



Office of the  
**Public Advocate**

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

The Public Advocate of Western Australia  
**Annual Report 2014/15**



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 2015.

This report records the operations and performance of the Office of the Public Advocate during 2014/15. 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.

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**PUBLIC ADVOCATE**  
3 September 2015

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# Overview

## The Year in Review

The Office of the Public Advocate protects some of the community's most vulnerable people. It plays an important decision-making role in the lives of more than 1,300 adults who are unable to make decisions for themselves and looks into the lives of people who may need a substitute decision-maker. It also provides information and advice about how and when substitute decision-makers could be appointed as well as less restrictive options to the making of a guardianship or administration order.

Demand for the Office's statutory services continues to rise each year. Western Australia's growing and ageing population, combined with the prevalence of dementia, are key factors driving demand. People may also lose decision-making capacity as a result of mental illness, a brain injury from an accident, illness or substance abuse, or lack capacity because of an intellectual disability from birth.

The Office of the Public Advocate worked diligently throughout the year to continue to meet demand for its advocacy and investigation services. Investigator advocates looked into the personal and financial welfare of adults with a decision-making disability and advocated for their best interests at hearings before the State Administrative Tribunal. In 2014/15, the Office carried out 20 per cent more investigations in total, than the previous year.

Similarly, the Office worked to meet the growing demand for its guardianship service. In 2014/15 there were 423 new appointments of the Public Advocate as guardian of last resort, an increase of 24 per cent from the previous year. At 30 June 2015, the Public Advocate was guardian for 1,383 adults, a 14 per cent increase from the previous year. In addition, 22 volunteers were involved in the Community Guardianship Program.

Through its community education activities, including 41 community education seminars and participation in a number of conferences this year, the Office continued to raise professional and community awareness on the guardianship and administration system. Presentations to community members focused on educating adults with capacity about how to plan for a time when they may lose capacity, by correctly appointing an enduring guardian and/or attorney.

The Public Advocate is an active member of a range of interagency initiatives including the Alliance for the Prevention of Elder Abuse in Western Australia, the People with Exceptionally Complex Needs Project and the Young People with Exceptionally Complex Needs Project.

The Office continued to contribute to a range of policy and legislative work to promote and protect the human rights and interests of adults with a decision-making disability. This included preparing for reforms in disability and mental health, being brought about through the introduction of the National Disability Insurance Scheme, the Disability Justice Centre and the *Mental Health Act 2014*.



## Acknowledgements

It is a difficult job, delving into the lives of people who may need a substitute decision-maker appointed, and making decisions on behalf of those who do. This work would not be possible without a dedicated team of investigator advocates, guardians, administration and support staff.

As always, the work of this team of people enabled the Office to deliver tangible benefits for vulnerable people with impaired capacity in Western Australia. This team carries out the Public Advocate's role and functions as enshrined in legislation. The staff work with commitment and compassion, sometimes in difficult circumstances amid family conflict or where vulnerable members of the community may have been exposed to situations of abuse or neglect.

Once again this year, the advocacy and support provided to isolated people through the participation and contribution of volunteers from the Community Guardianship Program was invaluable.

I commend all staff and volunteers for their commitment and for their efforts. Their tireless work to protect and promote the human rights of adults with a decision-making disability across the State is much appreciated.

I am grateful for the support of the Department of the Attorney General and of colleagues internal and external to the Department. I would also like to particularly acknowledge and thank Cheryl Gwilliam, Director General of the Department of the Attorney General, who continued to support this Office. Her assistance and guidance throughout the year was once again greatly appreciated.

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 2014/15 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 are 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 Office of 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**

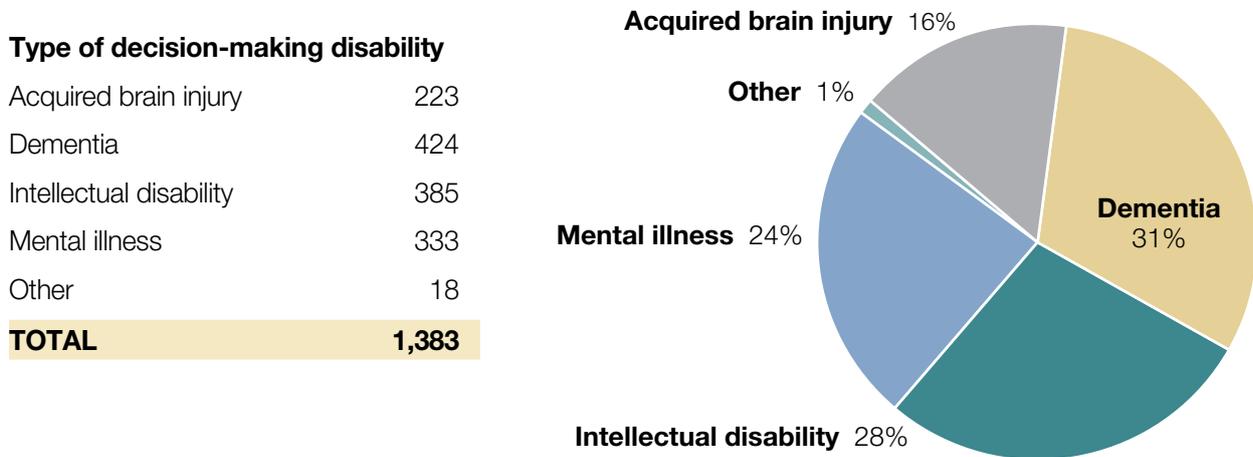
The views and wishes of the person concerned are sought to the extent possible and expressed in whatever manner, either at the time or gathered from the person's previous actions.

## 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.



**Figure 1 Profile of all guardianship orders appointing the Public Advocate by type of decision-making disability as at 30 June 2015**



While the most significant demographic trend impacting on the growing rate of represented persons is the ageing of the population, mental illness, acquired brain injury and intellectual disability are all areas of growth.

The number of people with a mental illness for whom the Public Advocate is guardian, has more than doubled over the past four years, from 154 in June 2011 to 333 in June 2015. Similarly, the number of people with an acquired brain injury has increased from 114 in 2011, to 223 in 2015. The number of people with an intellectual disability has increased from 221 in 2011, to 385 in 2015. For those people with an intellectual disability, the Public Advocate often remains their guardian for a long period of time or for life.

**Figure 2 People under guardianship orders appointing the Public Advocate by type of decision-making disability as at 30 June 2011 – 30 June 2015**

Type of decision-making disability	2011	2012	2013	2014	2015
Acquired brain injury	114	130	146	181	223
Dementia	249	297	348	394	424
Intellectual disability	221	263	283	319	385
Mental illness	154	207	251	284	333
Other	21	31	37	40	18
<b>Total</b>	<b>759</b>	<b>928</b>	<b>1,065</b>	<b>1,218</b>	<b>1,383</b>



## **Dementia**

A 2012 report by the Australian Institute of Health and Welfare entitled '*Dementia in Australia*'<sup>1</sup> 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. 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 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). 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.

In the previous '*Dementia in Australia*' report (AIHW 2007)<sup>1</sup>, information from Western Australia was used to estimate that five 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.<sup>2</sup> The Disability Services Commission of Western Australia funded and provided services to 25,586 people, of which 8,277 were Western Australians with intellectual disability as their primary condition in 2014/15.<sup>3</sup>

## **Acquired brain injury**

An acquired brain injury can result in the deterioration of cognitive, physical, emotional or independent functions. This injury can occur as a result of events including trauma, hypoxia, infection, alcohol and substance abuse, degenerative neurological disease or stroke.

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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.

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. Annual Client and Service Data Collection, 2014/15.



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.<sup>4</sup>

In 2014/15 the Disability Services Commission funded and provided services to 1,172 Western Australians with an acquired brain injury reported as their primary disabling condition.<sup>5</sup>

### **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 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).<sup>6</sup>

This remains consistent with earlier reports such as the 1997 National Mental Health and Wellbeing Survey,<sup>7</sup> 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 per cent 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.<sup>8</sup>

### **Resources**

The role and functions of the Public Advocate in 2014/15 were supported by:

- approved establishment of 49 (full-time equivalent) staff
- expenditure of \$6.4m<sup>9</sup>

The Office of the Public Advocate's core services are delivered through two distinct branches; advocacy and investigation, and guardianship. These staff members are accountable to the Public Advocate through their managers, and are supported by seven administration, policy and community education positions.

4 Australian Institute of Health and Welfare 2007. Disability in Australia: acquired brain injury. Bulletin no.55. Cat. No. AUS 96. Canberra:AIHW, p.1.

5 Disability Services Commission. Annual Client and Service Data Collection, 2014/15.

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 Expenditure includes shared Department of the Attorney General corporate support.



## 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
- guardianship and administration services provided through the appointment of the Public Advocate by the State Administrative Tribunal
- community education services regarding the guardianship and administration system.

### Cross-agency initiatives

The Office of the Public Advocate works together with the Public Trustee with regard to guardianship and administration matters. This occurs when both the Public Advocate and Public Trustee have been appointed as guardian and administrator respectively, by the State Administrative Tribunal. The two offices also provide joint training for private administrators, to enable them to better understand their role and responsibilities.

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



# Agency Performance

## Advocacy and Investigation

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

- conducting investigations referred by the State Administrative Tribunal in relation to applications for guardianship and administration, to gather information on what is in the best interests of the person with a decision-making disability
- 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 complaints or allegations 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 guardianship or administration order
- investigating whether a person who is placed 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 officer, who conducts brief investigations and provides 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, the priority for investigator advocates is to seek the views of the person who is the subject of an application, where possible. They also try to interview a range of interested parties which may include family, friends and service providers. The extent and nature of consultation will depend on the timeframe given by the State Administrative Tribunal and other workload priorities. Investigator advocates often prepare a report about what is in the person's best interests, to assist the State Administrative Tribunal with its deliberations.

Throughout the investigation, investigator advocates advance the best interests of the person with the decision-making disability. They explore whether there are less restrictive ways of resolving the concerns outlined in an application for the appointment of a guardian or administrator. For example, advising the person making the application of community services which could assist the person with a decision-making disability without the need for a substitute decision-maker to be appointed.



## The Year in Review

In 2014/15, the Public Advocate carried out 1,445 investigations into the personal or financial welfare of adults with a decision-making disability. These included new matters and matters carried over from 2013/14. Of these, 1,306 needed investigation and advocacy relating to applications for, or reviews of, administration or guardianship orders before the State Administrative Tribunal. The remaining 139 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 252 preliminary investigations were carried out by the liaison officer, which assisted the Tribunal in gathering further information relevant to the hearing.

### **Investigations referred by the State Administrative Tribunal**

There were 1,069 new investigations referred by the State Administrative Tribunal in 2014/15, representing a 16 per cent increase from the previous year. These comprised of applications regarding guardianship, administration, enduring powers of attorney, enduring powers of guardianship and reviews of administration or private guardianship orders.

The State Administrative Tribunal requested the attendance of an investigator advocate at 143 urgent hearings in 2014/15. This is a significant increase from 90 in the previous year and reflects a growing demand on the Office's resources to attend hearings at short notice to represent the best interests of proposed represented persons. In many of these cases there were urgent medical treatment decisions required, or a need to protect a person's finances.

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.



## Case Study

### The importance of completing planning documents in a valid way

Mr F was an elderly man with advanced dementia. When his care needs became too much for his son to continue looking after him at home, he moved into a residential nursing home. He remained in the nursing home for a number of years, until his health deteriorated and he was admitted to hospital.

While in hospital, Mr F's son was asked if Mr F had made an advance health directive. Mr F's son advised the health professional that his father had not made an advance health directive or any other formal documentation. He added that in the past he and his father had discussed the kinds of medical treatment he would and wouldn't want as he aged, and in particular if he had dementia or developed any other serious illness.

