



Office of the
Public Advocate

*Protecting the human rights of adults with
decision-making disabilities*

The Public Advocate of Western Australia
Annual Report 2008/09



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

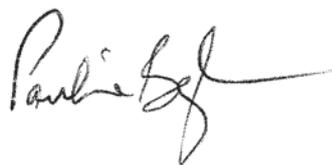


Hon Christian Porter MLA
ATTORNEY GENERAL

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 2009.

This report records the operations and performance of the Office of the Public Advocate during 2008/09. 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
21 September 2009

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Contents

OVERVIEW	5
Executive Summary.....	5
Operational Structure.....	7
Performance Management Framework	12
AGENCY PERFORMANCE	13
Advocacy and Investigation	13
Guardianship.....	26
Systemic Advocacy.....	36
Community Education	39
Corporate Services	42
SIGNIFICANT ISSUES AND TRENDS	44
DISCLOSURES AND LEGAL COMPLIANCE.....	46
Financial Statements	46
Key Performance Indicators.....	46
Ministerial Directives	49
Other Financial Disclosures	49
Other Legal Requirements	49
Government Policy Requirements	50
APPENDICES.....	51
Legislation	51
Publications	52
Glossary.....	53

Overview

Executive Summary

I am pleased to present the achievements of the Office of the Public Advocate during 2008/09. In making these achievements and servicing our clients, we have faced a number of significant challenges, which are important to highlight.

Demand for the Office's services continues to grow, with a 19 per cent increase in new investigations this year and a 23 per cent increase in new appointments of the Public Advocate as guardian of last resort. This follows increases of 21 and 64 per cent respectively, the previous year.

On 30 June 2009, there were 484 people for whom the Public Advocate was appointed guardian, compared to 380 at the same time in 2008, and 288 in 2007. In recognition of the increase in workload, the Department of the Attorney General provided interim funding for the appointment of two additional guardians from September 2008.

The community guardianship program gained five new volunteers this year, taking the total number of volunteers in the program to 14. Seven of these have been appointed guardians by the State Administrative Tribunal.

The increasing prevalence of dementia, due to Western Australia's ageing population, continues to be a significant factor contributing to the growth in demand for the Office's services. Of the 904 new matters referred to the Public Advocate for investigation, 45 per cent involved a person with dementia and of the 231 new guardianship appointments, 36 per cent involved a person with dementia.

The results of a study commissioned in June 2008, predict this demand for services to continue to grow for at least the next 13 years. Over the next five years, the number of appointments of the Public Advocate as guardian of last resort are predicted to increase at a minimum annual rate of 12.7 per cent, Tribunal-referred investigations by 3.2 per cent and community-referred investigations by 3.6 per cent.

A major project this year has been the preparation of applications to the Redress WA scheme. With the assistance of the Departments for Child Protection and Communities, historical information was accessed to support 49 applications to Redress WA for adults for whom the Public Advocate is appointed guardian. Of these, 46 applications were jointly prepared with the Public Trustee. The support of these agencies and in a number of cases, the assistance of the Disability Services Commission, enabled the Office to act in the best interests of our clients in making the applications.

Achieving a co-ordinated response to people who have complex needs, such as a significant disability, mental health and drug and alcohol abuse problems is a constant challenge for this Office. It is pleasing therefore, to see the investment by key government agencies, supported by funding from the Mental Health Division and the Disability Services Commission, into the People with Exceptionally Complex Needs (PECN) project.

The 2009 project is co-ordinating responses for six adults, five of whom have guardianship orders appointing the Public Advocate. As a partner agency in the project, this Office continued to work collaboratively with the other agencies, seeking solutions for this small but difficult cohort of adults with exceptionally complex needs which are currently unmet.

Submissions were made to a number of inquiries and an internal Reconciliation Action Plan was developed. The Public Advocate contributed to the State Government's response to the Australian Government's Green Paper on Homelessness and presented two papers at the Australian Guardianship and Administration Conference.

A total of 4,054 people contacted the Office of the Public Advocate's enquiry service this year, compared to 4,233 in 2007/08. Enduring powers of attorney continued to dominate, accounting for almost half of all enquiries.

In accordance with its obligations under the *Guardianship and Administration Act 1990* to provide education regarding guardianship and administration, the Office organised 20 training sessions for almost 600 people. Sessions were conducted in metropolitan and regional centres and four sessions specifically targeted Aboriginal service providers. Staff also participated in another 12 education sessions organised by service providers from the aged care, health and disability sectors.

A new case management system was introduced in May 2009 to improve documentation and processing regarding investigations, guardianship and decision-making for clients.

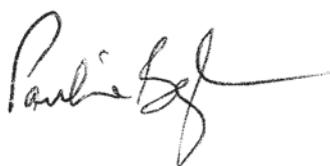
The Office, in partnership with the Office of the Chief Medical Officer of the Department of Health, has been heavily involved in preparing for the implementation of the *Acts Amendment (Consent to Medical Treatment) Act 2008*. This work will be greatly enhanced by the Government's commitment of \$1.35 million over the first four years, \$1 million of which has been allocated to the Office of the Public Advocate for the implementation of Enduring Powers of Guardianship. As at 30 June, consultation on the draft prescribed forms and information kits had commenced with key stakeholders.

I congratulate and thank the staff and volunteers of the Office of the Public Advocate, for their efforts and persistence throughout the year. They have conducted themselves in a professional and committed manner, sometimes under difficult circumstances.

The support offered by the many dedicated service providers and organisations which assist the people with decision-making disabilities for whom the Public Advocate is appointed is also appreciated.

I also wish to express my thanks to the Director General who appreciates the challenges before the Office.

I look forward to continuing to work with the management team and staff, volunteers and partners in the Department of the Attorney General, other government agencies and the community over the coming year to pursue the protection and promotion of the rights of adults with decision-making disabilities.



Pauline Bagdonavicius

PUBLIC ADVOCATE

21 September 2009

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 make provision for a power of attorney to operate after the donor has ceased to have legal capacity, and for connected purposes.”

In 2008/09 the Office of the Public Advocate reported on financial and administrative matters to the Director General of the Department of the Attorney General. In accordance with this arrangement, the financial statements of the Office have been published in the Department’s annual report.

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

Mission

The Public Advocate protects and promotes the human rights of adults with decision-making disabilities 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 an intellectual disability, a short or long-term mental illness, an acquired brain injury or dementia.

Function

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 decision-making disabilities
- investigation of concerns about the wellbeing of adults with decision-making disabilities 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, medical and lifestyle related decisions) when the State Administrative Tribunal determines that there is no one else suitable or willing 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

Western Australia has an ageing population. In 2009, 17.5 per cent of Western Australia's population consisted of people aged 60 years or over. By 2050, it is anticipated that this group will have grown to 27 per cent of the population.¹ With dementia accounting for a significant proportion of guardianship orders appointing the Public Advocate (32 per cent as at 30 June 2009), the ageing population is expected to continue to impact on the demand for guardianship services.

The ageing population has also been identified as an issue for carers of people with intellectual disabilities. Once the carers reach an age where they can no longer provide care for relatives with disabilities, they may seek a more formal guardianship solution.²

In 2006, 1.6 per cent of Western Australia's population (68,409 people) were identified as having a need for core activity³ assistance. Of these people, 54 per cent were aged 65 years and over.⁴ In the Disability Future Directions discussion paper, it is estimated that the total number of Western Australians with profound or severe core activity limitation will increase by approximately 44 per cent from an estimated 132,000 people in 2008 to 190,000 in 2023.

1 Australian Bureau of Statistics, 2008. *Population Projections Australia, 2006 to 2101*, Cat. No. 3222.0, Table B5. Population projections by age and sex, Western Australia – Series B.

2 Disabilities Services Commission, *Annual Report 2007-2008*. p.49.

3 Self care – showering or bathing, dressing, eating, toileting and bladder or bowel control; mobility – getting into or out of a bed or chair, moving about the usual place of residence, going to or getting around a place away from the usual residence, walking 200 metres, walking up and down stairs without a hand rail, bending and picking up an object from the floor, using public transport; and communication – understanding and being understood by strangers, family and friends [as defined in SCRGSP (Steering Committee for the Review of Government Service Provision) 2009. *Report on Government Services 2009*, Productivity Commission, Canberra. p.14.101.]

4 Disability Services Commission, undated. *2006 Census Need for core activity assistance in Western Australia*.

It is expected that the number of people with profound or severe core activity limitation in the 65 years and over age group, will increase by approximately 85 per cent, from around 56,000 in 2008 to over 100,000 in 2023.⁵

There are an estimated 65,300 Western Australians⁶ with a reported cognitive impairment or behavioural disorder which may limit or restrict their ability to make reasoned decisions in their own best interests. These disabilities can include intellectual and development disability, brain injury as a result of trauma, degenerative disease, substance abuse, or mental illness.

A decision-making disability can result from:

Dementia

The Australian Institute of Health and Welfare predicts that the number of people in Australia with dementia will increase by 27 per cent between 2003 and 2011, by a further 40 per cent between 2011 and 2021 and by another 50 per cent between 2021 and 2031. This would see the total number of people in Australia with dementia rise from 175,000 to 465,000 (an increase of 290,000 people, between 2003 and 2031).⁷

Access Economics predicts that the number of Western Australians diagnosed with dementia will grow to more than 79,000 by 2050.⁸ Growth of dementia in Western Australia is the third fastest in Australia, after the Northern Territory and Queensland. Around 80 per cent of people with dementia in Western Australia live in the metropolitan area.

Intellectual disability

The most commonly reported disability in Western Australia for people who received services under the Commonwealth-State/Territory Disability Agreement is intellectual disability.⁹ The Disability Services Commission of Western Australia funded and provided services to 10,833 Western Australians with intellectual disability as their primary condition in 2007/08. This accounted for 53 per cent of all service users.¹⁰

Acquired brain injury

An acquired brain injury (ABI) results in deterioration of cognitive, physical, emotional or independent functions and can occur as a result of trauma, hypoxia, infection, substance abuse, degenerative neurological disease or stroke. In 2007, the Australian Institute of Health and Welfare estimated that people aged 65 years or over were more than twice as likely as those aged less than 65 years to have an ABI with activity limitations or participation restrictions.¹¹

In 2007/08 the Disability Services Commission funded and provided services to 997 Western Australians with an acquired brain injury reported as their main disabling condition.¹²

5 Disability Services Commission, 2009. *Disability Future Directions 2025: A long term strategy for disability in Western Australia*, January 2009. p.4.

6 Persons with a Disability: Disability Status by Main Health Condition: mental and behavioural disorder with specific limitations or restrictions, WA 2003; Australian Bureau of Statistics, 4430.0 Disability, Ageing and Carers, Table 11, 2004. *

*This survey is currently being updated (as at 30 June 2009).

7 Australian Institute of Health and Welfare (AIHW) 2006. *Dementia in Australia: National Data Analysis and Development*. AIHW Cat. No AGE 53. Canberra: AIHW. p.58.

8 Access Economics, 2005. *Dementia Estimates and Projections: Western Australia and its Regions*, Executive Summary, Report for Alzheimer's Australia WA, Canberra Australia p.i.

9 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.

