court.

The parent continues to see the child on a regular basis and maintains a good relationship with the host family.

Revocations

Guardianship orders are reviewed when either an application for review is made to the State Administrative Tribunal, or when the order is nearing expiry. In 2012/13 guardians from the Office of the Public Advocate were involved in 232 reviews of guardianship orders. The purpose of reviewing an order is to determine whether the represented person still requires the Public Advocate as their guardian, or whether changes to the authority given in the order are required.

Of these 232 reviews, 110 orders were revoked by the State Administrative Tribunal because there was no longer a need for a substitute decision-maker as a result of:

- a less restrictive alternative being found
- another suitable, willing and available decision-maker having been identified, such as a family member or friend
- the person regaining capacity
- the issues leading to the Public Advocate's appointment having been resolved
- the guardianship order having no effect (for example, where the represented person repeatedly ignored the guardian's authority)
- treatment authority contained in a guardianship order being considered no longer necessary.

A total of 233 guardianship orders were closed during 2012/13.

Our Customers

The most common issue leading to the appointment of the Public Advocate as guardian of last resort continues to be treatment decisions, with 86 per cent of all guardianship orders appointing the Public Advocate at 30 June 2013 including these decisions (see Figure 9).

The high number of orders appointing the Public Advocate to make treatment decisions can be attributed to these people not having a valid enduring power of guardianship, a spouse, a child over the age of 18, a relative or a friend to act on their behalf. In some cases, these people exist, but are either unsuitable, unwilling or unavailable to act.

Decisions relating to accommodation are the second largest contributor to the appointment of the Public Advocate. At 30 June 2013, 73 per cent of all guardianship orders appointing the Public Advocate authorised decision-making regarding where they were to live, and 70 per cent authorised decision-making regarding with whom the represented person lives.

The high number of appointments regarding accommodation decisions, reflects concern for appropriate supported accommodation for people with a decision-making disability, conflict surrounding where and with whom a person should reside, as well as the need to consent to residential care on behalf of people with dementia, particularly for seniors who are self neglecting, refusing support services and opposed to entering residential care.

Of the 371 new appointments of the Public Advocate as guardian of last resort in 2012/13:

- the most common type of decision-making disability was dementia, with 157 (42 per cent) of the newly appointed people affected by this condition. This was followed by 78 people (21 per cent) with a mental illness, 62 people (17 per cent) with an intellectual disability, 59 people (16 per cent) with an acquired brain injury, and 15 people (four per cent) with another disability (see Figure 10)
- 279 people lived in the Perth metropolitan area and 92 lived in regional areas (see Figure 12)
- abuse of a person with a decision-making disability was a factor in 78 cases (21 per cent) and of these, 30 (38 per cent) were 65 years of age or older (see Figures 13 and 14).

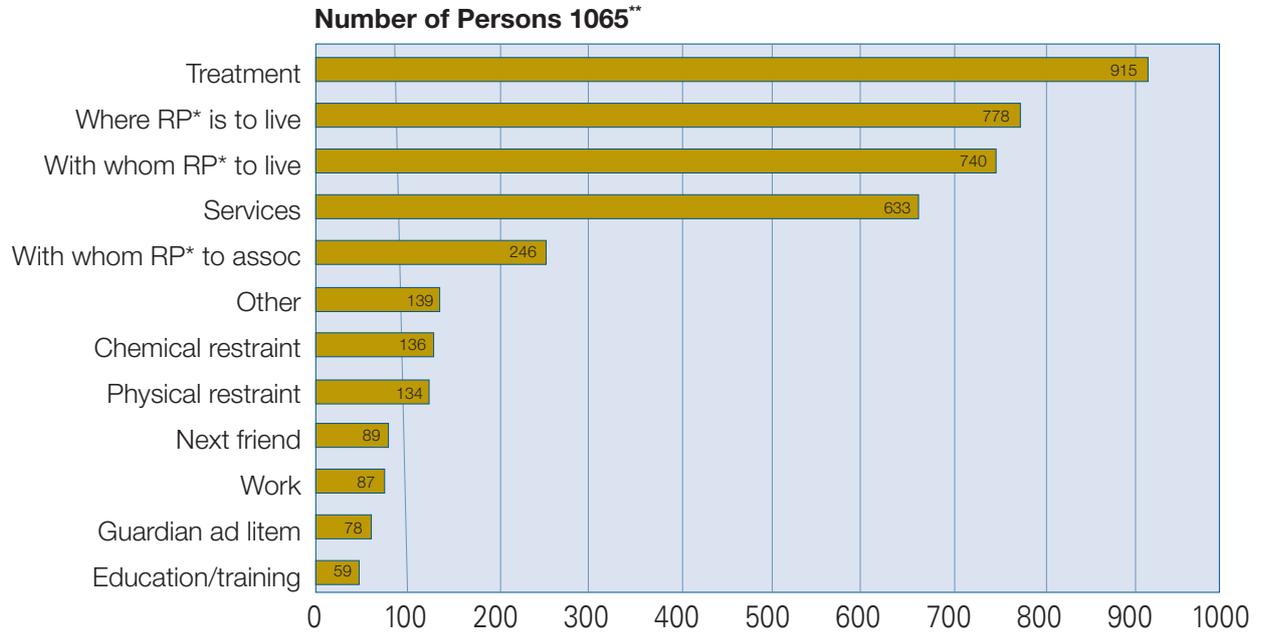
Of the 1065 adults with a decision-making disability for whom the Public Advocate was appointed as guardian at 30 June 2013, 144 were of Aboriginal or Torres Strait Islander descent (see Figure 16) and 192 were from a culturally diverse background¹².

The Public Advocate maintains a 24 hour contact service so that urgent matters can be dealt with after hours. The enquiries that are responded to are either in relation to making an urgent decision for a represented person where the Public Advocate is the appointed guardian, or a concern is raised that a person is urgently in need of a guardian and/or an administrator and may require a hearing of the State Administrative Tribunal at very short notice.

In 2012/13 guardians took 552 after-hour calls which took 199 hours.

¹² The Western Australian Public Sector defines 'people from culturally diverse backgrounds' as people born in countries other than those categorised by the Australian Bureau of Statistics as Main English Speaking (MES) countries (i.e. Australia, United Kingdom, Ireland, New Zealand, South Africa, Canada and United States of America).