#### **What is an advance health directive?**

An advance health directive is a legal document that enables you to make decisions now about the treatment you would, or would not want to receive, if you ever became sick or injured and were incapable of communicating your wishes. In such circumstances, your advance health directive would effectively become your voice.

The health professional recommended that Mr F's son complete an advance health directive on his father's behalf, according to Mr F's wishes concerning end of life care. The health professional explained that the doctors could then provide and/or withhold treatment as directed by the advance health directive. Mr F's son completed the document and had it witnessed appropriately and it was added to Mr F's hospital file.

Another health professional involved in Mr F's care came across the advance health directive and realised that it had been made on his behalf, rather than by Mr F. The health professional made a call to the Office of the Public Advocate as they were concerned that it was not a valid advance health directive and were unsure whether they should base Mr F's treatment on the document or whether someone else should be making decisions on Mr F's behalf.

In response to the phone call, the Office of the Public Advocate initiated an investigation. Mr F's son and hospital staff co-operated with the investigator advocate and the investigation revealed while the health professional had acted with good intention, they had misinterpreted the proper use of an advance health directive. The document was removed from Mr F's file and other options were discussed.

The investigator advocate explained to the health professional and Mr F's son that an advance health directive can only be made by the person who the document is about, and only while the person has capacity.

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Mr F’s son was relieved however, when the investigator advocate explained that under the *Guardianship and Administration Act 1990*, with regard to treatment decisions, he was in fact the authorised substitute decision-maker for his father, without the advance health directive.

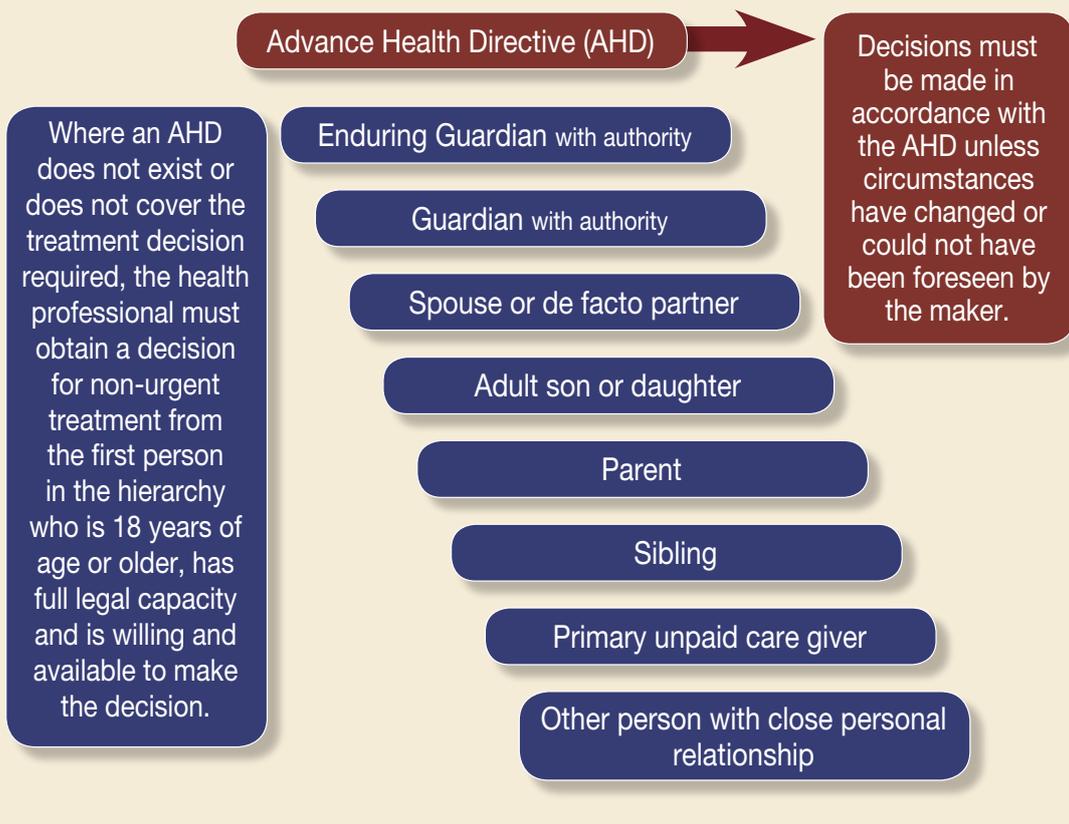
### How do you know who can make treatment decisions?

The *Guardianship and Administration Act 1990* sets out the order of people who health professionals need to obtain treatment decisions from, when a patient lacks the capacity to make their own decisions.

This list is as follows:

#### Hierarchy (order of priority) of treatment decision-makers

If you are unable to make decisions for yourself and non-urgent treatment is needed, treatment decisions will be made according to the following list:



In Mr F’s case, as there was no advance health directive, enduring guardian or guardian appointed, his son was the first person in the list who was willing and able to make these decisions, therefore he was the person health professionals should seek consent from, regarding treatment.

**Note:** Names and details have been changed to protect confidentiality.



## Liaison officer

The role of the Office of the Public Advocate's liaison officer is to respond on-site to requests from the State Administrative Tribunal seeking additional advice about applications, and make recommendations to the Tribunal about the options available, including referral to the Public Advocate for further investigation.

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

In 2014/15, the liaison officer conducted preliminary investigations into 247 new applications for guardianship, administration and intervention in enduring powers of attorney and enduring powers of guardianship. This was out of a total of 252 preliminary investigations.

## 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 concerns for a person where the referrer believes that person may have a decision-making disability.

Referrals for investigation come from a wide variety of sources. In 2014/15, this included referrals from family members, friends and neighbours of adults with impaired or suspected impaired decision-making capacity; human services and other support agencies; and government and non-government agencies.

In total 139 such referrals were reviewed by the Office in 2014/15, an increase of 11 per cent from the previous year. Of those 139 cases, 88 were closed during the financial year and 51 remained open at 30 June 2015.

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 a person has a decision-making disability, which would enable an application to the State Administrative Tribunal being made. The legislation does not provide the Public Advocate with the power to demand information from parties and this can impede 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.



## Case Study

### **Assisting when someone is ‘falling through the gaps’**

Miss R was a 49 year old woman, who lived alone in a small complex of villas.

Mr G was a lawyer who was engaged by the strata company which managed Miss R’s complex. On behalf of the strata company, Mr G attempted to recover unpaid strata fees from Miss R.

After a number of unsuccessful attempts to recover the debt, Mr G began taking steps to have Miss R evicted from her home. During the course of his work, Mr G also discovered Miss R was in arrears for her mortgage payments, and the bank was therefore working to recover this debt, or sell her property.

While Miss R was co-operative at times, Mr G found that she never followed through on making any payments, the villa appeared to be in a state of disrepair and he became increasingly concerned that cognitively, Miss R was unable to make decisions for her own good.

He became concerned about what would happen to her if she was evicted, so he contacted the Office of the Public Advocate with his concerns. This contact initiated a community referred investigation and an investigator advocate from the office began investigating Miss R’s situation.

Initially, Miss R was resistant to the assistance being offered by the investigator advocate. During this time, the investigator advocate worked to establish whether or not Miss R had capacity. Eventually Miss R agreed to an appointment with a health professional. She was diagnosed as having Autism and was assessed as not having the capacity to make these decisions.

An application was then made to the State Administrative Tribunal for the appointment of an administrator, to manage Miss R’s finances in her best interests.

As Miss R didn’t have any close family or friends who were willing and able to be appointed, the Public Trustee was appointed as her plenary administrator. The Public Advocate was also appointed as Miss R’s limited guardian to make decisions regarding health care and support services.

Together, the administrator and guardian worked to establish a plan around Miss R’s finances. They secured a disability services pension for Miss R, together with a number of services to assist her in her home. They reached an agreement with Miss R’s bank and strata company, which ensured she wasn’t evicted from her home.

After a short period of time, Miss R’s situation became much more stable. She had health and support services in place and her finances were being managed by the Public Trustee.

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Miss R, who was previously quite isolated, was now happy to have the support services in her life and also engaged with the Trust Manager at the Public Trustee to talk about her finances and to discuss buying things for her home. The Public Advocate applied to the State Administrative Tribunal to revoke her appointment as guardian, as there was no longer a need for the appointment as Miss R had supports in place to assist in meeting her needs.

**Note:** Names and details have been changed to protect confidentiality.

## Advocacy

In addition to conducting investigations, it is the role of an investigator advocate 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.

## Administrator of Last Resort

As at 30 June 2015, the Public Advocate was appointed by the State Administrative Tribunal as limited administrator for four people where it was not appropriate for the Public Trustee to have these specific authorities.

## Collaboration with other States and Territories

Throughout the year, both the advocacy and investigation team and the guardianship team were contacted by interstate counterparts regarding vulnerable adults with decision-making disabilities 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 assisted their counterparts to ensure the safety and protection of these vulnerable adults.



## 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 2014/15, alleged 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.

Some 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 149 of the 1,069 investigations, and of these, 53 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 a vulnerable individual. Often this occurs where the victim is socially isolated or dependent on their family for support.

This Office looks at the importance of balancing the person's right to autonomy, with the possibility of abuse and the need for the protection afforded by appointing someone to oversee the individual's decision-making.

### Case Study

#### Attorney acting appropriately

Miss N was a 76 year old Chinese woman, who immigrated to Australia approximately 40 years ago. Miss N had dementia and was unable to care for her own health and safety, or make reasonable judgements.

In the years after she moved to Australia, Miss N became estranged from her family in China. With no children or other family in Australia, Miss N formed close friendships with a circle of people who lived in her street. In particular, she became good friends with her next door neighbour Mrs A.

Before Miss N's dementia became apparent, she made some plans for her future, including executing an enduring power of attorney, in which she appointed her close friend Mrs A as her attorney.

As Miss N's dementia progressed and she became less able to care for herself, Mrs A engaged a number of different service providers to visit Miss N at her home to make sure she was properly cared for. Mrs A also helped Miss N on a daily basis. However, Mrs A was aging herself, and started to find Miss N's increasing need for care and support was becoming too much for her and the service providers.

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With some assistance from one of the service providers, Mrs A found a suitable aged care facility for Miss N to move into. In order to pay for the bond, she listed Miss N's house for sale.

Around the same time that the house was listed for sale, Miss N's estranged sister attempted to reconnect with her, through a family friend who lived in Australia. On behalf of Miss N's sister, the family friend started making enquiries as to Miss N's whereabouts. Eventually, when the family friend located Miss N, they discovered that her house was on the market, with the sale being organised by her neighbour.

The family friend made an application to the State Administrative Tribunal, as they believed the neighbour had taken advantage of Miss N. The family friend felt that after Miss N dies, the proceeds of her estate should go to her family in China, rather than to her neighbour, Mrs A.

The State Administrative Tribunal asked the Public Advocate to investigate the situation and provide a report of their findings at the hearing.

An investigator advocate from the Office of the Public Advocate spoke with a number of the service providers who cared for Miss N as well as a number of her neighbours. From this, the investigator advocate uncovered the background regarding the sale of Miss N's house, as well as the history of her friendship with Mrs A, and how close and supportive she had been over their long friendship.

In addition to this background, Mrs A provided the investigator advocate with a copy of the enduring power of attorney. This showed Miss N lodged the document with Landgate herself, to enable her attorney to sell her house if this was ever required. Miss N's doctor who was a witness when Miss N made the enduring power of attorney, also confirmed Miss N made the document of her own choice, before she was diagnosed with dementia.

At the State Administrative Tribunal hearing, the Tribunal member found Mrs A was acting appropriately in the role as attorney. She was acting in Miss N's best interests, by selling her property to secure her place in the residential care facility and provide funds for her ongoing care.

The application was dismissed and Mrs A was also appointed as Miss N's guardian for treatment decisions.

