



THE PUBLIC ADVOCATE  
OF WESTERN AUSTRALIA

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Annual Report  
2001/2002



Department of Justice  
Government of Western Australia



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## Mission

To protect and promote the rights, dignity and autonomy of people with decision-making disabilities, and to reduce the risk of neglect, exploitation and abuse.

## Our Customers

An estimated 63,000 Western Australian citizens (around 3% of the State's population) are limited in their capacity to make reasoned decisions in their own best interests.

## Our Staff

The Public Advocate employs 20 staff, 13 of whom are involved in providing services directly to clients.

## Services

**Advocacy:** Investigating, representing and making recommendations, in the best interests of adults with decision-making disabilities, on the need for guardianship or administration at hearings of the Guardianship and Administration Board, and in the community.

**Guardianship:** Personal, medical and lifestyle decision-making on behalf of people for whom the Public Advocate has been appointed as Guardian of Last Resort, ensuring as much personal autonomy and respect for the wishes of the represented person as possible.

**Community Education:** Helping to promote the rights of Western Australians with decision-making disabilities, and the provisions and operation of the *Guardianship and Administration Act 1990*, through community education, awareness and understanding.

**Responsible Minister**

Attorney General  
The Hon. J A McGinty BA BJuris  
(Hons) LLB MLA

**Public Advocate**

Ms Michelle Scott

**Accountable Authority**

Under the *Guardianship and Administration Act 1990*, the Public Advocate is required to submit an annual report on the performance of her functions to the responsible Minister.

The Office of the Public Advocate is administratively responsible to the Department of Justice and fulfils its financial and performance accountability requirements through the Director General of the Department of Justice.

**Access**

At 30 September 2002, the Office of the Public Advocate is located at:

Level 1, 30 Terrace Road,  
East Perth 6004

Phone: (08) 9278 7300

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Email: [opa@justice.wa.gov.au](mailto:opa@justice.wa.gov.au)

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EPA Information Line (24/day)  
(08) 9278 7301

The Hon. Attorney General

# Annual Report

In accordance with Section 101 (1) of the *Guardianship and Administration Act 1990*, I am pleased to submit the Annual Report of the Public Advocate for the financial year 2001/2002.

The *Guardianship and Administration Act 1990* became fully operational in Western Australia on 20 October 1992.

As well as recording the operations of the agency for the year ending 30 June 2002, this report also reflects on the emerging trends and the issues which impact on the population of people we serve.

**Michelle Scott**

**Public Advocate**

30 September 2002

# Terminology

## Guardianship and Administration

The Public Advocate is an independent statutory officer appointed under the Act to provide advocacy at hearings of the Guardianship and Administration Board and in the community, and to provide information and education on ways of safeguarding the best interests of people with decision-making disabilities (including guardianship and administration). The Public Advocate also acts as Guardian of Last Resort when appointed by the Board.

## The Guardianship and Administration Board

is an independent statutory tribunal established under the *Guardianship and Administration Act 1990*.

The Public Advocate and the Guardianship and Administration Board are independent statutory bodies with distinct and separate functions. They must each carry out their respective functions having total regard for the best interests of the person or persons with a decision-making disability.

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

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

**Enduring Powers of Attorney (EPA):** A means for competent people to appoint another person or agency to manage their property and/or financial affairs for them. Unlike an ordinary Power of Attorney, an EPA authority applies even if the person granting it loses their capacity to make decisions for themselves in the future.

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

**Individual Advocacy:** Investigating, representing and making recommendations in the best interests of adults with decision-making disabilities, on the need for guardianship or administration at hearings of the Board.

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

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

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

**Proposed Represented Person:** Refers to the person for whom an application for appointment of a Guardian or Administrator is made.

**Represented Person:** Refers to a person for whom a Guardian or Administrator has been appointed.

**Systemic Advocacy:** To inform government, community and business organisations on the best interests of adults with decision-making disabilities in the development of legislation, policy and services.

# Statement of Corporate Governance

## Legislative Authority

The Public Advocate's legislative authority comes from the *Guardianship and Administration Act 1990*. The Act was proclaimed to come into full operation on 20 October 1992.

## Related Legislation

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

- ▶ *The Health Act 1911*
- ▶ *The Supreme Court Act 1935*
- ▶ *The Public Trustee Act 1941*
- ▶ *The Disability Services Act 1993*
- ▶ *The Mental Health Act 1996*
- ▶ *The Criminal Law (Mentally Impaired Defendants) Act 1996*

## Management and Accountability Legislation

The Office of the Public Advocate is also bound to comply with legislation that relates to the management and accountability requirements of Government.

- ▶ *The Workers' Compensation and Rehabilitation Act 1981*
- ▶ *The Equal Opportunity Act 1984*
- ▶ *The Occupational Health and Safety Act 1984*
- ▶ *The State Supply Commission Act 1991*
- ▶ *The Freedom of Information Act 1992*
- ▶ *The Public Sector Management Act 1994*
- ▶ *The Financial Administration and Audit Act 1995*
- ▶ *The Electoral Act 1907*

The Office of the Public Advocate is administratively responsible to the Department of Justice and fulfils its financial and performance accountability requirements through the Department's reporting framework.

## Access and Equity

In accordance with Government requirements, the Public Advocate aims to ensure that services provided through her Office are accessible to all people who need them, and to identify and remove any barriers that may exist, particularly in relation to gender, disability, ethnic origin and place of residence.

## Compliance with Government Policies and Plans

The Office of the Public Advocate has complied with Government requirements to develop and report on its:

- ▶ **Disability Services Plan** (to ensure equal access to services for people with disabilities).
- ▶ **Language Services Plan** (to ensure access to information and services for people from linguistically and culturally diverse backgrounds).

In addition, the Public Advocate seeks to ensure that people living in rural areas are not disadvantaged in their access to services or to information about services.

## Freedom of Information (FOI)

Under the *Guardianship and Administration Act 1990* the Public Advocate is required to maintain customer confidentiality. However, if it is seen to be in the best interests of the represented person or proposed represented person, the Public Advocate does seek to explain the basis for decision-making and provide access to information wherever possible.

Details of initiatives and achievements under these reporting requirements are provided under CUSTOMER FOCUS on page 18.

# The SPECIAL NEEDS of Western Australians with a decision-making disability

According to the Australian Bureau of Statistics, more than 63,000 Western Australian citizens (approximately 3% of the State's population) are estimated to be limited in their capacity to make reasoned decisions in their own best interests due to conditions such as:

- ▶ a dementia (due to Alzheimer's Disease or other related disorder).
- ▶ a psychiatric condition.
- ▶ an intellectual disability.
- ▶ an acquired brain injury due to illness, accident or other trauma.

*Source: ABS survey of Disability, Ageing and Carers 1998*

The number of people with such disabilities is increasing because of:

- ▶ **an ageing population:** the number of Western Australians with severe to moderate dementia is currently estimated at around 17,000 people, of which 70% is related to Alzheimer's Disease. With the continued ageing of the population, this number is expected to double, representing 9–11% of the entire population of seniors within the next 10 years.

*Source: Alzheimer's Association of Western Australia*

- ▶ **acquired brain injuries:** more than 7,000 Western Australians are admitted to hospital each year with a head injury and possible Acquired Brain Injury (ABI). Most will make a full recovery, but it is estimated that about 600 people a year sustain permanent acquired brain injury and over half of these will require intensive and ongoing support.

*Source: Headwest*

- ▶ **medical intervention:** medical technology is better able to prolong the lives of people who have a disability, or who sustain an acquired brain injury, that affects their cognitive functioning.

The provisions of the *Guardianship and Administration Act 1990* acknowledge the specific complexities and magnitude of needs and circumstances that cause people with decision-making disabilities to be more vulnerable, and therefore require special consideration and support.

## The Need for PROTECTION

- ▶ To ensure the protection of the person with a decision-making disability against actual or potential neglect, exploitation and abuse.
- ▶ To reduce the risk of neglect, exploitation and abuse of a person with a decision-making disability.

## The Need for SUPPORT SERVICES

- ▶ To promote and safeguard the rights and wellbeing of the person with a decision-making disability.

## The Need for ADVOCACY

- ▶ To represent and promote the best interests of people with a decision-making disability who are not able to represent or advocate for themselves in their own best interests.