Figure 9 Functions for which Public Advocate has been appointed for all guardianship orders as at 30 June 2013



*RP = represented person

** An order can be made for multiple functions

Figure 10 Profile of new guardianship orders appointing the Public Advocate by type of decision-making disability 2012/13

Type of decision-making disability

Acquired brain injury	59
Dementia	157
Intellectual disability	62
Mental illness	78
Other	15
TOTAL	371

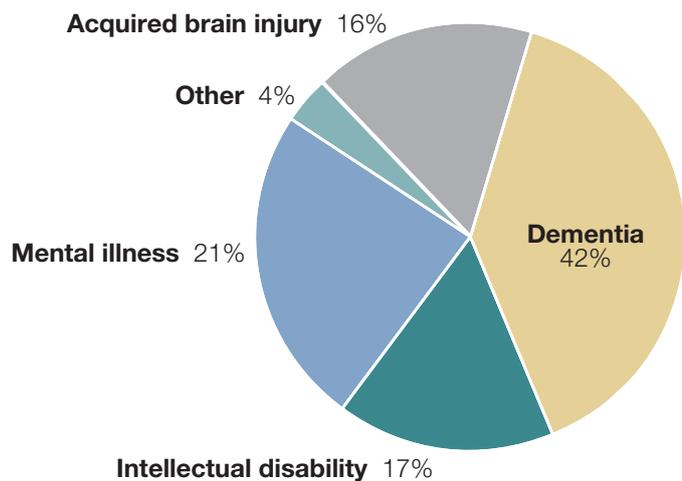


Figure 11 Profile of all guardianship orders appointing the Public Advocate by type of decision-making disability as at 30 June 2013

Type of decision-making disability	
Acquired brain injury	146
Dementia	348
Intellectual disability	283
Mental illness	251
Other	37
TOTAL	1065

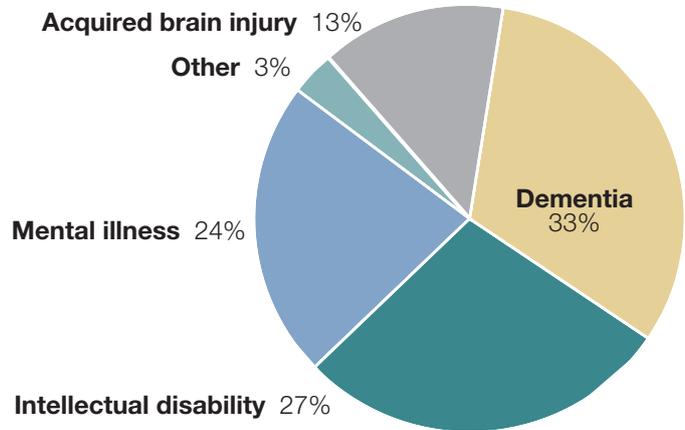


Figure 12 Profile of new guardianship orders appointing the Public Advocate by geographical location 2012/13

Geographical location	
Gascoyne	2
Goldfields-Esperance	13
Great Southern	12
Kimberley	3
Mid-West	12
Peel	11
Perth Metropolitan	279
Pilbara	6
South West	13
Wheatbelt	12
Other	8
Total	371

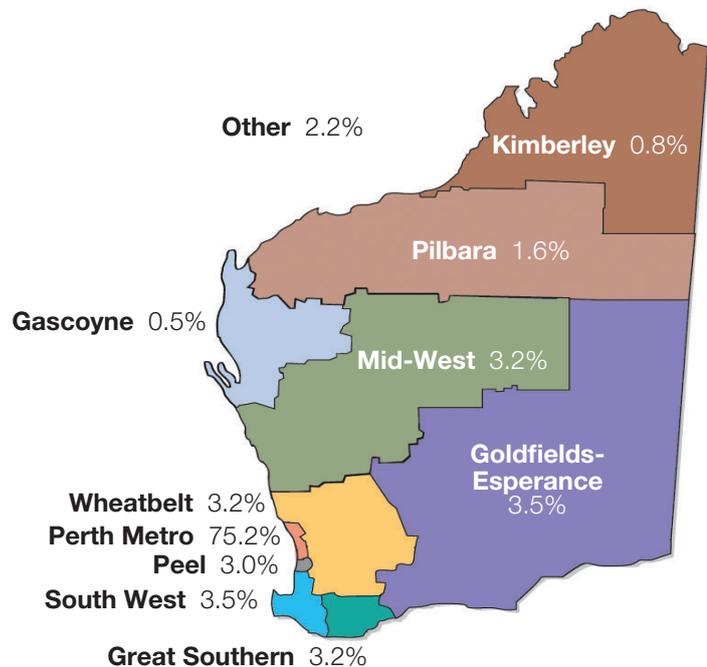
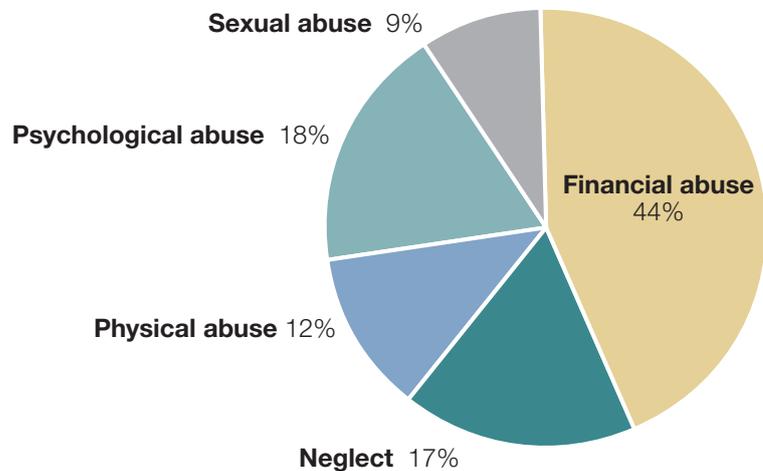


Figure 13 Profile of new guardianship orders appointing the Public Advocate by type of alleged abuse 2012/13 (including elder abuse)

Abuse type	78 people*
Financial abuse	57
Neglect	22
Physical abuse	16
Psychological abuse	23
Sexual abuse	12
TOTAL	130

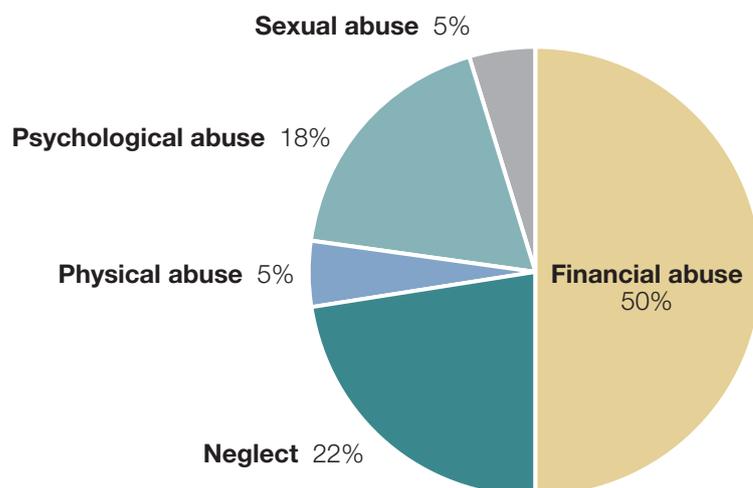


*Alleged abuse was reported in 78 people's cases, however, in some instances more than one alleged abuse type was reported.

Note - Abuse may relate to historical abuse prior to appointment of the Public Advocate.

