



Office of the
Public Advocate

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

The Public Advocate of Western Australia
Annual Report 2015/16



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

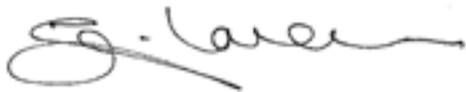


Hon. Michael Mischin MLC
ATTORNEY GENERAL

In accordance with Section 101(1) of the *Guardianship and Administration Act 1990* of Western Australia, I am pleased to submit the Annual Report of the Public Advocate for the year ending 30 June 2016.

This report records the operations and performance of the Office of the Public Advocate during 2015/16. 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.



Gillian Lawson
ACTING PUBLIC ADVOCATE
9 September 2016

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Overview

The Year in Review

Each year, the Office of the Public Advocate protects a growing number of vulnerable people in our community.

In its advocacy and investigation role, it looked into the lives of some 1,500 adults who may have needed a substitute decision-maker appointed.

As guardian of last resort, it played an important decision-making role in the lives of more than 1,500 adults who were unable to make decisions for themselves because of a decision-making disability.

In its advisory role, it provided information and advice to community members and relevant organisations, about how to navigate the guardianship and administration system.

Western Australia's ageing population and increasing prevalence of dementia, continued to drive demand for these statutory services provided by the Office.

Demand for the Office's services was also driven by people who did not have decision-making capacity as a result of an intellectual disability from birth; mental illness; or a brain injury from an accident, illness or substance abuse.

The Office of the Public Advocate worked diligently throughout the year to continue to meet demand for its advocacy and investigation services.

Investigator advocates looked into the personal and financial welfare of adults with a decision-making disability and advocated for their best interests at hearings before the State Administrative Tribunal. In 2015/16, the Office carried out five per cent more investigations in total than the previous year.

Similarly, the Office worked to meet the growing demand for its guardianship service. In 2015/16 there was a 10 per cent increase in new appointments of the Public Advocate as guardian of last resort. At 30 June 2016, the Public Advocate was guardian for 12 per cent more adults than at 30 June 2015.

The Office's Community Guardianship Program celebrated 10 years of operation in December 2016, and at 30 June 2016 there were 18 volunteers involved in the program.

The Office delivered 26 community education seminars in 2015/16 and participated in a number of conferences. This work raised professional and community awareness on the guardianship and administration system, with a particular focus on educating people about how to plan for a time when they may lose capacity.

The Office continued to contribute to a range of policy and legislative work to promote and protect the human rights and interests of adults with a decision-making disability.

Acknowledgements

The work of this Office can be challenging and confronting.

Balancing a person's right to make decisions for themselves, with the need to legally protect them from abuse, neglect and exploitation, is an onerous task.

Stepping into another person's shoes to make personal, lifestyle and treatment decisions on their behalf is equally demanding.

This work would not be possible without a dedicated team of investigator advocates, guardians, administration and support staff.

Once again this year, staff from the Office of the Public Advocate worked with commitment and compassion, and successfully delivered tangible benefits to vulnerable people with impaired capacity in Western Australia.

Often their work was carried out in difficult circumstances, amid family conflict or where vulnerable members of the community may have been exposed to situations of abuse or neglect.

The contribution of volunteers from the Community Guardianship Program was invaluable once again this year. This dedicated group of volunteers has an incredible impact on the lives of some isolated people within our community.

I want to thank the staff and volunteers for their hard work and commitment. Your input is integral to ensuring that our work achieves effective outcomes for people with impaired decision-making capacity.

I am also grateful for the support of the Department of the Attorney General and of colleagues internal and external to the Department.



Gillian Lawson

ACTING PUBLIC ADVOCATE

Overview of the agency

Operational Structure

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

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

In 2015/16 the Office of the Public Advocate reported on financial and administrative matters to the Director General of the Department of the Attorney General. In accordance with this arrangement, the financial statements of the Office are published in the Department’s annual report.

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

Mission

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

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

Functions

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

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

OVERVIEW OF THE AGENCY

Values

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

- **Presumption of competence**

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

- **Best interests**

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

- **Least restrictive alternative**

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

- **Limited versus plenary**

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

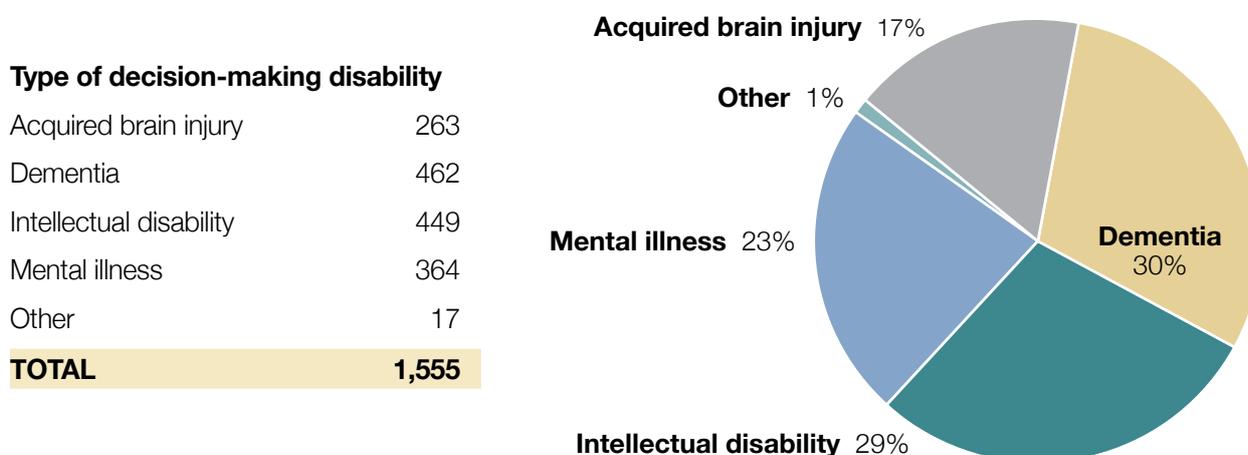
- **Current wishes and previous actions**

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

Stakeholders

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

Figure 1 Profile of all guardianship orders appointing the Public Advocate by type of decision-making disability as at 30 June 2016



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

The number of people with an acquired brain injury for whom the Public Advocate is guardian, has doubled over the past four years from 130 in June 2012 to 263 in June 2016.

In the same four year period, the number of people with a mental illness for whom the Public Advocate is their guardian, has increased by 76 per cent and the number of people with an intellectual disability has increased by 71 per cent. For those people with an intellectual disability, the Public Advocate often remains their guardian for a long period of time or for life.

Figure 2 People under guardianship orders appointing the Public Advocate by type of decision-making disability as at 30 June 2012 – 30 June 2016

Type of decision-making disability	2012	2013	2014	2015	2016
Acquired brain injury	130	146	181	223	263
Dementia	297	348	394	424	462
Intellectual disability	263	283	319	385	449
Mental illness	207	251	284	333	364
Other	31	37	40	18	17
Total	928	1,065	1,218	1,383	1,555

OVERVIEW OF THE AGENCY

Dementia

According to Alzheimer's Australia's 'Key Facts and Statistics 2016' publication¹, there are more than 353,800 Australians living with dementia. This number is expected to increase to 400,000 before 2021 and reach almost 900,000 by 2050, unless there is a medical breakthrough.

Research² commissioned by Alzheimer's Australia WA, estimated that in 2016 there are 33,300 people with dementia in Western Australia. This number is expected to reach 36,500 by 2020 and 69,000 by 2050.

The projected rates of prevalence in this report, suggest that the Office of the Public Advocate can expect continued and significant growth in the number of represented persons.

Intellectual disability

The most commonly reported disability in Western Australia for people who received services under the National Disability Agreement is intellectual disability.³ The Disability Services Commission of Western Australia funded and provided services to 25,665 people, of which 8,828 were Western Australians with an intellectual disability as their primary condition in 2015/16.⁴

Acquired brain injury

An acquired brain injury can result in the deterioration of cognitive, physical, emotional or independent functions. This injury can occur as a result of events including trauma, hypoxia, infection, alcohol and substance abuse, degenerative neurological disease or stroke. In 2007, the Australian Institute of Health and Welfare estimated that people aged 65 years or over were more than twice as likely as those aged less than 65 years to have an acquired brain injury with activity limitations or participation restrictions.⁵

In 2015/16 the Disability Services Commission funded and provided services to 711 Western Australians with an acquired brain injury reported as their primary disabling condition.⁶

1 Alzheimer's Australia 2016, *Key Facts and Statistics 2016*, <https://wa.fightdementia.org.au/files/NATIONAL/documents/Key-facts-and-statistics.pdf>

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

3 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.

4 Disability Services Commission. Annual Client and Service Data Collection, 2015/16.

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

6 Disability Services Commission. Annual Client and Service Data Collection, 2015/16.

Mental illness

In the 2007 National Survey of Mental Health and Wellbeing, 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 per cent) in the youngest age group (16-24 years) and to around one in 20 (six per cent) in the oldest age group (75-85 years).⁷

This remains consistent with earlier reports such as the 1997 National Mental Health and Wellbeing Survey,⁸ in which it was estimated that around 19 per cent of people in Western Australia had experienced a mental disorder in the previous 12 months, with the prevalence being highest amongst those aged 18-24 years and decreasing with age.

Six per cent of Western Australians aged 65 years and over reported some form of mental disorder. The prevalence of high or very high psychological distress in Western Australia was nine per cent in 2004.⁹

Resources

The role and functions of the Public Advocate in 2015/16 were supported by:

- approved establishment of 49 (full-time equivalent) staff
- expenditure of \$6.904m¹⁰

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

7 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.

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

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

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

Performance Management Framework

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

Government goal

The work of the Office of the Public Advocate reflects the State Government goal of: *Results-based service delivery: greater focus on achieving results in key service delivery areas for the benefit of all Western Australians.*

Department of the Attorney General purpose

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

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

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

Office of the Public Advocate services

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

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

Cross-agency initiatives

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

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

Agency Performance

Advocacy and Investigation

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

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

In carrying out their enquiries, the priority for investigator advocates is to seek the views of the person who is the subject of an application, where possible. They also try to interview a range of interested parties which may include family, friends and service providers. The extent and nature of consultation will depend on the timeframe given by the State Administrative Tribunal and other workload priorities.

Investigator advocates often prepare a report about what is in the person's best interests, to assist the State Administrative Tribunal with its deliberations. Investigator advocates provide oral advocacy at hearings in relation to the person's best interests.

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

The investigator might identify areas where decisions are required and find potential options for how these decisions could be addressed without a formal guardianship or administration order. The following examples show scenarios where this might occur.