**Note:** Names and details have been changed to protect confidentiality.



## Transition of young people leaving State care

The Office of the Public Advocate continues to work closely with the Department for Child Protection and Family Support in the early identification of young people's needs, to enable a smoother transition out of the Department's 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. Many of these young people have complex needs.

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.

In 2014/15, the Public Advocate's appointment as guardian came into effect for 16 young people leaving State care, when they turned 18 years of age as a result of applications to the State Administrative Tribunal by the Department for Child Protection and Family Support.

In addition, the Department made a further two applications where only an administration order was made, appointing the Public Trustee, and one other matter where a family member was appointed as guardian and administrator.

There was also a case where the young person had a significant disability and a family member applied to the State Administrative Tribunal for the appointment of an independent guardian and administrator. The Public Advocate and Public Trustee were appointed.

## Court referrals

The Children's, Family, Magistrates and Supreme Courts may 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 or administrator 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.

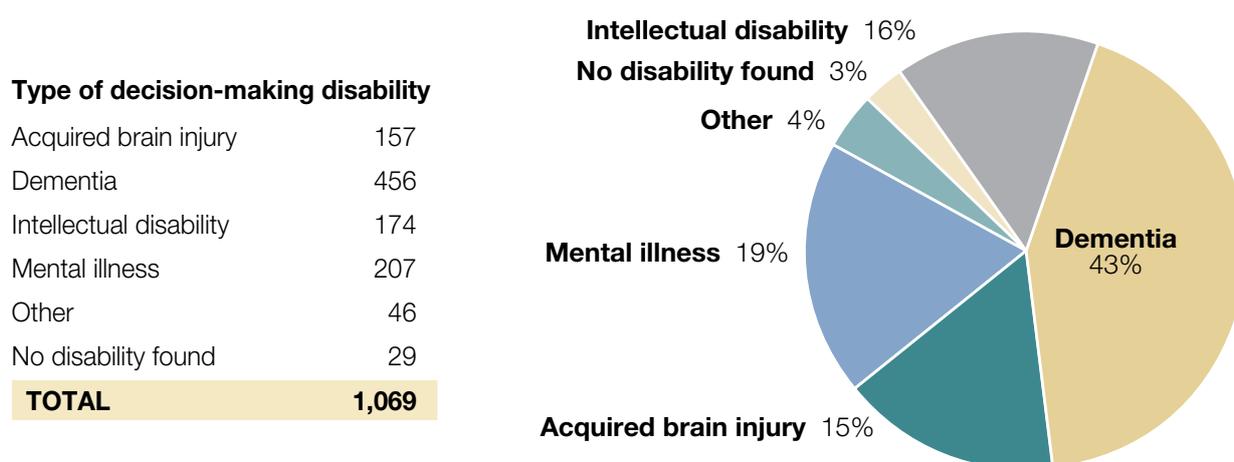
In most cases the court has very little information about the person's capacity and therefore considerable effort is taken to gather this information, and respond within the court's timeframes. The powers afforded under the *Guardianship and Administration Act 1990* do not authorise the Public Advocate to compel parties to provide information.



## Our Customers

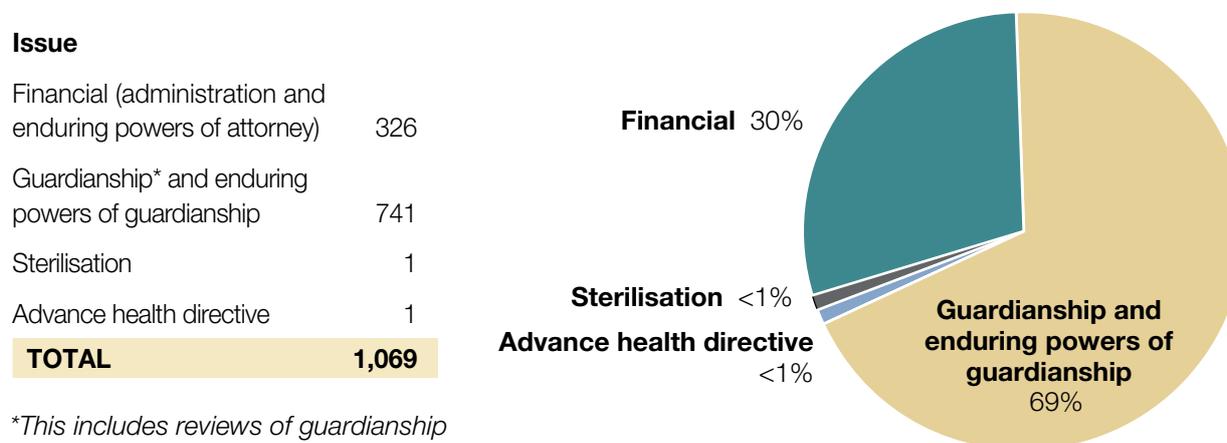
Of the 1,069 new matters referred to the Public Advocate for investigation by the State Administrative Tribunal in 2014/15, over 40 per cent involved a person with dementia. The remaining matters involved a person with mental illness, an intellectual disability and an acquired brain injury.

**Figure 3 Profile of new investigations by type of decision-making disability 2014/15**



Guardianship matters were once again the main reason for investigations this year, with over two thirds of all applications reporting decisions about matters such as accommodation, medical treatment and service provision, being required for the proposed represented person. Almost one third of applications involved financial decisions.

**Figure 4 Profile of new investigations by issue 2014/15**

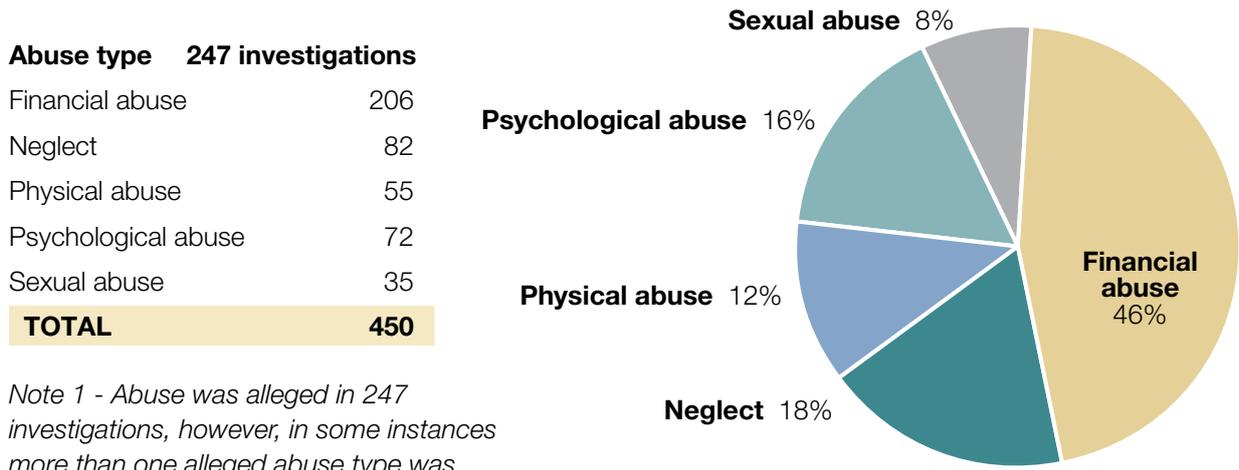


\*This includes reviews of guardianship orders where someone other than the Public Advocate was appointed.



Allegations of abuse were made in 247 of the 1,069 new investigations during the year, representing just over one fifth of investigations. In some cases, more than one type of alleged abuse was reported in the application. The most commonly reported form of abuse was financial, accounting for almost half of all allegations.

**Figure 5 Profile of new investigations alleging abuse by type of abuse 2014/15 (including statistics of elder abuse)**

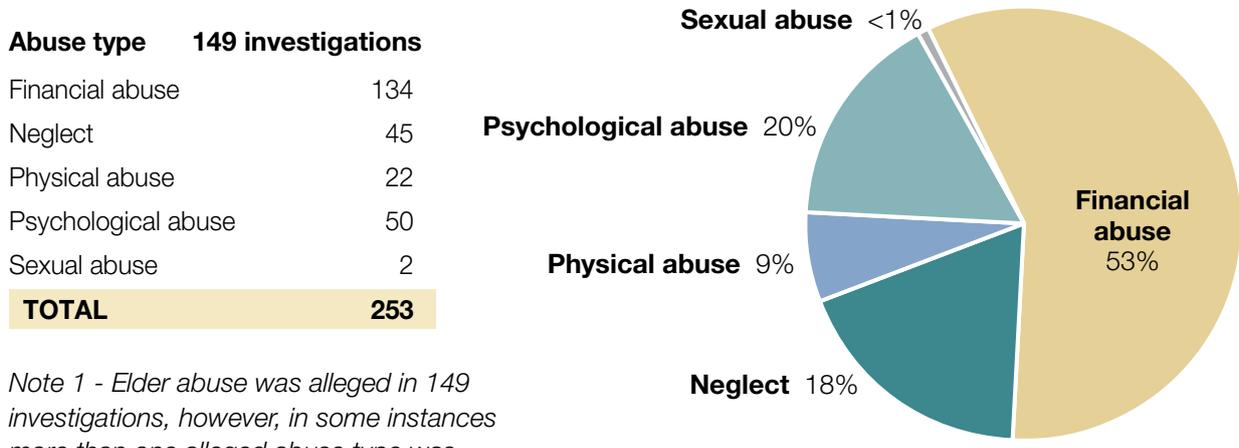


Note 1 - Abuse was alleged in 247 investigations, however, in some instances more than one alleged abuse type was reported in the application.

Note 2 - The abuse may relate to historical abuse which was revealed during the investigation.

Of the 247 investigations where abuse was alleged, 60 per cent of the people were 65 years of age or older. This compares with 55 per cent in 2013/14. Of those 65 or older, financial abuse was the most commonly reported form accounting for over half of all allegations.

**Figure 6 Profile of new investigations alleging elder abuse (aged 65 or older) by type of abuse 2014/15**



Note 1 - Elder abuse was alleged in 149 investigations, however, in some instances more than one alleged abuse type was reported in the application.

Note 2 - The abuse may relate to historical abuse which was revealed during the investigation.



The number of new investigations regarding a person of Aboriginal and Torres Strait Islander descent has remained fairly constant over the past five years, between seven and 10 per cent.

**Figure 7 Profile of new investigations by Aboriginality and Torres Strait Islander descent from 2010/11 to 2014/15**

Year	Total	Non ATSI	ATSI	ATSI as a percentage of total
2010/11	989	901	88	9
2011/12	884	818	66	7
2012/13	923	854	69	7
2013/14	925	833	92	10
2014/15	1,069	989	80	7

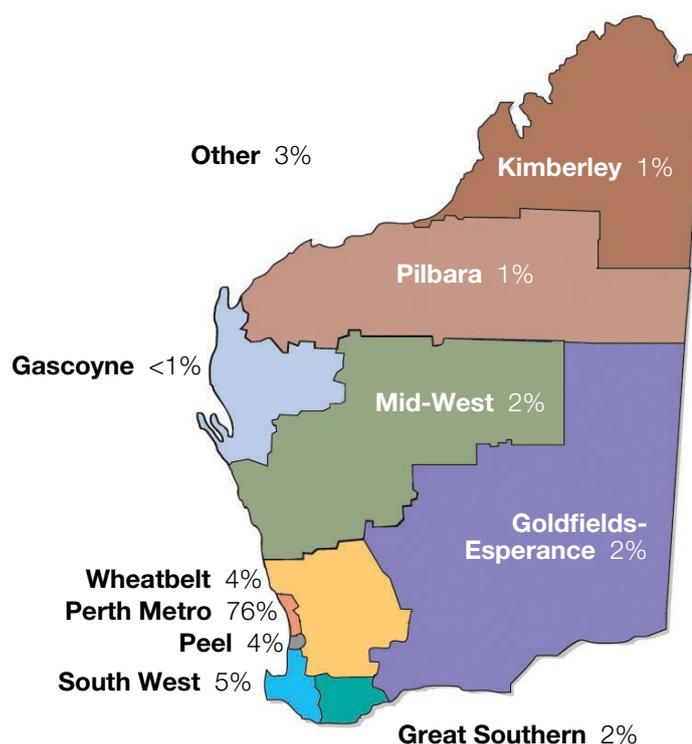
Note - ATSI = Aboriginal and Torres Strait Islander.