Figure 14 Profile of new guardianship orders appointing the Public Advocate by type of alleged elder abuse (aged 65 or older) 2012/13

Abuse type	30 people*
Financial abuse	22
Neglect	10
Physical abuse	2
Psychological abuse	8
Sexual abuse	2
TOTAL	44



*Alleged elder abuse was reported in 30 people's cases, however, in some instances more than one alleged abuse type was reported.

Note - Abuse may relate to historical abuse prior to appointment of Public Advocate.

Figure 15 Profile of new guardianship orders appointing the Public Advocate by Aboriginality or Torres Strait Islander descent from 2008/09 to 2012/13

Year	Total	Non ATSI*	ATSI*	ATSI* as a percentage of total
2008/09	231	206	25	11
2009/10	224	197	27	12
2010/11	330	282	48	15
2011/12	347	311	36	10
2012/13	371	335	36	10

*ATSI: Aboriginal or Torres Strait Islander

Figure 16 Profile of all guardianship orders appointing the Public Advocate by Aboriginality or Torres Strait Islander descent from 2008/09 to 2012/13

Year	Total	Non ATSI*	ATSI*	ATSI* as a percentage of total
2008/09	484	436	48	10
2009/10	596	518	78	13
2010/11	759	649	110	14
2011/12	928	801	127	14
2012/13	1065	921	144	14

*ATSI: Aboriginal or Torres Strait Islander

Systemic Advocacy

The Public Advocate advocates for adults with a decision-making disability at a government and community level. The Public Advocate liaises with government, community and business organisations regarding the best interests of adults with a decision-making disability in the development of legislation, policy and services.

The Year in Review

Enduring Powers of Guardianship – Reflections on the implementation project over four years

The changes to the *Guardianship and Administration Act 1990* which came into effect on 15 February 2010 marked a significant step forward in enabling adults to make future planning choices – which would come into effect should illness or injury mean the person lost the ability to make their own decisions.

This date marked the introduction of enduring powers of guardianship and advance health directives. These powers enable people to make plans about how future lifestyle and medical treatment decisions will be made.

Prior to this time the only legal planning tool was an enduring power of attorney which enabled people to appoint someone to make property and financial decisions.

An enduring power of guardianship gives an adult with capacity the opportunity to appoint someone to make their personal, lifestyle and medical treatment decisions, in the event that they ever lose capacity.

An advance health directive enables an adult to specify what medical treatment decisions they would make in certain situations, so that doctors can follow these decisions if the person loses capacity and finds themselves in that specific medical situation.

To assist in raising awareness of these new future planning options the State Government provided funding for a four year implementation project. The team for this project was established in 2009 and, under the leadership of the Public Advocate, commenced the task of amending current Office of the Public Advocate information and developing new resources to provide information to people about the powers, and copies of the relevant forms.

These resources included 'The guide to enduring power of guardianship in Western Australia' and 'The enduring power of guardianship information kit'. Both of these publications included the form required to make the power, and were immediately very popular and have continued to be so over the course of the implementation project.

The funding also enabled the presentation of information sessions throughout the state. These sessions were held for community members with an interest in understanding the new powers and how to make them, and for service providers who would need to know how the powers operated. The interest in the information sessions has remained consistently high over each year of the project, and there has been an enthusiastic response from audience members about the range of options they now have to plan for future decision-making.

Over the course of the four year project almost 350 sessions were presented across the state. Ensuring people in regional areas had access to the information was assisted by making links with key people in local communities who were able to promote sessions locally. This saw the team travel as far north as Derby where video links also brought in people from Fitzroy Crossing and Wyndham, to Esperance and Albany in the south and smaller towns including Pingelly, Morawa and Dalwallinu in the Wheatbelt. Visits to small towns often incorporated a presentation at the local hospital where the staff were always keen to have access to the information to pass on to clients.

There have been many memorable events, including the day in Balingup where the team presented to the Country Women's Association in the afternoon, and to their husbands in the evening at the Men's Shed. A highlight in the metropolitan area was the partnerships with Culturally and Linguistically Diverse (CALD) communities which saw presentations with interpreters to Greek, Romanian, Vietnamese, Chinese and Italian audiences.

Another key aspect of this process has been the partnership developed with the Office of the Chief Medical Officer at the Department of Health, which had the lead role in educating health professionals. There have been a number of joint presentations over the course of the project and this has enabled both offices to gain a greater understanding of how the powers will operate in different settings.

Over the course of the project the team has also been able to provide information statewide with the use of video-conferencing complementing on-site presentations in regional areas.

While the project concluded on 30 June 2013 the benefits will continue. There is an increased awareness in the community of the benefits of planning for the future, and many people who attended the sessions indicated they would be completing the documents.

Western Australia's ageing population and the increasing prevalence of dementia is a major factor contributing to the increase in numbers of people for whom the Public Advocate is appointed as guardian of last resort.

This demonstrates the critical need to ensure that people are aware of the options that are available to them in planning for the future. If people make these powers and choices about future decision making they avoid the need for intervention by Government authorities, including this Office, into their lives.

Collaboration with the Public Trustee in making applications for represented persons to *ex gratia* payment schemes

With the Public Trustee taking the lead role as the administrator, the Public Advocate and Public Trustee made joint applications for seventeen Aboriginal people to the *Stolen Wages Reparation Scheme WA* prior to the closing date of 30 November 2012. Sixteen applications were successful and in each case these Aboriginal people received an *ex gratia* payment of \$2000 in recognition of the percentage of their wages that was withheld by successive State governments between 1905 and 1972.

Both Offices also worked together to identify potential applicants for the Department for Communities 'Country High School Hostels *Ex Gratia* Scheme' for people who experienced abuse in a country high school hostel between 1960 and 2006. This scheme was established by the Western Australian Government in September 2012 to provide recompense to former students who were subject to abuse while boarding at any of the hostels that were administered under the *Country High School Hostels Authority Act 1960*.

For the vast majority of people considered for the scheme, neither the Public Advocate nor the Public Trustee had records on file of people's family history or education background prior to our appointments as guardian and/or administrator by the State Administrative Tribunal. Records were not easily obtainable, unlike the joint application process for *Redress WA* where it was possible to seek information from the then Department for Child Protection about people who had been in the care of the Department as a child.

More than 1400 represented persons were considered by the Public Trustee's Office and where relevant, other parties were contacted. In addition, the Public Advocate considered the potential eligibility of a further 326 proposed or represented persons.

In relation to the Public Advocate's search for potential applicants, one young woman was identified as having been a boarder at one of the hostels when she was in high school, however the guardian was able to establish that she did not experience any abuse. Instead she was grateful for the support provided by the hostel having previously experienced abuse by her family.

An interesting discovery was also made by the Public Advocate with the assistance of the Disability Services Commission that one man had experienced abuse in care in Tasmania as a young person and received compensation under the Tasmanian Redress scheme. Neither the Public Advocate nor the Public Trustee were previously aware of his past in this regard.

By the time the scheme closed on 31 May 2013, the Public Trustee had made applications for eight people, three of whom also had the Public Advocate appointed as their guardian.