- **Example 1:** A person makes an application for the appointment of a guardian, as they believe a vulnerable adult does not have appropriate support services in place. In the course of the investigation, the investigator advocate advises the applicant of community services which could assist the vulnerable adult. The applicant engages these services and the situation is resolved without the need for the appointment of a guardian.
- **Example 2:** A health professional makes an application for the appointment of a guardian, as they believe their patient has a decision-making disability and needs a substitute decision-maker to make treatment decisions. The *Guardianship and Administration Act 1990* sets out a formal order of treatment decision-makers. In explaining this hierarchy to the service provider, the investigator advocate assists the service provider to find the appropriate decision-maker, without the need for the appointment of a guardian.

The Year in Review

In 2015/16, the Public Advocate carried out 1,516 investigations into the personal or financial welfare of adults with a decision-making disability, representing a five per cent increase from 2014/15.

These 1,516 investigations included new matters and matters carried over from 2014/15. Of these, 1,349 needed investigation and advocacy relating to applications for, or reviews of, administration or guardianship orders before the State Administrative Tribunal. The remaining 167 investigations were referred directly to the Public Advocate by a member of the public or a community-based organisation, or another government agency or body.

An additional 88 preliminary investigations were carried out by the liaison officer, which assisted the Tribunal in gathering further information relevant to the hearing.

Investigations referred by the State Administrative Tribunal

There were 1,123 new investigations referred by the State Administrative Tribunal in 2015/16, representing a five per cent increase from the previous year. These consisted of applications regarding guardianship, administration, enduring powers of attorney, enduring powers of guardianship, advance health directives and reviews of administration or private guardianship orders.

The State Administrative Tribunal requested the attendance of an investigator advocate at 146 urgent hearings in 2015/16. An urgent hearing requires an investigator advocate to attend a hearing at short notice to represent the best interests of the proposed represented person. In many of these cases there were urgent medical treatment decisions required, or a need to protect a person's finances.

Investigator advocates are confronted with many and varied issues in their investigations, and they require a range of skills in order to identify and respond to the situations which arise in the course of their investigations.

The Office of the Public Advocate also provided a liaison officer to respond to requests from the State Administrative Tribunal which sought advice and recommendations about applications.

In 2015/16, the liaison officer conducted preliminary investigations into 88 new applications for guardianship, administration and intervention in enduring powers of attorney and enduring powers of guardianship. Recommendations to the State Administrative Tribunal included the need for referral to the Office of the Public Advocate for full investigation.

Case Study

Clarifying decision-making capacity

The State Administrative Tribunal received applications for guardianship and administration for Mrs A from a hospital social worker.

The Tribunal referred the applications to the Public Advocate to investigate and requested an investigator advocate attend the initial hearing.

What are the key factors in an investigation?

- 1) Does the proposed represented person (the person the application is about) have decision-making **capacity**?
 - a. Yes they have capacity: orders CANNOT be made for this person. That is, they have capacity to make their own decisions and therefore a substitute decision-maker (guardian or administrator) cannot be appointed.
 - b. No they do not have capacity: an order could potentially be made, however the following factors need to be considered.
- 2) Is there a **need** for a substitute decision-maker? Are there decisions to be made? For example, does the person need a decision made about where they will live?
- 3) Are there **less restrictive alternatives** to the appointment of a substitute decision-maker? For example, does the person agree to moving, and agree to where they will move to, in line with professional assessments?

Although the applications were made by a hospital social worker, by the time the Public Advocate became involved, Mrs A had been discharged and was living in an aged care facility.

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There was information in the applications which raised concerns about Mrs A's ability to live independently and manage her complex financial affairs. There were also concerns she had declining cognitive capacity. However, no specific cognitive impairment was identified in the applications.

The supporting medical information raised concerns about cognitive impairment but made no specific diagnosis. The medical information acknowledged there were issues regarding Mrs A's financial decision-making, but it also suggested this may be due to Mrs A being uncooperative rather than cognitively impaired. Overall it was stated by the doctor that Mrs A could manage her personal and financial affairs.

How is capacity determined?

Everyone is presumed to have capacity, until it is proven otherwise, to the satisfaction of the State Administrative Tribunal.

The Tribunal will require medical evidence to be able to make a determination about a person's capacity.

Medical evidence may include a report from a medical professional, which includes a diagnosis and how this impacts on decision-making; a report from a specialist such as a psycho-geriatrician about a person's capacity and any cognitive impairment; and hospital discharge summaries which may include a diagnosis.

At times, if a diagnosis is not clear, a medical practitioner will be asked to attend the Tribunal hearing to provide more information.

The investigator advocate met with Mrs A before the hearing. She was not able to explain to the investigator advocate how her money was managed or how her fees were paid. Mrs A indicated that she did not understand everything she needed to do regarding her finances now she was living in an aged care facility.

Mrs A seemed to have a good understanding about her medical treatment. She explained to the investigator advocate how she made decisions about medical matters and talked about her recent health issues. The investigator advocate was able to confirm that this information was accurate.

At the hearing, the Tribunal considered the information in the application and the medical documents. The manager of the aged care facility where Mrs A was living attended the hearing. The manager provided a statement which included a comment about Mrs A having dementia, however there was no formal diagnosis.

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Some of Mrs A's friends also attended the hearing. It was their view that Mrs A could make decisions for herself. They said they were assisting her with organising her finances and paying bills on her direction.

The Tribunal determined that there was insufficient information to determine that Mrs A no longer had full mental capacity and therefore both applications were dismissed.

A few weeks later the manager at the facility where Mrs A lived made another application for guardianship and administration. In this application the manager provided evidence that Mrs A was not managing her finances.

This evidence showed that she was not paying her facility fees and was therefore accruing a debt. She had also been unable to complete relevant Centrelink paperwork and was putting her accommodation at risk despite it being clear she could not organise alternative accommodation if she left the facility.

The manager included specific details about how Mrs A was demonstrating that she lacked capacity and provided extensive medical information. This included a report from a Geriatrician in which a diagnosis of vascular dementia was made.

There was also a report from Mrs A's doctor which stated she had a diagnosis of vascular dementia and as a result, Mrs A lacked capacity to make decisions in relation to personal and financial matters.

At the subsequent hearing, the Tribunal determined that on the basis of the new medical information, Mrs A was not able to make informed decisions. She was therefore a person for whom both a guardian and administrator could be appointed.

The Tribunal determined there were no less restrictive alternatives and it was clear that she needed both a guardian and an administrator.

Mrs A's friends were appointed as her plenary administrator and limited guardian.

Why did the two applications result in different outcomes?

Mrs A's capacity had not changed in the time between the first and second applications. The key difference between the two applications was the availability of medical evidence.

The first application lacked sufficient medical information regarding Mrs A's capacity. This meant the Tribunal did not have enough information to determine that Mrs A lacked capacity and therefore the Tribunal could not make any orders regarding Mrs A.

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The second application contained sufficient medical information which enabled the Tribunal to determine that Mrs A lacked capacity and was therefore able to make orders.

This shows how important it is when making applications, to be specific about the diagnosed cognitive impairment, and to include sufficient medical information to demonstrate that the person has a cognitive impairment which means they are no longer able to make decisions for themselves.

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

Community-referred investigations

Section 97 (1)(c) of the *Guardianship and Administration Act 1990* gives the Public Advocate the power to conduct investigations into matters referred by the community, about concerns for a person where the referrer believes that person may have a decision-making disability.

Referrals for investigation come from a wide variety of sources. In 2015/16, this included referrals from family members, friends and neighbours of adults with impaired or suspected impaired decision-making capacity; human services and other support agencies; and government and non-government agencies.

In total, 167 such referrals were reviewed by the Office in 2015/16, an increase of 20 per cent from the previous year. Of those 167 cases, 116 were closed during the financial year and 51 remained open at 30 June 2016.

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

Some investigations take considerable time to obtain important information such as medical records, to enable the Public Advocate to establish whether a person has a decision-making disability.

Accurate medical information is critical, as without information that a person has a decision-making disability, it is not possible to make an application to the State Administrative Tribunal.

The legislation does not provide the Public Advocate with the power to demand information from parties and this can impede some investigations in which claims of financial, or other forms of abuse, cannot be substantiated.

Types of community referred investigations undertaken by the Office of the Public Advocate include:

- A friend or neighbour sees a person is no longer making good decisions and suspects this might be due to dementia or some other decision-making disability.
- A person has concerns that a vulnerable adult is being abused or exploited.
- A family member has concerns about a relative with a decision-making disability, but the family members are unable to resolve the issues due to longstanding disputes.

The outcome of investigations might include:

- The Public Advocate making applications to the State Administrative Tribunal for guardianship and/or administration orders.
- The Public Advocate referring the concerned party to other agencies to provide assistance or support.
- The Public Advocate being provided information to confirm that the person does not have a decision-making disability and the matter being closed. In such cases where concerns exist, the identified person will be given information about how they may access community-based supports.

Advocacy

In addition to conducting investigations, it is the role of an investigator advocate to advocate in the best interests of people for whom a guardianship and/or administration order is being proposed (proposed represented persons) at hearings before the State Administrative Tribunal.

Collaboration with other States and Territories

Throughout the year, both the advocacy and investigation team and the guardianship team were contacted by interstate counterparts regarding vulnerable adults with decision-making disabilities who were either under guardianship orders in that State or Territory, or were the subject of an application proposing that they have a guardian appointed.

Where possible, staff assisted their counterparts to ensure the safety and protection of these vulnerable adults.

Administrator of Last Resort

As at 30 June 2016, the Public Advocate was appointed by the State Administrative Tribunal as limited administrator of last resort for five people where it was not appropriate for the Public Trustee to have those specific authorities.

Case Study

The Public Advocate as administrator of last resort

What does administrator of last resort mean?

If a person is unable to make reasonable decisions about their finances, they did not appoint an attorney while they had capacity, and informal arrangements are not working in their best interests, the State Administrative Tribunal may appoint an administrator.

An **administrator** has the authority to make financial and legal decisions on behalf of the person they represent.

If a person needing an administrator does not have a family member or friend who is available, suitable and willing to take on the role, the State Administrative Tribunal may appoint the Public Trustee.

If there is a conflict of interest for some reason, meaning the Public Trustee cannot be appointed as administrator, the *Guardianship and Administration Act 1990* enables the Public Advocate to be appointed as **administrator of last resort**.

The Public Advocate is only appointed as administrator, if all of the other options are exhausted, and the appointment is the only option available. This does not occur often.

Mr B was a young man with an intellectual disability and no family support. The Public Advocate was appointed as Mr B's guardian, and shortly after, was appointed as his administrator of last resort.

As administrator of last resort, the Public Advocate engaged the services of a legal firm to pursue compensation for Mr B, who had experienced abuse in care. The outcome of the legal matter was that Mr B was awarded compensation.

The compensation would enable Mr B to have greater opportunities to provide for his future living arrangements and support.

At around the time Mr B received compensation, the investigator advocate who was handling Mr B's case, was contacted by the Housing Authority to advise that Mr B owed a substantial debt due to damage to a property he had vacated.