10 Disability Services Commission, 2009. *Analysis of the Annual Client and Service Data Collection Results 2007-08*, June 2009. Unpublished report.

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

12 Disability Services Commission, 2009. *Analysis of the Annual Client and Service Data Collection Results 2007-08*, June 2009. Unpublished report.

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).¹³

This remains consistent with earlier reports such as the 1997 National Mental Health and Wellbeing Survey,¹⁴ in which it was estimated that around 19 per cent of people in Western Australia had experienced a mental disorder in the previous 12 months, with the prevalence being highest amongst those aged 18-24 years and decreasing with age. Six percent of Westerns Australians aged 65 years and over reported some form of mental disorder. The prevalence of high or very high psychological distress in WA was 9.2 per cent in 2004.¹⁵

Secondary Stakeholders

These are the people and organisations who provide support and/or assistance to people with a decision-making disability and include:

- unpaid carers (this can include family and friends who provide ongoing support and assistance in an unpaid capacity¹⁶)
- paid carers
- government and non-government organisations.

Potential stakeholders

These are people who do not have a decision-making disability but who seek to safeguard their financial future by nominating a trusted family member or other individual under an enduring power of attorney to make financial decisions on their behalf should they lose their decision-making capacity. The people being asked to act as an enduring power of attorney are also potential stakeholders.

Similarly, when Part 2 of the *Acts Amendment (Consent to Medical Treatment) Act 2008* is proclaimed, people who do not have a decision-making disability but want to direct their future personal, lifestyle and medical decision-making, will have two new tools at their disposal – Advance Health Directives and Enduring Powers of Guardianship. As the Office of the Public Advocate is responsible for the implementation of Enduring Powers of Guardianship (in partnership with the Department of Health, which is responsible for the implementation of Advance Health Directives), people who wish to appoint an enduring guardian, or people being asked to act as an enduring guardian are potential stakeholders.

Agency stakeholders

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

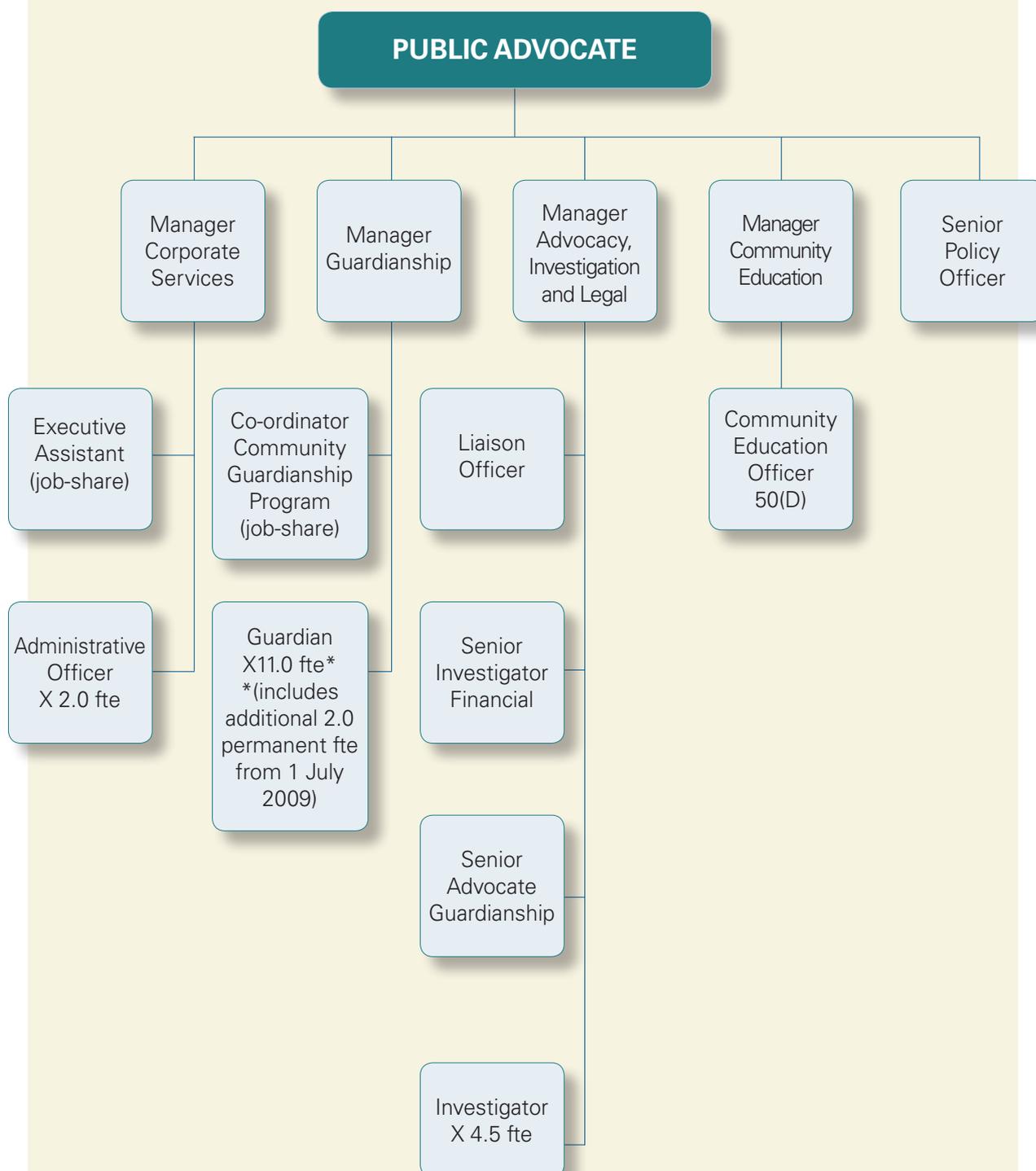
13 Slade, T., Johnston, A., Teesson, M., Whiteford, H., Burgess, P., Pirkis, J., Saw, S. 2009. *The Mental Health of Australians 2. Report on the 2007 National Survey of Mental Health and Wellbeing*. Department of Health and Ageing, Canberra. p.xii.

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

15 Australian Bureau of Statistics, 1999a. *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.

16 *Carers Recognition Act 2004*.

Organisational Structure



*fte: full-time equivalent.

Resources

The role and functions of the Public Advocate in 2008/09 were supported by:

- staff of 32 (full-time equivalent)*
- expenditure of \$3,613,000*

**actual, includes shared Department of the Attorney General corporate support.*

In order to meet the needs of its staff and make employment with the Office of the Public Advocate more attractive, two positions were trialled in job-share arrangements during 2008/09. Both the liaison officer and executive assistant positions have since been confirmed as permanent job-share positions.

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

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

Department of the Attorney General goal

The right to justice and safety for all people in Western Australia is preserved and enhanced.

Department purpose

To provide high quality and accessible justice, legal, registry, guardianship and trustee services that meet the needs of the community and Government.

Office of the Public Advocate services

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

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

Cross-agency initiatives

The Office of the Public Advocate works closely with the Public Trustee who can be appointed administrator, provides support to private administrators and who, together with the Office of the Public Advocate, provides training for private administrators.

The Office is also working closely with the Department of Health on the implementation of the *Acts Amendment (Consent to Medical Treatment) Act 2008*. The Office of the Public Advocate is responsible for the implementation of Enduring Powers of Guardianship and the Department of Health is responsible for Advance Health Directives.

Agency Performance

Advocacy and Investigation

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

The investigation and advocacy function of the Office of the Public Advocate includes:

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

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

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

The Year in Review

In 2008/09, the Public Advocate carried out 1020 investigations into the personal or financial welfare of adults with a decision-making disability. This included new matters and matters carried over from 2007/08. Of these, 819 needed investigation and advocacy services relating to applications for, or reviews of, guardianship or administration orders before the State Administrative Tribunal. Another 201 were referred directly to the Public Advocate by an individual or community-based organisation.

There was a 19 per cent increase in new investigations, with a total of 904 new investigations conducted in 2008/09 compared to 757 in 2007/08. Of the new investigations, 721 related to applications before the State Administrative Tribunal and 183 were referred to the Public Advocate by an individual or community-based organisation.

Investigations referred by the State Administrative Tribunal

The 721 new investigations relating to applications for guardianship and administration referred by the State Administrative Tribunal, comprised 537 applications for guardianship and administration, 176 applications for review of guardianship orders and 8 applications for interventions in enduring powers of attorney.

The table below shows the increase in investigation services provided to the State Administrative Tribunal since it began operation in 2005. Over the past four years, investigations involving this Office have increased by 39 per cent. There was a 12 per cent increase in State Administrative Tribunal initiated investigations between 2007/08 and 2008/09.

There was a decrease this year in the number of urgent matters referred to this Office, for which investigators and the liaison officer were required to advocate on behalf of the proposed represented person.

Fig. 1 Investigation services provided to the State Administrative Tribunal

Investigation services	2005/06	2006/07	2007/08	2008/09
New cases opened during the year	407	285	325	406
Attendance at hearing only matters	N/A**	55	90	107
Requests for urgent investigations	N/A**	55	56	32
Review of guardianship orders*	111	147	171	176
Total investigation services provided	518	542	642	721

*Not statutorily referred by the Tribunal for investigation under section 97iii(b) but OPA provides an advocacy service.

**Data not collected in 05/06.

Many of the applications received by the State Administrative Tribunal about guardianship and administration, contain insufficient information or involve issues which require clarification. Conflict between the parties involved in the application is also a common occurrence. Conflict in itself does not necessarily mean that one of the parties is not suitable to be appointed as a person's guardian or administrator. It does however, often mean further enquires need to be made.

Case study

Conflict between the parties to an application

In September 1998 B and M were appointed joint limited administrators for their sister D. As a result of conflict between B and his sister M, in relation to their role as their sister's administrators, the matter went back to the State Administrative Tribunal for a review of the order. The Tribunal subsequently revoked the joint administration order and appointed M as sole plenary administrator for D. In August 2007, B requested that the Tribunal review the order. The Tribunal decided that M was to remain D's sole plenary administrator.

In June 2008, M applied to the Tribunal to be appointed guardian for her sister D as their brother B was frustrating M's attempts to facilitate major medical treatment for D. M alleged that B had cancelled the elective surgery for D's treatment just before the surgery date, without notifying her of what he had done. B stated he had taken this action as he was concerned that D's health was being put at risk because of other medical conditions and he had received no advice from his sister M about the operation.

At the Tribunal hearing it was apparent that there was serious conflict between B and M. However, D told the Tribunal Member that she would prefer her sister M to make medical decisions on her behalf. Even though there was substantial conflict between B and M the Tribunal appointed M as D's limited guardian for five years to consent to any treatment or health care.

The reason given by the Tribunal for its decision, was that the presence of conflict within the family doesn't necessarily mean that an appointment should be made outside of the family and therefore automatically delegated to the Public Advocate.

A review application was lodged by B who challenged the suitability of M to be appointed as limited guardian. It was confirmed that D lacked capacity to provide informed consent to treatment and that the hearing was to review the decision about who should be appointed and the basis on which this decision was reached.

It was the submission provided by a representative of the Public Advocate (an investigator), which confirmed that conflict between B and M was not a sufficient reason in itself, for a family member (who was suitable as outlined in section 44 of the *Guardianship and Administration Act 1990*) to be discounted for appointment.