People with exceptionally complex needs

The People with Exceptionally Complex Needs project was initiated when the Public Advocate raised serious concerns about a small, but difficult cohort of adults with exceptionally complex needs, such as a significant intellectual disability, a mental illness, an alcohol or drug abuse problem and other unmet needs, for whom existing services were not working.

The People with Exceptionally Complex Needs initiative aims to significantly improve interagency collaboration and co-ordination of services and encourages agencies to use existing resources in innovative and creative ways to respond to individual needs.

The project operates through the partnership of senior officers from the Disability Services Commission, Mental Health Commission, Mental Health Services and the Drug and Alcohol Office of the Department of Health, Department of Corrective Services, Department of Housing, and the Office of the Public Advocate. It is also part of the National Partnership Agreement on Homelessness.

As at 30 June 2013, almost all of the 21 people participating in the people with exceptionally complex needs project were on guardianship and administration orders made by the State Administrative Tribunal. 18 participants had both a guardianship order appointing the Public Advocate and an administration order appointing the Public Trustee. In addition one person had an administration order appointing the Public Trustee and another person had a family member appointed as her guardian and administrator.

In April 2012, the Department for Child Protection, Disability Services Commission and the Mental Health Commission started a similar project for young people with exceptionally complex needs. The Public Advocate is a member of the interagency executive committee given the collaborative work between the Office and the Department for Child Protection in regard to young people in State care who may require a guardian and/or an administrator when they turn 18 years old. In addition to the four agencies already mentioned, senior representatives attend from the Department of Health's Child and Adolescent Mental Health and the Drug and Alcohol Office, Department of Corrective Services – Youth Justice, and the Departments of Education and Housing.

As at 30 June 2013, there were 11 young people participating in the program, three of whom are on guardianship and administration orders. The level of support provided by this project has been invaluable to these highly vulnerable young people who have required intensive support with their transition from State care.

Across Government strategies on homelessness

The Public Advocate is a member of the Across Government Senior Officers group for the National Partnership Agreement on Homelessness. In 2012/13 the Department for Child Protection and Family Support consulted this group in its ongoing implementation of across government initiatives to address homelessness.

Elder abuse

The Office of the Public Advocate has a mandate to protect and promote the human rights of adults with a decision-making disability.

A large and growing number of people in Western Australia, who are 65 or older, have a cognitive impairment (often due to dementia). This group of people are vulnerable to abuse, exploitation and neglect – often referred to as elder abuse - and are a key group which the Office works to protect.

Concerns about elder abuse may be raised within the Office during the progress of investigations, through calls to the telephone advisory service and at times during community information sessions. Abuse can be financial, physical, psychological, social and neglect, and a person may experience more than one form of abuse.

The Public Advocate is an active member of the Alliance for the Prevention of Elder Abuse in Western Australia, which is an interagency alliance established to finding ways to raise awareness of and prevent elder abuse. In addition, in 2012/13 the Office of the Public Advocate was an active member of a reference group on elder exploitation and abuse, facilitated by the Department for Communities.

The Office of the Public Advocate holds an annual forum on elder abuse, during World Elder Abuse Awareness Week. In June 2013, two seminars were held – one for community members and one for service providers. The focus of these seminars was the protection offered by the *Guardianship and Administration Act 1990* for an adult should they lose capacity.

These seminars provided an opportunity for community members and service providers to consider how adults prepare for the future by completing an enduring power of attorney and an enduring power of guardianship. These powers can operate when a person has lost capacity with the person appointed having a responsibility to make decisions in the person's best interests.

The community member session explored the factors people might want to consider before making these powers and how to make them. The potential benefits and pitfalls were highlighted to enable people to make an informed decision about whether to complete either power.

The session also provided information on the guardianship and administration system, and how this operated as a safeguard if a person chose not to complete these powers and later lost capacity.

The focus of the service provider seminar was on the proper use of the tools, the extent of authority under each power and the role of both the attorney and enduring guardian. A service providers' duty of care where they have concerns that a substitute decision-maker is not acting in the best interests of the person they represent was also explored to assist service providers responding to inadvertent and deliberate misuse of the powers.

Policy reviews

The Public Advocate and senior staff members participated in a number of other policy initiatives, reviews and inquiries in 2012/13, including:

- Submission to the consultation by the Mental Health Commission on the draft *Mental Health Bill 2012* and ongoing feedback
- Contributed to the Disability Services Commission – *Voluntary Code of Practice for the Elimination of Restrictive Practices*
- Contributed to the submission by the Australian Guardianship and Administration Council (AGAC) into the consultation on the *Personally Controlled Electronic Health Records Act* to facilitate the inclusion of substitute decision-makers
- Submission to the Disability Services Commission consultation on the draft *Declared Places (Mentally Impaired Accused) Bill 2013*
- Contributed to the development of the Department of the Attorney General's Disability Access and Inclusion Plan
- Reported on the Office of the Public Advocate's actions relevant to the Department of the Attorney General's Reconciliation Action Plan.

Implementing Legislative Change

Implementation of enduring powers of guardianship

This year marked the final year of work of the specific project in relation to the introduction of enduring powers of guardianship and advance health directives in Western Australia.

Changes to the *Guardianship and Administration Act 1990* brought these legal documents into force on 15 February 2010.

The focus of the Office's enduring powers of guardianship implementation team continued to be raising awareness about these documents, in the community and with key stakeholders within the aged care, community services and disability sectors across the State.

People are able to access information about the documents through a variety of mediums, including printed and online publications, information seminars and through the telephone advisory service.

Community feedback from the information sessions, 2012/13

"On behalf of the Kingsley Parkinson's Support Group I would like to thank you for your session and introduction to enduring powers of guardianship and advance health directives. Your time, effort and clarity of information was greatly appreciated and enjoyed by all."

Kingsley Parkinson's Support Group, February 2013

"The feedback from the community has been positive, with comments noting how much information was provided, and the facts were pertinent and able to be understood by the participants. We have a much more educated community on these topics as a result of the forum."

Waroona Community Resource Centre, March 2013

"Thank you for your very informative presentation to members of the Italian community. Your valued professional input on this particular occasion was greatly appreciated by all those who were present, and the general feedback received from the participants was extremely positive."

Italo-Australian Welfare and Cultural Centre Inc., March 2013

Making an enduring power of guardianship will mean that if a person loses capacity to make decisions there is someone, their enduring guardian, to step into the role and make decisions in the person's best interests. Most people will choose someone as their enduring guardian who they know well and trust, and will have discussed with the person their own views about their future lifestyle choices. The enduring guardian will make decisions as far as possible in accordance with the person's previous wishes, although circumstances may mean this is not always possible.

For example, the person may have told their enduring guardian they always want to live in a particular area. However, over time the person requires residential care and there is no facility in the chosen area.

While most enduring powers of guardianship will work well in ensuring there is someone available to make decisions there will be some cases where the power does not work as it was intended.

This could be for a number of reasons – the enduring guardian may not be available and no longer able to take on the role, the enduring guardian may be finding the decisions too difficult to make or the enduring guardian could be deliberately not acting in the person's best interests.