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The investigator advocate contacted the Housing Authority for details of the debt, including the date the property was vacated and the date the Department inspected the property.

The investigator advocate discovered that despite the Housing Authority having been notified that Mr B was moving out of the property, they did not inspect and secure the property until six weeks after he left.

The investigator advocate gathered information to appeal the debt to the Housing Authority Regional Appeals Committee.

Information provided to the Committee included:

- Mr B had an intellectual disability with the Public Advocate appointed as his guardian and administrator
- Mr B's previous good tenancy record, with no previous damage to any of the properties he lived in
- the Department's failure to inspect and secure the property on notification of Mr B's vacation
- the Department had been notified that Mr B's house had been 'taken over' by people who refused to leave, which had also been reported to the Police
- Mr B's history of being abused and exploited
- the reasons for Mr B vacating the property, including that people had moved into the house and were abusing and exploiting him

The investigator advocate attended the Appeals Committee on behalf of the Public Advocate. They presented the information and advocated that for these reasons, the debt should be reduced.

The investigator advocate succeeded in having the debt reduced to only matters for which Mr B was deemed responsible.

This meant the compensation Mr B had been awarded could be secured for his future needs, rather than being consumed by an unjust debt.

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

Issues for Advocacy and Investigation

Allegations of abuse

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

Some older Western Australians do not have support networks such as family and friends to assist them when they lose the capacity to make their own decisions. This often results in the appointment of the Public Advocate and/or the Public Trustee being necessary.

In 24 per cent of the investigations carried out in 2015/16, alleged abuse was the main reason for the application being made to the State Administrative Tribunal.

Of the 266 cases alleging abuse, 158 were concerning a person 65 years of age or older. Of these alleged elder abuse cases, 66 per cent related to financial abuse.

This alleged abuse often occurred in the absence of a substitute decision-maker, and by a person who saw the opportunity to exploit a vulnerable individual. Often this occurs where the victim is socially isolated or dependent on their family for support.

In some instances however, it was alleged that this abuse was perpetrated by a person with authority, including an enduring guardian appointed under an enduring power of guardianship or an attorney appointed under an enduring power of attorney.

The focus of the investigation is whether the person is in need of a substitute decision-maker. This Office looks at the importance of balancing the person's right to autonomy, with the possibility of abuse and the need for the protection afforded by appointing someone to oversee the individual's decision-making.

Transition of young people leaving State care

The Office of the Public Advocate continues to work closely with the Department for Child Protection and Family Support in the early identification of the needs of young people with a decision-making disability, to enable a smoother transition out of the Department's care.

A key role for the Office's principal investigator advocate is to work collaboratively with the Department for Child Protection and Family Support and other related service providers, to assist in the planning for young people with a decision-making disability, who are transitioning from State care at 18 years of age. Many of these young people have complex needs and will need ongoing care and support, and possibly a substitute decision-maker on an ongoing basis.

Wherever possible, the principal investigator advocate attends leaving care planning meetings for young people aged 16 years and over, to provide information on guardianship and administration and assist in considering the need for an application to be made.

The principal investigator advocate provides advocacy at any State Administrative Tribunal hearing, where applications have been made for the appointment of a guardian and/or an administrator for young people aged 16 and over. This involvement is consistent with the memorandum of understanding between the two agencies.

In 2015/16, the Public Advocate's appointment as guardian came into effect for 22 young people leaving State care, when they turned 18 years of age as a result of applications to the State Administrative Tribunal by the Department for Child Protection and Family Support.

Three applications were made but dismissed as there was a less restrictive alternative to the appointment of a guardian or administrator, or the young person was not deemed to have a decision-making disability which impaired their ability to make their own decisions.

In addition, there were four cases where the Office was involved in leaving care planning meetings, where the Department for Child Protection and Family Support decided applications were not required, as less restrictive alternatives were in place and working in the young person's best interests.

Court referrals

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

While the number of court referrals received by the Office are few, the investigation work involved requires considerable time and effort to seek evidence about the proposed represented person's background and their capacity to participate in the matter before the court.

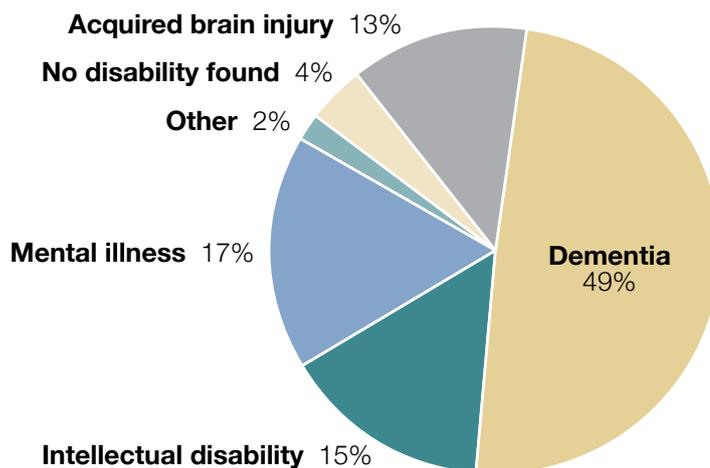
In most cases the court has very little information about the person's capacity and therefore considerable effort is taken to gather this information, and respond within the court's timeframes. The powers afforded under the *Guardianship and Administration Act 1990* do not authorise the Public Advocate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

Our Customers

Of the 1,123 new matters referred to the Public Advocate for investigation by the State Administrative Tribunal in 2015/16, 49 per cent involved a person with dementia. The remaining matters involved a person with mental illness, an intellectual disability and an acquired brain injury.

Figure 3 Profile of new investigations by type of decision-making disability 2015/16

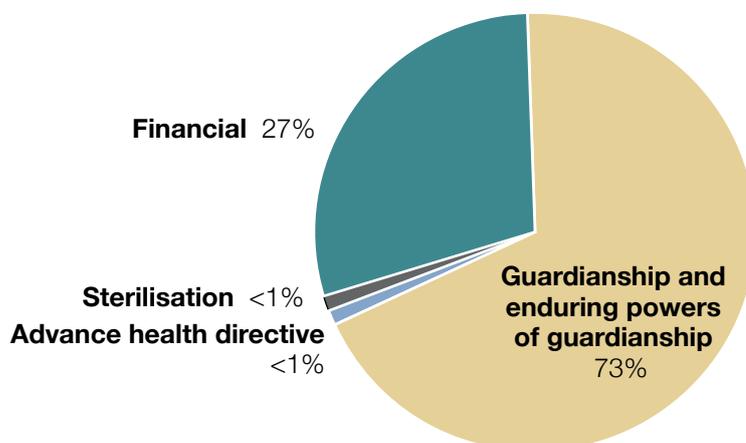
Type of decision-making disability	
Acquired brain injury	143
Dementia	549
Intellectual disability	169
Mental illness	197
Other	22
No disability found	43
TOTAL	1,123



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

Figure 4 Profile of new investigations by issue 2015/16

Issue	
Financial (administration and enduring powers of attorney)	306
Guardianship* and enduring powers of guardianship	815
Sterilisation	1
Advance health directive	1
TOTAL	1,123

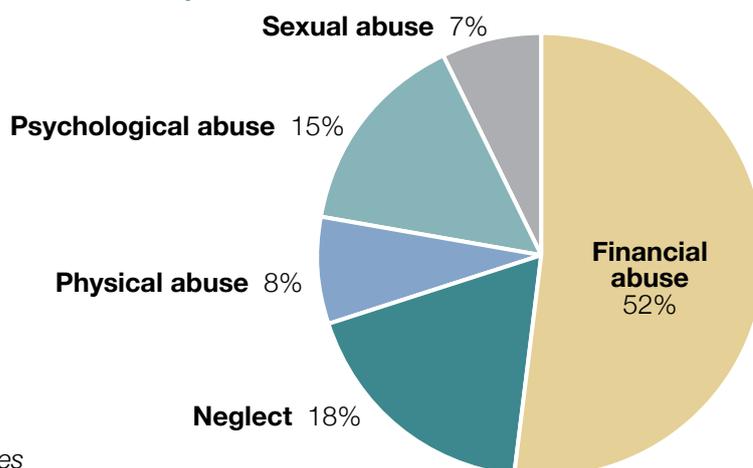


**This includes reviews of guardianship orders where someone other than the Public Advocate was appointed.*

Allegations of abuse were made in 266 of the 1,123 new investigations during the year, representing 24 per cent of investigations. In some cases, more than one type of alleged abuse was reported in the application. The most commonly reported form of abuse was financial, accounting for 52 per cent of all allegations.

Figure 5 Profile of new investigations alleging abuse by type of abuse 2015/16 (including statistics of elder abuse)

Abuse type	266 investigations
Financial abuse	208
Neglect	70
Physical abuse	33
Psychological abuse	58
Sexual abuse	30
TOTAL	399



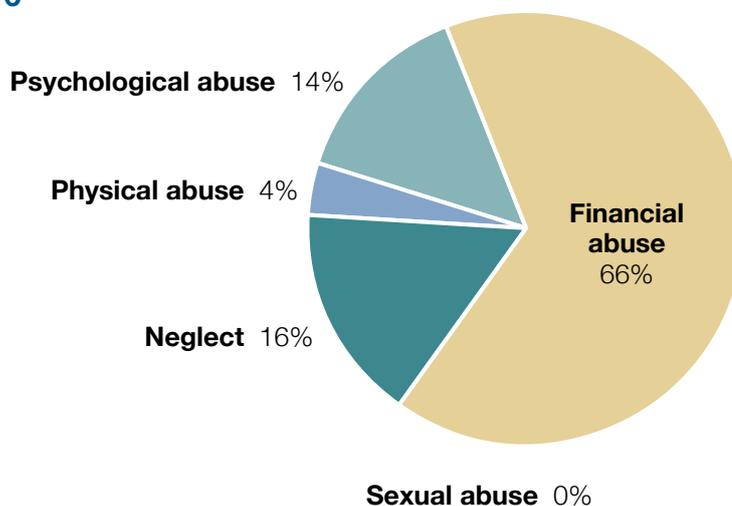
Note 1 - Abuse was alleged in 266 investigations, however, in some instances more than one alleged abuse type was reported in the application.

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

Of the 266 investigations where abuse was alleged, 59 per cent of the people were 65 years of age or older. This compares with 60 per cent in 2014/15. Of those 65 or older, financial abuse was the most commonly reported form accounting for over half of all allegations.

Figure 6 Profile of new investigations alleging elder abuse (aged 65 or older) by type of abuse 2015/16

Abuse type	158 investigations
Financial abuse	145
Neglect	36
Physical abuse	8
Psychological abuse	30
Sexual abuse	Nil
TOTAL	219



Note 1 - Elder abuse was alleged in 158 investigations, however, in some instances more than one alleged abuse type was reported in the application.