In reporting to the Tribunal, the investigator recognised that while the conflict made decision making difficult, it did not make it impossible. She went on to say that D had consistently said that she preferred her sister M to assist her, although it was clear she also had a strong affection for her brother B. It was acknowledged that although conflict existed between M and B, M had stated very clearly that she would not prevent B from having contact with D, which was a strong indication of M's objectivity in acting in the best interests of D.

(continued)

Case study (continued)

The investigator was of the opinion that the situation would not be improved by appointing the Public Advocate, because it was likely that the same level of opposition from B would be experienced. This view was accepted by the Tribunal.

In concluding, the Tribunal said the guardian (M) had “an exemplary track record”; while the brother (B), “had not impressed us as truthful or as capable of setting aside his personal views and issues”. The Tribunal expressed satisfaction that the guardian was able to set aside her views to make decisions in D’s best interests and noted that conflict did exist between the two parties, but felt it did not lead to M being unsuitable to be appointed guardian.

The Tribunal revoked the limited guardianship order and reappointed M as plenary guardian. It was felt that a plenary guardianship order had become necessary due to a number of concerns raised at the hearing where potential decisions were required on D’s behalf as a result of B’s recent actions towards her accommodation support agency, which if continued, may result in D needing to find alternative accommodation.

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

Liaison officer

The role of the Office of the Public Advocate’s liaison officer at the State Administrative Tribunal is a critical one, especially when there are urgent applications or requests for a guardian or investigator to attend a hearing at short notice. The number of referrals from the Tribunal was up marginally from last year. The liaison officer conducted preliminary investigations into 505 applications for guardianship, administration and intervention in an enduring power of attorney, compared to 496 in 2007/08.

Case study

Role of the liaison officer

A is 70 years old, she has dementia and experiences psychotic symptoms. She had been residing at home with her husband, who was experiencing extreme carer stress, including threats from A of physical violence towards him.

During an outing, A's behaviour deteriorated to the point that A's husband needed help to manage her. Unable to get help, A's husband abandoned her in a public place, which resulted in A being admitted to hospital.

A's husband became dissatisfied with aspects of A's care in the hospital and attempted to remove her. In attempting to remove A from the hospital, A became distressed and the treating team were concerned that A's health and wellbeing may be compromised if her husband discharged her.

A hospital social worker lodged an urgent application with the State Administrative Tribunal for the appointment of a guardian to determine where A should reside and what medical treatment she should receive. The Tribunal set the hearing for the next day.

The treating team's view on what was appropriate care for A and the views of her husband were in conflict. The treating team believed A needed treatment that could only be provided in a hospital, but A's husband wanted to take her home.

Given the short timeframe there was not sufficient time for the Public Advocate to undertake a full investigation into A's best interests and to submit a written report to the Tribunal, prior to the hearing.

The liaison officer, experienced at gathering information in short timeframes, was allocated the case for the purpose of gathering as much information as possible from interested parties prior to the hearing. This process enabled the liaison officer to quickly form a view to present at the approaching hearing, as to whether it would be in A's best interests for a guardian to be appointed and if so, who would be able to make decisions in her best interests.

In gathering information the liaison officer made contact with the social worker/ applicant, who advised that the treating team would admit A to a psychiatric facility as an involuntary patient if her husband attempted to remove her from the hospital again. The treating team did not think being admitted to a psychiatric facility would be in A's best interests, but it would be the only way they could ensure she received appropriate care if her husband insisted on removing her from the hospital.

The applicant added that the treating team believed the appointment of the Public Advocate as guardian, to determine where A should reside and what medical treatment she should receive, would ensure that decisions were made in her best interests.

The liaison office contacted A's husband to talk about some of his concerns and see if she could negotiate a least restrictive alternative to the appointment of a guardian, while being mindful of the fact that the treating team had grave concerns about A's health and safety in the care of her husband.

(continued)

Case study (continued)

A's husband told the liaison officer that he became exhausted while providing care for A and that leaving her in a public place was his cry for help. Although the situation had improved since A was admitted to hospital, he was unhappy about the ward she was on, as he wanted her to be with higher functioning patients. He said that if A was not transferred to a different ward, he planned to take her home against medical advice, even though providing care for her would continue to be a significant challenge for him. He did not think a guardian was required, but said if the Tribunal found there was a need, he would propose himself and oppose the appointment of the Public Advocate.

The liaison officer also contacted A's daughter who said she had been estranged from her parents for many years, primarily because she felt that A should be at a facility, because her father was unable to provide care at the level she required. She added that she supported the appointment of a guardian and proposed that she be appointed on the basis that a family appointment was preferable to the appointment of the Public Advocate.

The liaison officer attended the hearing during which the conflict between A's husband and daughter was obvious. A's daughter expressed the view that she could make decisions in A's best interests with regard to where she lived and what medical treatment she received. A's husband was strongly opposed to this, stating that he was offended by the thought that she would make such decisions for his wife.

The liaison officer advocated for the appointment of the Public Advocate as guardian as an interim measure. This was to allow time for the delegated guardian to work with A's husband to see if support services could be arranged which would enable A to live at home with her husband and still receive adequate care, while reducing the workload/pressure of full-time care experienced by A's husband.

The Tribunal appointed the Public Advocate as limited guardian to determine where A should reside and what medical treatment she might receive, with a review to occur within two months. The Public Advocate was also directed to conduct a full investigation and provide a written report prior to the review hearing as to whether there was an ongoing need for the appointment of a guardian and if so, a recommendation regarding who would be best able to make decisions in A's best interests.

An experienced guardian and the senior investigator worked together with A and her husband. By the time of the review, A's circumstances had significantly improved and A's husband was happy with the services A was receiving in the home. At the review hearing the Tribunal determined there was no further need for a guardian and revoked the order.

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

Community-referred investigations

In 2008/09, members of the community, human service support agencies, government and non-government agencies referred 201 matters to the Public Advocate for investigation. Of those, 185 were new referrals and 16 were carried over from 2007/08. At 30 June 2009, 30 investigations remained open.

In most cases, the focus of community-referred investigations was to establish whether the person of concern required a guardian or administrator or was under an inappropriate order.

The table below shows a 52 per cent increase from 2007/08 to 2008/09 in investigations concerning matters referred to the Office by community members or professionals. This figure is inflated however, due to a change in the way some statistics were recorded during the year, because of the introduction of a new case management system**.

Fig. 2 Community-referred Investigations

	2005/06	2006/07	2007/08	2008/09
Cases carried over from previous year	13	23	17	16
New cases opened during the year	93	82	115	185
Total cases new and carried over	106	105*	132*	201**

* These totals include preliminary investigations conducted by the Liaison Officer that are not referred by the Tribunal for further investigation and are now being recorded in OPA's case management system as community-referred investigations.

** Brief investigations by the liaison officer, that did not result in a referral to the Office from the State Administrative Tribunal, could not be captured in OSCAS (the Office's case management system prior to May 2009). These were therefore recorded under the broad category of community-referred investigations. However, PACMAN (the new case management system which replaced OSCAS in May 2009), includes both brief liaison officer investigations and those which are eventually referred to the Office by the State Administrative Tribunal, as a separate investigation category. During the Office's transition to the new case management system, for ease of reporting, all of the liaison officer's investigations (from mid May until the end of June) were included in the community-referred investigations figure.

Advocacy

Investigators attended more than 480 State Administrative Tribunal hearings where they advocated in the best interests of a proposed represented person. In addition, guardians attended hearings for 176 reviews of guardianship orders.

Case study

Responding to Elder Abuse – working in collaboration with other agencies

B is a 90 year old widow with declining health and poor eyesight, who lives in her own unit in Perth. B felt lonely as her four children were scattered around Australia. After visiting her son and grandchildren in a country town, B agreed to sell her unit, buy the house her son and grandchildren lived in and move in to be cared for by her family. Once in the house, B felt neglected by her family and terrified of abuse from her son. Eventually, with the aid of community medical and welfare organisations, B was relocated to Perth and put in touch with the Older People's Rights Service in Mirrabooka which is under the auspice of the Northern Suburbs Community Legal Centre.

The Older People's Rights Service referred B to the Office of the Public Advocate where her circumstances were given a high priority. An investigator from the Office liaised with the Inner City Older Persons Mental Health Service, who expedited an assessment of B's capacity to make financial decisions. An urgent application for administration was made to the State Administrative Tribunal. Using financial documentation from the Older People's Rights Service, the investigator was able to set out financial statements showing:

- the house in the country had been bought with her grandson, as joint tenants, meaning her grandson could take control of the property at any time
- a 30 year mortgage had been taken over the property in the names of the grandson and B, without B's understanding
- B's account was being debited with costs for the house, such as a fridge, an air conditioner, rates and repairs, without her knowledge, as well as an ongoing monthly direct debit paid to her grandson.

The Tribunal appointed the Public Trustee as administrator to protect her estate. Gaining confidence with this result and with the support of the Inner City Older Persons Mental Health Service and the Office of the Public Advocate, B agreed to move into a low care hostel of her choice, where she felt appreciated by the staff and other residents.

By working collaboratively across organisations, there was no duplication of work, efficient handling of information and consistent, clear support for a frail, confused and anxious woman. B's case was completed promptly, reducing her anxiety and creating a measure of certainty that enabled B to search for new accommodation and take a shared place until her assets could be freed to take a bonded position in her own unit, without the need for a guardian to be appointed.

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

Issues for Advocacy and Investigation

Financial abuse of the elderly

The 19 per cent increase in referrals to the Office of the Public Advocate for investigations can largely be attributed to Western Australia's ageing population. A significant proportion of these investigations involved financial abuse as the main reason for the application being made to the State Administrative Tribunal. Other reasons included disputes within families about where a person should reside or what medical treatment they should receive. Many older Western Australians do not have support networks such as family and friends to assist them when they lose the capacity to make their own decisions. This often results in the appointment of the Public Advocate or the Public Trustee being necessary.

Transition of young people

Following the signing of a memorandum of understanding between the Department for Child Protection and the Office of the Public Advocate in July 2007, the agencies have worked together in the early identification of young people's needs, to make their transition out of the Department for Child Protection's care smoother.

In 2008/09 the Office of the Public Advocate was involved in leaving care planning for 17 young people, some of whom were referred by the State Administrative Tribunal for investigation. Of these, nine were referred to the Office as part of the memorandum of understanding. These referrals demonstrate the growing awareness in the Department for Child Protection of the need to ensure that early leaving care planning occurs in order to transition these young adults into the guardianship and administration system, should substitute decision-making still be required for them about important areas of their lives after they turn 18.

Court referrals

The Children's, Magistrates and Supreme Courts continue to seek the advice of the Public Advocate when there are concerns that a person appearing before the court (in civil matters) is unable to understand proceedings and may need a guardian to assist. In 2008/09 there were 5 referrals received from the three courts, one more than last year.

While these referrals are few in number, 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 and therefore considerable time is taken in finding this information. The powers afforded to the Public Advocate under the *Guardianship and Administration Act 1990* do not authorise the Office to compel parties to provide information.