Whatever the reason the power is not working the *Guardianship and Administration Act 1990* enables the power to be reviewed by the State Administrative Tribunal. If an application is made to the State Administrative Tribunal they will hold a hearing to look at the person's situation, what decisions need to be made and how the enduring guardian is making decisions. Once they have gathered all the information they will make a decision about what should happen to ensure that decisions continue to be made in the person's best interests.

The following case study titled 'Varying the terms of an enduring power of guardianship where there is family conflict' demonstrates one of the options available to the Tribunal. In this case rather than revoke the enduring power of guardianship the power was 'varied' for a period of time. The Public Advocate was appointed temporarily to make decisions in the area where there was a family dispute allowing the enduring guardian to continue to make the other decisions.

Case Study

Varying the terms of an enduring power of guardianship where there is family conflict.

Mrs S has four adult children and in mid-2011 made an enduring power of guardianship appointing two of her children as her joint enduring guardians.

Since making the enduring power of guardianship, Mrs S had to go to hospital as a result of a fall in mid-2012, and after this was transferred to residential facility. It was apparent at this stage that Mrs S's mental capacity had deteriorated to the stage that the enduring guardians had taken over decision-making authority for their mother.

Applications were made to the State Administrative Tribunal from the other children of Mrs S who were concerned that the enduring power of guardianship was not being used properly and that they were not being given information about their mother. The case was referred to the Public Advocate for investigation.

During the course of the investigation, it was identified that there was substantial conflict between the adult siblings. This conflict was impacting on how the best interests of Mrs S were being considered.

In investigating the application the investigator advocate gathered information from all the adult children, the person who had witnessed the making of the enduring power of guardianship, the long term GP of Mrs S and other close friends.

These people provided insight into the making of the enduring power of guardianship, confirming in their view the decision was made voluntarily and that Mrs S had capacity at the time to make the power.

- **The capacity at the time of making an enduring power of guardianship is critical. If a person lacks capacity the document could be found to be invalidly made.**

The investigator advocate also met with Mrs S, who was able to explain that she loved all her children, but also had some awareness of the conflict between them. She explained that her choice of enduring guardians was that her daughter, Ms S, and her son, Mr S, were regular visitors and had always looked after her. She viewed her other daughters as having more commitments and so were not in such a good position to be her enduring guardian.

- **Even though a person may have some lack of capacity, gathering their views and wishes to the extent possible is very important. It is part of principles of the Guardianship and Administration Act 1990 to take into account previous views and wishes. In this situation Mrs S was clearly able to explain the decision-making process and her wishes about who should make her decisions.**

The main difference of opinion that was identified related to the views presented by the adult children of how information had been shared between them about Mrs S.

The applicants presented the view that they had not been told by the enduring guardians about their mother's fall or admission to hospital. They believed they had a right to this information, and in their view the fact that they were not told this indicated that the enduring guardians were not acting in the best interests of Mrs S.

The enduring guardians presented the view that they had told their siblings of their mother's admission to hospital and had also tried to organise a family meeting at the hospital to discuss her future care and support needs.

At the Tribunal hearing all parties were given the opportunity to present their case. Mrs S, who was at the hearing, stated that she was agreeable to all her children being informed about her health and the enduring guardians agreed to share information. As there seemed to be some prospect of resolving matters without the need for a formal order the hearing was adjourned.

- **A validly executed enduring power of guardianship where the enduring guardian is working in the best interests of the person is a less restrictive alternative to the appointment of a guardian and is also a demonstration of the previous wishes of the person. Under the *Guardianship and Administration Act 1990* it is important to consider all 'least restrictive alternatives' before an order is made.**

When the next hearing was held, while a family meeting had occurred to some success, it was apparent that there was still disagreement between the siblings.

After considering the applications the Tribunal decided that while the enduring power of guardianship was properly made, the conflict between the siblings was having an impact on how it was working.

The Tribunal determined that the enduring power of guardianship should be left in place but the decision making authority of the enduring guardians varied. The enduring guardians' authority to make decisions about who Mrs S should have contact with was suspended. A further limited guardianship order was made for six months, appointing the Public Advocate with authority to make decisions about who Mrs S should have contact with. This type of decision-making would include deciding who could visit Mrs S, when and where visits would occur and the length of visits.

- **By making a limited order the Tribunal responded to the principle of the legislation to limit any order to the specific functions which were required. In this case the mediation had resolved some issues, but not the issue of contact. Therefore the least restrictive alternative was to vary the enduring power of guardianship and allow it to remain in force, while appointing an independent guardian to make the decisions which were still giving rise to family conflict.**

At the six-month review hearing, the Public Advocate's appointment was revoked and the enduring power of guardianship reinstated as there were no longer issues in relation to contact. This enabled the enduring power of guardianship to be fully restored as there was no longer family conflict. This was a very good outcome for Mrs S and her family.

Community Education

The Office promotes the human rights of adults in Western Australia with a decision-making disability, under the provisions and operation of the *Guardianship and Administration Act 1990*. This is done through community education activities which improve people's awareness and understanding of the legislation, the system and the surrounding issues. Activities include:

- providing the community and relevant service providers with education and training which promotes the human rights of adults with a decision-making disability
- producing and publishing written and other material accessible to the community and service providers in a variety of formats and languages
- developing partnerships with other government agencies, non-government organisations and community groups to disseminate information about guardianship and administration
- promoting community responsibility for the wellbeing of vulnerable adults with a decision-making disability who may be at risk of abuse, exploitation or neglect.

The Year in Review

The significant legislative changes to the *Guardianship and Administration Act 1990*, which came into effect in February 2010, continued to be the driving force behind the Office's community education activities in 2012/13.

The most significant changes following the proclamation of the *Acts Amendment (Consent to Medical Treatment) Act 2008* were the introduction of enduring powers of guardianship and advance health directives in Western Australia.

The delivery of a State-wide information strategy to raise awareness and understanding in the community about these was again the primary focus of the Office's community education program. Community members and service providers in the health, aged-care, disability and other related sectors were provided information on the proper use and execution of the two documents.

Information and training for health professionals, regarding their role in relation to the operation of advance health directives remained the responsibility of the Department of Health.

In addition to this core element, sessions were provided on enduring powers of attorney, and the guardianship and administration system in general. Joint training with the Public Trustee's Office for private administrators continued, as did the annual forums to raise people's awareness and understanding of elder abuse, in recognition of World Elder Abuse Awareness Day in June 2013.

In 2012/13, the Office conducted a total of 92 education seminars. Of these, 66 were tailored to the needs of community members, 21 specifically targeted service providers and five catered to the needs of both groups.

As previously noted, the provision of seminars specifically on the topics of enduring powers of guardianship and advance health directives in Western Australia was made possible by \$1 million funding over four years to the Office of the Public Advocate. This funding ceased on 30 June 2013.

Customer contact/enquiries

A total of 4945 people used the Office of the Public Advocate's advisory service in 2012/13, compared to 5086 in 2011/12. Contact was made via telephone, email, mail and in person (see Figure 17).