## In 2001/2002 the Public Advocate

► **provided individual advocacy for 459 people**

(a 2% reduction from the previous year of 470 people).

► **responded to 94 community-referred investigations where**

concerns were raised about a person with a decision-making disability who may require the appointment of a Guardian or Administrator, or who was alleged to be under inappropriate guardianship or administration (an 18% decrease from the previous year of 115 investigations).

► **was appointed Guardian of Last Resort on behalf of 74 people**

for whom no-one else was available or suitable to act as substitute decision-maker, and continued in the role of substitute decision-maker for a further 132 people, bringing it to **a total of 206 people** for the year (a 27% increase from the previous year of 162 people provided with guardianship services).

► **responded to 3,556 public enquiries**

on 4,469 topics including the guardianship and administration system, how to safeguard the wellbeing of people with decision-making disabilities, and the Enduring Powers of Attorney provisions of the Act (a 1% decrease from the previous year's response to 3,584 enquiries. This was due to the success of the Enduring Power of Attorney Information line which reduced the demand on the Telephone Advisory Service by 9%).

# Strategic Summary

## Mission

*To protect and promote the rights, dignity and autonomy of people with decision-making disabilities, and to reduce the risk of neglect, exploitation and abuse.*

## Legislative Principles

Both the Public Advocate and the Guardianship and Administration Board are bound by the principles laid down in the *Guardianship and Administration Act 1990*.

The five principles listed below are intended to protect the rights of people with decision-making disabilities and ensure that their right to make decisions for their own lives is not taken away from them unless absolutely necessary and in their own best interests. The Public Advocate has adopted these same principles as her core operational values.

### ▸ **Best Interests**

The primary goal is always to focus on the best interests of the person with the decision-making disability.

### ▸ **Presumption of Competence**

Every person is presumed to be competent unless conclusively proved otherwise.

### ▸ **Least Restrictive Alternative**

A Guardian or Administrator will only be appointed if it is established that there is no other way of meeting the person's needs in a less restrictive way of impacting on their freedom of decision and action.

### ▸ **Limited Versus Plenary**

The authority of an appointed substitute decision-maker will be limited to those areas in which the person with the decision-making disability is experiencing the greatest need for decision-making support.

### ▸ **Current Wishes/Previous Actions**

The Public Advocate, as far as possible, seeks to ascertain the views and wishes of the person concerned, as expressed, in whatever manner, at the time, or as gathered from the person's previous actions.



## Output Goals

### ▸ **Advocacy**

Investigating, representing and making recommendations in the best interests of people with decision-making disabilities, on the need for guardianship or administration at hearings of the Guardianship and Administration Board, and in the community.

### ▸ **Guardian of Last Resort**

Personal, medical and lifestyle decision-making on behalf of people for whom the Public Advocate has been appointed as Guardian of Last Resort, ensuring as much personal autonomy and respect for the wishes of the represented person as possible.

### ▸ **Community Education**

Helping to promote the rights of Western Australians with decision-making disabilities, and the provisions and operation of the *Guardianship and Administration Act 1990*, through community education, awareness and understanding.

### ▸ **Customer Focus**

To ensure customers are satisfied with services provided.

# Operational Summary

## Key Outputs

The Public Advocate is an independent statutory officer. Financial and administrative accountability requirements are fulfilled through the Director General of the Department of Justice.

The Public Advocate provides three key services:

- ▶ Advocacy
- ▶ Guardianship
- ▶ Community Education

## Services Provided

During 2001/2002, 764 people with a decision-making disability were provided with individual advocacy, guardianship or administration services to assure their rights, dignity and autonomy. This is an increase of 2% on services provided the previous year and an increase of 20% over three years. Of these:

- ▶ 459 people were provided with individual advocacy to represent their rights and best interests at hearings of the Guardianship and Administration Board.
- ▶ 94 people were the subject of a community-referred investigation to determine the need for appointment of a substitute decision-maker to assure their well being.
- ▶ 206 people who had no one else suitable or available to take on substitute decision-making on their behalf were provided with guardianship services.
- ▶ 5 people who had no one else suitable or available to take on substitute decision-making on their behalf were provided with administration services.

In addition, 3,556 people were provided with information on 4,469 topics about the rights of people with decision-making disabilities and/or the provisions of the *Guardianship and Administration Act 1990*.

## Resources

During 2001/2002, the role and responsibilities of the Public Advocate in relation to the needs of Western Australians with a decision-making disability (potentially more than 63,000 people) and other key stakeholders, was supported by:

- ▶ 20 staff
- ▶ an operational budget of \$1.62 million

## Advocacy

### Individual Advocacy

In 2001/2002, the Public Advocate provided individual advocacy to 459 people.

Services could not be provided to 312 people considered in need of advocacy. In addition, the number of people identified in need of advocacy increased by 54 (8%) in the past year.

#### Individual Advocacy

	1998/1999	1999/2000	2000/2001	2001/2002	Change	
					1 year	3 years
<b>Needing Support</b>	562	696	717	771	+8%	+37%
<b>Support provided</b>	484	516	470	459	-2%	+5%
<b>Support not provided</b>	78	180	247	312	+26%	+30%
<b>% supported</b>	86%	74%	66%	60%	-6%	-26%

### Community-Referred Investigations

During 2001/2002, 94 community-referred investigations were conducted (down 18% from 115 the previous year). Of these, 27 related to allegations of abuse.

#### Community-Referred Investigations

	1998/1999	1999/2000	2000/2001	2001/2002	Change	
					1 year	3 years
<b>Investigations</b>	53	82	115	<b>94</b>	-18%	+77%

### Total Individual Advocacy and Community Referred Investigations

During 2001/2002, the total number of individual advocacy and community-referred investigations needing support increased from 832 to 865 (up 4%). However the total number of cases where services were provided fell from 585 to 553 (down 5%).

#### Total Individual Advocacy and Community-Referred Investigations

	1998/1999	1999/2000	2000/2001	2001/2002	Change	
					1 year	3 years
<b>Total support provided</b>	537	598	585	<b>553</b>	-5%	+3%
<b>Total needing support</b>	615	778	832	<b>865</b>	+4%	+41%
<b>% supported</b>	87%	77%	70%	<b>64%</b>	-6%	-23%

## Total Outputs – Three Year Trend

Output Group	1998/1999	1999/2000	2000/2001	2001/2002	Change		
					1 year	2 years	3 years
<b>Advocacy</b>	484	516	470	<b>459</b>	- 2%	- 11%	- 5%
<b>Community Referred Investigation</b>	53	82	115	<b>94</b>	-18%	+15%	+77%
<b>Administrator of Last Resort</b>	3	7	4	<b>5</b>	+25%	- 29%	- 29%
<b>Guardian of Last Resort</b>	95	133	162	<b>206</b>	+27%	+55%	+117%
<b>Total Outputs</b>	635	738	751	<b>764</b>	+2%	+4%	+20%
<b>Unmet Need</b>	78	180	247	<b>312</b>	+26%	+73%	+300%
<b>Total Identified Need for Services</b>	713	918	998	<b>1076</b>	+8%	+17%	+51%

## Guardianship

In 2001/2002, as Guardian of Last Resort, the Public Advocate provided guardianship services to 206 people, of which 74 were new appointments and 132 carried over from the previous year.

This reflects an increase of 117% in the past three years, demonstrated by a steady increase in the number of people for whom the Public Advocate has been appointed as Guardian of Last Resort, as well as a significant rise in the number of people for whom the Public Advocate is required to provide continuing decision-making support, from year to year.

## Guardian of Last Resort

	1998/1999	1999/2000	2000/2001	2001/2002	Change	
					1 year	3 years
<b>Total for Year</b>	95	133	162	<b>206</b>	+27%	+117%
<b>New Appointments</b>	38	59	60	<b>74</b>	+23%	+95%
<b>Carried Forward</b>	57	74	102	<b>132</b>	+29%	+132%

## Community Education

Public interest and awareness of the *Guardianship and Administration Act 1990* is increasing. This is particularly reflected in the demand for education and advice by service providers and professionals on matters concerning the rights and well being of Western Australians with a decision-making disability.