Case study

Court referrals – complex and time consuming

D is 56 years old and has a psychiatric condition. The State Administrative Tribunal appointed a guardian to act as D's 'next friend' in lifestyle matters.

When D came before the Supreme Court with a matter relating to her estate, the court was unable to accept her applications and submissions because the Rules of the Supreme Court prevent it from accepting these directly from "a person under a disability". Although the court had no information regarding D's mental capacity, it was aware that she was subject to a guardianship order, which according to the Rules of the Supreme Court, by definition meant that she was "a person under a disability". The court also observed that she appeared unable to understand the court proceedings or what submissions were required in the legal process and she was unrepresented by a lawyer in some instances.

The Office of the Public Advocate received a referral from the Supreme Court to investigate if D required a legally appointed administrator to act as her 'next friend' in legal proceedings concerning her property.

The Office had limited details about how to contact D but was eventually provided with an email address and a mobile phone number. During the course of the investigation, D never answered the mobile number and she checked and answered her emails irregularly. The investigator attempted to contact D's current medical practitioner to determine D's capacity to instruct a solicitor and whether there was the need for a 'next friend' to be appointed. D was unable to provide details of any current treating practitioners. During the investigation D sought assistance from a psychiatrist in the public health system. The psychiatrist felt unable to provide the Office or the court with confidential client information regarding D's capacity. Progressing the investigation was therefore difficult.

In the course of the investigation, the investigator and at times the Manager Advocacy, Investigation and Legal, were required to attend numerous hearings of the Supreme Court to provide updates on the Office's investigation. They were also required to gather further information regarding D's capacity and the court's legal impasse. Often there was little notice of the times and dates of the hearings. The investigator was also required to consult with the State Solicitor's Office (SSO) regarding aspects of the law and to negotiate that the SSO act as friend of the court to represent the Public Advocate regarding certain matters of law.

This ongoing case is an example of a complex matter dealt with by the advocacy and investigation team.

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

Our Customers

Of the 904 new matters referred to the Public Advocate for investigation, nearly half of them (45 per cent) involved a person with dementia, while 19 per cent had an intellectual disability, 16 per cent a psychiatric condition, 13 per cent an acquired brain injury and 7 per cent had another disability (see Figure 3).

Accommodation considerations and reviews of guardianship orders were again the dominating issues involved in investigations this year, with 33 per cent and 21 per cent (respectively) of investigations involving these issues (see Figure 4).

People with decision-making disabilities are vulnerable to abuse. Allegations of abuse were made in 133 of the 904 new investigation matters received by the Office of the Public Advocate (see Figure 5). Again this year, the most commonly reported form of abuse was financial, accounting for 54 per cent of all allegations. This was followed by neglect (22 per cent), psychological abuse (9 per cent), physical abuse (8 per cent) and sexual abuse (7 per cent).

In 84 of these cases of alleged abuse, the victim was aged over 65 years (see Figure 6). Financial abuse of those aged over 65 was significantly higher (60 per cent) than other reported forms of abuse.

Most new investigations (77 per cent) were carried out in the metropolitan area (see Figure 7).

Note: The Office of the Public Advocate introduced a new case management system in May 2009. Statistics shown in Figures 5 and 6 have been derived from full year case information held in both new and old case management systems. Statistics shown in Figures 3, 4 and 7 have been derived using case information as at 18 May 2009.

Fig. 3 Profile of new investigations by type of decision-making disability 2008/09

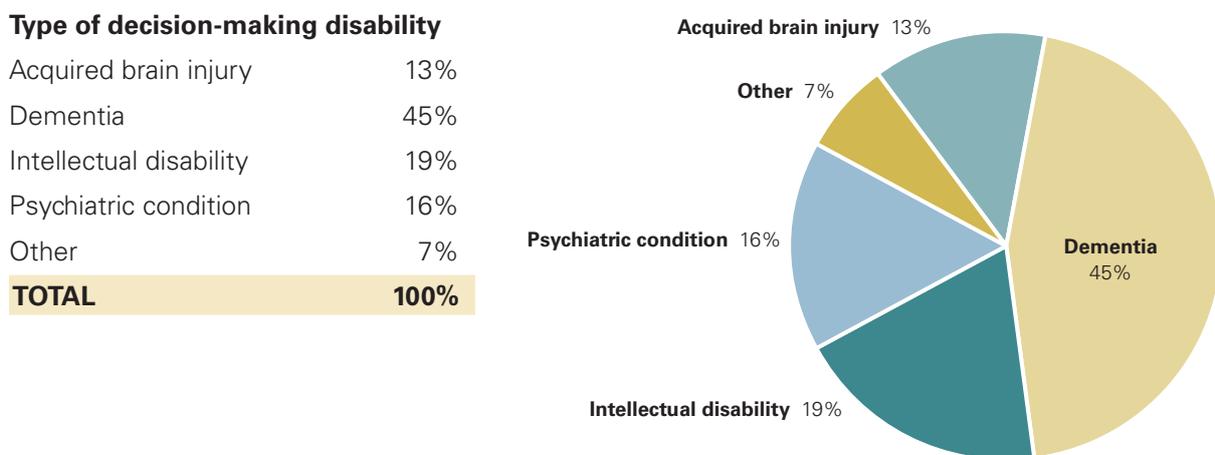


Fig. 4 Profile of new investigations by issue 2008/09

Major issue type

Accommodation	33%
Assist with money	10%
Legal administration or guardianship	4%
Management of assets	8%
Medical/dental	11%
Relationship contacts	3%
Review of administration	3%
Review of guardianship	21%
Other	7%
TOTAL	100%

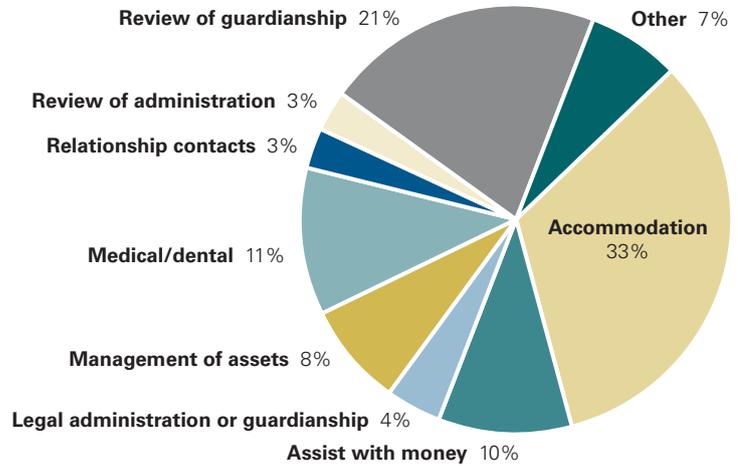
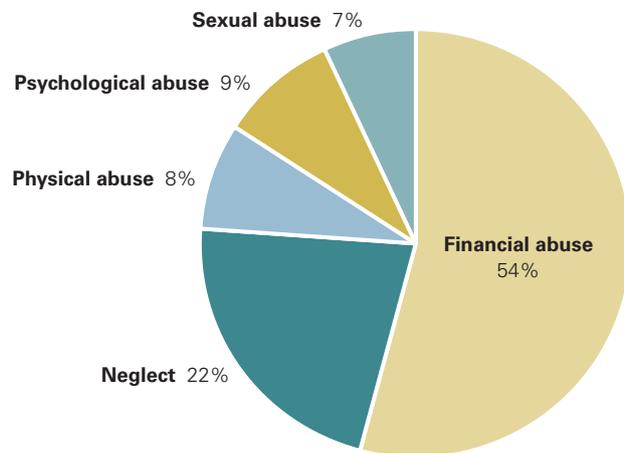


Fig. 5 Profile of new investigations alleging abuse by type of abuse 2008/09

(including statistics of elder abuse)

Abuse type **133 people***

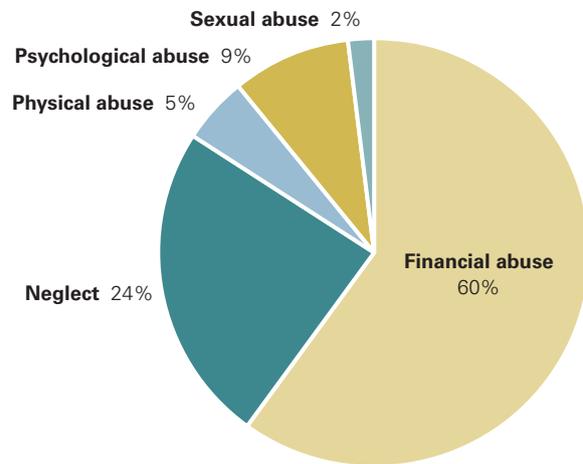
Financial abuse	98
Neglect	41
Physical abuse	14
Psychological abuse	17
Sexual abuse	13
TOTAL	183



**In some instances, more than one alleged abuse type is reported in an application.*

Fig. 6 Profile of new investigations alleging elder abuse (aged over 65) by type of abuse 2008/09

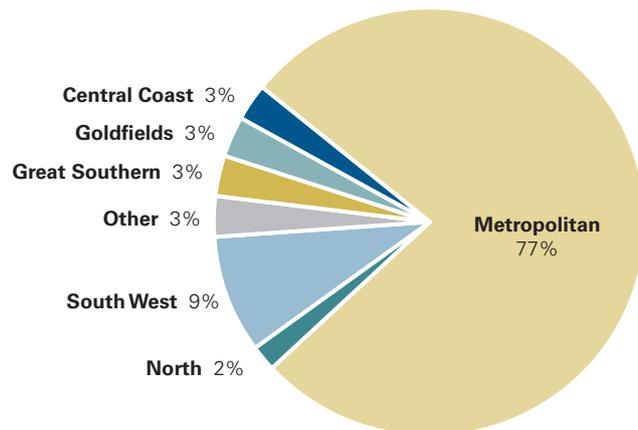
Abuse type	84 people*
Financial abuse	63
Neglect	25
Physical abuse	5
Psychological abuse	9
Sexual abuse	2
TOTAL	104



*In some instances, more than one alleged abuse type is reported in an application.

Fig. 7 Profile of new investigations by geographical location 2008/09

Geographical location	
Central Coast	3%
Goldfields	3%
Great Southern	3%
Metropolitan	77%
North	2%
South West	9%
Other	3%
TOTAL	100%



Legal issues

In late 2008 an amendment was made to section 43 the *Guardianship and Administration Act 1990* to allow application to be made to the State Administrative Tribunal for a person who has turned 17 years old. If satisfied that the young person is in need of a guardian or administrator the State Administrative Tribunal can make an order which is to come into effect upon the young person turning 18 years old. This has been a critical change and has been important in this Office working with the Department for Child Protection in transitioning vulnerable young people from the Department’s care to the adult guardianship and administration system – either with the appointment of the Public Advocate, the Public Trustee or a private person.

Guardianship

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

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

The year in review

In 2008/09 there were 231 new appointments of the Public Advocate as guardian of last resort, compared to 187 new appointments in 2007/08. This 23 per cent increase shows the continued growth in demand for guardianship services on the Office.

At 30 June 2009, the Public Advocate had responsibility as guardian for 484 adults with decision-making disabilities, compared to 380 at 30 June 2008, an increase of 27 per cent.