In some instances, enquirers sought advice on multiple topics. Guardianship matters dominated enquiries, accounting for 39 per cent of all enquiries received this year. Enquires regarding enduring powers of attorney accounted for 32 per cent, and administration, enduring powers of guardianship and general enquiries accounted for nine per cent each (see Figure 18).

The telephone advisory service provides recorded information on guardianship, administration, enduring powers of attorney and enduring powers of guardianship. It also gives callers the option to speak to an advisory officer.

Figure 17 Enquiries to the advisory service by mode of handling 2012/13

Mode of handling	Jul 2012	Aug 2012	Sep 2012	Oct 2012	Nov 2012	Dec 2012	Jan 2013	Feb 2013	Mar 2013	Apr 2013	May 2013	Jun 2013	Total
Telephone	451	419	346	358	368	322	468	395	370	465	422	337	4,721
Interview	4	8	7	11	5	4	6	5	6	9	8	3	76
Email/letter	15	18	10	14	12	7	13	7	9	24	12	7	148
TOTAL	470	445	363	383	385	333	487	407	385	498	442	347	4,945

Figure 18 Enquiries to the advisory service by subject 2012/13

Subject of Enquiry	Jul 2012	Aug 2012	Sep 2012	Oct 2012	Nov 2012	Dec 2012	Jan 2013	Feb 2013	Mar 2013	Apr 2013	May 2013	Jun 2013	Total	Total as percentage of all enquiries
Guardianship	221	198	188	191	173	199	223	160	165	232	203	161	2314	39
Administration	48	45	42	39	48	46	64	46	50	48	59	24	559	9
EPA	217	185	165	126	146	105	162	173	171	186	176	137	1949	32
EPG	62	51	45	40	47	38	56	38	32	51	38	45	543	9
AHD	16	5	10	15	15	9	20	10	6	17	17	7	147	2
General	73	49	39	30	51	28	65	43	37	47	39	29	530	9
Total	637	533	489	441	480	425	590	470	461	581	532	403	6042	100

Note – In some instances, enquirers sought advice on multiple subjects.

Services to Aboriginal people

The printed resources of the Office include a brochure on the guardianship and administration system and the role of the Public Advocate in protecting vulnerable adults, which has been developed specifically for Aboriginal people. As well as being in plain English it uses illustrations to explain the concepts of guardianship and administration.

In addition to this targeted resource, where appropriate information sessions for service providers include practical examples of how the guardianship and administration system could be used to assist Aboriginal people to ensure culturally appropriate outcomes are achieved.

Catering to the needs of clients from a Culturally and Linguistically Diverse (CALD) background

In 2012/13 the Office delivered five information sessions to Culturally and Linguistically Diverse community members. These sessions covered information on enduring powers of guardianship and enduring powers of attorney and interpreters worked with the presenter to deliver the sessions in Mandarin, Italian and Vietnamese.

All of the Office's publications are available in alternative formats¹³, including other languages, upon request. The Office has translated three of its most commonly used information sheets – regarding enduring powers of attorney, enduring powers of guardianship and general planning for the future information – into Chinese, Italian, Polish and Vietnamese.

Catering to the needs of clients with vision impairments

The Office has utilised the services of the Association for the Blind of Western Australia to record three of its publications into audio, so that clients with vision impairments could easily access the information.

These publications were:

- A Guide to Enduring Power of Guardianship in Western Australia
- The brochure: New laws offering you choices to make an Advance Health Directives and appoint an Enduring Guardian
- Enduring Power of Attorney Information Kit.

Update of enduring power of attorney publications

The enduring power of attorney kit provides brief information on the enduring power of attorney and how people can complete the document. The kit includes the enduring power of attorney form. A minor review and update of the kit occurred during the financial year 2012/13.

The publication 'A guide to enduring power of attorney in Western Australia' has been substantially revised. The guide will provide comprehensive information on the enduring power of attorney and has sections for both the person making the power and the person being appointed attorney. The guide will be made available online when completed.

Corporate Services

The role of Corporate Services is to support the Office of the Public Advocate by facilitating effective administration, management and information systems and ensuring that government accountability requirements are fulfilled. The functions include:

- planning and providing office management and administration requirements
- providing financial and human resource management, procurement, information technology and physical resource management.

¹³ Other than the enduring power of attorney form and enduring power of guardianship form, which are not able to be translated into other languages, as they must be in English.

These services are supported by the Department of the Attorney General and costs are proportionally allocated to the Office of the Public Advocate and reflected in the Treasury Budget statements. The budget allocation and subsequent expenditure for 2012/13 are as follows:

Figure 19 Budget allocation and expenditure 2012/13

	Total Cost of Output
\$'000 Actuals 2012-13	5933
\$'000 Budget 2012-13	5689 (revised budget)
\$'000 Variations from Budget	(244)

The Year in Review

Office Accommodation

The Corporate Services team was responsible in June 2013 for coordinating the Office relocation, after nearly 20 years at the Hyatt Centre in East Perth, to International House in St Georges Terrace in the Central Business District.

Office technology

Enhancements to the Public Advocate Case Management system (PACMAN) were carried out in 2011/12. These changes improved the data collection and reporting capabilities of the system. A post-implementation audit review of the system commenced in May 2012. Overall the review found that PACMAN was operating as expected. In line with increasing need for cyber security a number of recommendations for enhancing security of the data were recommended. These have all been implemented in conjunction with Department of the Attorney General Shared Information Services Directorate.

Video conferencing continued to be used for client interviews and providing service provider information sessions in regional areas.

Interpreter services

To help ensure that language is not a barrier to guardianship and investigation services for customers for whom English is a second language, the Office uses translation and interpreter services. During 2012/13 interpreter services were provided in Arabic, Auslan, Bosnian, Croatian, Hakka, Italian, Korean, Pashtu, Polish, Portuguese, Russian and Vietnamese. Interpreters were also used for community education purposes, the details of which are provided in that section of the report.

Freedom of information

Ten valid applications were received during 2012/13 for the release of information. Seven of the requests were dealt with in full and three are still under consideration. Two applications carried over from 2011/12 were finalised in 2012/13.

Anyone who wishes to access information held by the Office of the Public Advocate can contact the Freedom of Information Co-ordinator on 9278 7300 or 1300 858 455. They may be asked to submit their request in writing.

If a request is denied, an application may be lodged with the Public Advocate. If the application is denied or a person is unhappy with the decision of the Public Advocate, they may lodge an appeal with the Information Commissioner.

Customer feedback

Feedback from customers is welcomed and encouraged. It is important that people contact the Office with suggestions, compliments and complaints regarding services.

In 2012/13, the Office of the Public Advocate received 18 formal compliments and one suggestion. The Office also received 45 formal complaints during the year, which were all considered by the Public Advocate or a senior manager.

For people who lodge a formal complaint with the Office of the Public Advocate, either in writing, via email or over the telephone, the Office undertakes to:

- respond to all grievances within 10 working days of the complaint being lodged
- keep records of all relevant proceedings including details of the grievance, the investigation, methods of resolution and customer feedback
- advise the relevant people (in writing) of the outcome and any corrective action to be taken.