Three quarters of new investigations in 2014/15 were carried out in the Perth metropolitan area.

**Figure 8 Profile of new investigations by geographical location 2014/15**

**Geographical location**

Gascoyne	3
Goldfields-Esperance	20
Great Southern	24
Kimberley	10
Mid-West	23
Peel	40
Perth Metro	812
Pilbara	11
South West	50
Wheatbelt	44
Other	32
<b>Total</b>	<b>1,069</b>





## Guardianship

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

- ensuring timely decisions are made in the best interests of the represented person
- protecting the represented person from abuse, exploitation and neglect
- ensuring wherever possible, 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 judgements 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 2014/15 there were 423 new appointments of the Public Advocate as guardian of last resort, compared to 340 in 2013/14, representing an increase of 24 per cent.

At 30 June 2015, the Public Advocate had responsibility as guardian of last resort for 1,383 adults with a decision-making disability, compared to 1,218 at 30 June 2014, representing an increase of 14 per cent.

The Public Advocate had responsibility as the sole guardian for 1,318 of the total 1,383 represented persons as at 30 June 2015. In relation to the remaining 65 appointments of the Public Advocate, there were 60 represented persons on a guardianship order which appointed the Public Advocate and private guardian(s) with different functions, and five represented persons for whom the Public Advocate and the private guardian (a family member) were appointed with the same functions as guardian.

During the year, the Public Advocate was involved with 2,154 guardianship orders and reviews of orders, comprising of existing appointments as at 30 June 2014, new appointments of the Public Advocate as guardian for the first time during the year, and periodic reviews of guardianship orders by the State Administrative Tribunal or reviews sought by the Public Advocate or other parties.



As the guardian of last resort, the Public Advocate made personal, lifestyle and treatment decisions in relation to a range of matters 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.

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 is just above the 95 per cent target set for this measure of timeliness.

To meet the needs of the Office’s 193 represented persons of Aboriginal and Torres Strait Islander descent, guardians liaised with their families, Aboriginal community members, Aboriginal agencies and service providers, to enable culturally appropriate practices to be adopted wherever 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 2014/15, the guardianship team attended 411 review hearings conducted by the State Administrative Tribunal, in which they 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 ongoing training and support to volunteers.



At 30 June 2015, there were 22 volunteers engaged in the community guardianship program. Of these, 12 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. Six of the 22 volunteers had been matched with a represented person, who they were taking time to get to know, while still receiving induction training from the Office.

Work is progressing to find suitable matches for the four unmatched volunteers.

During the year, one of the community guardians made end of life decisions for their represented person, through their final days.

## Case Study

### **The important work of community guardians**

Mr Y was a young Aboriginal man with cerebral palsy, no verbal communication and no family connections. Through the Public Advocate's appointment as Mr Y's guardian, he became part of the Community Guardianship Program, where he met Miss L, a community guardian.

Miss L and Mr Y formed a friendship over time. Miss L would visit Mr Y regularly, and the two went on outings and attended appointments together.

Eventually, Miss L was appointed as Mr Y's guardian, replacing the Public Advocate in this role. This came about after the Public Advocate and the community guardianship program co-ordinator felt confident that Miss L was capable in the role. They applied to the State Administrative Tribunal to revoke the appointment of the Public Advocate as Mr Y's guardian and to appoint Miss L as guardian.

The Office of the Public Advocate's community guardianship program co-ordinator remained available for consultation, to assist Miss L in her decision-making role.

Mr Y had a history of dental hygiene issues. Regular dental check-ups had been recommended, along with a scale and clean as a preventative measure. This was done under light sedation.

Mr Y's uncontrolled movements and inability to co-operate with past dental checks and treatment, even under light sedation, had led to his dentist recommending dental work be performed under a general anaesthetic.

Putting Mr Y under a general anaesthetic however, posed a high risk due to complications from one of his health conditions. The community guardian therefore had to weigh-up the benefits of preventative dental treatment, against the potential risks associated with a general anaesthetic.

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After researching and consulting with medical professionals, as well as consulting with the Office's community guardianship program co-ordinator, Miss L decided to seek a second opinion from another dentist. She found a dentist with a lot of experience working with people with cerebral palsy.

At the appointment, the new dentist was not only able to encourage Mr Y to co-operate in a full dental check, she successfully took X-rays, performed a scale and clean and determined that no further dental treatment was needed for two years.

**Note:** Names and details have been changed to protect confidentiality.

## Issues for Guardianship

The growth in demand for guardianship services is 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. Ensuring adequate support and services are provided to these clients, maintaining contact with them and conducting visits often poses challenges for the Office of the Public Advocate.
- In 2014/15 guardians and investigator advocates made 17 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 multifaceted, as a number of represented persons have multiple and complex needs. They 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 in these circumstances 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 a range of 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 residential 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 for represented persons with disruptive or self-injurious behaviour.
- 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 Crime Division), 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 and 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, 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 the children of a represented person. 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

### Western Australian guardianship orders not recognised in all States and Territories

Mr P was a middle-aged man with paranoid schizophrenia. He was on holidays in Western Australia, but became detained in a mental health facility after becoming unwell and assaulting his travel companion.

With no family or friends available to take on the role as Mr P’s substitute decision-maker, an application was made to the State Administrative Tribunal and the Public Advocate was appointed as Mr P’s guardian.

When Mr P’s mental health stabilised somewhat, he indicated to the guardian that he wanted to return home to South Australia.

While his mental health had improved, there was still the need for someone to assist Mr P to make decisions in his best interests.

The guardian liaised with Mr P’s family and mental health providers in South Australia to prepare for his return. Unfortunately there was not a family member who was suitable, willing and available to take on the role as Mr P’s guardian.

Under Western Australia’s legislation, guardianship orders from other States and Territories are able to be automatically recognised. However, South Australia does not automatically recognise a Western Australian guardianship order.

The guardian applied to the South Australian Civil and Administrative Tribunal for the appointment of a guardian. Eventually an equivalent order was made and Mr P returned to South Australia. He received care from the South Australian mental health service and was under the guardianship of the South Australian Public Advocate.

His delegated guardian in Western Australia applied to the State Administrative Tribunal for the revocation of his Western Australian guardianship order. The order was revoked, removing the Public Advocate as his guardian.

**Note:** Names and details have been changed to protect confidentiality.



## Case Study

### Re-establishing family connections

Miss J was a young homeless Aboriginal woman with a history of alcohol and substance abuse. As a result of her risky lifestyle choices, Miss J was involved in a serious car accident, in which she sustained a severe head injury.

While Miss J was in hospital, it became clear to hospital staff that she was unable to make decisions in her own best interests and there was no one currently in her life who was suitable, willing and available to make decisions regarding her healthcare and ongoing accommodation and support needs.

Health professionals were of the opinion that she would require permanent professional care and full time one-on-one security, due to her aggression.

Following applications to the State Administrative Tribunal, the Public Trustee was appointed as Miss J's administrator, and the Public Advocate as her guardian.

While under guardianship, Miss J became part of the People with Exceptionally Complex Needs project. Together, staff from the project and Miss J's delegated guardian from the Office of the Public Advocate, worked to co-ordinate services and disability professionals in Miss J's care.

#### ***What is the People with Exceptionally Complex Needs project?***

Some adults with a decision-making disability have exceptionally complex needs, with two or more major issues, such as a significant intellectual disability, mental illness and an alcohol or drug abuse problem.

In some of these cases, the existing system is not enough. Interagency collaboration for the many services they require has failed to meet their exceptionally complex needs and they have begun to fall through the gaps. For the individuals selected for the People with Exceptionally Complex Needs project, greater collaboration is made possible through the Project Co-ordinator and commitment by agencies at both senior and operational levels to find unique solutions.

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, work together to operate the project.

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Eventually, Miss J moved from the hospital into a residential care facility. This arrangement worked for a period of time, until Miss J became unstable and alternative arrangements had to be made. For a period of time, Miss J was homeless as she would not stay in the facility and alternative arrangements had not been made.

Miss J was then placed in a regional farm stay, as it was thought that moving her away from the metropolitan area would be beneficial. Again, this arrangement worked for a while, before Miss J had to move again.

Although estranged, Miss J had family located in a regional area of Western Australia. The guardian and People with Exceptionally Complex Needs project staff worked with some of these family members and eventually Miss J moved in with a small group of family members. This move proved detrimental, as parties were often held at the house and Miss J was able to easily access alcohol and other substances.

It was during this difficult period however, that a previously undiagnosed mental health condition was revealed and Miss J started taking appropriate medication. The improvement in her mental health was seen quickly.

An aunt of Miss J's then came forward and offered to have her live with her. This arrangement has proven successful to date. Miss J, who was previously considered a person for whom permanent care was needed, was no longer having periods of homelessness, had re-established family connections and was no longer showing antisocial behaviour or taking risks. Miss J began attending regular medical appointments with the assistance of her aunt and started participating in structured activities including sport and art.

**Note:** Names and details have been changed to protect confidentiality.



## 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 2014/15, guardians from the Office of the Public Advocate were involved in 411 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.

During the year, a short-term project had a particular focus on identifying cases where the delegated guardian believed the appointment of the Public Advocate as guardian was no longer necessary.

Of the 411 reviews, 117 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.

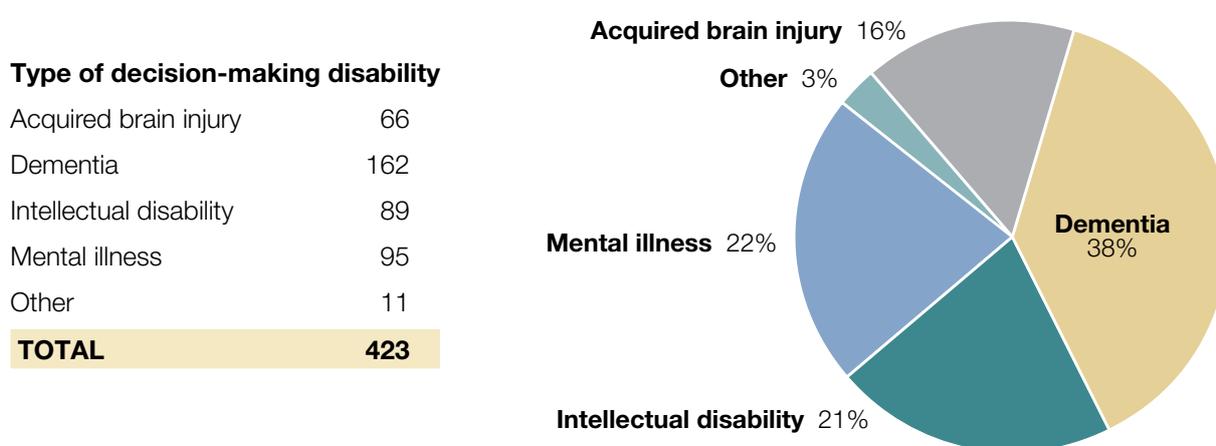
A total of 259 guardianship orders ceased during 2014/15, through revocation by the State Administrative Tribunal, or death of the represented person.