The provision and access to a specialist Telephone Advisory Service (TAS) has contributed to this trend. In 2001/2002, TAS handled 3,556 enquiries (a 1% decrease from the previous year) on 4,469 topics. This was due to the success of the Enduring Power of Attorney Information line which reduced the demand on TAS by 9%.

### Community Education

	1998/1999	1999/2000	2000/2001	2001/2002	Change	
					1 year	3 years
<b>Number of Enquiries</b>	2,382	3,405	3,584	<b>3,556</b>	-1%	49%
<b>Topics of Enquiry</b>	2,788	3,879	4,208	<b>4,469</b>	+6%	+60%
<b>Total Public Talks and Presentations</b>	51	84	81	<b>43</b>	-37%	-12%

*The total number of public presentations dropped from 81 to 43 as a result of the introduction of scheduled training and community education seminars which encouraged stakeholder and interested groups to attend training sessions.*

## Customer Focus

Given the nature of the decision-making disabilities of the Public Advocate's primary customers, it is very difficult to measure their satisfaction with the service provided. Therefore, to provide a more realistic measure of customer satisfaction, surveys are conducted of secondary customers (i.e. people who have a personal or professional relationship with the primary customer). Respondents rate their satisfaction with the service provided on a scale of 1-5 according to eight key Service Standards.

In 2001/2002, of 312 survey forms distributed, 125 secondary customers responded (a response rate of 40%):

- ▶ 75% of respondents said they were satisfied or very satisfied with the advocacy and representation services provided by the Public Advocate.
- ▶ 84% of respondents said they were satisfied or very satisfied with the extent to which the Public Advocate had effectively achieved her Mission to promote and protect the rights, dignity and autonomy of people with decision-making disabilities and to reduce the risk of neglect, exploitation or abuse.

## Major Initiatives and Achievements

In addition to the support provided to people with a decision-making disability, during 2001/2002 the Public Advocate has:

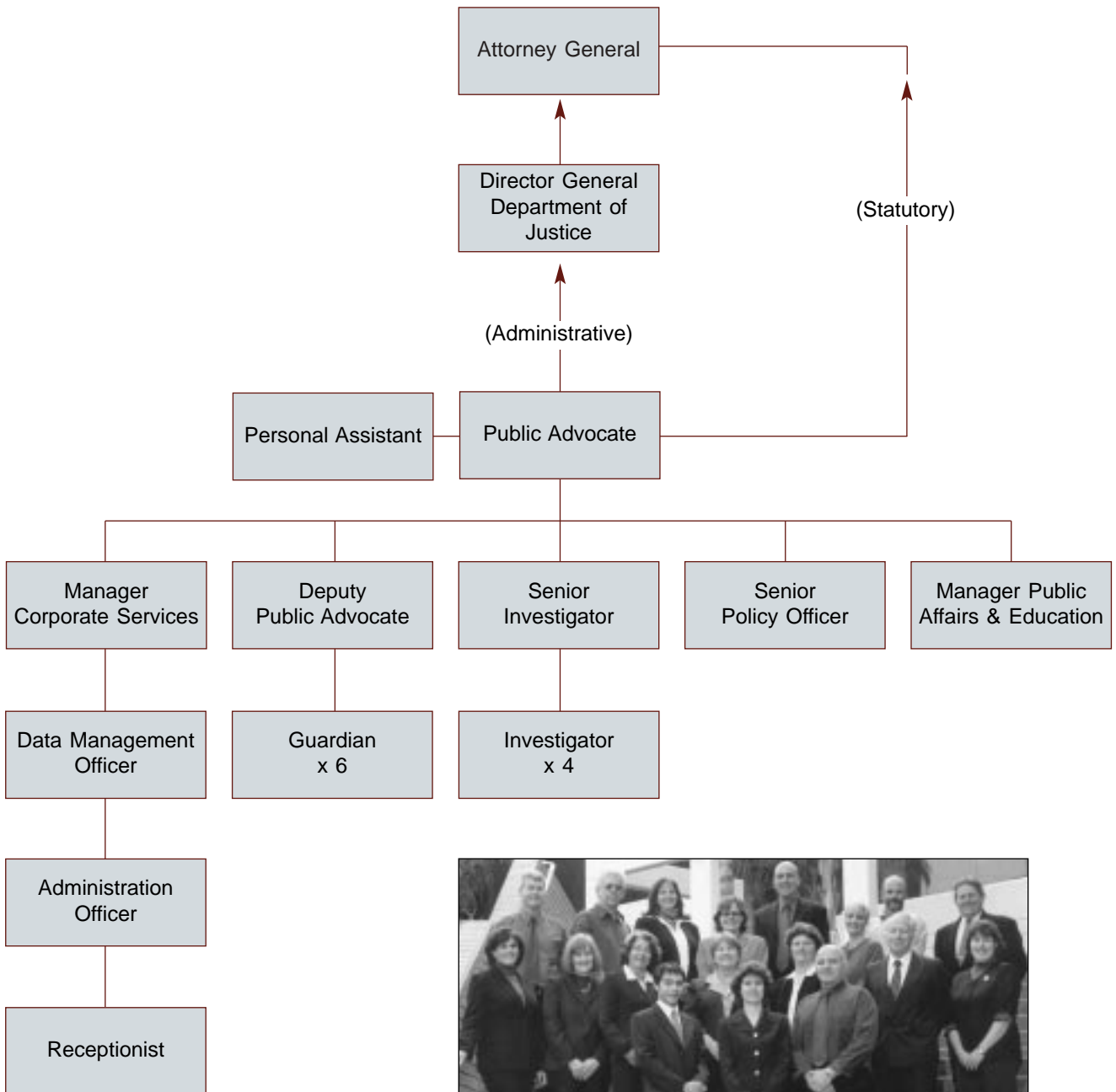
- ▶ Commissioned a report entitled *“Needs of Indigenous People in the Guardianship and Administration system in WA”*, which was released in October 2001. The report identified the need to improve access to the guardianship and administration system and the provision of less formal alternatives to the appointment of a guardian or administrator to assist Indigenous people. Implementation of key recommendations of the report will be considered over the next two years.
- ▶ Launched a pilot project to provide guardianship and advocacy services to regional Western Australia in May 2002. The project aims to improve services for adults with decision-making disabilities and their carers by providing enhanced access to information, advice and assistance, and by providing a more immediate response to abuse and conflict situations. The pilot is being undertaken in Bunbury as a step towards achieving improved equity for regional stakeholders.

## Future Directions

In 2002/2003, the Public Advocate will:

- ▶ Provide advocacy and education services that establish alternatives to the services of the Public Advocate and the Guardianship and Administration Board to protect the rights and well being of people with decision-making disabilities.
- ▶ Restructure the Office of the Public Advocate to redirect resources to critical areas of advocacy and guardianship.
- ▶ Implement strategies to establish less restrictive alternatives for Indigenous people to reduce the need for them to access the Office of the Public Advocate and the Guardianship and Administration Board
- ▶ Implement community education strategies that focus on ways to prevent the need to use the Office of the Public Advocate and the Guardianship and Administration Board and the need for a guardian or administrator.
- ▶ Continue to implement the Bunbury pilot project to improve services to regional Western Australia.

# Organisational Structure



Back row, left to right: Peter Watts, Jack Mansveld, Serena Dale, Robyn Baker, Rob D'Agostino, Mary Bairstow, John Hodges, Kieth Van Dongen  
 Middle row, left to right: Nola Bradshaw, Lee Pickens, Gwen Sumatluck, Janine Hawker, Liz Shepherd, Keith Utley, Helen Hart  
 Front row, left to right: Gilles Gaudet, Gillian Lawson, Gino Coniglio

# Operational Context

The Public Advocate's role to protect and promote the rights and best interests of Western Australians with decision-making disabilities also provides a focus for other Government and non-Government organisations. For each of our four primary customer groups, several other State, Commonwealth, non-Government agencies and disability advisory bodies share the responsibility to develop policies and provide services for mutual customers.

The number of non-Government and community organisations targeting specific disability groups are too numerous to mention individually. However, the Public Advocate works with many of them in her pursuit to advance the best interests of people with a decision-making disability.

At a Government level, the Guardianship and Administration Board is the body responsible for determining whether a person with a decision-making disability is in need of a substitute decision-maker to safeguard their well being. Furthermore, the Public Trustee of Western Australia has a substitute financial management role in relation to the broad cross section of people with decision-making disabilities.