During the year, the Public Advocate made personal, medical and lifestyle decisions for 27 per cent more represented persons than in 2007/08. These decisions covered a range of personal circumstances including:

- major medical decisions in relation to palliative care, contraception and major and minor 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.

For the second year running, people with dementia accounted for the largest proportion of new appointments of the Public Advocate as guardian. Of the 231 people newly appointed, 83 had dementia (36 per cent). 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 or willing to take on the role of decision-maker.

The Public Advocate allocated a guardian to a represented person within one working day of notification of appointment in 91 per cent of cases. The slight shortfall from the 95 per cent target set for this measure of timeliness reflects the increased demand for the Office's guardianship services.

To meet the needs of the Office's 48 represented persons of Aboriginal or Torres Strait Islander descent, guardians liaised with Aboriginal agencies, service providers, communities and family members to ensure culturally appropriate practices were adopted.

Growth in the guardianship team

Due to the sustained growth in demand for guardianship services and the increasing number of clients with exceptionally complex needs, the Office of the Public Advocate identified the need for additional guardians.

Since 2006/2007 the guardianship section of the Office of the Public Advocate consisted of 10 full time positions (nine guardians and one community guardianship co-ordinator). During 2008/09 the guardianship section received two additional full time positions on a temporary basis. In June 2009, these were confirmed as permanent positions (from 1 July 2009).

Community Guardianship Program

Since it started in 2005, the Community Guardianship Program has given Western Australian community members the opportunity to become involved in supporting and protecting people with decision-making disabilities in their community. It has also raised the awareness of the rights of people with decision-making disabilities and enriched their lives through regular personal contact.

Another five volunteers were recruited to become community guardians in 2008/09, taking the total volunteers in the program to 14. At 30 June 2009, a total of seven volunteers had been appointed guardians by the State Administrative Tribunal since the program started.

Issues for Guardianship

The growth in demand for guardianship services is compounded by the increasing complexity of the issues surrounding the protection of adults with decision-making disabilities.

- 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. At 30 June 2009, some 40 of the 231 new appointments were for people who lived outside the Perth metropolitan area. Ensuring adequate support and services are provided to these clients, maintaining contact with them and conducting visits often poses unique challenges to the Public Advocate.

- In 2008/09 guardians and investigators made more than 30 trips to regional towns including Albany, Augusta, Broome, Bunbury, Busselton, Collie, Cunderdin, Geraldton, Kalgoorlie, Karratha, Narrogin, Newman, Northam, Port Hedland and Roebourne. In some cases, the Public Advocate has had to determine the suitability of accommodation options for represented persons living outside of Western Australia.
- The issues surrounding decisions which guardians are required to make may be complex, as a growing number of represented persons have multiple and complex needs. These people may have more than one diagnosed condition combined with a drug or alcohol problem and challenging behaviour. Sometimes as a result of their behaviour they come into contact with the criminal justice system. Decision-making for such people involves the guardian working with a number of agencies to provide an intensive level of support.
- Due to the increasing number of aged people for whom the Public Advocate is appointed guardian, decisions regularly have to be made regarding the medical needs of people who have complex medical conditions, chronic illnesses or are terminally ill. The challenge for the Public Advocate is carefully weighing up the wishes of the represented person and those of their family members and friends, alongside the views of the treating physicians about what is in a person's best interests regarding treatment or end of life care.
- Guardians are experiencing increased pressure to locate services, seek funding and co-ordinate the provision of services for represented persons. The shortfall of appropriate services and the refusal of represented persons to accept help compound this problem. Where people have a dual diagnosis, for example, an intellectual disability and a mental illness, the task of encouraging an agency to take the lead role may be very difficult.
- Making decisions about whether a represented person remains in their own home or is placed in residential care, when concerns exist around their self-care, is often a source of conflict between guardians and represented persons and/or their relatives. Guardians must balance the rights of a represented person to remain at home and their need for care.
- In many cases the Public Advocate has been required to determine the need for chemical and/or physical restraint for represented persons. This can involve seeking a guardianship review hearing before the State Administrative Tribunal. In some cases, the Public Advocate has had to consent to psychological programs for behavioural management of disruptive or self-injurious represented persons.
- The appointment of the Public Advocate can result in major disagreement within the family of the represented person. In cases where the represented person has been abused, neglected or exploited, 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 decision-making disabilities may be extremely vulnerable to sexual assault and sexual exploitation. The Public Advocate intervenes in these matters and seeks Police involvement (via the Sexual Assault Squad), referral to the Sexual Assault Resource Centre and medical and counselling services. The Public Advocate has noted the particular vulnerability of young people with intellectual disabilities and women with mental illnesses, to sexual assault. This group often lack adequate self protective behaviours and/or family and agency support services.
- Making decisions for represented people from an Aboriginal or Torres Strait Islander background requires an understanding of cultural differences. The family members of these represented people sometimes oppose or do not recognise the authority of the Public Advocate as their relative's guardian.
- The Public Advocate makes decisions for people who are frequent and sometimes serious offenders, whether detained in a psychiatric hospital or prison, or living in the community. These individuals can pose a risk to themselves as well as members of the community and often require intensive support and cross-agency collaboration which might involve the Police, the Department of Corrective Services' Intellectual Disability Diversion Program, Legal Aid, and Mental Health Services.

Case study

End of life decision-making

B is a 62 year old male who migrated from Turkey in 1974. He came to Australia on his own, having been estranged from his wife and children for many years. Being Muslim, B became actively involved in the local Muslim community not long after he arrived in Australia.

B experienced kidney failure and had to receive dialysis three times a week.

In 2007 B suffered a stroke and was admitted to hospital. The hospital social worker made an application for a guardian to be appointed to make medical treatment decisions on behalf of B and to determine where he should live when he was discharged from hospital.

The Public Advocate was appointed as B's guardian as there was no-one else willing or able to take on the role. Shortly after the appointment, a decision was made for B to be discharged from the hospital into nursing home care.

B continued to receive dialysis, but was reported to be increasingly non-compliant with his treatment and the hospital ultimately recommended that dialysis should be ceased. The nursing home disagreed with this recommendation and offered to send a familiar staff member to the dialysis sessions with B by way of support. This led to a noticeable improvement in relation to B's compliance with dialysis. Approximately three months later however, the same problems arose again.

An interpreter was engaged to discuss the situation with B who indicated that he did not want to continue his treatment. The hospital and nursing home staff supported B's view and the Public Advocate made the decision for B to receive palliative care. B's friends were advised of this decision.

Shortly after this decision was made, one of B's friends contacted the Office of the Public Advocate and advised that he was unhappy with the decision because B's religion was such that all efforts should be made to prolong his life. He stated that B's friends in the Muslim community wanted dialysis to be resumed and that this was also the view of his family in Turkey.

The Public Advocate sought the advice of a local Muslim religious reader and organised a meeting between him, the guardian, the friend and the treating doctors. At the meeting the religious leader advised that he was of the view that efforts had already been made to prolong B's life, but that B was now indicating that he no longer wanted to be treated. He noted also that B's reasons for not wanting treatment to continue were because he was in pain, considered his quality of life to be very poor and was distressed by the treatment. His view was that it would be acceptable under Islamic Law for dialysis to cease.

Further to this meeting all parties agreed that B should receive palliative care.

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

Case study

Complex needs

J is 29 and has schizophrenia and chronic alcohol dependency. Her lifestyle has become very disorganised due to her regular periods of intoxication resulting in self-neglect, aggression and homelessness. J also has an acquired brain injury as a result of a motor vehicle accident which has impaired her memory and ability to problem solve.

J has a history of aggression towards others including her parents, who have sought a restraining order to stop her from going to their family home. J's parents are extremely concerned that her alcohol dependency is going to cause further mental impairment and other health problems. J is also placing herself at risk of sexual assault and/or contracting sexually transmitted diseases, through risky behaviour aimed at getting money to buy alcohol. J has also been suicidal at times and on one occasion took an overdose of her medications resulting in her stomach being pumped in hospital.

In desperation, J's parents applied to the State Administrative Tribunal to seek the appointment of the Public Advocate as their daughter's guardian as they felt that they were no longer able to properly support her.

The State Administrative Tribunal determined that J had a decision-making disability and that she was unable to make reasonable judgements regarding her health or safety. The Tribunal accepted J's parents submission that they had exhausted all available options to support J. The Tribunal appointed the Public Advocate as J's limited guardian for one year, to make decisions about where and with whom she should live, the services she needed, her treatment and health care and with whom she should associate.

The Public Advocate immediately sought co-ordinated services to provide J with the support she needed. This resulted in J finding hostel accommodation and having her medications reassessed by her local mental health clinic. She was then referred to a drug and alcohol program to receive rehabilitation and counselling which proved successful (when assistance was provided to help her keep her appointments). J eventually found a job (with assistance) giving her life a sense of value and consistency.

As a result of J's progress, her parents lifted the restraining order and reconnected with their daughter. They often agree for J to spend the weekend with them which has helped her to redirect her social life away from her old destructive routines.

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

Case study

State Administrative Tribunal determination regarding restraint

M is 71 years old and has dementia. M's daughter moved her from New South Wales to Western Australia because there was suspected domestic violence between M and her husband. M's other children agreed that she should no longer live with her husband, but were opposed to her being moved interstate.

The State Administrative Tribunal appointed the Public Advocate as M's limited guardian for two years to make decisions about her medical treatment, where and with whom she should live and the contact she should have with others. During the two year appointment, the Director of Nursing at the Residential Aged Care Facility where M was living applied to the Tribunal for a review of the order. In her application, the Director stated that she believed the appointed guardian needed additional authority to be able to make decisions about the physical and chemical restraint of M. She stated that the facility was using physical restraints such as lap-belts, bed rails and all-in-one suits to ensure M's comfort, safety and dignity. She also advised that M was being prescribed Respiridol.

The Public Advocate argued at the Tribunal hearing that physical restraint needed to be added to the order as this was a requirement of the facility under its policies. It was, however, acknowledged that generally the Public Advocate would consider that consent could be given to what was being requested by the facility under the order's authority for medical treatment and health care.

The Public Advocate also advised that consent to the prescription of Respiridol could be given under the order's authority for medical treatment and health care. This view was based on information provided by M's treating doctor that the medication had been prescribed to prevent agitation and restlessness.

The Tribunal determined that the Public Advocate could consent to the prescription of Respiridol under the existing order, but that to be able to consent to the use of lap-belts, bed rails and all-in-one suits, an additional authority enabling the guardian to consent to the use of physical restraint was required.

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 2008/09 guardians from the Office of the Public Advocate were involved in 176 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 what authority is given in the order are required.

Of the 176 reviews, 57 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 and willing 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, if the represented person ignored the guardian's authority)
- medical treatment authority contained in a guardianship order being considered no longer necessary.

A total of 117 guardianship orders were closed during 2008/09.

Our Customers

The two most common issues leading to the appointment of the Public Advocate as guardian of last resort were medical treatment / health care and accommodation, which made up 26 and 21 per cent (respectively) of all guardianship orders made in 2008/09 (see Figure 8).

The high number of medical treatment orders can be attributed to the lack of a spouse, child, relative or friend to act on a person's behalf, or in other instances these people exist but are either unsuitable or unwilling to act.