## Our Customers

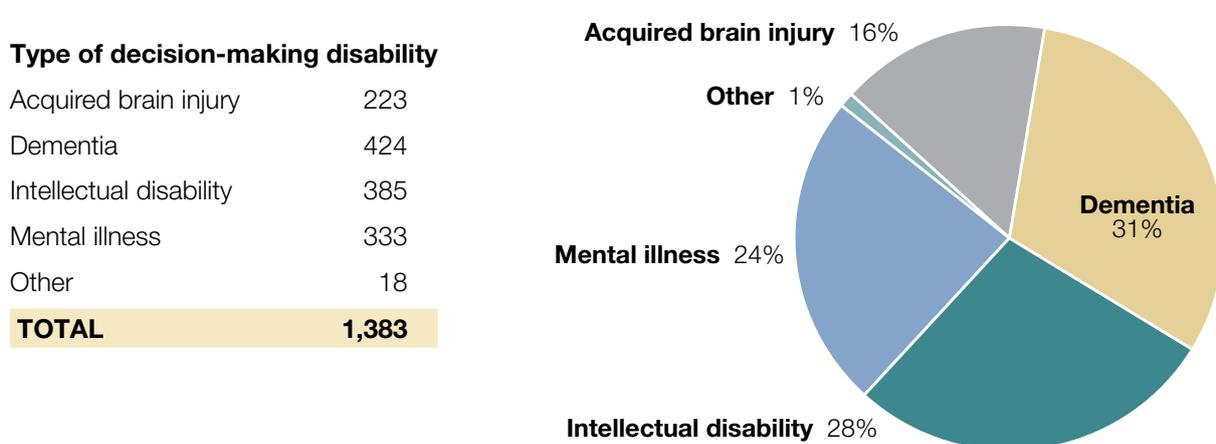
People with dementia continued to account for a large proportion of new appointments of the Public Advocate as guardian of last resort. Of the 423 new appointments in 2014/15, 38 per cent had dementia, 22 per cent a mental illness, 21 per cent an intellectual disability, and 16 per cent an acquired brain injury.

**Figure 9 Profile of new guardianship orders appointing the Public Advocate by type of decision-making disability 2014/15**



Similarly, of the total 1,383 appointments at 30 June 2015, dementia was the most common type of decision-making disability, followed by intellectual disability, mental illness and acquired brain injury.

**Figure 10 Profile of all guardianship orders appointing the Public Advocate by type of decision-making disability as at 30 June 2015**

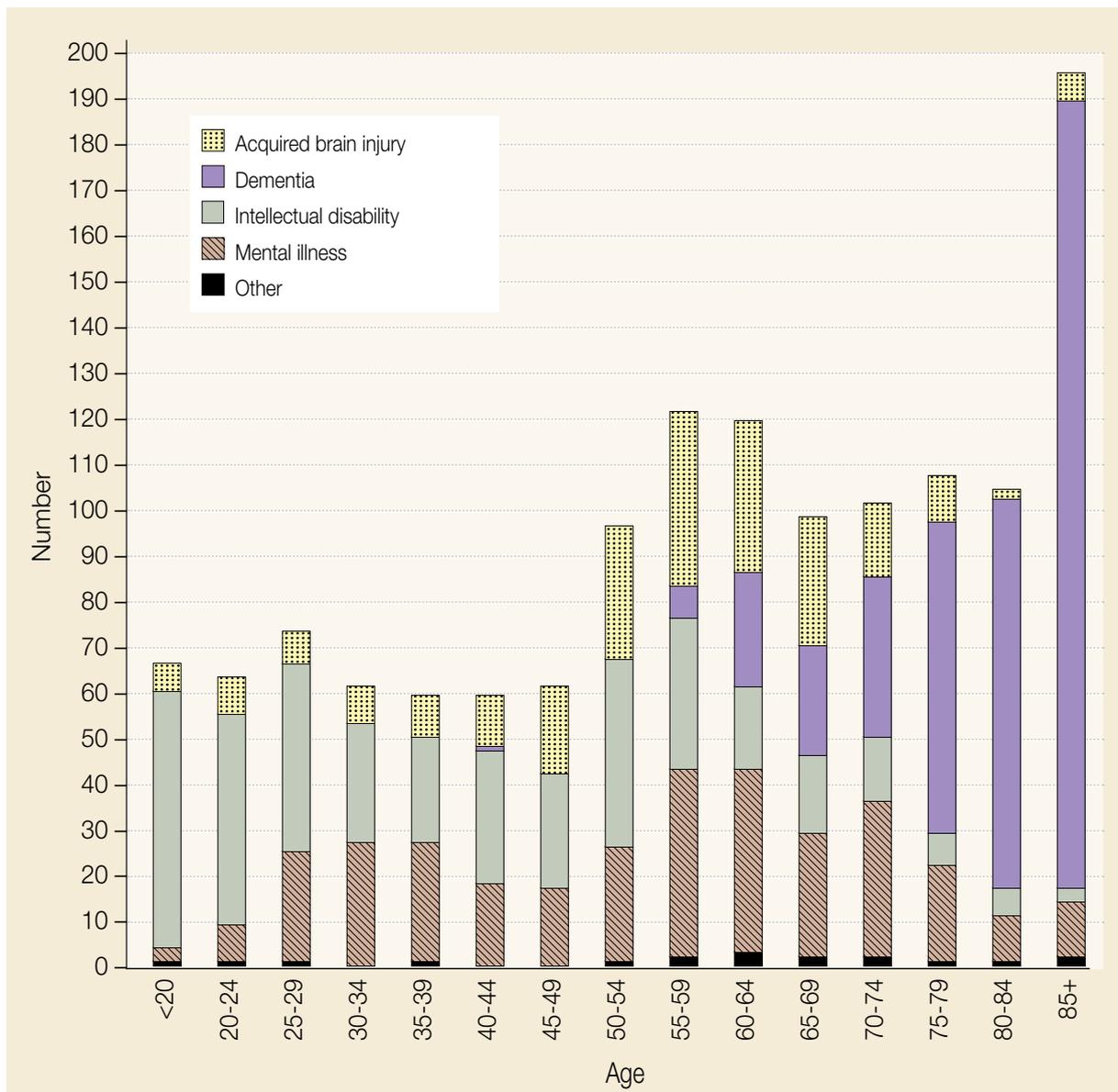




At 30 June 2015, the Public Advocate was guardian of last resort for 299 adults aged 80 years and over, who account for more than one fifth of all guardianship appointments. The majority of these people have dementia.

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.

**Figure 11 Profile by age and disability type of all people on guardianship orders appointing the Public Advocate as at 30 June 2015**





The most common single issue leading to the appointment of the Public Advocate as guardian of last resort continued to be treatment decisions. At 30 June 2015, 85 per cent of all orders appointing the Public Advocate as guardian included the authority to make treatment decisions.

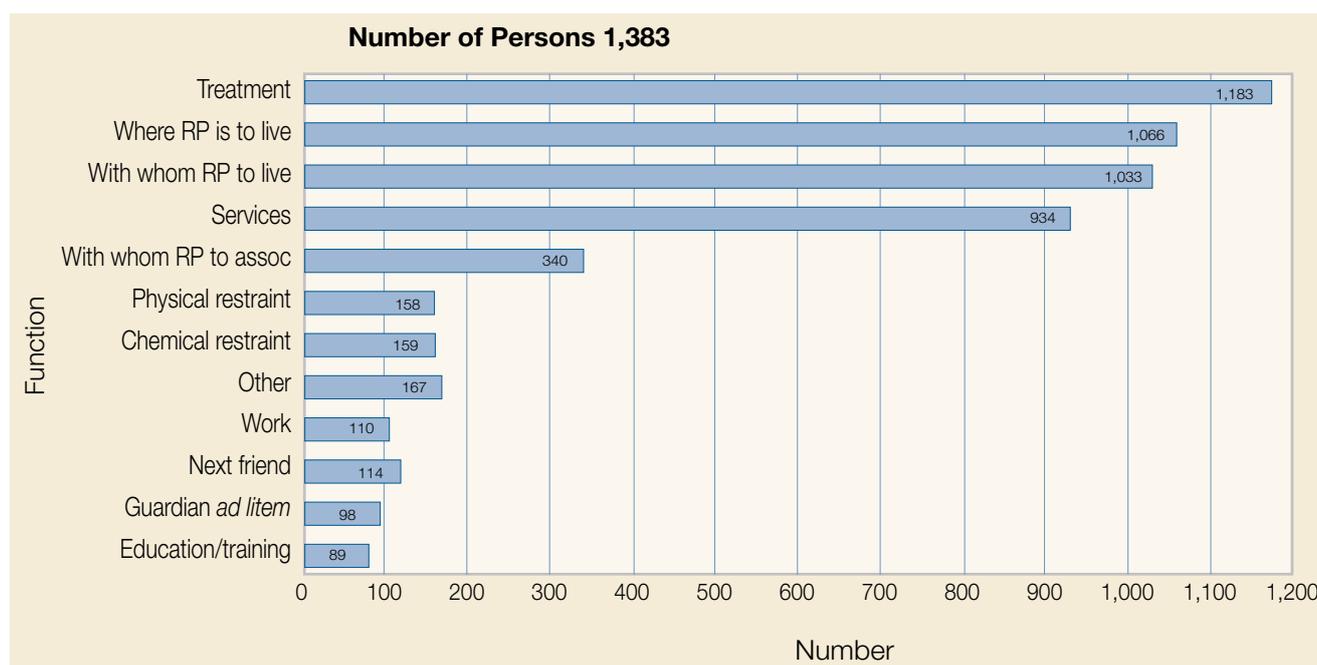
The high number of orders appointing the Public Advocate to make treatment decisions can be attributed to represented persons not having a valid enduring power of guardianship, a spouse, a child over the age of 18, or a relative or a friend to act on their behalf. In some cases, these people exist, but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

At 30 June 2015, almost three quarters of all guardianship orders authorised the Public Advocate to make decisions for represented persons regarding where and with whom they were to live.

The high number of appointments regarding decisions about where and with whom a represented person lives reflects issues regarding appropriate supported accommodation for people with a decision-making disability. In many cases there is a need to consent to residential care on behalf of people with dementia, particularly for seniors who are neglecting themselves, refusing support services and opposed to entering residential care.

Decisions relating to where the person should live were the second largest contributor to the appointment of the Public Advocate in 2014/15. This was followed closely by decisions regarding who the person should live with.

**Figure 12 Functions for which Public Advocate has been appointed for all guardianship orders as at 30 June 2015**



Note 1 - RP = represented person.

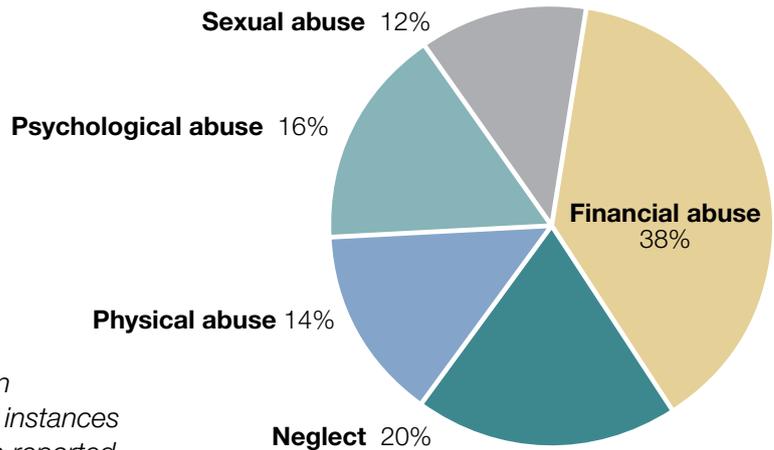
Note 2 - An order can be made for multiple functions.



Allegations of abuse were a factor in 105 or 25 per cent of the 423 new guardianship orders appointing the Public Advocate in 2014/15. In some cases, more than one type of abuse was reported. The most commonly reported form of abuse was financial, accounting for 38 per cent of all allegations.