The shared roles of other Government agencies are listed in the table below.

Customer Group	Government Agency Involvement
<b>People with a dementia</b> <i>(due to Alzheimer's Disease and related disorders)</i>	<ul style="list-style-type: none"> <li>▶ Office of Seniors Interests (<i>State</i>)</li> <li>▶ Department of Family and Community Services (<i>Commonwealth</i>)</li> <li>▶ Department of Health and Aged Care (<i>Commonwealth</i>)</li> <li>▶ Department of Veteran's Affairs (<i>Commonwealth</i>)</li> </ul>
<b>People with a Psychiatric condition</b>	<ul style="list-style-type: none"> <li>▶ Department of Health (<i>State</i>)</li> <li>▶ Department of Health and Aged Care (<i>Commonwealth</i>)</li> </ul>
<b>People with an intellectual disability</b> <i>(from birth or occurring during the developmental years)</i>	<ul style="list-style-type: none"> <li>▶ Disability Services Commission (<i>State</i>)</li> <li>▶ Department of Family and Community Services (<i>Commonwealth</i>)</li> </ul>
<b>People with an Acquired Brain Injury</b> <i>(due to illness, accidents, trauma or damage caused by exposure to chemicals or drugs)</i>	<ul style="list-style-type: none"> <li>▶ Disability Services Commission (<i>State</i>)</li> <li>▶ Department of Family and Community Services (<i>Commonwealth</i>)</li> <li>▶ Department of Health (<i>State</i>)</li> <li>▶ Department of Health and Aged Care (<i>Commonwealth</i>)</li> </ul>

Centrelink also has a role to play, not only in the lives of many people with decision-making disabilities, but also in the lives of many of their primary carers in the assessment and payment of pensions and benefits. Additionally, the Equal Opportunity Commissioner ensures that people with a disability are not subject to unlawful discrimination in accessing goods, services and facilities that are publicly available to other community members.

At a national level, all Public Advocates, Presidents of Guardianship and Administration Boards and Public Trustees meet together on a regular basis as part of the Australian Guardianship and Administration Committee (previously known as the Interjurisdictional Committee on Guardianship and Administration) of which the Public Advocate of Western Australia was Chairperson until August 2002.



# Public Advocate's Report



The Office of the Public Advocate (the Office) has a critical role in protecting the rights, dignity and autonomy of people with decision-making disabilities and in reducing their risk of neglect, exploitation and abuse.

In 2001–2002 the Office continued to focus on its core responsibilities of advocacy, guardianship and community education as set out in the *Guardianship and Administration Act 1990*.

This involves working closely with individual Western Australians who have a decision-making disability, their families and carers. It is estimated that there are some 63,000 Western Australians who have a decision-making disability. The Office also has a key role in working strategically with Government and non-Government agencies that have a direct interest and involvement with people who may have a decision-making disability.

A key priority in 2002–2003 will be the restructure of the Office to meet the increasing demand for the services that it provides.

Despite the pressures on existing services, customer surveys continue to show positive results. Seventy-five percent of respondents were satisfied or very satisfied with the advocacy and representation services provided by the Public Advocate. Eighty-four percent of respondents said they were satisfied or very satisfied with the extent to which the Public Advocate had effectively achieved her mission to protect the rights, dignity and autonomy of people with decision-making disabilities and to reduce their risk of neglect, exploitation and abuse.

Particular highlights in 2001–2002 include:

- ▶ The release of the report “*Needs of Indigenous People in the Guardianship and Administration system in WA in October 2001*”. The report identified the need to improve access to the guardianship and administration system and the provision of less formal alternatives to the appointment of a guardian or administrator to assist Indigenous people. Implementation of key recommendations of the report will be considered over the next two years.
- ▶ The establishment of a pilot project to provide guardianship and advocacy services to regional Western Australia. The project will be evaluated in 2002–2003.

In reviewing the work of the Office in 2001–2002, I would like to thank my predecessor Julie Roberts who concluded her five-year appointment as Public Advocate in August 2002 and the staff who have achieved significant outcomes over the last twelve months. I would also like to acknowledge the Government’s ongoing support to the Office.

My appointment to the position of Public Advocate commenced on 16 September 2002. I have a strong personal commitment to the function of the Public Advocate and I look forward to working with the staff of the Office to meet the challenges in the year ahead.

Michelle Scott  
Public Advocate

# Customer Focus

## Our Customers

Overall, the Public Advocate serves three main customer groups:

- ▶ people with decision-making disabilities (primary customers).
- ▶ people who care for or provide support to people with decision-making disabilities, either in a paid or unpaid capacity (secondary customers).
- ▶ people who do not, at present, have a decision-making disability but who seek to make provision for the possibility that they may lose their decision-making capacity and require the support of a substitute decision-maker at some time in the future (potential customers).

**1. The primary customer group represents those members of the Western Australian population who have a decision-making disability.**

More than 63,000 Western Australians are estimated to have disabilities that may affect their ability to make reasoned decisions in their own best interests.

*The Public Advocate supports people with decision-making disabilities through advocacy, representation and guardianship services.*

**2. The secondary customer group is that group of people who provide care either on a paid or unpaid basis to people who have a decision-making disability.**

The care and wellbeing of people with decision-making disabilities is often dependent on others. Based on the assumption that there are at least two family members involved in the life of a person with a decision-making disability, this secondary group of unpaid carers is an estimated 126,000 people. Appointed guardians and administrators are also included as secondary customers. The number of paid carers, advisory and/or support personnel is not known.

*The Public Advocate works closely with carers and service providers to ensure that the needs of people with decision-making disabilities are met.*

**3. The third group of potential customers extends to the broader population of adult citizens who may wish to safeguard their own financial future by implementing an Enduring Powers of Attorney (EPA) in the event that they could, at some later stage, lose their own decision-making capacity.**

The Public Advocate has a legislative role to provide information and advice to the broader community on the *Guardianship and Administration Act 1990*, as well as alternatives to guardianship and administration (including the option for competent adults to complete an EPA). *The Public Advocate provides information, advice and education to members of the public on the Enduring Powers of Attorney provisions of the Guardianship and Administration Act 1990 by way of publications, online information on their website, and training for legal and financial professionals which supports the quality of their respective advice to customers on completing an EPA.*

## Western Australians with a Decision-Making Disability

Decision-making disabilities are most commonly attributed to four main conditions:

- ▶ a dementia (due to Alzheimer's Disease or other related disorder).
- ▶ an intellectual disability (from birth or occurring during the developmental years).
- ▶ a psychiatric condition.
- ▶ an Acquired Brain Injury (ABI) due to illness, accident, or other trauma (e.g. damage caused by exposure to chemicals or drugs, or sustained substance abuse).

The incidence of decision-making disabilities in the Western Australian community is presented below.

### ***Dementia due to Alzheimer's Disease and related disorders***

The number of Western Australians with severe to moderate dementia is currently estimated at around 17,000 people, of which 70% is related to Alzheimer's Disease. With the continued ageing of the population, this number is expected to double, representing 9–11% of the entire population of seniors within the next 10 years.

### ***Intellectual Disability***

More than 10,000 people with an intellectual disability are eligible to receive services from the Disability Services Commission (it is estimated that around 1% of the population has an intellectual disability).

### ***Psychiatric Condition***

Accurate data on the number of people with a psychiatric condition in Western Australia is not available. However, it is estimated that one in four people will develop a short or long term mental illness at some time in their lives.

### ***Acquired Brain Injury***

More than 7,000 Western Australians are admitted to hospital each year with head injuries and possible acquired brain injury due to accident, stroke, tumour, infection or substance abuse. Most will make a full recovery, but it is still estimated that about 600 people a year sustain permanent acquired brain injury, with over half of these needing intensive ongoing support.

## A Commitment to CUSTOMER FOCUS Principles

The Public Advocate has identified Customer Focus as one of its four Output Goals committed to ensuring customers are satisfied with services provided.

Customer Focus Service Principles are applied across all operational areas, which are assessed and reviewed through customer and stakeholder input and feedback integral to all major activities and initiatives.