Significant Issues Impacting the Agency

Meeting demand for services

The demand for the Office of the Public Advocate's statutory services of advocacy and investigation, and guardianship is persistent.

Demand for guardianship services continued to grow, with a 15 per cent increase in the total number of people the Public Advocate was guardian for at 30 June 2013, compared to the same time the previous year. There was a seven per cent increase in new appointments of the Public Advocate as guardian during the year.

In 2012/13 demand for advocacy and investigations showed a small increase, with a total of 1264 investigations carried out, compared to 1217 the previous year, with an increase of over 4 per cent in new investigation referrals by the State Administrative Tribunal.

Western Australia's ageing population and the resulting increase in the number of people with dementia continue to be significant factors contributing to the increasing demand for the Office's services.

In 2012/13, 45 per cent of new matters referred for investigation involved a person with dementia (see Figure 3) and 42 per cent of the people for whom the Public Advocate was appointed guardian for the first time have dementia (see Figure 10).

A detailed, independent study on forecasting demand for services undertaken in 2003/04 by Data Analysis Australia indicated an annual growth over the next five years of 5.9 per cent for guardianship orders, 2.1 per cent for community-referred investigations and two per cent for investigations referred by the State Administrative Tribunal. The number of guardianship orders has been consistently higher than those projections.

As noted in previous Annual Reports, the Public Advocate received a repeat study by Data Analysis Australia in November 2008. The revised forecasts show a substantial increase in the number of appointments of the Public Advocate as guardian of last resort, with an annual growth rate of a minimum of 12.7 per cent for the next five years. This growth rate is considered likely to be an underestimate.

The growth in investigations is not predicted to be as strong, with annual growth rates of 3.2 per cent for investigations referred by the State Administrative Tribunal and 3.6 per cent for community-referred investigations over the next five years.

The report notes that the revised forecasts are substantially higher than the original forecasts because of:

- the sudden increase in the rates of people with dementia coming under guardianship orders appointing the Public Advocate
- the increased length of time clients with dementia stay with the Public Advocate
- other considerations including the transition from the Guardianship and Administration Board to the State Administrative Tribunal.

The effects of the baby boomer generation will impact strongly on organisations such as the Office of the Public Advocate, in which elderly people are increasingly the users of the service. It is expected that this will continue to be a factor until 2022/2023, when it is anticipated that the growth of this older demographic (60 to 85 years) will stabilise.

In recognition of the growing demand for services, \$5 million of additional funding over four years was allocated to the Office of the Public Advocate in the 2011/12 State Budget. This funding started on 1 July 2011 to provide a permanent increase of 14 full-time employees over four years, with 12 of the additional staff now in place on the advocacy and investigation, and guardianship teams.

Implementing legislative change

Changes to the *Guardianship and Administration Act 1990* in February 2010, which introduced enduring powers of guardianship and advance health directives, continued to be the priority focus of the Office's community education program. The four year funding ended 30 June 2013, limiting the capacity of the Office to continue with the same number of information sessions. However a community education calendar has been developed to provide targeted information sessions into the future. The calendar has been published on the Office of the Public Advocate's website and includes details on how to book into the sessions.

Disclosures and Legal Compliance

Financial Statements

See the Department of the Attorney General annual report.

Key Performance Indicators

Notes to the Performance Indicators

The following performance indicators should be read in conjunction with the accompanying *notes to the key performance indicators*

Advocacy, Guardianship and Administration Services

In any society, the ability of a community to care for those who are unable to care for themselves is a measure of its maturity. In Western Australia, the preservation and enhancement of the right to justice and safety for all of its community members, requires that the State safeguards the rights of adults with reduced decision-making abilities, and reduces the incidence of risk, neglect and exploitation. The Public Advocate represents and advances the best interests of people with a decision-making disability, both at hearings for the appointment of a guardian and in the community.

Key effectiveness indicator	Actual 2009-10	Actual 2010-11	Actual 2011-12	Target 2012-13	Actual 2012-13	Comment on significant variation
<p>Percentage of Guardians of Last Resort allocated in one day</p> <p>This indicator measures the timeliness of the Public Advocate in allocating a guardian to a represented person in order to make decisions on their behalf and protect them from neglect, abuse or exploitation. A guardian is appointed only when considered necessary, and when there is no one else suitable or available to take on the role.</p>	94%	90%	95%	95%	96%	N/A

Key efficiency indicator	Actual 2009-10	Actual 2010-11	Actual 2011-12	Target 2012-13	Actual 2012-13	Comment on significant variation
<p>Average cost of providing advocacy and guardianship services</p> <p>This indicator measures the average cost per case of providing advocacy and guardianship services on behalf of people with decision-making disabilities.</p>	\$1,851	\$1,610	\$1,744	\$1,770	\$1,776	N/A

Key effectiveness indicator	Description
<p>Guardian of Last Resort allocated in one day</p>	<p>This indicator is based on the Public Advocate's best practice to ensure the needs of the represented person are met immediately. It is measured by the number of appointments of Guardians of Last Resort made by the State Administrative Tribunal at the hearing and accepted by the Public Advocate's delegate within one working day of receipt of the guardianship order.</p> <p>The Public Advocate is appointed as guardian of last resort only when considered necessary, and when there is no one else suitable or available to take on the role. The information for this was extracted from the Public Advocate Case Management System (PACMAN).</p>

Efficiency indicator	Description
<p>Average cost per case of providing Advocacy and Guardianship services</p>	<p>This indicator is calculated by dividing the total cost of providing advocacy, guardianship and administration services by the number of advocacy and guardianship services provided. The information for this indicator was extracted from the Department's activity based cost management system (Business Objectives) and the Public Advocate Case Management System (PACMAN).</p>

Ministerial Directives

Nil.

Other Financial Disclosures

See the Department of the Attorney General annual report.

Public Interest Disclosures

Nil.

Other Governance Disclosures

See the Department of the Attorney General annual report.

Other Legal Requirements

Advertising

The Public Advocate discloses the following information relating to advertising, direct mail and market research expenditure as required under Section 175ZE of the *Electoral Act 1907*:

Figure 20 Advertising

Adcorp and Whitepages: Government Gazette, community guardianship program, community education and recruitment advertising	\$9,888
TOTAL EXPENDITURE	\$9,888

Disability Access and Inclusion Plan Outcomes

See the Department of the Attorney General annual report.

Compliance with Public Sector Standards and Ethical codes

The Office of the Public Advocate, as part of the Department of the Attorney General, complied with the Public Sector Standards, the WA Code of Ethics and the Department's code of conduct. The code of conduct outlines the ethical principles, obligations and standards applying to staff. It aims to instil the values of "respect, integrity, unity and diversity, justice and collaboration" in all our people. The code specifies standards of behaviour and helps inform employees how to exercise judgement and accept personal responsibility in their professional roles.