**Figure 13 Profile of new guardianship orders appointing the Public Advocate by type of alleged abuse 2014/15 (including elder abuse)**

Abuse type	105 people
Financial abuse	74
Neglect	38
Physical abuse	28
Psychological abuse	32
Sexual abuse	23
<b>TOTAL</b>	<b>195</b>



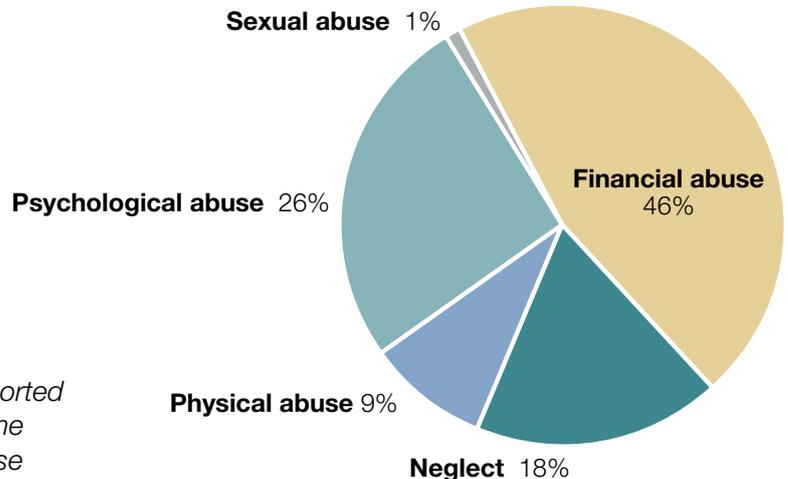
*Note 1 - Alleged abuse was reported in 105 people's cases, however, in some instances more than one alleged abuse type was reported.*

*Note 2 - Abuse may relate to historical abuse prior to the appointment of the Public Advocate.*

Of the 105 people for whom abuse was alleged, 42 people were 65 years of age or older. Of these, financial abuse was also the most commonly reported form of abuse, having been alleged in 46 per cent of cases.

**Figure 14 Profile of new guardianship orders appointing the Public Advocate by type of alleged elder abuse (aged 65 or older) 2014/15**

Abuse type	42 people
Financial abuse	34
Neglect	13
Physical abuse	7
Psychological abuse	19
Sexual abuse	1
<b>TOTAL</b>	<b>74</b>



*Note 1 - Alleged elder abuse was reported in 42 people's cases; however, in some instances more than one alleged abuse type was reported.*

*Note 2 - Abuse may relate to historical abuse prior to the appointment of the Public Advocate.*



Ten per cent of new appointments of the Public Advocate as guardian in 2014/15 were for a person of Aboriginal and Torres Strait Islander descent.

**Figure 15 Profile of new guardianship orders appointing the Public Advocate by Aboriginality and Torres Strait Islander descent from 2010/11 to 2014/15**

Year	Total	Non ATSI	ATSI	ATSI as a percentage of total
2010/11	330	282	48	15
2011/12	347	311	36	10
2012/13	371	335	36	10
2013/14	340	297	43	13
2014/15	423	379	44	10

Note – ATSI = Aboriginal and Torres Strait Islander.

For the past five years, orders where the Public Advocate has been appointed as guardian of last resort for a person of Aboriginal and Torres Strait Islander descent, has averaged 14 per cent of all orders.

**Figure 16 Profile of all guardianship orders as at 30 June, appointing the Public Advocate by Aboriginality and Torres Strait Islander descent from 2010/11 to 2014/15**

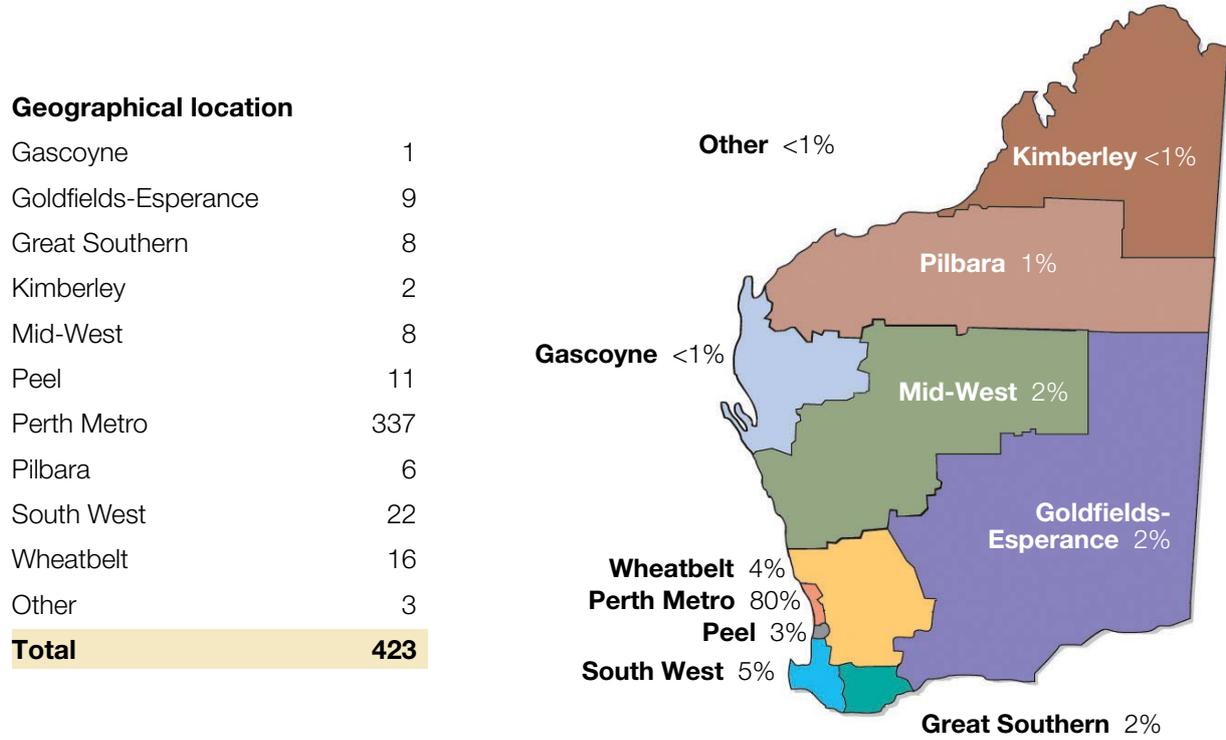
Year	Total	Non ATSI	ATSI	ATSI as a percentage of total
2010/11	759	649	110	14
2011/12	928	801	127	14
2012/13	1,065	921	144	14
2013/14	1,218	1,044	174	14
2014/15	1,383	1,190	193	14

Note – ATSI = Aboriginal and Torres Strait Islander.



Eighty per cent of new appointments of the Public Advocate in 2014/15 were for people living in the Perth metropolitan area.

**Figure 17 Profile of new guardianship orders appointing the Public Advocate by geographical location 2014/15**



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 2014/15 guardians took 801 after hour calls which took 239 hours.



## Systemic Advocacy

The Office of the Public Advocate works with the government, community and private sectors in developing legislation, policies and services, which promote and protect the human rights and interests of adults with a decision-making disability.

### The Year in Review

#### **Collaboration in preparing for changes in the disability sector**

A number of the Office's clients have and will continue to be impacted by recent reforms to the disability sector.

Namely, the introduction of the National Disability Insurance Scheme and the transition of accommodation services provided by the Disability Services Commission to non-government service providers, has seen the Office of the Public Advocate work in collaboration with a number of other agencies.

The impact of these changes on the Office and its clients is detailed in the Significant Issues section of this report.

#### **People with exceptionally complex needs**

In 2006, the Public Advocate raised serious concerns about a small but problematic group 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.

Out of this concern, the People with Exceptionally Complex Needs project was born.

The project 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.

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, work together to operate the project.

At 30 June 2015, 20 people were participating in the People with Exceptionally Complex Needs Project. Of these, 18 had a guardian and/or administrator appointed by the State Administrative Tribunal. Of these, 16 participants had both a guardianship order appointing the Public Advocate and an administration order appointing the Public Trustee.



## **Young people with exceptionally complex needs**

A similar project for young people with exceptionally complex needs was established in April 2012, by the then Department for Child Protection, Disability Services Commission and the Mental Health Commission.

The Office of the Public Advocate is also involved in detailed collaborative work with the Department for Child Protection and Family Support, in order to assist the transition of young people out of State care when they turn 18, who may need a guardian and/or an administrator appointed. The Public Advocate therefore, is a member of the interagency executive committee for the young people with the exceptionally complex needs project.

Other senior representatives on the interagency committee are from the Department of Health's Child and Adolescent Mental Health Service, Drug and Alcohol Office, Department of Corrective Services – Youth Justice, and the Departments of Education and Housing.

At 30 June 2015, there were 12 young people participating in the Young People with Exceptionally Complex Needs Project. Of these, three had the Public Advocate appointed as their guardian and the Public Trustee appointed as their administrator. In addition, the Office of the Public Advocate was involved in transition planning for one young person, for whom applications for the appointment of a guardian and administrator will be made next year, before they turn 18.

Over the year, the level of support provided by this project has been invaluable to four highly vulnerable young people who have required intensive support with their transition from State care.

## **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.

In Western Australia, this vulnerable group of the community consists of a large and growing number of people who are 65 or older and have a cognitive impairment, often due to dementia.

This sub-group face a higher risk of abuse, exploitation and neglect – often referred to as 'elder abuse' – and are a key group which the Office works to protect.

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



The Public Advocate is an active member of the Alliance for the Prevention of Elder Abuse in Western Australia. This is an interagency alliance established to find ways to raise awareness of and prevent elder abuse.

The Office of the Public Advocate contributes annually to World Elder Abuse Awareness Week, which occurs in June every year. In June 2015 two community events were held, the focus of which were the protection offered by the *Guardianship and Administration Act 1990* for adults, should they lose capacity.

The two seminars provided an opportunity for seniors and other community members to consider how they could prepare for the future and protect themselves from potential exploitation and abuse by completing an enduring power of attorney and/or an enduring power of guardianship. These powers can operate when a person has lost capacity, giving the person they have appointed the responsibility to make decisions in the maker's best interests and the legal authority to do so.

The Office worked collaboratively with Advocare and the City of Joondalup, and the Public Advocate gave a presentation on the future planning tools available in Western Australia as part of an 'Art of Ageing' event for seniors. This event highlighted topics such as personal safety and cybercrime, as well as planning for the future. It raised issues which helped seniors become more aware of elder abuse in our society, and provided suggestions about how they could protect themselves from potential abuse and exploitation.

A staff member from the Office also gave a half-day presentation to community members from Rockingham and surrounding areas. The presentation explored the factors to be considered before appointing substitute decision-makers using an enduring power of attorney and/or an enduring power of guardianship. This enabled audience members to make an informed decision about whether to complete either power, and provided them with copies of the correct forms if they wished to do so.

The presenter also delivered 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. This event was held in partnership with the City of Rockingham's Community Support and Safety Services branch.

A seminar for service providers was also held during World Elder Abuse Awareness Week. The focus of the service provider seminar was on the overarching guardianship and administration system, and the way in which it could be used by service providers with regard to their duty of care in protecting vulnerable adults.