The Public Advocate has:

- ▶ developed a *Statement of Customer Service Standards* and a *Consumer Grievance Policy* to respond to customer complaints.
- ▶ implemented regular surveys of people with an interest in the wellbeing of a person with a decision-making disability, or who have direct experience of the advocacy service provided by the Public Advocate.
- ▶ implemented regular evaluations of training programs and major community education events.

## Access and Equity

In accordance with Government requirements, the Public Advocate seeks to ensure that services provided to the public are accessible, including identifying and removing any barriers that may exist, particularly in relation to gender, disability, ethnic origin and place of residence.

The legislative principles that govern the operation of the guardianship and administration system are consistent with Government policies and plans to improve access and equity for disadvantaged groups.

For example, the Public Advocate seeks to promote personal empowerment, independence and choice wherever possible to enable customers to exercise as much control over their own lives as they are capable of doing.

### **Disability Services Plan**

The Public Advocate has implemented all the recommendations of a comprehensive Disability Access Audit undertaken in 1997/98, and continues to monitor barriers that may inhibit equal access to services.

An example of this is where necessary, sound amplifiers are arranged for people who have a hearing impairment.

### Language Services Plan

To ensure that language is not a barrier to services for customers with limited fluency in English, the Public Advocate:

- ▶ subscribes to interpreter services (which provided 14 on-site interpreters and 2 telephone interpreters during 2001/2002).
- ▶ provides access to cultural awareness training for staff members.

### Rural Customers

The Public Advocate seeks to ensure that people living in rural and regional areas are not disadvantaged in their access to services or to information about services.

In 2001/2002, four community forums and training seminars for service providers were held in country centres in Karratha, Bunbury, Broome and Port Hedland.

The Public Advocate is committed to identifying ways of improving the services provided to people living in rural, regional and remote areas of Western Australia. In May 2002, a pilot project based in Bunbury was launched to provide individual advocacy, investigation and guardianship services to the State's South West. In addition, tele-conference training to service providers via key satellite locations in the north west of the State was provided.

### Access to Information

Online information about the Public Advocate is located within the Department of Justice's website at [www.justice.wa.gov.au](http://www.justice.wa.gov.au), under the heading *Guardianship, Administration and Advocacy*, including the Enduring Power of Attorney form and the Public Advocate's Annual Report.

## Customer Survey

The primary customers of the Public Advocate are people identified as not being able to make reasoned decisions for themselves. As such, it is either very difficult or not possible to survey this group directly for feedback on the effectiveness of services. To measure customer satisfaction and outcomes of service, survey forms are distributed to secondary customers (i.e. people with a direct personal or professional involvement in the lives of people in the primary customer group).

### Individual Advocacy

To measure customer satisfaction of its individual advocacy services, the Public Advocate distributed a total of 312 surveys to secondary customers and received a 40% response (i.e. 125). Recipients were asked to rate the extent to which the advocacy service provided by the Public Advocate had effectively protected and promoted the rights, dignity and autonomy of the person with a decision-making disability, and/or reduced the risk of neglect, exploitation and abuse.

### Service Standards

The Public Advocate has developed a set of service standards rated on a Likert scale of 1–5, where 1 denotes not satisfied and 4 denotes very satisfied, 5 (not applicable/unknown)

SERVICE STANDARDS	Satisfaction Rate
<b>ACCESS</b> Staff are accessible Services physically accessible	87% 50%
<b>INDIVIDUAL NEEDS</b> Services are sensitive to people's individual needs	86%
<b>DIGNITY</b> Services promote personal dignity, independence and choice wherever possible	88%
<b>PRIVACY</b> The Public Advocate respects the privacy of customers and does not release personal information unless required to protect the person's safety	85%
<b>INFORMATION</b> The Public Advocate provides services information and advice to customers to enable greater choice and ensure accountability	82%
<b>PROFESSIONALISM</b> Services meet the highest professional and service standards	85%
<b>FEEDBACK</b> The Public Advocate encourages, and is responsive to customer feedback on its services	76%
<b>GRIEVANCES</b> The Public Advocate treats customers' complaints seriously and deals with them as soon as possible to ensure a satisfactory resolution	47%

- ▮ 75% of respondents indicated that they were satisfied or very satisfied with advocacy and representation services provided.
- ▮ 84% of respondents indicated that the Office fulfils its aim – which is to promote the rights, dignity and autonomy of people with decision-making disabilities and to reduce the risk of neglect, abuse of exploitation.
- ▮ Overall, the customer survey results indicate a high performance.
- ▮ The lower ratings for the service standards of feedback and grievances are being examined.

Results of the Customer Survey should be interpreted in light of the Public Advocate's involvement in providing advocacy in cases of intense family conflict or where there are allegations of abuse. Both these factors can significantly impact on the satisfaction rating, particularly where difficult decisions may have to be made in variance to those of other family members.

### Customer Survey Profile

- ▶ 48% of customer respondents had a personal relationship to the represented person (i.e. family, friend).
- ▶ 48% of customer respondents had a professional relationship to the represented person (i.e. service provider, social worker, Director of Nursing).
- ▶ 2% of customer respondents did not select a category.

## Freedom of Information and Ombudsman

### Freedom of Information

In 2001/2002, the Public Advocate received four valid applications for information under the *Freedom of Information Act 1992*.

All four applications were declined based on exemptions under clause 3 Schedule 1 (personal information concerning third parties).

The average time taken to deal with a request for information was six days, which is well below the average duration across all agencies of 21 days.

The Manager of Corporate Services is the designated officer to receive and handle enquiries about Freedom of Information (FOI). Contact details are as follows:

*Freedom of Information Designated Officer  
Manager, Corporate Services  
Office of the Public Advocate  
PO Box 6293  
EAST PERTH WA 6892*

### Ombudsman Complaints

The Public Advocate encourages the public to seek the advice of the Ombudsman as an avenue of last resort if they have a complaint. In 2001/2002, the Ombudsman investigated three complaints in respect to the Office of the Public Advocate. None were substantiated.

# Output Reports

## Advocacy

*Investigating, representing and making recommendations in the best interests of adults with decision-making disabilities, on the need for guardianship or administration at hearings of the Guardianship and Administration Board, and in the community.*

### Key Strategies

- ▶ To investigate and identify the circumstances and needs of people with decision-making disabilities who are the subject of an application for the appointment of a guardian or administrator, and ensure that their best interests are represented at hearings before the Guardianship and Administration Board.
- ▶ To ensure that the appointment of a guardian or administrator is only made when there is no alternative solution to the presenting problem.
- ▶ To investigate community complaints or concerns that a person with a decision-making disability may be at risk of neglect, exploitation and abuse, and may be in need of a guardian and/or administrator.
- ▶ To inform Government, community and business organisations on the best interests of adults with decision-making disabilities in the development of legislation, policy and services.

### Services Provided

During 2001/2002:

- ▶ A total of 459 cases were provided with individual advocacy.
- ▶ 94 community-referred investigations were carried out.



### Individual Advocacy

The Public Advocate investigates, represents and makes recommendations in the best interests of adults with decision-making disabilities, on the need for guardianship or administration at hearings of the Guardianship and Administration Board. The Guardianship and Administration Board may also direct the Public Advocate to investigate and report on any matter before the Board.

- ▮ The total number of cases identified as needing individual advocacy at hearings of the Guardianship and Administration Board was 771 up from 717 in the previous year, an 8% increase.
- ▮ The total number of cases needing individual advocacy, where services could be provided, fell to 459 down from 470 in the previous year, a 2% decrease. Over a three-year period cases provided with individual advocacy is down 5%.
- ▮ 312 cases identified as being in need of individual advocacy could not be supported compared to 247 people in the previous year (up 26%).

#### Individual Advocacy

	1998/1999	1999/2000	2000/2001	2001/2002	Change	
					1 year	3 years
<b>Needing Support</b>	562	696	717	<b>771</b>	+8%	+37%
<b>Support not provided</b>	78	180	247	<b>312</b>	+26%	+300%
<b>Support provided</b>	484	516	470	<b>459</b>	-2%	-5%
<b>% Supported</b>	86%	74%	66%	<b>60%</b>	-6%	-26%

### Community-Referred Investigations

The Public Advocate has a mandate under Section 97(1)(c) of the *Guardianship and Administration Act 1990* to investigate cases where no application has been made but there are concerns that a person is in need of a guardian or administrator, or is under an inappropriate guardianship or administration order. During 2001/2002, 94 investigations were conducted, compared to 115 (an 18% decrease) in the previous year. Over three years Community-Referred Investigations have increased by 77%.