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

Of the 231 new appointments of the Public Advocate as guardian of last resort in 2008/09:

- The most common type of decision-making disability was dementia, with 83 (36 per cent) of the newly appointed people affected by this condition. This was followed by 53 people (23 per cent) with an intellectual disability, 46 people (20 per cent) with a psychiatric condition, 31 people (13 per cent) with an acquired brain injury and 18 people (8 per cent) with another disability (see Figure 9).
- 183 people lived in the Perth metropolitan area, 40 lived in regional areas and 8 lived elsewhere (see Figure 11).
- Abuse of a person with a decision-making disability was a factor in 17 cases (7 per cent) and of these, nine were 65 years of age or older. Neglect was once again the main type of abuse, both overall and in the cases of elder abuse (see Figures 12 and 13).

Of the 484 adults with a decision-making disability that the Public Advocate was guardian for at 30 June 2009, 48 were of Aboriginal or Torres Strait Islander descent and another 65 were identified as having a culturally and linguistically diverse background.

Guardians took 334 after hours calls compared to 233 in 2007/08, taking 127 hours (an increase from 99 hours last year).

Note: The Office of the Public Advocate introduced a new case management system in May 2009. Statistics shown in Figures 8 – 13 have been derived from data held in both new and old case management systems.

Fig. 8 Decision authorities given to the Public Advocate for all guardianship orders as at 30 June 2009

Function	
Accommodation	319
Education/training	41
Guardian ad litem	48
Medical/dental	405
Next friend	53
With whom RP* is to associate	106
With whom RP* is to live	278
Work	54
Other	250

*RP = represented person.

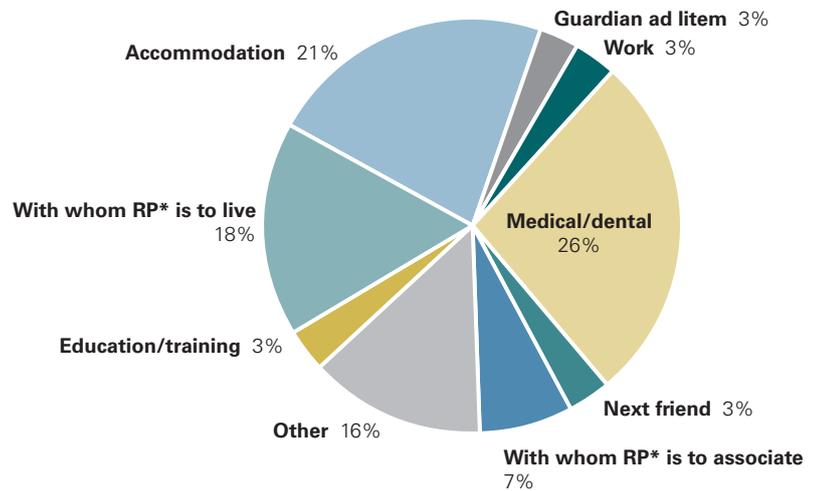


Fig. 9 Profile of new guardianship orders appointing the Public Advocate by type of decision-making disability 2008/09

Type of decision-making disability	
Acquired brain injury	31
Dementia	83
Intellectual disability	53
Psychiatric condition	46
Other	18
TOTAL	231

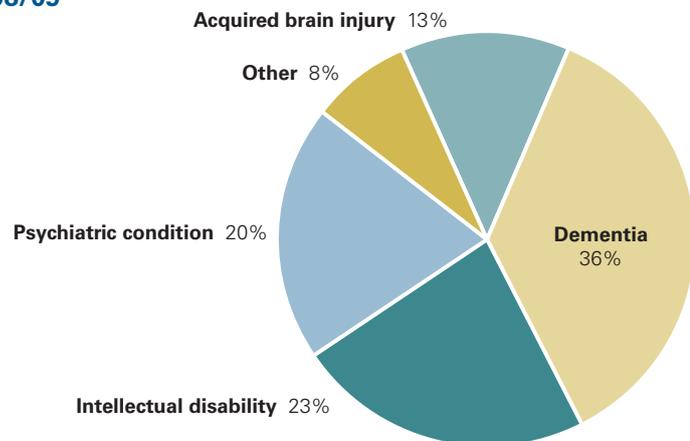


Fig. 10 Profile of all guardianship orders appointing the Public Advocate by type of decision-making disability as at 30 June 2009

Type of decision-making disability	
Acquired brain injury	62
Dementia	157
Intellectual disability	156
Psychiatric condition	86
Other	23
TOTAL	484

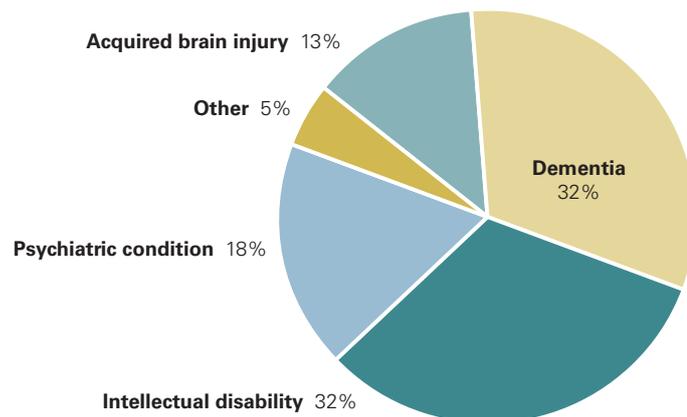


Fig. 11 Profile of new guardianship orders appointing the Public Advocate by geographical location 2008/09

Geographical location

Central Coast	6
Goldfields	6
Great Southern	7
Metropolitan	183
North	4
South West	17
Other	8
TOTAL	231

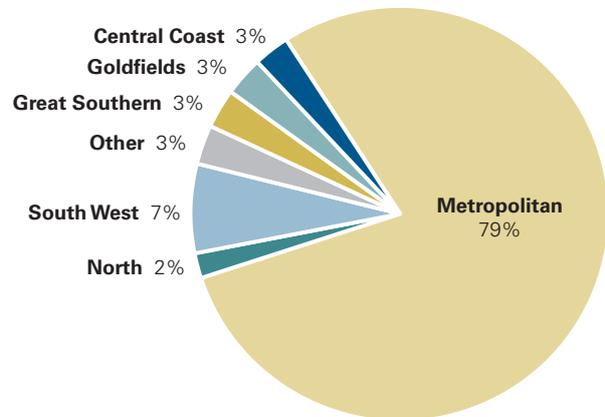
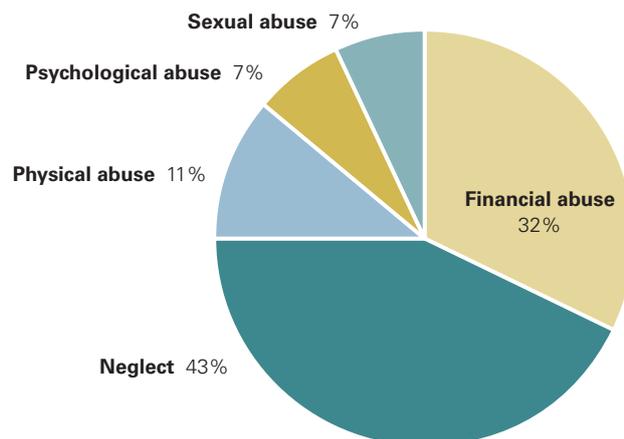


Fig. 12 Profile of new guardianship orders appointing the Public Advocate by type of alleged abuse 2008/09

(including statistics of elder abuse)

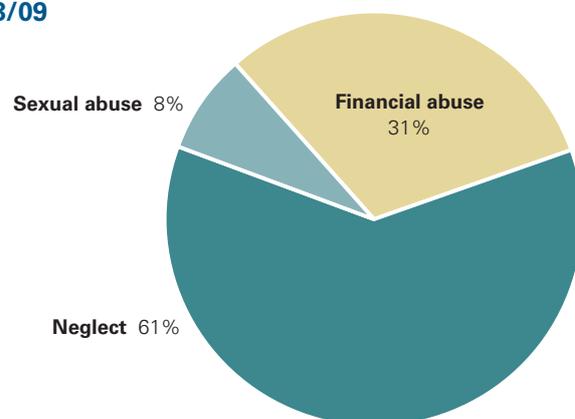
Abuse type	17 people
Financial abuse	9
Neglect	12
Physical abuse	3
Psychological abuse	2
Sexual abuse	2
TOTAL	28



**In some instances, more than one alleged abuse type is reported.*

Fig. 13 Profile of new guardianship orders appointing the Public Advocate by type of alleged elder abuse (aged over 65) 2008/09

Abuse type	9 people
Financial abuse	4
Neglect	8
Physical abuse	0
Psychological abuse	0
Sexual abuse	1
TOTAL	13



Systemic Advocacy

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

The Year in Review

Redress WA

In December 2007, the State Government committed \$114 million to Redress WA, a scheme aimed at helping adults - who as children, were abused and/or neglected¹⁷ – to move forward with their lives.

In response, applications for 49 people on guardianship orders appointing the Public Advocate (almost 10 percent of all orders) were made to Redress WA (as at 30 June 2009). Almost all of these applications were jointly prepared with the Public Trustee, with two people choosing to complete their applications with assistance from other agencies.

The strong partnership the Offices of the Public Advocate and Public Trustee have developed with regard to Redress WA, has further advanced the best interests of people under guardianship and administration orders appointing the Public Advocate and Public Trustee.

In view of the difficulty for people with decision-making disabilities to recall their life stories and identify their potential to apply to Redress WA, the Public Advocate sought the assistance of the Department for Child Protection to put in place an authority providing Ministerial Consent pursuant to section 241(2) of the *Children and Community Services Act 2004* so that identifying information could be disclosed to the Office of the Public Advocate. The Ministerial Consent enabled the Public Advocate to also share the confidential information obtained from the Department for Child Protection's records with the Public Trustee and significant others for the purpose of Redress WA.

Data matching of the names of all 571 people under guardianship of the Public Advocate was carried out with the Department for Child Protection's client records, from August 2008. This included those people for whom the Public Advocate was already appointed guardian, as well as new appointments.

This process identified 137 people whose historical records were then reviewed to confirm they were placed in care as children, and to identify any potential claim to Redress. In some cases, information was obtained from other sources to support an application. As a result of this review and research process, 49 applications were made.

The Public Advocate and Public Trustee are most appreciative of the extensive support provided by the Departments for Child Protection and Communities throughout the application process. These agencies facilitated access to the historical records of people for whom applications were being made. Similarly, the assistance of the Disability Services Commission was sought in some instances. Their help was also appreciated.

¹⁷ In State care in Western Australia before 1 March 2006.

The Public Advocate also made eight applications to the State Administrative Tribunal for additional legal authority to enable the Public Trustee or the Public Advocate to sign applications to Redress WA on behalf of represented persons.

During 2009/10, the Public Trustee will take the lead in negotiating the settlement of Redress WA claims in partnership with the Public Advocate and represented persons.

People with exceptionally complex needs

The People with Exceptionally Complex Needs (PECN) project was initiated in 2006 when the Public Advocate raised serious concerns about a small, but difficult cohort of adults with exceptionally complex needs, such as a significant disability, a mental health, alcohol or drug abuse problem and other unmet needs, for whom existing services were not working.