## Policy and legislative work

The Public Advocate and senior staff members were involved in policy development and reviews with other government and non-government agencies during 2014/15, including:

- Further submissions and amendments to previous submissions on the statutory review of the *Guardianship and Administration Act 1990*.
- Review and amendment of Memoranda of Understanding between the Public Advocate and several stakeholders including the Disability Services Commission, Advocare, Western Australia Police, Sexual Assault Resource Centre and Northern Suburbs Community Legal Centre (Older Persons Rights Service).
- Continuing work with the Mental Health Commission and Department of Health and other agencies, regarding the *Mental Health Act 2014*, its implementation and its intersection with the *Guardianship and Administration Act 1990* including preparation of an addendum to the Clinicians Guide and submissions on the *Mental Health Partnership Agreement* (initiated by the Health and Disability Services Complaints Office).
- Submissions to the Director General on a discussion paper on the review of the *Criminal Law (Mentally Impaired Accused) Act 1996*.
- Input into the development of operational policies for the new Disability Justice Centre which is operated by the Disability Services Commission, including the development of a guide about the role of guardians and the decisions they can make under the *Declared Places (Mentally Impaired Accused) Act 2015*.
- Contributed to the consultation process with regard to the implementation of the National Disability Insurance Scheme in pilot sites in Western Australia.
- Completion of a staff and agency wide survey on the *Mental Health, Drugs and other Services Plan* and continued involvement in the consultation process on the Plan with the Mental Health Commission and Drug and Alcohol Office.
- Participation in an all of government stocktake on the cost of alcohol related action for the Drug and Alcohol Office.
- Submissions to the Western Australian Council of Social Service on the Core Capability Framework for working with people with an intellectual disability and co-occurring mental illness/health issues.
- Alliance for the Prevention of Elder Abuse and Western Australian Network for the Prevention of Elder Abuse – Continued participation in both project groups including support for World Elder Abuse Awareness Day events.



## 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

In 2014/15, the Office delivered a total of 41 community education sessions across the State, regarding the guardianship and administration system, the legislation and the planning documents available to people under the legislation.

Of these, 11 were tailored to the needs of community members, 22 specifically targeted service providers and eight catered to the needs of both groups

Four of the sessions were held jointly with the Public Trustee for the benefit of newly appointed Private Administrators, which provided them with information and advice about their role and responsibilities.

Another four of the sessions were delivered as part of broader focused conferences, which are detailed further below.

At the 3rd National Elder Abuse Conference, held in Perth during September 2014, the Public Advocate spoke on "The Guardianship and Administration Act 1990 as a tool to respond to Elder Abuse". Many staff members from the Office also benefitted by being able to attend conference sessions on topics of great relevance to their work.

The manager advocacy, investigation and legal gave a presentation at the Australian Society for Intellectual Disability conference in November 2014. The title of the talk was: "Who will make decisions for your child when they turn 18? Assisting parents of a child with a decision-making disability to plan for the future."



Attendees to the Australian Association of Bioethics and Health Law Conference in October 2014 were able to hear a talk on: “Sex, love and sterilisation: Balancing the rights of reproduction for those with decision-making disabilities”, given by one of the Office’s senior investigator advocates.

The Office’s principal investigator advocate spoke at the Financial Counsellors Association of WA conference, about enduring powers of attorney and enduring powers of guardianship.

All of the Office’s education sessions were held at accessible venues, with the majority of sessions in the metropolitan area, alongside sessions in Albany, Geraldton, Kalgoorlie-Boulder and Kojonup. Video conferencing was available on request.

The Office also participated in the ‘Disability Services Expo’, organised by the Disability Services Commission. Members of the public and service providers were able to talk to a staff member about the work the Office does, and take away information and publications for colleagues and clients. This event exposed the work of the Office to 500 community members and over 80 service providers who were in attendance.

For the second time, the Office of the Public Advocate worked with the Carers’ Policy Officer from the Department of Local Government and Communities and staff from the Public Trustee on facilitating a half-day forum especially for carers, held during Carers’ Week in October 2014. The representative from the Office of the Public Advocate spoke about the guardianship and administration system in Western Australia, including information which could help carers better understand the role of substitute decision-makers. This was followed by a talk from a representative from the Public Trustee about wills and will planning.

During 2014/15, the Office had a particular focus on working with the Gay, Lesbian, Bisexual, Transgender and Intersex community. As well as two information sessions delivered specifically for Gay, Lesbian, Bisexual, Transgender and Intersex community members in March 2015, the Office of the Public Advocate’s staff benefitted from a half-day training session from the chairperson of Gay, Lesbian, Bisexual, Transgender and Intersex Rights in Ageing Incorporated.

In 2014/15, the Office also delivered an information session on enduring powers of attorney to an audience at the Italo-Australian Welfare and Cultural Centre. An interpreter worked with the presenter to deliver the session to an Italian-speaking audience.

## **Customer contact/enquiries**

The Office of the Public Advocate provides an advisory service for people who have a personal or professional interest in the rights and needs of adults with a decision-making disability.

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



A total of 4,994 people used the advisory service in 2014/15, compared to 5,116 in 2013/14. Contact was made via telephone, email, mail and in person.

**Figure 18 Enquiries to the advisory service by mode of handling 2014/15**

Mode of handling	Jul 2014	Aug 2014	Sep 2014	Oct 2014	Nov 2014	Dec 2014	Jan 2015	Feb 2015	Mar 2015	Apr 2015	May 2015	Jun 2015	Total
<b>Telephone</b>	440	393	432	460	429	274	401	369	403	401	332	364	4,698
<b>Interview</b>	10	5	6	5	12	4	10	16	7	14	10	7	106
<b>Email/letter</b>	17	12	24	22	17	18	18	8	10	15	14	15	190
<b>TOTAL</b>	<b>467</b>	<b>410</b>	<b>462</b>	<b>487</b>	<b>458</b>	<b>296</b>	<b>429</b>	<b>393</b>	<b>420</b>	<b>430</b>	<b>356</b>	<b>386</b>	<b>4,994</b>

In some instances, enquirers sought advice on multiple topics. Guardianship matters produced the most enquiries, accounting for 36 per cent of all enquiries received this year. Enquiries regarding enduring powers of attorney accounted for 33 per cent, and the remaining enquiries were spread across administration, enduring powers of guardianship and general enquiries.

**Figure 19 Enquiries to the advisory service by subject 2014/15**

Subject of enquiry	Jul 2014	Aug 2014	Sep 2014	Oct 2014	Nov 2014	Dec 2014	Jan 2015	Feb 2015	Mar 2015	Apr 2015	May 2015	Jun 2015	Total	Total as percentage of all enquiries
<b>Guardianship</b>	193	179	187	227	197	167	171	145	169	196	173	162	2,166	36
<b>Administration</b>	68	59	42	62	66	38	59	39	65	50	53	61	662	11
<b>Enduring power of attorney</b>	197	166	197	172	194	86	174	175	183	160	138	164	2,006	33
<b>Enduring power of guardianship</b>	63	61	46	56	69	22	49	56	53	62	43	60	640	10
<b>Advance health directive</b>	13	7	7	11	11	4	10	11	8	9	10	5	106	2
<b>General</b>	53	41	40	49	43	22	41	45	51	45	39	40	509	8
<b>Total</b>	<b>587</b>	<b>513</b>	<b>519</b>	<b>577</b>	<b>580</b>	<b>339</b>	<b>504</b>	<b>471</b>	<b>529</b>	<b>522</b>	<b>456</b>	<b>492</b>	<b>6,089</b>	<b>100</b>

*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 Office 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.

## Plain English brochure

During the year the Office added a new brochure to its suite of existing publications. The four-page publication, titled ‘If you can’t make your own decisions, who will make them for you?’ has been written in plain English and includes illustrations.

The concepts and information contained in many of the Office’s publications can be complicated and difficult to understand. This brochure aims to explain some of the key concepts in simple terms, in order to improve accessibility to the Office’s information.

The brochure explains the concept of capacity, why people might lose capacity, the three planning documents a person can use in case they do lose capacity (an enduring power of attorney, enduring power of guardianship and advance health directive) and more detailed information about medical treatment decisions.

## Catering to the needs of clients from a culturally and linguistically diverse background

All of the Office’s publications are available in alternative formats<sup>10</sup>, 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. These are available on the Office’s website, and in hard copy on request.

## 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 2014/15 interpreter services were provided in Auslan, Cantonese, Italian, Macedonian, Maltese, Polish, Ukrainian and Vietnamese.

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<sup>10</sup> 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.



## **Catering to the needs of clients with vision impairments or print disabilities**

In 2014/15, the Office of the Public Advocate's website was upgraded so that every webpage and every publication on the site has a 'listen' function. This function enables people to click on any page or document that they are interested in, and the text will be read aloud.

The website also features 'focus colours', meaning when a visitor to the website hovers over links contained in the website text, the links are highlighted, enhancing readability and navigation. A 'skip to main content' link has also been added to the top of every webpage, improving navigation.

## **Catering to the needs of clients with hearing impairments**

All staff have received training and information on understanding how to use the National Relay Service, to communicate better with clients who are deaf, or who have a hearing impairment or speech impairment. The variety of contact methods offered by the National Relay Service are promoted on the Office's website.



## 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.

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 2014/15 are as follows:

**Figure 20 Budget allocation and expenditure 2014/15**

	Total Cost of Output
\$'000 Actuals 2014/15	6,360
\$'000 Budget 2014/15	6,299 (revised budget)
\$'000 Variations from Budget	(61)

## The Year in Review

### Office accommodation

The Office of the Public Advocate has representation on the Department of the Attorney General's project teams working on the planning for the Old Treasury Building Office Tower.

### Freedom of information

Eleven valid applications were received during 2014/15 for the release of information. All 11 requests were dealt with in full during the year.

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

In 2014/15, the Office of the Public Advocate received 19 formal compliments and one suggestion. The Office also received 38 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 and 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 main issue impacting the Office of the Public Advocate continues to be the ongoing demand for its statutory services of advocacy and investigation, and guardianship.

In recognition of the growing demand for services, over \$5 million of additional funding over four years was allocated to the Office 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, to assist the Office in its provision of statutory services. From 1 July 2014 the full complement of the additional 14 positions were in place.

As the trend in 2014/15 showed an increase in statutory workloads, an additional two positions were provided through internal funding from the Department of the Attorney General, bringing the permanent staffing level to 49 full-time equivalent positions.

In 2014/15, the Office of the Public Advocate experienced a 16 per cent increase in demand for new investigations; a 20 per cent increase in the total number of investigations carried out (including matters carried over from 2013/14); a 24 per cent increase in new appointments as guardian of last resort; and a 14 per cent increase in total guardianship orders at 30 June 2015.

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

In 2014/15, 38 per cent of the people for whom the Public Advocate was appointed guardian for the first time had dementia and 43 per cent of the 1,069 new matters referred for investigation involved a person with dementia.

The effects of the baby boomer generation will continue to impact strongly on organisations such as the Office of the Public Advocate, in which elderly people are increasingly the users of the service.

There are a number of people for whom the Public Advocate remains guardian for a number of years. One example of this is an elderly person with dementia, who doesn't have anyone in their life who is suitable, willing and available to make decisions on their behalf. They may initially require someone to make decisions about their accommodation and support services, such as moving from the family home to an aged care facility, or having support services visit them at home. Although these arrangements might become stable, they may then require more long-term decisions about their medical treatment, until they pass away.



Another common example is when the Public Advocate is appointed as guardian for a young person with an intellectual disability. If there is no one in their life who is suitable, willing and available to make decisions on their behalf, the State Administrative Tribunal may repeatedly make a guardianship order every five years, appointing the Public Advocate. This could mean for some individuals, that the Public Advocate is appointed to make medical treatment decisions for the rest of their lives.

## State and National disability sector reform

In October 2013, the Disability Services Commission announced significant changes to the way in which they will provide accommodation services to some 60 per cent of 500 people living in their accommodation services. In the future, the majority of these services will be provided by non-government accommodation providers.

Around that time the Office of the Public Advocate identified almost 50 people on guardianship orders appointing the Public Advocate who may be impacted by this change. As a result, the Public Advocate liaised with the Disability Services Commission and the Public Trustee to identify where applications would need to be made to the State Administrative Tribunal for new or amended guardianship and/or administration orders, to ensure suitable arrangements are in place to make decisions for the ongoing accommodation of these people.