#### Community-Referred Investigations

	1998/1999	1999/2000	2000/2001	2001/2002	Change	
					1 year	3 years
<b>Community-Referred Investigations</b>	53	82	115	<b>94</b>	-18%	+77%

### Total Advocacy and Community-Referred Investigations

During 2001/2002, the total number of individual advocacy and community-referred investigations needing support increased from 832 to 865 (up 4%). However the total number of cases where services were provided fell from 585 to 553 (down 6%).

#### Total Advocacy and Community-Referred Investigations

	1998/1999	1999/2000	2000/2001	2001/2002	Change	
					1 year	3 years
<b>Total support provided</b>	537	598	585	<b>553</b>	-5%	+3%
<b>Total needing support</b>	615	778	832	<b>865</b>	+4%	+41%
<b>% supported</b>	87%	77	70%	<b>64%</b>	-6%	-23%

### Abuse

In 2001/2002, 100 out of 553 (i.e. 18%) cases involved allegations of abuse, including 75 cases of suspected financial abuse (the most commonly raised issue of concern).

#### New Advocacy Cases involving Alleged Abuse

	1999/2000		2000/2001		2001/2002	
	#	%	#	%	#	%
<b>Physical</b>	2	4%	1	2%	<b>2</b>	<b>3%</b>
<b>Sexual</b>	1	2%	3	6%	<b>1</b>	<b>1%</b>
<b>Financial</b>	41	80%	35	71%	<b>58</b>	<b>79%</b>
<b>Psychological</b>	3	6%	1	2%	<b>4</b>	<b>6%</b>
<b>Neglect</b>	4	8%	9	19%	<b>8</b>	<b>11%</b>
<b>SUB TOTAL</b>	51		49		<b>73</b>	
<b>CRI Abuse Cases</b>	62		46		<b>27</b>	
<b>TOTAL</b>	113		95		<b>100</b>	

## Performances Indicators

Effectiveness	1998/1999	1999/2000	2000/2001	2001/2002	Target
<b>1.1</b> The proportion of cases provided with an advocacy service relative to the number in need of service	87	77	70%	<b>64%</b>	68%

This indicator measures the extent to which the Public Advocate provides advocacy to those identified as requiring advocacy to protect the rights of people with decision-making disabilities and reduce the risk of neglect, exploitation or abuse. The indicator is derived by dividing the number of cases provided with advocacy support by the number of cases assessed by the Public Advocate as requiring independent advocacy.

**1.1:** *In 2001/2002, 865 cases were identified in need of advocacy (including community-referred investigations) compared to 832 in the previous year (i.e. up 4%). The Public Advocate was able to provide individual advocacy on behalf of 553 people, compared to 585 the previous year (down 6%). The increasing demand across all services and the complexity of cases has added to the Public Advocate's inability to meet all individual advocacy requirements.*

Effectiveness	1998/1999	1999/2000	2000/2001	2001/2002	Target
<b>1.2</b> The extent to which advocacy service recommendations are accepted by the Guardianship and Administration Board	93%	94%	97%	<b>97%</b>	90%

This indicator measures the extent to which the individual advocacy service meets the needs of people with decision-making disabilities in determining their best interests. The advocacy service investigates the circumstances and needs of a person who is subject to an application and makes recommendations to the Guardianship and Administration Board on what is considered to be in the person's best interests. The Board's acceptance of recommendations made on behalf of a person for whom advocacy is provided is indicative of the effectiveness of the advocacy.

**1.2:** *The proportion of individual advocacy recommendations accepted by the Guardianship and Administration Board in 2001/2002 was the same as 2000/2001. The target set was exceeded.*

Timeliness	1999/2000	2000/2001	2001/2002	Target
<b>1.3</b> Percentage of advocacy cases completed within eight weeks	78%	79%	<b>61%</b>	77%

This indicator measures the ability to complete advocacy cases subject to applications before the Guardianship and Administration Board from the time allocated to completion. This indicator is derived from dividing the number of individual advocacy cases completed within eight weeks by the total number of advocacy cases handled.

**1.3:** *The best practice standard of eight weeks used by the Guardianship and Administration Board has been applied. This standard is directly affected by the Guardianship and Administration Board's scheduling of hearings.*

Please Note: The result of 61% is based on quarter three results due to unavailability of data as a result of database changeover.

## Recommendations at Hearings of the Guardianship and Administration Board

	1998/1999		1999/2000		2000/2001		2001/2002		Trend	
									1 year	3 years
<b>Public Advocate involvement at hearing</b>	351		398		311		<b>367</b>		+18%	+5%
Outcome of Public Advocate Recommendations										
	#	%	#	%	#	%	#	%		
<b>+ve hearing outcome</b>	328	93%	361	94%	286	97%	<b>331</b>	<b>97%</b>	+16%	+41%
<b>-ve hearing outcome</b>	23	7.0%	22	6%	10	4%	<b>12</b>	<b>3%</b>	+20%	-48%
<b>Unmade Outcome</b>			15		15		<b>24</b>			

- Comments:** In 2001/2002, the Public Advocate made recommendations to the Guardianship and Administration Board on behalf of 343 people with a decision-making disability. A 97% acceptance rate was achieved for recommendations made by the Public Advocate in the best interest of the proposed represented person, which were endorsed by the Guardianship and Administration Board.

## Issues and Trends

### Demand

Demand for individual advocacy and community-referred investigations is increasing.

- The combined number of cases identified in need of individual advocacy and community-referred investigations over the past 12 months rose from 832 to 865 (up 4%), reflecting a 41% increase over the past three years.
- The number of individual advocacy cases subject to an application before the Guardianship and Administration Board, and identified in need of individual advocacy over the past 12 months rose from 717 to 771 (up 8%), representing an increase of 37% over the past three years.

### Unmet Needs

Unmet needs for individual advocacy remains a key concern.

- 312 cases (up 6%) subject to an application before the Guardianship and Administration Board, and identified in need of advocacy support, could not be provided with advocacy services. This compares to 247 cases in the previous year where needs could not be met, representing an increase of 26% over the past three years. This trend is directly affected by the increasing numbers requiring advocacy services and Guardian of Last Resort appointments to the Public Advocate.
- The total number of individual advocacy cases provided with services fell to 470 from 516 in the previous years (down 2%).

### **Sterilisation Procedures**

There was only one application in respect to sterilisation of an adult with a decision-making disability in 2001/2002. As for previous years the number is low and concerns that unlawful sterilisation procedures may be occurring remains. Section 57(1) of the *Guardianship and Administration Act 1990* states:

*“A person shall not carry out or take part in any procedure for the sterilisation of a represented person unless:*

- ▮ both the guardian of the represented person and the Board have consented in writing to the sterilisation;*
- ▮ all rights of appeal in respect of a determination under Section 63 have lapsed or been exhausted; and*
- ▮ the sterilisation is carried out in accordance with any condition imposed under this Act.”*

### **Medical/Dental Treatment Provisions**

The introduction of legislative changes to the *Guardianship and Administration Act 1990* in December 2000 provided for a hierarchy of people who can provide consent to treatment for people with decision-making disabilities, without the need for the appointment of a guardian. In 2001/2002 applications for medical/dental treatment were down 26%.

### **Enduring Powers of Attorney**

The Public Advocate has continued to be involved in a significant number of matters where Enduring Powers of Attorney are operating, and where there is conflict within the family, or allegations of improper use of powers held by the Attorney.

### **Wills for Represented Persons**

In April 2002 the Supreme Court of Western Australia determined that a person subject to an administration order, under the *Guardianship and Administration Act of 1990*, was prohibited from making a will without the Guardianship and Administration Board having consented. This decision requires Administrators to apply to the Guardianship and Administration Board for authorisation if a represented person wishes to make a will.