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

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

Figure 7 Profile of new investigations by Aboriginality and Torres Strait Islander descent from 2011/12 to 2015/16

Year	Total	Non ATSI	ATSI	ATSI as a percentage of total
2011/12	884	818	66	7
2012/13	923	854	69	7
2013/14	925	833	92	10
2014/15	1,069	989	80	7
2015/16	1,123	1,024	99	9

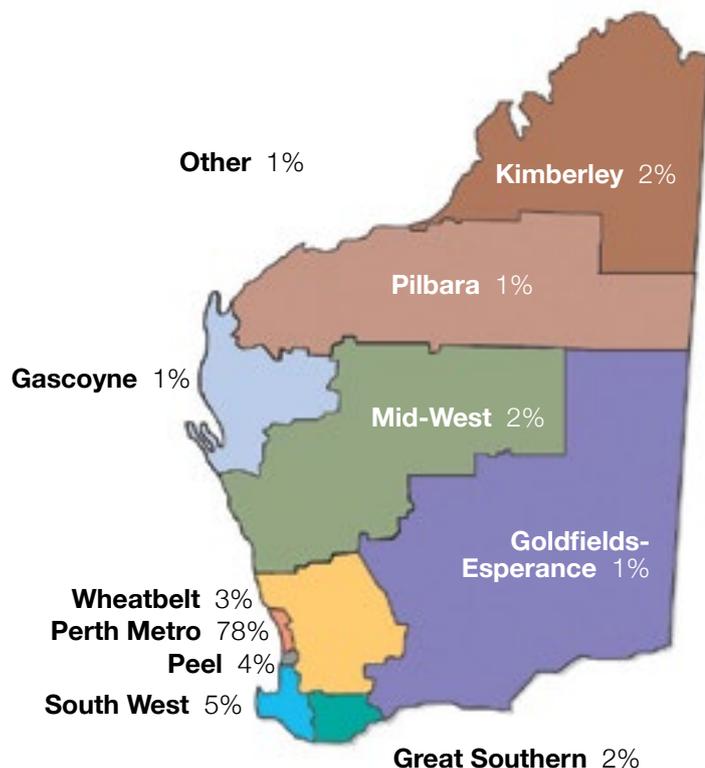
Note - ATSI = Aboriginal and Torres Strait Islander.

874 of new investigations in 2015/16 were carried out in the Perth metropolitan area.

Figure 8 Profile of new investigations by geographical location 2015/16

Geographical location

Gascoyne	7
Goldfields-Esperance	12
Great Southern	25
Kimberley	22
Mid-West	25
Peel	48
Perth Metro	874
Pilbara	8
South West	54
Wheatbelt	33
Other	15
Total	1,123



Guardianship

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

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

The Year in Review

In 2015/16 there were 468 new appointments of the Public Advocate as guardian of last resort, compared to 423 in 2014/15, representing an increase of 11 per cent.

At 30 June 2016, the Public Advocate had responsibility as guardian of last resort for 1,555 adults with a decision-making disability, compared to 1,383 at 30 June 2015, representing an increase of 12 per cent.

The Public Advocate had responsibility as the sole guardian for 1,477 of the total 1,555 represented persons as at 30 June 2016. In relation to the remaining 78 appointments of the Public Advocate, there were 72 represented persons on a guardianship order which appointed the Public Advocate and private guardian(s) with different functions, and six represented persons for whom the Public Advocate and the private guardian (a family member) were appointed with the same functions as guardian.

During the year, the Public Advocate was involved with 2,350 guardianship orders and reviews of orders, comprising of existing appointments as at 30 June 2015, new appointments of the Public Advocate as guardian for the first time during the year, and periodic reviews of guardianship orders by the State Administrative Tribunal or reviews sought by the Public Advocate or other parties.

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

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

The Public Advocate allocated a guardian to a represented person within one working day of notification of appointment in 98 per cent of cases. This is above the 95 per cent target set for this measure of timeliness.

To meet the needs of the Office’s 228 represented persons of Aboriginal and Torres Strait Islander descent, guardians liaised with their families, Aboriginal community members, Aboriginal agencies and service providers, to enable culturally appropriate practices to be adopted wherever possible.

Community guardianship program

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

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

The program celebrated its 10 year anniversary in December 2015.

At 30 June 2016, there were 18 volunteers engaged in the community guardianship program. Of these, 14 had been appointed by the State Administrative Tribunal as their represented person’s guardian, replacing the Public Advocate and providing a more personal level of involvement in their life.

Two of the 18 volunteers had been matched with a represented person, who they were taking time to get to know, while still receiving induction training from the Office. At 30 June 2016, work was progressing to find suitable matches for the two unmatched volunteers.

Advocacy at reviews of guardianship orders appointing the Public Advocate

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

In 2015/16, the guardianship team attended 427 review hearings conducted by the State Administrative Tribunal, in which they advocated in the best interests of the represented person.

Issues for Guardianship

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

- While the majority of the Public Advocate's represented people live in the Perth metropolitan area, there are a number who live in regional locations. Ensuring adequate support and services are provided to these clients, maintaining contact with them and conducting visits often poses challenges for the Office of the Public Advocate.
- In 2015/16 guardians and investigator advocates made 23 trips to regional areas. In some cases, the Public Advocate had to determine the suitability of accommodation options for represented persons living outside of Western Australia.
- The issues surrounding decisions which guardians are required to make may be multifaceted, as a number of represented persons have multiple and complex needs. They may have more than one diagnosed condition combined with a drug or alcohol problem and challenging behaviour. Sometimes as a result of their behaviour they come into contact with the criminal justice system. Making decisions in these circumstances involves the guardian working with a number of agencies, which together, provide an intensive level of support.
- Due to the increasing number of elderly people for whom the Public Advocate is appointed guardian, decisions regularly have to be made regarding treatment decisions for people who have a range of medical conditions, chronic illnesses or are terminally ill. The challenge for the Public Advocate is carefully weighing up the wishes of the represented person and those of their family members and friends, alongside the views of the treating physicians about what is in a person's best interests regarding treatment or end of life care.

- Guardians may experience pressure to locate services, seek funding and co-ordinate the provision of services for represented persons. The shortfall of appropriate services and the refusal of represented persons to accept help compound this problem. Where people have a dual diagnosis, for example, an intellectual disability and a mental illness, the task of encouraging an agency to take the lead role may be very difficult.
- Making decisions about whether a represented person remains in their own home or is placed in residential care, when concerns exist around their self-care, is often a source of conflict between guardians and represented persons and/or their relatives. Guardians must balance the rights of a represented person to remain at home and their need for residential care.
- In many cases the Public Advocate has been required to determine the need for chemical and/or physical restraint for represented persons. This can involve seeking a guardianship review hearing before the State Administrative Tribunal. In some cases, the Public Advocate has had to consent to psychological programs for behavioural management for represented persons with disruptive or self-injurious behaviour.
- The appointment of the Public Advocate can result in major disagreement within the family of the represented person. In cases where the represented person has experienced abuse, exploitation or neglect, contact between the person and their family may often need to be supervised. During the year, the Public Advocate arranged supervised access to represented persons where there was risk of abuse. In some cases, guardians must work with represented persons whose parents or relatives also have a decision-making disability.
- People with a decision-making disability may be extremely vulnerable to sexual assault and sexual exploitation. The Office of the Public Advocate intervenes in these matters and seeks Police involvement (usually via the Sex Crime Division), referral to the Sexual Assault Resource Centre and medical and counselling services. The Public Advocate has noted the particular vulnerability of young people with intellectual disabilities and women with mental illnesses, to sexual assault. This group often lack adequate self-protective behaviours and/or family and agency support services.
- Making decisions for represented people from an Aboriginal and Torres Strait Islander background requires an understanding of cultural differences. The family members of these represented people sometimes oppose or do not recognise the authority of the Public Advocate as their relative's guardian.

- The Public Advocate makes decisions for people who are frequent and sometimes serious offenders whether detained in a psychiatric hospital, prison, or living in the community. These individuals can pose a risk to themselves as well as members of the community and often require intensive support and cross-agency collaboration which may involve the Police, Disability Services Commission, the Department of Corrective Services, Legal Aid, Mental Health Commission and the Department of Health's Mental Health Services.
- The Public Advocate continues to undertake the legal functions of 'next friend' and guardian *ad litem* which is to initiate or defend any civil legal proceedings respectively. This usually involves a guardian providing instructions to a lawyer during protection proceedings taken by the Department for Child Protection and Family Support on behalf of the children of a represented person. This function is undertaken by the Public Advocate where the State Administrative Tribunal determines that the represented person is unable to conduct their own legal affairs due to a lack of decision-making capacity.

Case Study

End of life decision-making

Mrs C was a 65 year old woman with end-stage Multiple Sclerosis which had impaired her cognitive ability. Mrs C had a percutaneous endoscopic gastrostomy (PEG) feeding tube inserted for hydration and nutrition.

After having migrated to Australia from the United Kingdom around 30 years ago, Mrs C had lost contact with her family. She had been the resident of a care facility for almost 20 years, as she was fully dependent on care staff for all activities of daily living.

The Public Advocate was appointed as Mrs C's guardian with treatment authority, after the appointment of a family member became unworkable.

Mrs C was admitted to hospital to have her PEG reinserted after it came out while she was being showered. In the following months she had to be readmitted to hospital on several occasions due to complications with her PEG, including recurrent infection at the insertion point.

An abscess had also formed around Mrs C's liver, she developed aspiration pneumonia and the infection at the site of the PEG reached a stage where the PEG could not be reinserted and Mrs C required a nasal gastric tube.

Hospital staff reported that Mrs C was in a depressed state and had become disinterested in what was happening with her treatment.

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After several discussions with Mrs C's doctors, the Public Advocate consented to a decision to provide Mrs C with palliative treatment only. She was discharged back to the care facility to be kept comfortable and pain free. Mrs C's treating team believed she would die within a few weeks.

In the weeks before she was discharged from hospital, two of her family members attempted to make contact with her via the care facility. The centre's social worker informed the family members of Mrs C's deteriorating health. They then started speaking with Mrs C's delegated guardian and her brother and sister-in-law flew to Perth and spent time with her in the facility over a few weeks.

Mrs C's depression improved, she was engaged in her care and her health stabilised somewhat. Mrs C wanted to return to the United Kingdom and her family supported her decision.

Mrs C's delegated guardian worked with Mrs C, her family and her treating team to see whether moving back to the United Kingdom was possible.

The treating team felt that with adequate medical support on the flight Mrs C could safely fly home. However, they outlined a variety of health risks posed by a long distance flight, including the potential for Mrs C to pass away during the flight, or for it to decrease the time she had left.

Mrs C was aware of the risks and appeared to accept them. She had indicated her desire to return home for several years.