Over the course of the transition project, the Office is aware of 16 applications having been made by the Disability Services Commission for the appointment of a guardian and/or administrator, and family members have made applications for two people. The Public Advocate has made numerous applications in order to vary the guardianship authority of residents by initiating review applications or making recommendations at routine review hearings scheduled by the State Administrative Tribunal.

In addition, since the start of the transition project, a total of 64 people for whom the Public Advocate was appointed guardian, have been identified as potentially being impacted at some stage.

However, the circumstances of seven of the 64 people have changed. Six are no longer involved, as they have moved, and in one case the Public Advocate's appointment as guardian has been revoked as a family member became active in the consultation process and was found suitable to be appointed as guardian.

Of the remaining 57 people, 29 are living in group homes which have either transitioned to the non-government sector or are in the transition process or being considered to remain with the Disability Services Commission. The staged transition process includes extensive consultation facilitated by the Commission's transition team with the residents, their families and guardians (where appointed), about new service providers. This will continue throughout 2015/16.



Changes to the disability sector, brought about by the State Government's 2013 agreement to join the National Disability Insurance Scheme (NDIS), also started to take effect during the year.

Many of the Office's clients, who receive disability support including accommodation and services, and are under 65 years of age, may be impacted by this major reform in the long term.

In Western Australia, the scheme started on 1 July 2014 through a staged rollout of two pilots, one by the Commonwealth Government and the other by the State Government.

The National Disability Insurance Agency put the Commonwealth's scheme into place in three Local Government areas in the Perth Hills; Swan, Kalamunda and Mundaring. The State pilot operated through the Western Australian Disability Services Commission's 'My Way' model in the lower south-west region of the State.

During the year, 95 people for whom the Public Advocate is guardian were identified as living in the Commonwealth Hills pilot site. These people may be eligible to receive funding through the scheme after the staged implementation has been completed over two years. A further seven people for whom the Public Advocate is guardian, are located in the lower south-west and were involved in the State pilot.

From 1 July 2015, the State 'My Way' NDIS pilot will expand to the Local Government areas of Cockburn and Kwinana. It is estimated that there will be 39 people under 65 years of age, for whom the Public Advocate is guardian, who live in these areas and will therefore be part of the pilot.

The *Mental Health Act 2014* was passed on 16 October 2014 and it is anticipated that it will be substantially operational by November 2015. There are significant changes in the Act which will impact the Office of the Public Advocate. The new legislative framework recognises the role of carers and families in providing care and support to people who have a mental illness, and for related purposes.

This will most likely lead to greater involvement in clinical decisions, legal reviews and proceedings, and related matters by guardians, carers, nominated persons and others involved in the support of patients requiring treatment under the *Mental Health Act 2014*.



## Case Study

### Transition from Disability Services Commission to National Disability Insurance Scheme

Miss Y was a young woman with an intellectual disability. She had no living family, but one close friend who she lived with.

The Public Advocate was appointed as Miss Y's plenary guardian and she was registered with the Disability Services Commission. With so few people in her life, Miss Y regularly visited her Local Area Co-ordinator from the Disability Services Commission for assistance and to discuss any issues in her life.

Due to unforeseen circumstances Miss Y became homeless.

Around the same time, the National Disability Insurance Scheme (NDIS) was launched in Western Australia. Miss Y was identified as living in the Commonwealth Hills trial site. The process then started to transition her funding and associated support from Disability Services Commission to the Commonwealth National Disability Insurance Agency.

The NDIS planner met with Miss Y and Miss Y's guardian, Local Area Co-ordinator and friend. They discussed what supports Miss Y currently had in her life and what support she needed moving forward. During this process, Miss Y advised the group that she was thinking about moving interstate.

Miss Y's NDIS planner investigated accommodation options, both supported and independent, in Western Australia as well as comparable options interstate. The planner also researched what assistance was available, both in Western Australia and interstate, to meet Miss Y's specific needs to live independently in the community. The support agencies the planner identified were ones which could mimic the services of her Local Area Co-ordinator.

Miss Y and her guardian were provided with all of the information, in order to make a decision.

In the interim, the planner helped Miss Y to find independent housing and linked her with support services which assisted her until the new service provider she chose, was able to start.

The NDIS planner provided assistance and sourced support that was not traditionally available. They established links to flexible and special services that offered support specific to Miss Y's changing needs. This gave Miss Y choice and control over her services and their delivery in a way which met her specific circumstances, abilities and vulnerabilities.

**Note:** Names and details have been changed to protect confidentiality.



## Case Study

### **National Disability Insurance Scheme: An example of the Disability Services Commission's 'My Way' pilot**

Mr G was a young man who sustained a serious brain injury at birth.

The Public Advocate was appointed as Mr G's limited guardian, with the authority to make decisions about where and with whom he lived, as well as the services he received and the contact he had with other people.

Mr G lived with his dad in a small country town in the south-west region of Western Australia.

Mr G had attended group work activities in the past, but found group settings overwhelming and frustrating. He had difficulty communicating and this often led to aggressive behaviour which limited his ability to form friendships. Mr G had also expressed his desire to live independently from his dad.

When the National Disability Insurance Scheme (NDIS) was launched, Mr G was identified as living in the scheme's State-operated trial site. The Disability Services Commission was operating the State 'My Way' pilot in the lower south-west of the State.

Mr G's 'My Way' planning was very person-centred. It focussed on improving Mr G's communication skills and building his independent living skills.

Mr G was linked with a training and employment agency in the area where he was able to spend time one-on-one with a support worker, rather than having to be part of a larger group. Mr G was always given the opportunity to join the larger group, which he did from time to time. Mr G started attending the agency three days per week.

In order to improve Mr G's communication skills, his guardian requested a formal assessment by a speech pathologist. With the right tools and support it was hoped that Mr G's improved communication skills would reduce his frustration, give him the opportunity to clearly express his wishes and needs, and help him work in group settings and develop friendships.

The My Way plan also considered Mr G's desire to live independently. The plan aimed to slowly develop the skills needed by having Mr G spend increasing amounts of time during the day in a unit on his dad's property. This gave him a chance to practice things like cooking and cleaning. The plan aims to gradually build the time Mr G spends in the unit during the day and eventually have Mr G sleep-over in the unit on his own.

**Note:** Names and details have been changed to protect confidentiality.



# 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 2011/12	Actual 2012/13	Actual 2013/14	Target 2014/15	Actual 2014/15	Comment on significant variation
<p><b>Percentage of guardians of last resort allocated in one day</b></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>	95%	96%	94%	95%	96%	N/A



## Notes to the Performance Indicators

Key efficiency indicator	Actual 2011/12	Actual 2012/13	Actual 2013/14	Target 2014/15	Actual 2014/15	Comment on significant variation
<p><b>Average cost of providing advocacy and guardianship services</b></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>	\$1,744	\$1,776	\$1,820	\$1,800	\$1,649	N/A

Key effectiveness indicator	Description
<p><b>Guardian of last resort allocated in one day</b></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><b>Average cost per case of providing advocacy and guardianship services</b></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 175 ZE of the *Electoral Act 1907*:

**Figure 21 Advertising**

Adcorp and Whitepages: community guardianship program, community education and recruitment advertising	\$8,580
<b>TOTAL EXPENDITURE</b>	<b>\$8,580</b>

### 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 that apply when working for the Department. This code aims to encompass the values of excellent service, integrity and accountability, equity and fairness, collaboration and learning and professional autonomy that are expected of all staff.

In adhering to these policies, 20 staff from the Office of the Public Advocate made 32 conflict of interest declarations and four offers of gifts, hospitality or other benefits which exceeded a value of \$25 were recorded on the register.

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, and those of the State Records Office. An updated Retention and Disposal Schedule was approved by the State Records Office, effective December 2013. In line with the Department's ongoing commitment to improve staff awareness in records management, 96 per cent of Office of the Public Advocate staff had completed records awareness training as at 30 June 2015.

## 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 a number of years ago. In keeping with that policy, the Office appointed one first aid officer and one deputy first aid officer.

The Office's Occupational Safety and Health Committee comprises two management representatives and two elected staff representatives. Meetings are held quarterly, although issues can be raised at any time by staff with the elected representatives, and at every staff meeting where staff members have an opportunity to provide feedback. During 2014/15 there were no fatalities, no lost time injuries and no claims.

All new employees in 2014/15 were required to undertake the Department of the Attorney General's Occupational Safety and Health training. Furthermore, staff members were also presented with an opportunity to attend security information sessions which raised awareness on security within the workplace.

As a result of the implementation of the Occupational Safety and Health committee and relevant processes, the Office has experienced a positive year in regards to safety within the workplace.



# 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*  
*Declared Places (Mentally Impaired Accused) Act 2015*  
*Disability Services Act 1993*  
*Health Act 1911*  
*Magistrates Court (Civil Proceedings) Act 2004*  
*Mental Health Act 1996*  
*Mental Health Act 2014*  
*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 Injury Management Act 1981*  
*Working with Children (Criminal Record Checking) Act 2004*



## Appendix 2 Publications

All Public Advocate publications are available online at [www.publicadvocate.wa.gov.au](http://www.publicadvocate.wa.gov.au)

### 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
- Community Guardianship Program
- Are you worried about a vulnerable adult who needs help making decisions? (a brochure for Aboriginal people).
- If you can't make your own decisions, who will make them for you? (a plain English brochure).

#### 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](http://www.publicadvocate.wa.gov.au)

The publications, Enduring Power of Attorney Information Kit, Guide to Enduring Power of Guardianship in Western Australia, and the Enduring Power of Guardianship Information Kit, can be purchased from the State Law Publisher via their website ([sales@dpc.wa.gov.au](mailto:sales@dpc.wa.gov.au)) or over the telephone (6552 6000).



## 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.

**Investigation:** Seeking further information in relation to a person's circumstances which can assist in assessing the need for the appointment of a guardian and/or administrator; and what authority any appointed person would require.

**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.



# Appendix 4 Easy Read Annual Report 2014/15

## This document is about

- the Office of the Public Advocate
- the things the Office does
- what the Office did this year
- what might make it harder in the future for the Office to do its work.

## The Office of the Public Advocate

- protects adults who can't make decisions for themselves because of some kind of illness or injury to their brain, known as a decision-making disability (some people are born with a decision-making disability and other people may get a disability later, from an accident or illness)
- looks into reports of concern about other people harming or taking advantage of a person with a decision-making disability
- makes decisions for people with a decision-making disability, when there is no one else who can make decisions for them and a guardianship order is made by the State Administrative Tribunal (when this happens, the person appointed is called a guardian and they can make decisions about things like where the person lives, who they live with and see, what activities they do and what medical care they have)
- does its best to improve life for people with a decision-making disability
- teaches people about what the Office does, who can make decisions for people with a decision-making disability and how to protect people with a decision-making disability.

## This year we

- investigated 1,445 matters about adults with a decision-making disability who might have had someone trying to harm them or take advantage of them or their money
- were appointed as guardian for the first time, for 423 adults with a decision-making disability
- made decisions for the people we were guardian for, which was 1,383 people on 30 June 2015
- held 41 information sessions about what the Office does and how to help protect people with a decision-making disability
- helped 4,994 people who contacted the Office's advisory service for information
- had 49 staff positions
- spent \$6.4 million to protect people with a decision-making disability.

## What will happen in future years

There are more people getting older in Western Australia, which means there are more people with dementia, as well as other brain injuries and illnesses.

More people with decision-making disabilities means there will be more work for the Office of the Public Advocate.

The Office has to keep finding ways to manage more work so that it can keep helping all of the people who need help.

## How to contact us

If you:

- have a question about someone with a decision-making disability and think they might need a guardian (a person to make decisions for them about where they live or what medical care they have), or an administrator (a person to make decisions for them about their money)
- are worried about the safety and welfare of someone with a decision-making disability, or
- want to know what you can do to plan for a time when you might not be able to make decisions for yourself

call the Office on **1300 858 455** between 8:30am to 4:30pm, Monday to Friday.