## Issues for New Cases of Individual Advocacy

	1998/1999	1999/2000	2000/2001	2001/2002
<b>GUARDIANSHIP</b>				
<b>Access to Services</b>	7	6	5	<b>12</b>
<b>Accommodation</b>	57	60	98	<b>74</b>
<b>Medical/Dental</b>	19	32	34	<b>25</b>
<b>Sterilisation</b>	3	0	0	<b>1</b>
<b>Self Neglect</b>	1	4	4	<b>4</b>
<b>Other Guardianship</b>	10	10	14	<b>14</b>
<b>ADMINISTRATION</b>				
<b>Assist with Money</b>	158	158	162	<b>176</b>
<b>Property</b>	25	14	6	<b>6</b>
<b>Other Administration</b>	11	15	6	<b>3</b>
<b>EPA</b>	41	28	10	<b>11</b>
<b>LEGAL ISSUES</b>	20	27	10	<b>4</b>
<b>REVIEW</b>	88	101	81	<b>52</b>
<b>Not Identified</b>	1	2	0	<b>0</b>
<b>TOTAL</b>	441	457	430	<b>382</b>

## Advocacy Challenges

### Unmet Needs

The increasing number of people requiring individual advocacy reflects a continuing trend in which the Public Advocate does not have the capacity to meet all the advocacy requirements which are identified.

Work practices and standards have been reviewed and further developed to identify ways to extend advocacy services. In 2002/2003 the Public Advocate will undertake a restructure to redirect resources to the critical areas of advocacy and guardianship services.

### Emerging Issues

The increasing complexity of cases is having a direct impact on the Public Advocate's ability to service the demand for advocacy. The Public Advocate continues to be involved in the investigation of new and diverse areas of individual advocacy as they emerge on a case by case basis. These include:

- ▮ The need for guardianship for the purpose of medical consent for people hospitalised under an involuntary order under the *Mental Health Act 1996*.
- ▮ The need for guardianship for the purpose of deciding accommodation for people placed on a community treatment order under the *Mental Health Act 1996*.

- ▶ The need for guardianship for the purpose of restraint including chemical and/or physical, and under what circumstances (if at all) it should be used.
- ▶ The need to define what constitutes medical treatment for example contraception and chemical restraint.
- ▶ The extent to which guardianship might apply to a person held in custody under the *Criminal Law (Mentally Impaired Defendants Act) 1996*.

### **Financial Investigations**

There has been continuing demand for specialist knowledge and skills in individual advocacy, particularly in the area of financial management. The Public Advocate must investigate and make recommendations to the Guardianship and Administration Board on a broad range of issues including:

- ▶ Private company interests held by the proposed represented person.
- ▶ The liability of administrators who have failed to act in the best interests of the represented person (e.g. inappropriate investments and gifting of funds).
- ▶ The viability of the retention or sale of property in the best interests of the represented person.
- ▶ Allegations of financial abuse or inappropriate transactions by attorneys appointed under Enduring Powers of Attorney.
- ▶ The deposition of assets or funds to cater for the proposed represented person or represented person's wishes and intentions.

### **Abuse**

One hundred cases (22%) of the 459 cases provided with advocacy service involved allegations of abuse. These cases are highly complex and require intense investigation and advocacy.

In cases of financial abuse, which account for the highest number of new cases of alleged abuse (75% in 2001/2002), recommendations are usually made for the appointment of an administrator to take action for the recovery of funds.

The Public Advocate has also been involved in eight cases (11%) of alleged neglect of a person with a decision-making disability, and one case (1%) of alleged sexual abuse.

Where necessary, matters have been referred to the police.

### Guardianship and Administration Board Referrals

In accordance with the *Guardianship and Administration Act 1990*, section 97(1)(b)(iii), the Public Advocate is required to investigate or report on any question referred by the Board, in relation to any matter before the Board.

In 2001/2002, 87 directions were referred by the Guardianship and Administration Board compared to 75 in the previous year (up 16%).

### Rural Services

Wherever possible, the Public Advocate investigates the needs of people with a decision-making disability at their normal place of residence, including country regions. While the objective is to provide a more equitable service to people in rural and/or remote areas, it also poses significant resource challenges, most particularly in relation to travel time and associated expenses. The Public Advocate remains committed to providing an equitable service to regional Western Australia.

## Major Achievements and Outcomes 2001/2002

During 2001/2002, the Public Advocate:

- ▶ Provided independent advocacy for 459 people.
- ▶ Conducted 94 community-referred investigations in response to concerns or allegations about the safety or well being of a person with a decision-making disability.
- ▶ Achieved a 97% acceptance rate for recommendations made by the Public Advocate in the best interest of the proposed represented person, which were endorsed by the Guardianship and Administration Board.
- ▶ Successfully initiated a pilot project based in Bunbury to expand advocacy, investigations and guardianship services to clients in the South West.

## Systemic Advocacy

**Systemic advocacy informs Government, community and business organisations on the best interests of adults with decision-making disabilities in the development of legislation, policy and services.**

Many of the issues facing people with decision-making disabilities are caused by failures within systems. Each time advocacy is provided for an individual, whilst the problem is addressed for that person, it does not address legislative structure and policy issues. The systemic advocacy role undertaken by the Public Advocate aims to enhance and strengthen the principles of individual advocacy to the broader community.



Systemic advocacy focuses on the **cause** of the issues that need individual advocacy, and works to **resolve** them. This necessitates a longer term, strategic approach and often involves working with other agencies to effect change.

Another challenge is the diverse demographic base of our customers, who essentially come from four different disability groups (i.e. age-related disability, intellectual disability, mental illness and acquired brain injury). For each group, there are different key stakeholders, different State and Commonwealth legislative mandates, and different models of service delivery. Within each of these demographic groups, the respective population is another small sub-set, each with its own particular issues. Deciding where to best spend limited resources is an ongoing consideration for the Public Advocate.

## Initiatives and Achievements in 2001/2002

During 2001/2002, several significant systemic advocacy projects came to fruition, while others were initiated and include:

### Service Improvements

#### **The Needs of Indigenous People**

Indigenous people are under-represented in the Guardianship and Administration system. This is not unique to Western Australia. Staff of the Office of the Public Advocate and the members of the Guardianship and Administration Board had previously identified concerns about the system's response to Indigenous people and the need to better understand that interface.

The 1998 independent statutory review of the Board and the Office of the Public Advocate ("OPA") confirmed the need to look into the issues.

In early 2000 the Public Advocate commissioned a major project to research the issues and established a Steering Committee of Indigenous policy makers and service providers to advise the project consultants. A report of the findings was released in October 2001 and includes recommendations for change in respect of the Office of the Public Advocate and the Board. Key strategies will be considered over the next two years. Strategies include targeted community education packages, the identification of strategic networks and partnerships that will support both the Office of the Public Advocate and the Board to be more accessible, culturally sensitive and assist in the identification of alternatives to guardianship and administration for Indigenous people.

### **Clarification of the Role of Guardianship and the OPA within the Mental Health Services**

A need was identified for clarity about the role and function of Guardianship and the OPA. In partnership with the Metropolitan Mental Health Services an Information Sheet was developed specifically for mental health workers. This was endorsed by the Managers and has been widely promoted and well received in the Metropolitan Mental Health Services. The plan is for these guidelines to also be promoted to rural and remote area mental health staff.

### **Public Policy and Legislative Review**

The Unmet Needs Taskforce convened by the Minister for Disability Services, the Hon Sheila McHale MLA, was an initiative to clearly identify the issues and the need for accommodation in Western Australia. The Public Advocate provided data and information on the needs of represented persons to the Taskforce.

A report was submitted to the Minister for Disability Services in January 2002.

The Minister for Community Development, the Hon Shelia McHale MLA, established a Carers Recognition Act Executive Working Group and a Reference Group chaired by the Hon Ljiliana Ravlich MLC to develop legislation recognising the responsibilities and needs of carers. The Public Advocate was a member of the reference group of key stakeholders and participated in feedback on proposals for the draft legislation.

The approach taken was that the legislation should guide agencies in the development of best practice in engaging with carers and encourage agencies to work with carers to deliver the best outcomes for the people they care for and for carers.

### **The Need for Review of the *Criminal Law (Mentally Impaired Defendants) Act 1996***

One of the aims of the *Criminal Law (Mentally Impaired Defendants) Act 1996* is to protect the rights of people with decision-making disabilities in the criminal justice system.

The Minister for Health, the Hon Bob Kucera, MLA, has convened a review to consider the operation and effectiveness of the legislation, the need for continuation and effectiveness of the Mentally Impaired Defendants Review Board. The Office of the Public Advocate has been invited to be a member of the Stakeholder Steering Committee. The review is chaired by Professor D'Arcy Holman.