Mrs C's family returned home and secured a place for her at a suitable care facility. They were also able to secure funding and a generous support allowance for Mrs C, as she was still a British Citizen and she had made National Insurance contributions during her working life.

The Public Advocate applied to the State Administrative Tribunal to extend the guardianship authority to include accommodation, services and overseas travel. The order was amended to include these authorities, and Mrs C's guardian then worked with Mrs C, her family, her treating team, staff from the care facility, People With Disabilities WA and relevant agencies in the United Kingdom to arrange her transition home.

Mrs C passed away six weeks after returning to the United Kingdom. She was surrounded by family and had enjoyed a richness of life in those final weeks that would not have been possible had she remained in Australia.

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

Case Study

Warrant to enter

Mrs D was a 45 year old woman with an intellectual disability.

Mrs D and her brother lived with their Uncle for most of their childhood, as their mother and father abandoned them at a young age.

The Public Advocate was appointed as Mrs D's limited guardian, after her brother applied to the State Administrative Tribunal because he could no longer cope as her guardian.

With her brother's assistance, Mrs D had secured a place in supported accommodation on a number of occasions.

However, Mrs D's Uncle was unwell with schizophrenia and believed that the support workers were trying to kill her. He convinced her of this several times and removed her from the supported accommodation to live with him.

Mrs D trusted her Uncle and started acting out on his delusions. The situation was escalating and there was a real concern that Mrs D was at risk of committing a serious criminal offence.

The Public Advocate's delegated guardian applied to the State Administrative Tribunal to have the Public Advocate appointed as Mrs D's plenary guardian. Specifically, the delegated guardian was seeking the authority to make decisions regarding what contact, if any, Mrs D had with family members.

The plenary guardianship order was granted and the delegated guardian worked with Mrs D's support service to have Mrs D removed from her Uncle's home and taken back to supported accommodation.

Several attempts to do so failed, as Mrs D's Uncle refused to give staff access to the house, even when accompanied by Police.

The delegated guardian returned to the State Administrative Tribunal and applied for a warrant to enter.

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What is a warrant to enter?

Under section 49 of the *Guardianship and Administration Act 1990*, if a guardian is being refused entry into premises where a represented person is, or is believed to be, the guardian can apply to the State Administrative Tribunal for a warrant to enter those premises.

If the State Administrative Tribunal issues a warrant, it might authorise the guardian to enter the premises by force and with the assistance of police officers if necessary.

The warrant to enter was granted. With the assistance of police officers, Mrs D was safely removed from her Uncle's home and returned to supported accommodation where she was no longer a risk to herself or anyone else.

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 2015/16, guardians from the Office of the Public Advocate were involved in 427 reviews of guardianship orders.

The purpose of reviewing an order is to determine whether the represented person still requires the Public Advocate as their guardian, or whether changes to the authority given in the order are required.

Of the 427 reviews, 131 orders were revoked by the State Administrative Tribunal because there was no longer a need for a substitute decision-maker as a result of:

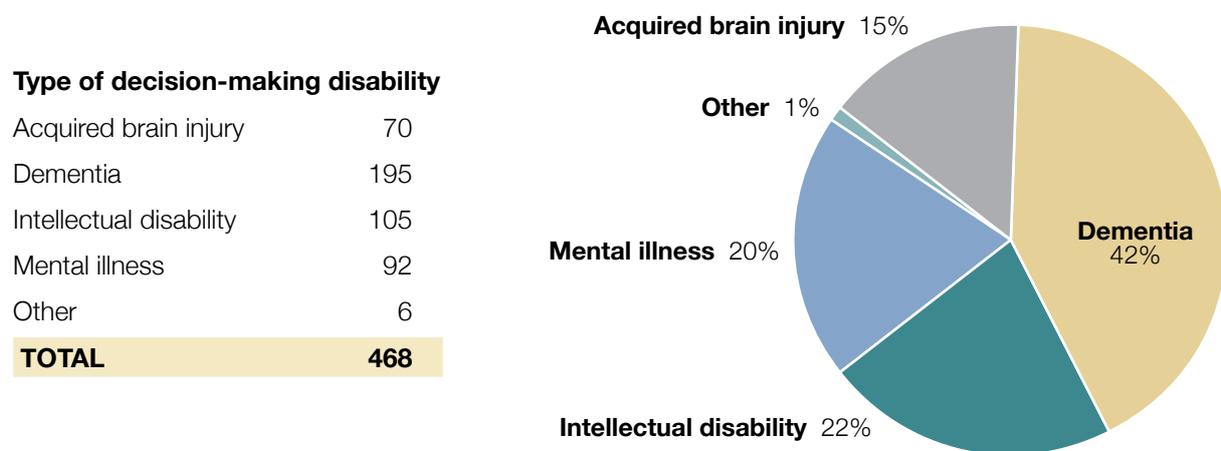
- a less restrictive alternative being found
- another suitable, willing and available decision-maker having been identified, such as a family member or friend
- the person regaining capacity
- the issues leading to the Public Advocate's appointment having been resolved
- the guardianship order having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

A total of 287 guardianship orders ceased during 2015/16, through revocation by the State Administrative Tribunal, or death of the represented person.

Our Customers

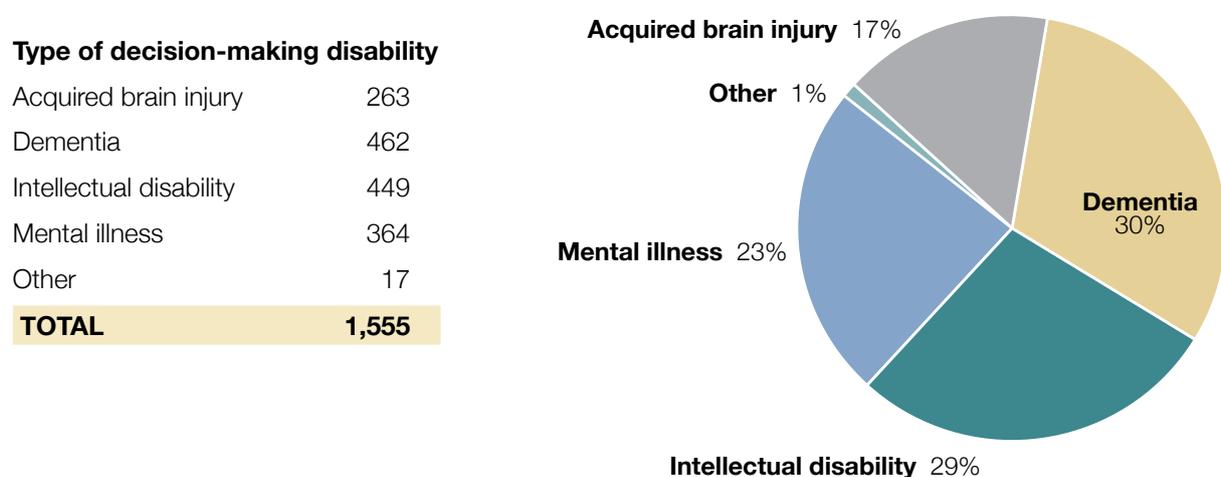
People with dementia continued to account for a large proportion of new appointments of the Public Advocate as guardian of last resort. Of the 468 new appointments in 2015/16, 42 per cent had dementia, 22 per cent an intellectual disability, 20 per cent a mental illness, and 15 per cent an acquired brain injury.

Figure 9 Profile of new guardianship orders appointing the Public Advocate by type of decision-making disability 2015/16



Similarly, of the total 1,555 appointments at 30 June 2016, dementia was the most common type of decision-making disability, followed by intellectual disability, mental illness and acquired brain injury.

Figure 10 Profile of all guardianship orders appointing the Public Advocate by type of decision-making disability as at 30 June 2016

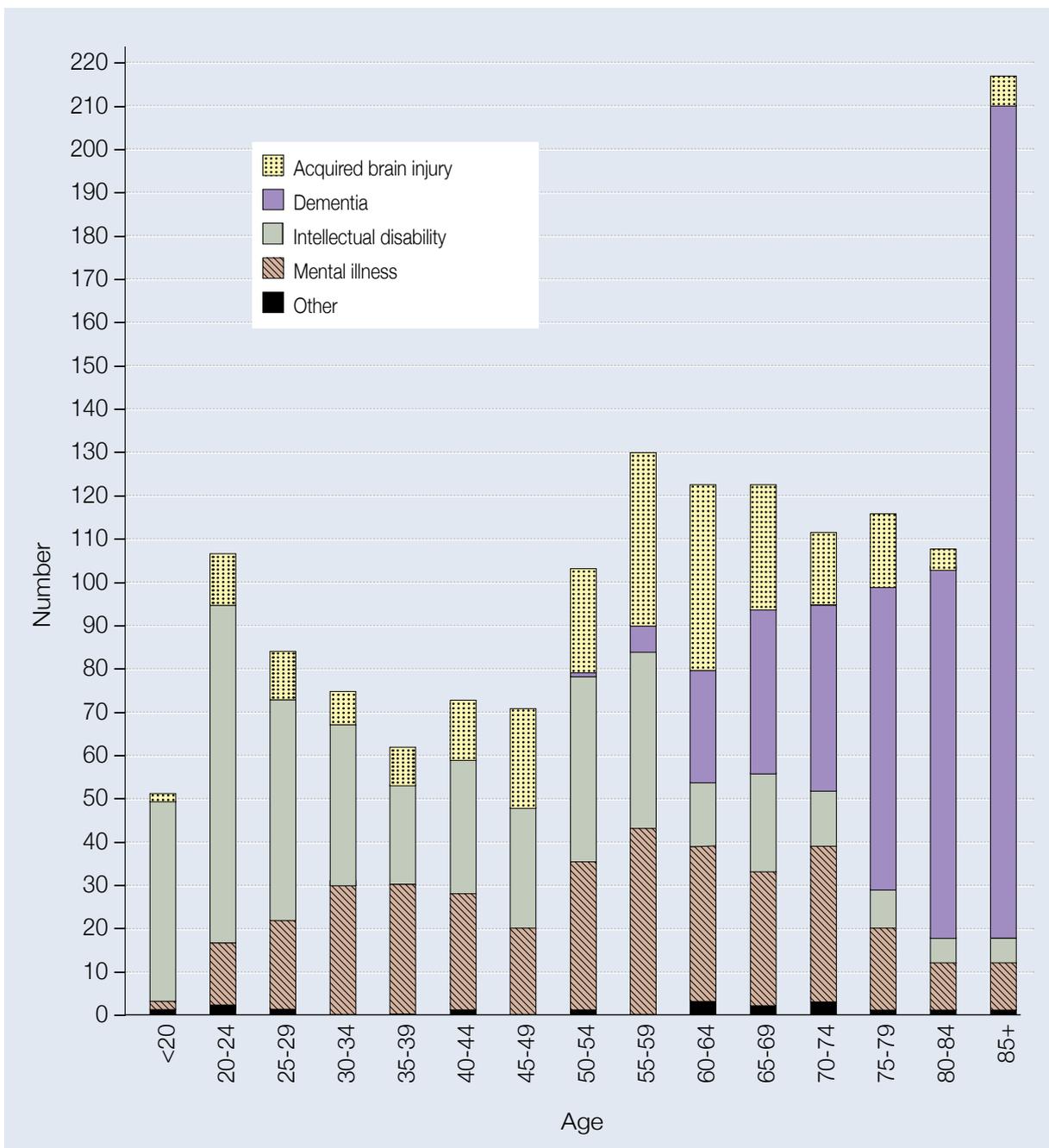


AGENCY PERFORMANCE – Guardianship

At 30 June 2016, the Public Advocate was guardian of last resort for 323 adults aged 80 years and over, who account for one fifth of all guardianship appointments. The majority of these people (86 per cent) have dementia.