The 2009 pilot project operates under the partnership of senior officers from the Mental Health Division (Department of Health), Disability Services Commission, Department of Corrective Services, Department of Housing, the Drug and Alcohol Office and the Office of the Public Advocate.

The Disability Services Commission and Mental Health Division provided \$150,000 for the project in 2008/09. This funding has been used to employ an experienced practitioner to oversee innovative and co-ordinated responses to improve the wellbeing of this small group of people.

Given the complexity of the prospective cases, it was anticipated that the pilot would facilitate intervention for five people during 2009. This has expanded to six people, five of whom have guardianship orders appointing the Public Advocate.

Across Government strategies on homelessness

The Office of the Public Advocate was one of the many agencies which contributed to the development of the State Government's response to the Australian Government's Green Paper on Homelessness in June 2008. The Public Advocate will be a representative on the new Senior Officers Group which starts in July 2009 and will be convened by the Department for Child Protection. The group will oversee the Implementation Plan for the National Partnerships Agreement on Homelessness in Western Australia. The People with Exceptionally Complex Needs project will be included in the new initiatives.

Elder abuse

The Public Advocate continues to be involved in responding to elder abuse as a member of the Alliance for the Prevention of Elder Abuse (WA) (APEA). The alliance organised an event on World Elder Abuse Awareness Day in June 2009, with a range of presentations which highlighted elder abuse and the role of service providers and community members in identifying and reporting abuse. The presentation from the Office of the Public Advocate covered the role of the guardianship and administration system in responding to and preventing elder abuse.

Reconciliation Action Plan

The development of a Reconciliation Action Plan (RAP) within the Office of the Public Advocate has led to an increase in opportunities for raising cultural awareness within the Office. Staff have attended cultural awareness training and video presentations on relevant topics. Staff involved in delivering training sessions in regional areas of Western Australia provided reports on sessions which further raised staff awareness of the cultural differences across the State.

Australian Guardianship and Administration Conference

In March 2009 the Public Advocate, accompanied by two staff members from the Office of the Public Advocate, attended the Australian Guardianship and Administration Conference in Brisbane. Together, the three representatives presented a paper on the Public Advocate's Community Guardianship Program and another on the protocol between the Office and the Department for Child Protection in relation to young people with a decision-making disability leaving State care.

Policy reviews

Submissions were made to a number of inquiries by the Public Advocate. These included:

- ***Review of the WA Disability Services Act 1993, August 2008***
Submission to the steering committee for the review of the Disability Services Act 1993
- ***Law Reform Commission of WA Court Intervention Program Consultation, September 2008***
Submission to the Law Reform Commission in relation to the options for the development of court intervention programs for people with a disability
- ***The National Disability Strategy, December 2008***
Submission to the National Disability Strategy consultation process, which will contribute to the development of government activity and future policy initiatives
- ***Disability Future Directions, March 2009***
Response to the Disability Services Commission consultation on the development of a long term strategy for disability in Western Australia
- ***Review of the Carers Recognition Act 2004***
The Public Advocate participated as a member of the Review Steering Group which provided leadership and direction to the Review of the Act by the Minister for Seniors. The final report was tabled in the Parliament in November 2008.

Community Education

The role of Community Education is to promote the human rights of adults in Western Australia with decision-making disabilities under the provisions and operation of the *Guardianship and Administration Act 1990* through community education, awareness and understanding.

This includes:

- developing a calendar of effective community and professional education and training which promotes the human rights of adults with decision-making disabilities
- producing and publishing written and other material accessible to the community 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 decision-making disabilities at risk of exploitation, neglect and abuse.

The Year in Review

Almost 600 people attended 20 guardianship and administration, enduring power of attorney and private administrator training seminars organised by the Office of the Public Advocate in 2008/09. Staff participated in another 12 education sessions organised by service providers from the aged care, health and government sectors.

People attending Office of the Public Advocate presentations are asked to complete a survey indicating their level of satisfaction with the seminar and the information provided. Of the 445 who responded in 2008/09 to the surveys, 97 per cent were satisfied or very satisfied with the content and conduct of the session which is identical to the level of satisfaction the previous year.

The role of local government officers in preventing elder abuse was the subject of a one day seminar organised by the Alliance for the Prevention of Elder Abuse, of which the Public Advocate is a member.

Unfortunately the Office has been unable to meet all requests for training from the community. The priorities for training this year were regional and Aboriginal-specific service providers.

Regional collaboration

The Country Health Network enlisted the participation of staff from the Office of the Public Advocate in four training sessions in country towns. Staff with experience in guardianship participated in panel discussions based on hypothetical medical situations involving a person with a decision-making disability. The sessions in Northam, Bunbury, Geraldton and Karratha attracted some 100 participants.

Collaboration with service providers in health and aged care and local hospitals enabled another eight training sessions introducing the guardianship and administration system to service providers to be run in Albany, Broome, Bunbury, Derby, Geraldton, Kalgoorlie, Karratha and Narrogin.

Customer contact/enquiries

The Office's Telephone Advisory Service (TAS line) provides recorded information on guardianship, administration and enduring powers of attorney and gives callers the option of speaking to a receptionist or advisory officer.

A total of 4054 people contacted the Office of the Public Advocate via the Telephone Advisory Service, email, mail and in person, compared to 4,233 in 2007/08. Enduring Powers of Attorney continued to dominate enquiries, accounting for almost half the total enquiries this year (43 per cent).

Information regarding enduring powers of guardianship will be updated on the Telephone Advisory Service as the implementation of the *Acts Amendment (Consent to Medical Treatment) Act 2008* proceeds. In the meantime, people interested in information about Enduring Powers of Guardianship are being directed to email their enquiries to opa@justice.wa.gov.au.

Fig. 14 Type of enquiries to the Telephone Advisory Service 2008/09

	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Total
Guardianship	127	95	87	95	68	116	112	91	100	114	104	100	1209
Administration	85	78	50	79	62	64	65	67	72	60	69	60	811
Enduring Power of Attorney	221	196	176	254	168	177	181	209	138	127	192	157	2196
General	55	31	40	52	35	55	41	47	44	33	35	44	512
TOTAL	488	400	353	480	333	412	399	414	354	334	400	361	4728

**In some instances, callers made enquiries regarding multiple topics.*

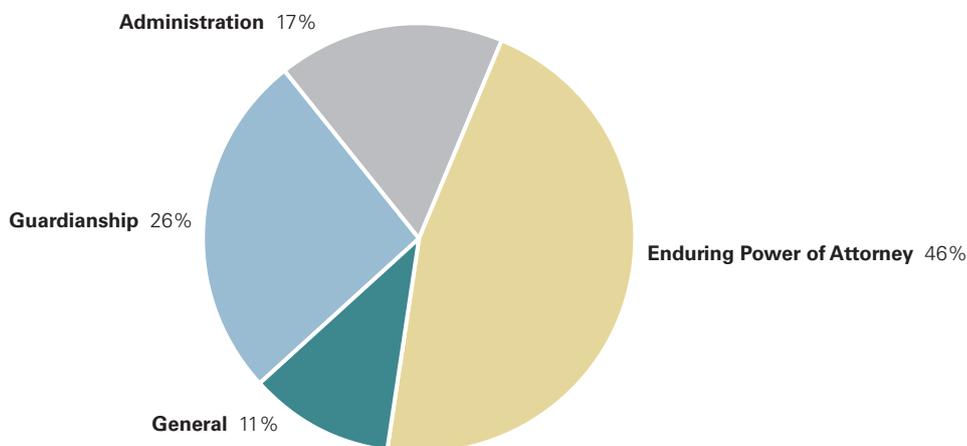


Fig. 15 Mode of handling enquiries

	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Total
Phone	362	333	356	317	369	236	358	349	348	361	341	353	4083
Interview	6	8	4	8	7	5	6	4	6	10	9	6	79
Email/Letter	6	5	9	7	6	6	3	3	3	6	9	8	71
Total	374	346	369	332	382	247	367	356	357	377	359	367	4233

Protecting vulnerable Aboriginal adults

Of the regional training sessions, four were specifically targeted at raising awareness of guardianship, administration and the Office of the Public Advocate among Aboriginal service providers. A metropolitan session at the State-wide Indigenous Mental Health Service attracted 16 people from aged, community care and mental health fields. Knowledge of the role of the Office of the Public Advocate was further enhanced by the appointment of an Aboriginal Community Education Officer who raised awareness among key agencies until her departure in February 2009.

Publications and website

With the launch of the Public Advocate's revamped website in March 2009, information about guardianship, enduring powers of attorney and administration has become easier to find (at www.publicadvocate.wa.gov.au).

Changes were made to the enduring power of attorney kit and minor edits were made to other brochures and information sheets maintained by the Office of the Public Advocate. Brochures and information sheets were distributed to people on request and were also available on the Public Advocate website.

When the *Acts Amendment (Consent to Medical Treatment) Act 2008* is implemented, information regarding Enduring Powers of Guardianship and other changes to the *Guardianship and Administration Act 1990*, will be incorporated into the Office's website and various publications. Limited information is currently available on the 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 under a service-level agreement and costs are proportionally allocated to the Public Advocate and reflected in the Treasury Budget statements. The budget allocation and subsequent expenditure for 2008/09 are as follows:

Fig. 18 Budget Allocation and Expenditure 2007/08

	Total Cost of Output
\$'000 Actuals 2008-09	3,613
\$'000 Budget 2008-09	3,263 (revised budget)
\$'000 Variations from Budget	(350)

The Year in Review

Human resources

The staff training committee continued to co-ordinate and develop staff training opportunities through the staff training program in 2008/09. The program aims to meet the specific needs of staff in the Office of the Public Advocate. Whole of office training was provided on conflict resolution and staff had the opportunity to attend conferences organised by the Richmond Fellowship, the Australian Association of Gerontology, National Disability Services and the Australian Guardianship and Administration Conference. A number of guest speakers were invited to the Office to address staff on relevant topics. Staff also took advantage of the expanded number of generic training courses provided by the Learning and Development branch of the Department of the Attorney General.

Office technology

The development of a new Case Management System for the recording and management of client and case information was delayed after the original contractor withdrew their interest. Work started again in January 2009 after the contact was awarded to a new contractor.

The new system, known as the Public Advocate Case Management System (PACMAN) became operational in May 2009. Work to transfer existing case data from the old system into PACMAN is continuing, as are additional developments to enhance the system.

Videoconferencing continued to be used for client interviews, service provider training and seminars involving people in regional areas.

Interpreter services

To help ensure that language is not a barrier to services for customers for whom English is a second language, the Office uses translation and interpreter services. During 2008/09 interpreter services were provided in Cantonese, Italian, French, Filipino, Greek and Vietnamese.

Freedom of information

Two valid applications were received during 2008/09 for the release of information. One application was refused in part as it was seeking information about third parties and the other, which was received in June was still under assessment at 30 June 2009.

Anyone who wishes to access information held by the Public Advocate should 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 2008/09, the Office of the Public Advocate received four formal compliments. The Office also received 13 formal complaints during the year, which were all resolved after the complainants were contacted by the Public Advocate or a senior manager.