In adhering to these policies, 25 staff from the Office of the Public Advocate made conflict of interest declarations and reported 12 offers of gifts, hospitality or other benefits which exceeded a value of \$25.

In line with the Department of the Attorney General's ongoing commitment to improve staff awareness on ethical conduct and public standards, all staff are required to complete online training in accountability and ethical decision-making.

Recordkeeping Plans

Records are maintained in accordance with the Department of the Attorney General's records keeping plans. In line with the Department's ongoing commitment to improve staff awareness in records management, 99 per cent of Office of the Public Advocate staff had completed records awareness training as at 30 June 2013.

Government Policy Requirements

For information on substantive equality see the Department of the Attorney General annual report.

Occupational Safety, Health and Injury Management

For administrative purposes, Occupational Safety and Health is managed under Department of the Attorney General policies and procedures which are in accordance with legislative requirements and the Code of Practice 'Occupational Safety and Health in the WA Public Sector'.

The Office of the Public Advocate recognises its general duty of care obligations and is committed to providing a productive, safe and healthy work environment for all. The Office supports the work of managers and employees in identifying and managing safety and health issues in the workplace. As far as practicable, the goal is a workplace free of work-related harm, disease or injury. The Office complies with the injury management requirements of the *Workers Compensation and Injury Management Act 1981*.

The Department of the Attorney General introduced a formal policy regarding the appointment of first aid officers in 2011/12. In keeping with that policy, the Office appointed one first aid officer and one deputy first aid officer.

In accordance with changes in policy an Occupational Safety and Health Committee was constituted for the first time in 2012/13. The committee comprises two management representatives and two elected staff representatives. Meetings are held quarterly whilst issues can be raised at any time by staff with the elected representatives. During 2012/13 there were no fatalities, one new lost time injury and one claim continuing from 2011/12.

During 2012/13 all new employees were required to undertake the Department of the Attorney General's Occupational Health and Safety training.

Appendix 1 Legislation

Legislative Authority

The Public Advocate's legislative authority is contained in the *Guardianship and Administration Act 1990*. The Act was proclaimed to come into full operation on 20 October 1992. The *Acts Amendment (Consent to Medical Treatment) Act 2008* amended the *Guardianship and Administration Act 1990* on 15 February 2010.

Related legislation

Other legislation relating to the circumstances and needs of people with a decision-making disability include:

State Administrative Tribunal Act 2004

Carers Recognition Act 2004

Community Protection (Offender Reporting) Act 2004

Criminal Investigation (Identifying People) Act 2002

Criminal Investigation Act 2006

Criminal Law (Mentally Impaired Accused) Act 1996

Dangerous Sexual Offenders Act 2006

Disability Services Act 1993

Health Act 1911

Magistrates Court (Civil Proceedings) Act 2004

Mental Health Act 1996

Prisons Act 1981

Prohibited Behaviour Orders Act 2010

Public Trustee Act 1941

Supreme Court Act 1935

The Public Advocate also complies with legislation that relates to the management and accountability requirements of Government, including:

Corruption and Crime Commission Act 2003

Electoral Act 1907

Equal Opportunity Act 1984

Financial Management Act 2006

Freedom of Information Act 1992

Occupational Safety and Health Act 1984

Public Interest Disclosure Act 2003

Public Sector Management Act 1994

State Records Act 2000

State Supply Commission Act 1991

Workers' Compensation and Rehabilitation Act 1981

Appendix 2 Publications

All Public Advocate publications are available online at www.publicadvocate.wa.gov.au and printed copies of all except the enduring power of attorney kit and guide, can be obtained from the Office of the Public Advocate.

Annual Report

Information sheets

- Introduction to the Guardianship and Administration System
- Role of the Public Advocate
- Role of the State Administrative Tribunal
- Guardianship
- Administration
- Sterilisation
- Public Advocate — Customer Feedback and Service Standards
- Enduring Power of Attorney (also available in Chinese, Italian, Polish and Vietnamese)
- Enduring Power of Guardianship (also available in Chinese, Italian, Polish and Vietnamese)
- Planning for the Future (also available in Chinese, Italian, Polish and Vietnamese)

Position statements

- Decisions About Treatment
- Restraint
- Role of the Public Advocate as Guardian of Last Resort in Accommodation Decisions
- Role of the Public Advocate as Guardian of Last Resort in Treatment Decisions
- Role of the Public Advocate as Guardian of Last Resort in Contact Decisions
- Role of the Public Advocate as Guardian of Last Resort to make Treatment Decisions: Palliative Care

Brochures

- Office of the Public Advocate
- Your choices to make an advance health directive and appoint an enduring guardian (also available in audio format)
- Community Guardianship Program
- Are you worried about a vulnerable adult who needs help making decisions? (a brochure for Aboriginal people).

Enduring power of attorney and enduring power of guardianship information kits and guides

The kits and guides can be downloaded for free from the Office of the Public Advocate's website, www.publicadvocate.wa.gov.au, or purchased from the State Law Publisher, 10 William Street, PERTH, WA, 6000, sales@dpc.wa.gov.au or at selected newsagents.

The enduring power of attorney information kit and the guide to enduring power of guardianship are also available in audio format from the Office.

Appendix 3 Glossary

Administration: The legal appointment of a responsible person who can make financial and property decisions on behalf of a person who is not capable of making those decisions for themselves.

Advance health directive: A document in which a person makes decisions about their future treatment.

Community-referred investigation: The investigation of any complaint or allegation made by an interested party that a person is in need of a guardian or administrator, or is under inappropriate guardianship or administration. This type of investigation is carried out under Section 97(1)(c) of the *Guardianship and Administration Act 1990*.

Enduring power of attorney: A means for competent people to appoint another person or agency to manage their property and/or financial affairs. Unlike an ordinary power of attorney, an enduring power of attorney authority continues even when the person granting it loses their capacity to make decisions for themselves.

Enduring power of guardianship: A document in which a person nominates an enduring guardian to make personal, lifestyle and treatment decisions on their behalf in the event that they lack full legal capacity in the future.

Guardianship: The appointment by the State Administrative Tribunal of a responsible person who can make personal, lifestyle and treatment decisions in the best interests of a person who is not capable of making those decisions for themselves.

Individual advocacy: Investigating and making recommendations in the best interests of adults with decision-making disabilities, on the need for guardianship or administration at hearings of the State Administrative Tribunal.

Interested parties: Any person or persons with a personal or professional interest in the outcome of a guardianship or administration application.

Limited guardianship or administration order: The authority given to an appointed substitute decision maker to make guardianship or administration decisions on behalf of the represented person, limited to certain specified areas.

Plenary guardianship or administration order: The authority given to an appointed substitute decision maker to make all guardianship or administration decisions on behalf of the represented person.

Proposed represented person: Refers to the person for whom an application for appointment of a guardian or administrator is made.

Represented person: Refers to a person for whom a guardian or administrator has been appointed.

State Administrative Tribunal: An independent statutory tribunal that makes and reviews orders appointing guardians and administrators and considers applications for intervention into enduring powers of attorney, enduring powers of guardianship, advance health directives and related matters.