This is a reflection of the ageing population, the subsequent increasing prevalence of dementia in the community and the growing number of people without family or friends who are suitable, willing and available to take on the role of decision-maker.

Figure 11 Profile by age and disability type of all people on guardianship orders appointing the Public Advocate as at 30 June 2016



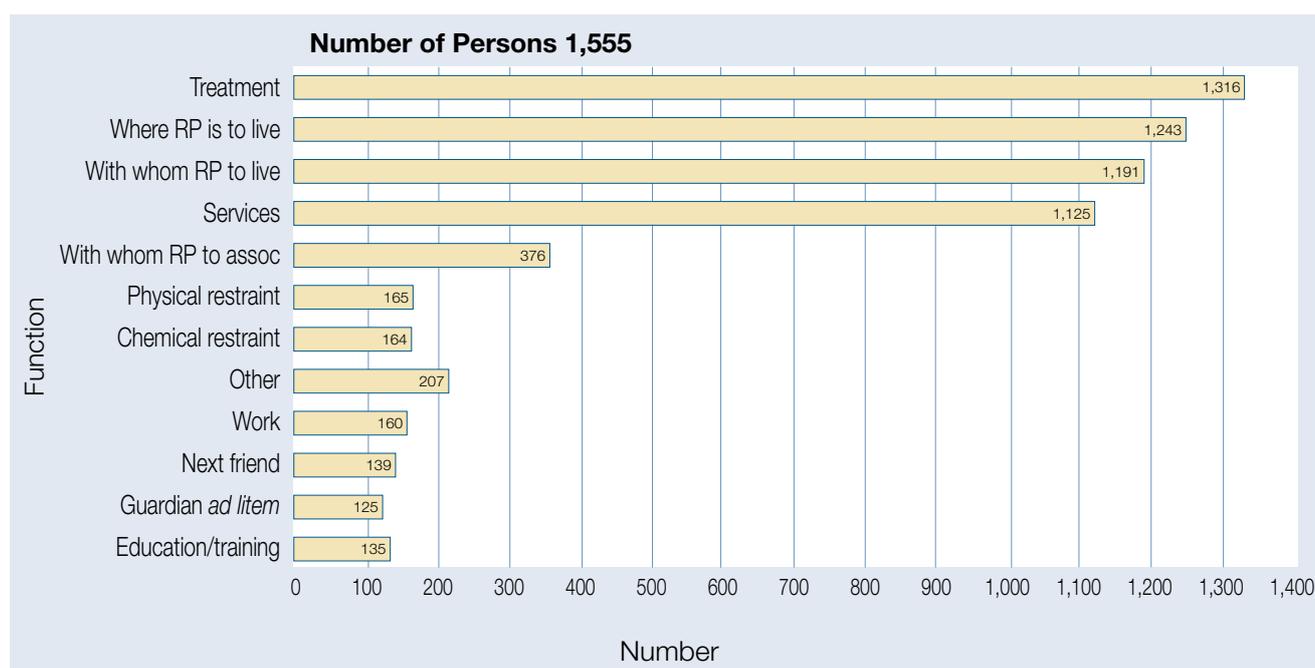
The most common single issue leading to the appointment of the Public Advocate as guardian of last resort continued to be treatment decisions. At 30 June 2016, 85 per cent of all orders appointing the Public Advocate as guardian included the authority to make treatment decisions.

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

At 30 June 2016, 80 per cent of all guardianship orders authorised the Public Advocate to make decisions for represented persons regarding where they were to live. Similarly, 77 per cent authorised the Public Advocate to make decisions regarding with whom they were to live.

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

Figure 12 Functions for which Public Advocate has been appointed for all guardianship orders as at 30 June 2016



Note 1 - RP = represented person.

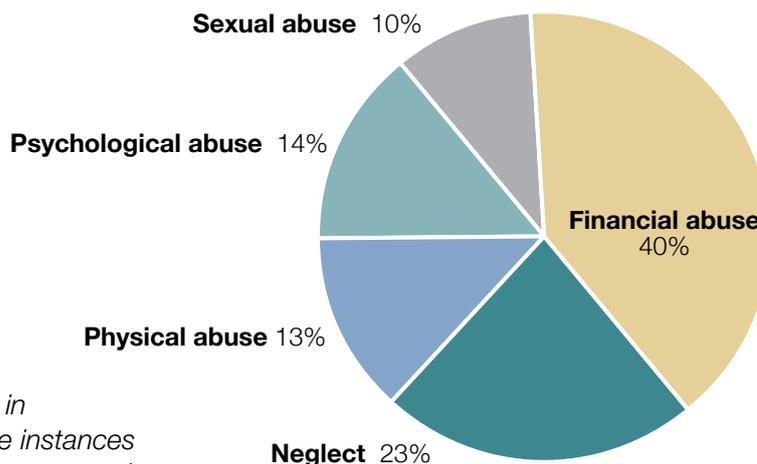
Note 2 - An order can be made for multiple functions.

AGENCY PERFORMANCE – Guardianship

Allegations of abuse were a factor in 117 or 25 per cent of the 468 new guardianship orders appointing the Public Advocate in 2015/16. In some cases, more than one type of abuse was reported. The most commonly reported form of abuse was financial, accounting for 40 per cent of all allegations.

Figure 13 Profile of new guardianship orders appointing the Public Advocate by type of alleged abuse 2015/16 (including elder abuse)

Abuse type	117 people
Financial abuse	76
Neglect	45
Physical abuse	25
Psychological abuse	27
Sexual abuse	19
TOTAL	192



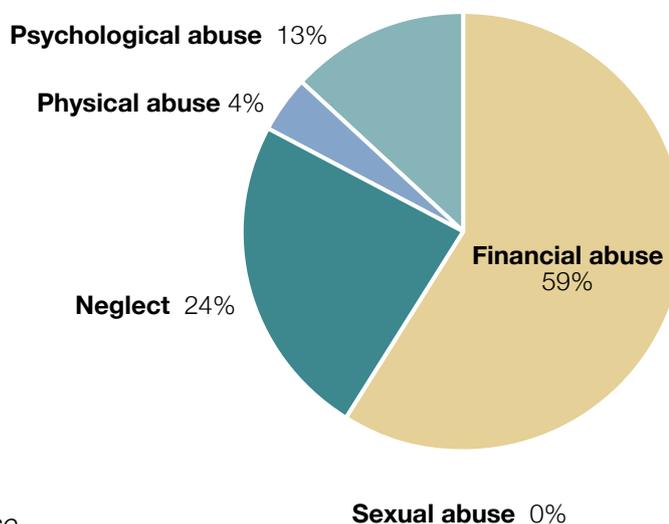
Note 1 - Alleged abuse was reported in 117 people’s cases, however, in some instances more than one alleged abuse type was reported.

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

Of the 117 people for whom abuse was alleged, 50 people were 65 years of age or older. Of these, financial abuse was also the most commonly reported form of abuse, having been alleged in 59 per cent of cases.

Figure 14 Profile of new guardianship orders appointing the Public Advocate by type of alleged elder abuse (aged 65 or older) 2015/16

Abuse type	50 people
Financial abuse	41
Neglect	17
Physical abuse	3
Psychological abuse	9
Sexual abuse	Nil
TOTAL	70



Note 1 - Alleged elder abuse was reported in 50 people’s cases; however, in some instances more than one alleged abuse type was reported.

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

Of the 468 new appointments of the Public Advocate as guardian in 2015/16, 59 were for a person of Aboriginal and Torres Strait Islander descent, representing 13 per cent.

Figure 15 Profile of new guardianship orders appointing the Public Advocate by Aboriginality and Torres Strait Islander descent from 2011/12 to 2015/16

Year	Total	Non ATSI	ATSI	ATSI as a percentage of total
2011/12	347	311	36	10
2012/13	371	335	36	10
2013/14	340	297	43	13
2014/15	423	379	44	10
2015/16	468	409	59	13

Note – ATSI = Aboriginal and Torres Strait Islander.

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

Figure 16 Profile of all guardianship orders as at 30 June, appointing the Public Advocate by Aboriginality and Torres Strait Islander descent from 2011/12 to 2015/16

Year	Total	Non ATSI	ATSI	ATSI as a percentage of total
2011/12	928	801	127	14
2012/13	1,065	921	144	14
2013/14	1,218	1,044	174	14
2014/15	1,383	1,190	193	14
2015/16	1,555	1,327	228	15

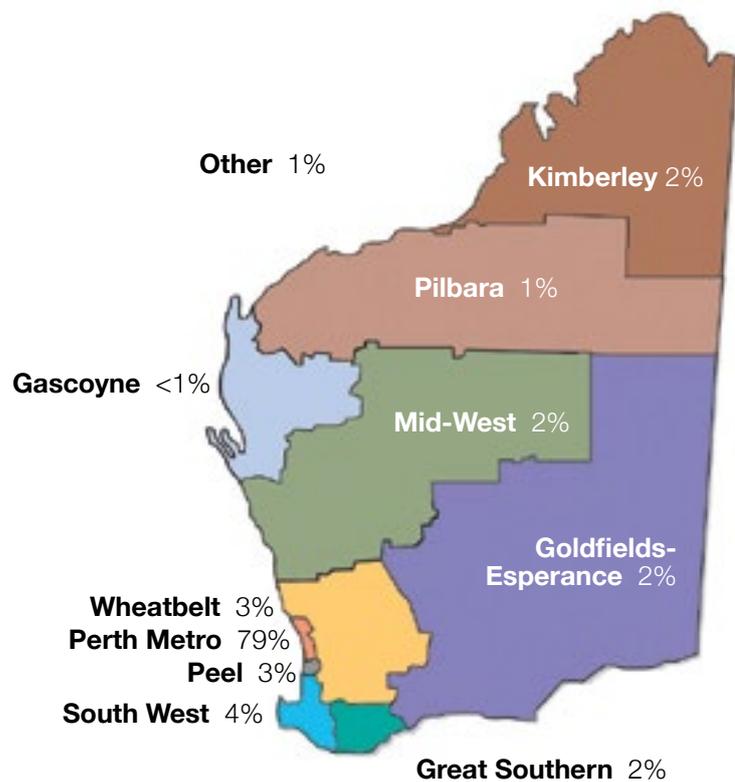
Note – ATSI = Aboriginal and Torres Strait Islander.