For people who lodge a formal complaint with 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 received
- keep records of all relevant proceedings including details of the grievance, the investigation, methods of resolution and customer feedback
- make documentation of the investigation available to the person who lodged the complaint (except where this contravenes confidentiality requirements)
- communicate the outcome in writing, together with any corrective action to be taken, to all parties.

Significant Issues and Trends

Growth in demand for services

The demand for investigation, advocacy and guardianship services from the Office of the Public Advocate continues to increase. In 2008/09, the total number of investigations increased by 17 per cent and the number of new appointments as guardian of last resort increased by 23 per cent. At 30 June 2009, the Public Advocate was guardian for 27 per cent more people than at the same time last year.

Western Australia's ageing population and the resulting increase in the number of people with dementia are significant factors contributing to the increasing demand for the Office's services. In 2008/09, 45 per cent of new matters referred for investigation involved a person with dementia and 36 per cent of the people for whom the Public Advocate was appointed guardian during the year have dementia.

A detailed, independent study on forecasting demand for services undertaken in 2003/04 by Data Analysis Australia indicated an annual growth over the next five years of 5.9 per cent for guardianship orders, 2.1 per cent for community-referred investigations and 2 per cent for investigations referred by the State Administrative Tribunal. The number of guardianship orders has been consistently higher than those projections.

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

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

The report notes that the current forecasts are substantially higher than the previous forecast because of:

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

There is no decrease predicted in the growth rate until 2022-2023, when it is anticipated that the older demographic (60 to 85 years) will stabilise somewhat and the effects of the "baby boom" generation will impact strongly on organisations such as the Office of the Public Advocate, in which elderly people are the main users of the service.

The Department of the Attorney General provided funding for two additional guardians from September 2008 to help meet the increasing demand for guardianship services. This arrangement will become permanent in July 2009.

Introduction of Enduring Powers of Guardianship

The *Acts Amendment (Consent to Medical Treatment) Act 2008* (the Act) amends the *Guardianship and Administration Act 1990*, *Civil Liability Act 2002* and *The Criminal Code* to provide a legislative basis for Enduring Powers of Guardianship and Advance Health Directives. These instruments will enable adults to plan for future medical and lifestyle decisions.

The Act was passed by both Houses of Parliament on 12 June 2008 by a conscience vote and received Royal Assent on 19 June 2008. Parts 3 and 4 of the Act became operational on 27 June 2009. Part 3 amended the *Civil Liability Act 2002* and Part 4 *The Criminal Code*. These provisions provide increased certainty for health professionals in the difficult area of end of life care.

Part 2 of the Act will amend the *Guardianship and Administration Act 1990*. The Act requires the drafting of the Regulations under the *Guardianship and Administration Act 1990* to prescribe the Enduring Power of Guardianship and Advance Health Directive forms. Consultation on the draft forms was also required to fulfil the commitment given during the Parliamentary debate.

The Act introduces new functions for the Office of the Public Advocate, which is responsible for the implementation of Enduring Powers of Guardianship. The Department of Health is responsible for the implementation of Advance Health Directives.

In June 2009, the Government committed \$1.35 million over the first four years for the implementation of the legislation, with \$1 million going to the Office of the Public Advocate for Enduring Powers of Guardianship.

The Office has started preparing for the implementation of Enduring Powers of Guardianship. In partnership with the Department of Health, consultation with key stakeholders about the draft prescribed forms and guides for Enduring Powers of Guardianship and Advance Health Directives began in June 2009. Targeted community education for relevant service providers including representatives from the health, aged care and disability sectors and interested members of the public, will be rolled out in 2009/10.

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 decision-making disabilities, both at hearings for the appointment of a guardian and in the community.

Effectiveness indicators	Actual 2005-06	Actual 2006-07	Actual 2007-08	Target 2008-09	Actual 2008-09	Comment on significant variation
<p>Proportion of customers provided with advocacy, relative to the number of referrals</p> <p>This indicator measures the number of matters allocated for advocacy as a percentage of the total referrals, including community referrals.</p>	100%	100%	100%	95%	99%	N/A
<p>The percentage of customers surveyed, satisfied with information and advice provided by the Office of the Public Advocate</p> <p>This indicator measures the satisfaction level of clients in respect to the information and advice received at training sessions.</p>	97%	97%	97%	90%	97%	N/A

Effectiveness indicators	Actual 2005-06	Actual 2006-07	Actual 2007-08	Target 2008-09	Actual 2008-09	Comment on significant variation
<p>Guardian of Last Resort allocated in one day</p> <p>This indicator measures the timeliness of the Public Advocate in allocating a guardian to a represented person in order to make decisions on their behalf and protect them from neglect, abuse or exploitation. A guardian is appointed only when considered necessary, and when there is no one else suitable or available to take on the role.</p>	93.5%	92%	93%	95%	91%	N/A

Efficiency indicator	Actual 2005-06	Actual 2006-07	Actual 2007-08	Target 2008-09	Actual 2008-09	Comment on significant variation
<p>Average cost of providing advocacy and guardianship services</p> <p>This indicator measures the average cost per case of providing advocacy and guardianship services on behalf of people with decision-making disabilities.</p>	\$2,395	\$2,506	\$2,582	\$2,112	\$2,229	N/A

Notes to the Key Performance Indicators

Advocacy, Guardianship and Administration Services

Effectiveness Indicator	Description
Proportion of customers provided with advocacy relative to the number of referrals	<p>This indicator measures the ability to provide advocacy to clients identified as requiring advocacy and is considered a key indicator because it shows the extent to which the Office of Public Advocate (OPA) is able to protect the rights of adults with decision-making disabilities and reduce the risk of neglect, exploitation or abuse. Data for this indicator was extracted from both the OPA Statistical Collection Access System (OSCAS) and the new case management system (PACMAN).</p> <p>The Office of the Public Advocate receives applications referred by the State Administrative Tribunal, as well as community referrals, and assesses their priority before allocating the highest priority applications to investigators. Applications not able to be allocated are placed on a waitlist.</p>
The percentage of customers surveyed satisfied with the information and advice by the Office of Public Advocate	<p>Customer surveys are distributed to secondary customers. That is, people with a direct personal or professional involvement in the lives of people in the primary customer group. Feedback questionnaires are distributed to the target group at the conclusion of every training course. The level of satisfaction with the services delivered is measured by collating the ranking level (1 = high satisfaction and 4 = unsatisfied) assigned to the feedback questions by clients.</p> <p>In 2008-09 582 people attended community education sessions held by the Office of the Public Advocate. All attendees were given survey forms at the end of each session. 445 responses were received, yielding a response rate of 76%. The survey's sampling error rate is 2.25% and the confidence interval was at 95%.</p> <p>The indicator relates directly to one of the key elements of the Public Advocate's outcome statement of providing information and advice to the community about the Guardianship and Administration system.</p>
Guardian of Last Resort allocated in one day	<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 SAT 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 both the OPA Statistical Collection Access System (OSCAS) and the new case management system (PACMAN).</p>

Efficiency Indicator	Description
Average cost per case of providing Advocacy and Guardianship services	<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 Advisor (DotAG's budgeting system), the OPA Statistical Collection Access System (OSCAS) and the new case management system (PACMAN).</p>

Ministerial Directives

Nil

Other Financial Disclosures

See the Department of the Attorney General annual report.

Other Legal Requirements

Advertising and marketing expenditure

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

Fig. 16 Advertising and marketing expenditure

Adcorp and Whitepages: community education and recruitment advertising	\$11,253
Department of Premier and Cabinet: Intersector – recruitment advertising	0
Direct mail organisation	0
Market research organisation	0
TOTAL EXPENDITURE	\$11,253

Compliance with Public Sector Standards and Ethical codes

For administrative purposes, compliance with Public Sector Standards and Ethical Codes is managed under the Department of the Attorney General's Code of Conduct and relevant supporting legislation, policy and procedures.

In adhering to these policies, the Office of the Public Advocate made eight conflict of interest declarations and reported seven offers of gifts, hospitality or other benefits.

Record keeping

Records are maintained in accordance with the Department of the Attorney General's records keeping plans. As part of the transition to the Office of the Public Advocate's new case management system, PACMAN, the practice of numbering and recording Office files in the Department's official records and information management system was adopted.

At 30 June 2009, 90 per cent of staff had completed online training in records awareness designed to increase understanding of their obligations under the *State Records Act 2000*.

Government Policy Requirements

For information on corruption prevention, substantive equality and sustainability action plans see the Department of the Attorney General annual report.

Occupational Safety and Health (OSH)

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*.

Due to the relatively small size of the Office, there is no formal Occupational Safety and Health Committee. Staff are able to, and encouraged, to raise occupational safety and health issues in monthly team meetings. The Manager Corporate Services is responsible for investigating any issues raised and co-ordinating the reporting and claims process. During 2008/09 there were no fatalities and one lost time injury.

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* will amend the *Guardianship and Administration Act 1990* when part 2 is implemented.

Related legislation

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

State Administrative Tribunal Act 2004

Health Act 1911

Supreme Court Act 1935

Magistrates Court (Civil Proceedings) Act 2004

Public Trustee Act 1941

Disability Services Act 1993

Mental Health Act 1996

Criminal Law (Mentally Impaired Accused) Act 1996

Criminal Investigation (Identifying People) Act 2002

Criminal Investigation Act 2006

Carers Recognition Act 2004

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

Corruption and Crime Commission Act 2003

Electoral Act 1907

Equal Opportunity Act 1984

Financial Management Act 2006

Freedom of Information Act 1992

Occupational Safety and Health Act 1984

Public Interest Disclosure Act 2003

Public Sector Management Act 1994

State Records Act 2000

State Supply Commission Act 1991

Workers' Compensation and Rehabilitation Act 1981

Appendix 2 Publications

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

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 Complaints and Service Standards
- Enduring Power of Attorney

Position statements

- Consent to Medical and Dental 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 Medical Decisions
- Role of the Public Advocate as Guardian of Last Resort in Contact Decisions

Brochures

- Office of the Public Advocate
- Community Guardianship Program
- Caring for and respecting older people (available in English, Italian, Greek, Dutch, Polish, Serbian, Croatian, Chinese and Vietnamese)
- Are you worried about a vulnerable adult who needs help making decisions? (a brochure for Aboriginal people).

Enduring Power of Attorney information kit and guide

The kit and professional guide can be purchased at the State Law Publisher, 10 William Street, PERTH, WA, 6000, sales@dpc.wa.gov.au or at selected Newspower newsagents.

Professional guides

- *A Guide for Service Providers* 2005 Edition (Practice Manual)

Research reports

- *Mistreatment of Older People in Aboriginal Communities – an Investigation into Elder Abuse* 2005
- *Care and Respect – Elder Abuse in Culturally and Linguistically Diverse Communities* 2006

Newsletters

- OPA News
- Community Guardianship

Annual Report

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 (AHD): 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 (EPA): 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 EPA authority continues even when the person granting it loses their capacity to make decisions for themselves.

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

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

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

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

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

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

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

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

State Administrative Tribunal (SAT): An independent statutory tribunal that makes and reviews orders appointing guardians and administrators and considers applications for intervention into enduring powers of attorney.