At 30 June 2016, 79 per cent of all appointments of the Public Advocate were for people living in the Perth metropolitan area.

Figure 17 Profile of all guardianship orders as at 30 June 2016, appointing the Public Advocate by geographical location

Geographical location

Gascoyne	7
Goldfields-Esperance	29
Great Southern	36
Kimberley	29
Mid-West	35
Peel	53
Perth Metropolitan	1,232
Pilbara	17
South West	65
Wheatbelt	41
Other	11
Total	1,555



The Public Advocate’s after hours service

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

In 2015/16 guardians took 1,053 after hour calls which took 302 hours.

Systemic Advocacy

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

The Year in Review

Collaboration in preparing for changes in the disability sector

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

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

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

People with exceptionally complex needs

In 2006, the Public Advocate raised serious concerns about a small but problematic group of adults with exceptionally complex needs, such as a significant intellectual disability, a mental illness, an alcohol or drug abuse problem and other unmet needs, for whom existing services were not working.

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

The project aims to significantly improve interagency collaboration and co-ordination of services and encourages agencies to use existing resources in innovative and creative ways to respond to individual needs.

Senior officers from the Disability Services Commission, Mental Health Commission, Mental Health Services including the former Drug and Alcohol Office of the Department of Health, Department of Corrective Services, Housing Authority, and the Office of the Public Advocate, work together to operate the project.

At 30 June 2016, 22 people were participating in the People with Exceptionally Complex Needs Project. Of these, 21 had a guardian and/or administrator appointed by the State Administrative Tribunal. Of these, 20 participants had both a guardianship order appointing the Public Advocate and an administration order appointing the Public Trustee.

Young people with exceptionally complex needs

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

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

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

At 30 June 2016, there were 12 young people participating in the Young People with Exceptionally Complex Needs Project. Of these, four had the Public Advocate appointed as their guardian and the Public Trustee appointed as their administrator. In addition, the Office of the Public Advocate was involved in leaving care discussions for three young people, for whom applications for the appointment of a guardian and administrator will be made next year, before they turn 18.

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

Elder abuse

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

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

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

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

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

The Office of the Public Advocate contributes annually to World Elder Abuse Awareness Week, which occurs in June every year.

Once again this year, the Office worked in collaboration with two key organisations to provide two education sessions for World Elder Abuse Awareness Day.

These sessions focussed on the protection offered by the *Guardianship and Administration Act 1990* for adults, should they lose capacity.

The first seminar was held in conjunction with the City of Rockingham's Community Support and Safety Services branch. It provided an opportunity for seniors and other community members to consider how they could prepare for the future and protect themselves from potential exploitation and abuse by completing an enduring power of attorney and/or an enduring power of guardianship. These powers can operate when a person has lost capacity, giving the person they have appointed the responsibility to make decisions in the maker's best interests and the legal authority to do so.

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

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

The second session was for service providers in the legal and aged care sectors. The presentation considered how service providers could be alert to issues of elder abuse in relation to their clients, and steps they may be able to take to address this. Again, the seminar focussed on the opportunities for protection offered by the *Guardianship and Administration Act 1990*.

Policy and legislative work

The Public Advocate and senior staff members were involved in policy development and reviews with other government and non-government agencies during 2015/16, including:

- Further input to previous submissions, for the statutory review of the *Guardianship and Administration Act 1990* and the implementation of the recommendations in the report tabled in Parliament in December 2015.
- Review and amendment of Memoranda of Understanding between the Public Advocate and several stakeholders including the Disability Services Commission, Advocare, Western Australia Police, Sexual Assault Resource Centre and Northern Suburbs Community Legal Centre (Older Persons Rights Service).

All of these memoranda have now been finalised and continue to operate effectively. In particular, the memorandum between the Disability Services Commission and the Office of the Public Advocate now reflects the exchange of information with regard to represented people transitioning to or residing in trial sites under the National Disability Insurance Scheme and also residents of the Disability Justice Centre.

- Continued input into the finalisation of operational policies for the Disability Justice Centre operated by the Disability Services Commission. This included discussions regarding the identification and transition of residents to the Centre and treatment decisions in relation to residents for whom the Public Advocate was appointed guardian.
- Continued work between the Office of the Public Advocate and the Disability Services Commission particularly with regard to how the *National Disability Insurance Scheme Act 2013* (NDIS Act) is applied in the Western Australia NDIS trial site.

Agreement was reached with regard to nominee provisions and who should be appointed to sign support plans. Agreement was reached in regard to the circumstances in which guardians might be required to sign support plans and the process whereby the Commission would approach the agency about a guardianship appointment when there was no other appropriate person to sign the plan. The Public Advocate prepared an agreed standard statement to be used by guardians to clarify their role when signing plans.

- Continued work with the Commonwealth's pilot in the Hills with regard to the implementation of the National Disability Insurance Scheme in Western Australia. This included participation on the Psychiatric Hostels NDIS Engagement Project Collaboration Group. Members of the Group met regularly to contribute resources and ideas to a pilot project aimed at engaging people with a psychosocial disability with the National Disability Insurance Scheme.
- Continued work with the Mental Health Commission, Department of Health and other agencies, regarding the *Mental Health Act 2014*, its implementation and its intersection with the *Guardianship and Administration Act 1990*.

The Office of the Public Advocate developed resources, conducted training for staff, and presented to external stakeholders. The Office collaborated with the Department of Health to clarify issues prior to the implementation of the *Mental Health Act 2014* with particular emphasis on patients with dementia or acquired brain injury, who present at mental health services and who lacked capacity to make decisions. Regular meetings were also held between the Office and the Chief Psychiatrist with regard to issues arising under the *Mental Health Act 2014*.

- Contributing to the response by the Department of the Attorney General on the Out-Of-Home Care Reform, Legislative Amendments Consultation Paper circulated by the Department for Child Protection and Family Support.
- Alliance for the Prevention of Elder Abuse and Western Australian Network for the Prevention of Elder Abuse – Continued participation in both project groups including support for World Elder Abuse Awareness Day events as reported earlier.

Community Education

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

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

The Year in Review

In 2015/16, the Office delivered a total of 26 community education sessions across the State, regarding the guardianship and administration system, the legislation and the planning documents available to people under the legislation.

Of these, seven were tailored to the needs of community members, 14 specifically targeted service providers and five catered to the needs of both groups.

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

Two large sessions, targeting community members and service providers, were held as part of World Elder Abuse Awareness Day. These sessions aimed to raise people's awareness of elder abuse and offer potential strategies to minimise their risk and that of their friends, families and clients. More details are provided in the 'Elder Abuse' section under Systemic Advocacy.

All of the Office's education sessions were held at accessible venues, with the majority of sessions in the metropolitan area, alongside sessions in Broome, Halls Creek and Mount Barker. Attendees also participated in a number of the sessions via video conference facilities.

The Office also participated in the Seniors Week ‘Have A Go Day’ event, organised by the Seniors Recreation Council of WA. Members of the public and service providers were able to talk to a staff member about the work the Office does, and take away information and publications for colleagues and clients. This event exposed the work of the Office to more than 200 community members and almost 30 service providers who were in attendance.

Customer contact/enquiries

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

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

A total of 5,324 people used the advisory service in 2015/16, compared to 4,994 in 2014/15. Contact was made via telephone, email, mail and in person.

Figure 18 Enquiries to the advisory service by mode of handling 2015/16

Mode of handling	Jul 2015	Aug 2015	Sep 2015	Oct 2015	Nov 2015	Dec 2015	Jan 2016	Feb 2016	Mar 2016	Apr 2016	May 2016	Jun 2016	Total
Telephone	438	356	458	483	469	373	473	477	387	454	369	340	5,077
Interview	14	14	6	3	9	3	7	6	8	13	15	6	104
Email/letter	19	7	21	12	20	13	15	14	9	5	3	5	143
TOTAL	471	377	485	498	498	389	495	497	404	472	387	351	5,324

AGENCY PERFORMANCE – Community Education

In some instances, enquirers sought advice on multiple topics. Guardianship matters produced the most enquiries, accounting for 39 per cent of all enquiries received this year. Enquiries regarding enduring powers of attorney accounted for 30 per cent, and the remaining enquiries were spread across administration, enduring powers of guardianship, advance health directives and general enquiries.

Figure 19 Enquiries to the advisory service by subject 2015/16

Subject of enquiry	Jul 2015	Aug 2015	Sep 2015	Oct 2015	Nov 2015	Dec 2015	Jan 2016	Feb 2016	Mar 2016	Apr 2016	May 2016	Jun 2016	Total	Total as percentage of all enquiries
Guardianship	214	184	250	229	247	193	246	205	153	266	172	138	2,497	39
Administration	68	41	58	60	57	46	47	49	52	47	41	34	600	9
Enduring powers of attorney	202	131	177	187	152	136	166	197	167	142	158	146	1,961	30
Enduring powers of guardianship	69	64	59	71	65	51	67	61	53	52	64	73	749	12
Advance health directives	9	12	27	14	7	4	7	11	11	10	13	14	139	2
General	61	30	41	41	57	31	48	52	66	46	32	30	535	8
Total	623	462	612	602	585	461	581	575	502	563	480	435	6,481	

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

Services to Aboriginal people

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

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

Plain English brochure

The Office has developed a plain English brochure, titled ‘If you can’t make your own decisions, who will make them for you?’

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

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

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

All of the Office's publications are available in alternative formats¹¹, including other languages, upon request. The Office has translated three of its most commonly used information sheets – regarding enduring powers of attorney, enduring powers of guardianship and general planning for the future information – into Chinese, Italian, Polish and Vietnamese. These are available on the Office's website, and in hard copy on request.

Interpreter services

To help ensure that language is not a barrier to guardianship and investigation services for customers for whom English is a second language, the Office uses translation and interpreter services. During 2015/16 interpreter services were provided in Arabic, Croatian, German, Greek, Italian, Macedonian, Malaysian, Maltese, Mandarin, Polish, Serbian, Spanish, Tagalog and Vietnamese.

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

Every webpage and publication on the Office's website has a 'listen' function. This function enables people to click on any page or document that they are interested in, and the text will be read aloud.

The website also features 'focus colours', meaning when a visitor to the website hovers over links contained in the website text, the links are highlighted, enhancing readability and navigation. A 'skip to main content' link also improves navigation.

Catering to the needs of clients with hearing impairments

Staff use the National Relay Service as required, to communicate better with clients who are deaf, or who have a hearing impairment or speech impairment. The variety of contact methods offered by the National Relay Service are promoted on the Office's website.

¹¹ Other than the enduring power of attorney form and enduring power of guardianship form, which are not able to be translated into other languages, as they must be in English.

Corporate Services

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

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

These services are supported by the Department of the Attorney General and costs are proportionally allocated to the Office of the Public Advocate and reflected in the Treasury Budget statements. The budget allocation and subsequent expenditure for 2015/16 are as follows:

Figure 20 Budget allocation and expenditure 2015/16

	Total Cost of Output
\$'000 Actuals 2015/16	6,904
\$'000 Budget 2015/16	6,765 (revised budget)
\$'000 Variations from Budget	(140)

The Year in Review

Office accommodation

On 13 June 2016, the Office of the Public Advocate relocated to the Department of the Attorney General's new premises, within the David Malcolm Justice Centre.

Freedom of information

Seven valid applications were received during 2015/16 for the release of information. All seven requests were dealt with in full during the year.

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

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

Customer feedback

In 2015/16, the Office of the Public Advocate received 21 formal compliments and three suggestions. The Office also received 21 formal complaints during the year, which were all considered by the Public Advocate or a senior manager.

For people who lodge a formal complaint with the Office of the Public Advocate, either in writing, via email or over the telephone, the Office undertakes to respond to all grievances within 10 working days of the complaint being lodged and advise the relevant people (in writing) of the outcome and any corrective action to be taken.

Significant Issues Impacting the Agency

Meeting demand for services

As has been the case for a number of years now, the main issue which impacted the Office of the Public Advocate in 2015/16 was the increasing demand for its statutory services of advocacy and investigation, and guardianship.

In 2015/16, the Office of the Public Advocate experienced a five per cent increase in demand for investigations, a 12 per cent increase in total guardianship orders at 30 June 2016 and an 11 per cent increase in new appointments as guardian of last resort.

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

In 2015/16, 42 per cent of the people for whom the Public Advocate was appointed guardian for the first time had dementia and 49 per cent of the 1,123 new matters referred for investigation involved a person with dementia.

According to research¹² commissioned by Alzheimer's Australia WA, there were 33,300 people with dementia in Western Australia in 2016. The projected rates of prevalence in this report estimate there will be 36,500 people with dementia in WA by 2020 and 69,000 by 2050.

This, coupled with the fact that there are a number of people for whom the Public Advocate remains guardian for a number of years, will continue to drive demand for the Office's services.

State and National disability sector reform

Disability Services Commission changes

As noted in previous annual reports, the Disability Services Commission made an announcement in 2013, regarding planned changes to the way in which they provide accommodation services to some 60 per cent of 500 people living in their accommodation services. The changes would see the majority of these services provided by non-government accommodation providers.

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

¹² Australian Institute of Health and Welfare 2012. *Dementia in Australia*. Cat. no. AGE 70. Canberra: AIHW. ISBN 978-1-74249-349-7. Pages ix, 21, 22, 99 & 147

Over the course of the transition project, the Office has advocated for more than 20 applications to be made by the Disability Services Commission for the appointment of an administrator and/or guardian. In addition, guardians from the Office of the Public Advocate have made numerous applications in order to vary the guardianship authority of residents (for whom the Public Advocate was already appointed) by initiating review applications or making recommendations at routine review hearings scheduled by the State Administrative Tribunal. Investigator advocates have also been involved in matters referred by the State Administrative Tribunal, where family members have made applications to be appointed guardian and/or administrator.

Since the start of the transition project, a total of 73 people for whom the Public Advocate was appointed guardian, have been identified as potentially being impacted at some stage. However, the circumstances of 10 of the 73 people changed and their involvement in the transition planning ceased as they moved into alternative accommodation, aged care or died.

The outcome of the transition process for the Office of the Public Advocate is that of the remaining 63 people, 40 are living in group homes which have either transitioned to the non-government sector or are in the transition process and 23 are living in accommodation which will remain with the Disability Services Commission. Throughout the staged transition process, extensive consultation was facilitated by the Commission's transition team with the residents, their families and guardians (where appointed), about new service providers.

National Disability Insurance Scheme (NDIS) changes

Changes to the disability sector, brought about by the State Government's 2013 agreement to join the National Disability Insurance Scheme (NDIS), continued to impact the Office in 2015/16.

A number of the Office's clients who receive disability support including accommodation and services and are under 65 years of age, were affected by the scheme. Delegated guardians from the Office worked with NDIS staff throughout the year in the development and approval of NDIS support plans in both the State and Commonwealth pilots.

The scheme will be evaluated during the 2016/17 financial year and there are plans to expand the scheme beyond the initial trial sites. Any expansion to the scheme will involve the Office carrying out further work to identify clients who may be impacted and liaising with relevant agencies in preparation for the scheme becoming 'live' in the new areas.

Disclosures and Legal Compliance

Financial Statements

See the Department of the Attorney General annual report.

Key Performance Indicators

Notes to the Key Performance Indicators

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

Advocacy, Guardianship and Administration Services

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

Key effectiveness indicator	Actual 2012/13	Actual 2013/14	Actual 2014/15	Target 2015/16	Actual 2015/16	Comment on significant variation
<p>Percentage of guardians of last resort allocated in one day</p> <p>This indicator measures the timeliness of the Public Advocate in allocating a guardian to a represented person in order to make decisions on their behalf and protect them from neglect, abuse or exploitation. A guardian is appointed only when considered necessary, and when there is no one else suitable or available to take on the role.</p>	96%	94%	96%	95%	98%	N/A

Key efficiency indicator	Actual 2012/13	Actual 2013/14	Actual 2014/15	Target 2015/16	Actual 2015/16	Comment on significant variation
<p>Average cost of providing advocacy and guardianship services</p> <p>This indicator measures the average cost per case of providing advocacy and guardianship services on behalf of people with decision-making disabilities.</p>	\$1,776	\$1,820	\$1,800	\$1,860	\$1,744	N/A

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

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

Ministerial Directives

Nil.

Other Financial Disclosures

See the Department of the Attorney General annual report.

Public Interest Disclosures

Nil.

Other Governance Disclosures

See the Department of the Attorney General annual report.

Other Legal Requirements

Advertising

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

Figure 21 Advertising

Adcorp and Whitepages: Government Gazette, community guardianship program, community education and recruitment advertising	\$7,498
TOTAL EXPENDITURE	\$7,498

Disability Access and Inclusion Plan Outcomes

See the Department of the Attorney General annual report.

Compliance with Public Sector Standards and Ethical codes

The Office of the Public Advocate, as part of the Department of the Attorney General, complied with the Public Sector Standards, the WA Code of Ethics and the Department's code of conduct. The code of conduct outlines the ethical principles, obligations and standards that apply when working for the Department. This code aims to encompass the values of excellent service, integrity and accountability, equity and fairness, collaboration and learning and professional autonomy that are expected of all staff.

In adhering to these policies, 18 staff from the Office of the Public Advocate made 30 conflict of interest declarations and five offers of gifts, hospitality or other benefits were recorded on the register. One offer of hospitality was refused.

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

Recordkeeping Plans

Records are maintained in accordance with the Department of the Attorney General's records keeping plans, and those of the State Records Office. An updated Retention and Disposal Schedule was approved by the State Records Office, effective December 2013. In line with the Department's ongoing commitment to improve staff awareness in records management, 100 per cent of Office of the Public Advocate staff had completed records awareness training as at 30 June 2016.

Government Policy Requirements

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

Occupational Safety, Health and Injury Management

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

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

The Department of the Attorney General introduced a formal policy regarding the appointment of first aid officers a number of years ago. In keeping with that policy, the Office appointed one first aid officer and one deputy first aid officer.

The Office's Occupational Safety and Health Committee comprises two management representatives and two elected staff representatives. Meetings were held quarterly, although issues can be raised at any time by staff with the elected representatives, and at every staff meeting where staff members had an opportunity to provide feedback. During 2015/16 there were no fatalities, no lost time injuries and no claims.

All new employees in 2015/16 were required to undertake the Department of the Attorney General's Occupational Safety and Health training. Furthermore, staff members were also presented with an opportunity to attend security information sessions which raised awareness on security within the workplace.

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

Appendix 1 Legislation

Legislative Authority

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

Related legislation

State Administrative Tribunal Act 2004

Carers Recognition Act 2004

Community Protection (Offender Reporting) Act 2004

Criminal Investigation (Identifying People) Act 2002

Criminal Investigation Act 2006

Criminal Law (Mentally Impaired Accused) Act 1996

Dangerous Sexual Offenders Act 2006

Declared Places (Mentally Impaired Accused) Act 2015

Disability Services Act 1993

Health Act 1911

Magistrates Court (Civil Proceedings) Act 2004

Mental Health Act 2014

Prisons Act 1981

Prohibited Behaviour Orders Act 2010

Public Trustee Act 1941

Supreme Court Act 1935

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

Corruption and Crime Commission Act 2003

Electoral Act 1907

Equal Opportunity Act 1984

Financial Management Act 2006

Freedom of Information Act 1992

Occupational Safety and Health Act 1984

Public Interest Disclosure Act 2003

Public Sector Management Act 1994

State Records Act 2000

State Supply Commission Act 1991

Workers' Compensation and Injury Management Act 1981

Working with Children (Criminal Record Checking) Act 2004

Appendix 2 Publications

All Public Advocate publications are available online at www.publicadvocate.wa.gov.au

Annual reports

Information sheets

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

Position statements

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

Brochures

- Office of the Public Advocate
- Your choices to make an advance health directive and appoint an enduring guardian
- Community Guardianship Program
- Are you worried about a vulnerable adult who needs help making decisions?
(a brochure for Aboriginal people)
- If you can't make your own decisions, who will make them for you? (a plain English brochure)

Guides and kits

- A Guide to Enduring Power of Attorney in Western Australia
- Enduring Power of Attorney Information Kit
- A Guide to Enduring Power of Guardianship in Western Australia
- Enduring Power of Guardianship Information Kit

Appendix 3 Glossary

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Appendix 4 Easy Read Annual Report 2015/16

This document is about

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

The Office of the Public Advocate

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

This year we

- investigated 1,516 matters about adults with a decision-making disability who might have had someone trying to harm them or take advantage of them or their money
- were appointed as guardian for the first time, for 468 adults with a decision-making disability
- made decisions for the people we were guardian for, which was 1,555 people on 30 June 2016
- held 26 information sessions about what the Office does and how to help protect people with a decision-making disability
- helped 5,324 people who contacted the Office's advisory service for information
- had 49 staff positions
- spent \$6.904 million to protect people with a decision-making disability.

What will happen in future years

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

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

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

How to contact us

If you:

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

call the Office on **1300 858 455** between 9am and 4.30pm, Monday to Friday.