### **Professional Development**

The Nurses Board of WA is taking a leadership role in the convening of a working party to develop guidelines for nurses in the use of patient restraints in Western Australia.

While the guidelines are to assist nurses it is hoped that they will also assist others who deal with restraint in their working environment. The Public Advocate was invited to participate in a working party of key stakeholders convened by the Board.

Work on the draft was completed in June 2002 and is yet to be ratified by the Board.

## Partnerships with External Working Parties

The Public Advocate worked in close partnership with Government and non-Government agencies during the year. This included representation on several inter-agency committees and working parties at both a local and national level, addressing specific projects that affect the rights and well being of people with decision-making disabilities. Some of these are:

### **Access to Justice Working Party**

A long-standing high-level committee, under the auspices of the Disability Services Commission with senior representation from the Police Service, the Department of Justice, the Disability Services Commission, the Health Department and The Legal Aid Commission, and chaired by Justice Robert D Nicholson AO of the Federal Court. The working party aims to identify and promote strategies to address issues for people with decision-making disabilities who enter the Criminal Justice System.

### **WA Network for the Prevention of Elder Abuse**

A vital network coordinated by Advocare Inc, with representation from the Public Advocate, Office of Seniors' Interests, Churches of Christ Homes, City of Joondalup, PARK Mental Health, Department of Veterans Affairs, Silver Chain, University of Western Australia, Canning Division of General Practice, Curtin University and Community Policing. Also linked to the Australian Network for the Prevention of Elder Abuse. Its aim is to promote the safety and well being of older people in Western Australia, as well as increase community awareness and research about elder abuse issues, provide a medium for systemic advocacy work, and develop a database of elder abuse resources.

### **City of Joondalup Elder Protection Network**

A local network of providers under the auspices of the City of Joondalup, working together with support from the Public Advocate, the Office of Seniors' Interests and the Health Department, to promote better responses to incidents of elder abuse, and to older people who are at risk of abuse. The model was developed in Joondalup and is now being promoted to other local governments.

### **Australian Guardianship and Administration Committee**

This committee comprises Public Advocates, Public Trustees and Presidents of Guardianship and Administration Boards or their equivalent. The aim of this committee is to address issues impacting nationally on clients of the guardianship and administration system and promote consistency in practice.

## Submissions

During 2001/2002 the Public Advocate made submissions in response to a number of proposals for legislative change and reviews undertaken by other agencies with the aim of optimising the use of resources and improving outcomes for our customers. Submissions included:

- ▶ *Criminal Investigation (Identify Persons) Bill 2001*
- ▶ *Labour Relations Reform Bill 2002*
- ▶ *Surveillance Devices Bill 2001*
- ▶ *Review of the Disabilities Services Commission*
- ▶ *Disabilities Services Commission/Department of Health: Draft protocol in respect of people with intellectual disability and mental health disorders*
- ▶ *Review of the role of the Chief Psychiatrist and the Office of the Chief Psychiatrist*

# Guardian of Last Resort

*The appointment of the Public Advocate as guardian, when the appointment of a guardian is considered necessary, by the Guardianship and Administration Board and there is no one else suitable or available to take on this role.*

## Key Strategies

- ▶ Ensuring timely decisions are made in the best interests of the represented person.
- ▶ Protecting the represented person from neglect, exploitation and abuse.
- ▶ Ensuring, wherever possible, that decisions made on behalf of people for whom the Public Advocate has been appointed Guardian of Last Resort:
  - ▶ consider the wishes of the represented person either verbally expressed or intimated through previous lifestyle practices.
  - ▶ preserve personal autonomy.
  - ▶ enable the person to live in the community.
  - ▶ enable the person to participate in the life of their community.
  - ▶ encourage and assist the person to become capable of caring for themselves.
  - ▶ maintain supportive relationships.
  - ▶ maintain familiar cultural, linguistic and religious practices and contacts.

## Services Provided

During 2001/2002, the Public Advocate provided guardianship services to 206 people (i.e. 74 new appointments and 132 existing clients). This compares with a total of 162 people in the previous year. In June 2002, the Public Advocate had decision-making responsibility for 171 people with decision-making disabilities. This is the highest number of cases ever carried by the Office in one month, and 31% higher than the previous record of 131 at the same time last year.

### Guardian of Last Resort

	1998/1999	1999/2000	2000/2001	2001/2002	Trend	
					1 year	3 years
<b>Total for year</b>	95	133	162	<b>206</b>	+27%	+117%
<b>New Appointments</b>	38	59	60	<b>74</b>	+23%	+95%
<b>Carried Forward</b>	57	74	102	<b>132</b>	+29%	132%

## Performance Indicators

Effectiveness	1998/1999	1999/2000	2000/2001	2001/2002	Target
<b>2.1</b> The extent to which the problem precipitating the need for the Public Advocate to be appointed as Guardian of Last Resort has been resolved	92.8%	95%	100%	<b>100%</b>	90%

This indicator measures the extent to which the Public Advocate provides appropriate guardianship services when appointed to do so. Resolution of problems precipitating the need for appointment of the Public Advocate may include taking action to protect the represented person from neglect, abuse or exploitation, resolving conflict over major lifestyle decisions and/or providing legal consent. The indicator is derived by dividing the number of resolved Guardian of Last Resort cases by the total number of cases, excluding those cases where the person died during the period under review.

**2.1:** *Due to the small numbers involved, small fluctuations can result in high percentage changes from year to year. During 2001/2002, 35 cases were closed. Of these, 21 were resolved and 14 people died. The effectiveness rate was 10% higher than the target.*

Timeliness	1998/1999	1999/2000	2000/2001	2001/2002	Target
<b>2.2</b> Guardian of Last Resort appointments allocated within one working day	100%	98%	100%	<b>100%</b>	98%

The indicator measures the extent to which a represented person is provided with a substitute decision-maker to advance their best interests immediately after the need has been identified.

**2.2:** *The short time-line of appointments allocated within one working day reflects the importance of the Public Advocate formally delegating her authority promptly to a guardian to ensure that, if required, the necessary authority is available for important decisions to be made in a timely manner on behalf of the represented person.*

Efficiency	1998/1999	1999/2000	2000/2001	2001/2002	Target
<b>2.3</b> The average cost of providing advocacy and guardianship services	\$2,546	\$2,783	\$2,448	<b>\$2,499</b>	\$2,477

This indicator is calculated by dividing the total cost of providing advocacy and guardianship services by the number of advocacy and guardianship cases handled.

**2.3:** *The average cost of providing advocacy and guardianship during 2001/2002 was \$2,499 per person supported representing an increase of \$51 from the previous year.*

## Issues and Trends

### Demand

The demand for the Public Advocate to be appointed as Guardian of Last Resort is increasing. There were 74 new Guardian of Last Resort appointments in 2001/2002, reflecting a continuing trend in the need for guardianship services provided by the Public Advocate. This compares with 60 new appointments in the previous year.

In cases where a guardianship application is made, the Public Advocate has consistently been appointed more frequently than a private guardian with the exception of last financial year. In 2001/2002, 63 private guardianship appointments were made compared to the 74 new appointments to the Public Advocate.

Due to the complexity of cases in which the Public Advocate is appointed as Guardian of Last Resort, the appointment often extends beyond a 12-month period, thus resulting in an increasing number of cases carried forward each year:

- During 2001/2002, 132 appointments were carried forward (up 29%), compared to 102 from the previous year. This represents a 132% increase in cases carried forward over the past four years.
- In addition to new appointments, existing guardianship orders were reinstated in 23 cases.
- Of a combined total of 97 new and reinstated orders:
  - (96%) were for periods of between 1–5 years.

#### Length of Guardianship Order

	Number	Percentage
<b>5 yrs</b>	49	51%
<b>4 yrs</b>	-	0%
<b>3 yrs</b>	2	2%
<b>2 yrs</b>	15	15%
<b>1 yrs</b>	27	28%
<b>6 months</b>	3	3%
<b>3 months</b>	1	1%
<b>TOTAL</b>	97	100%

- 65 (85%) were limited guardianship orders consistent with the legislative principle requiring a preference for appointments to the specific area in which decision-making support is required.
- 32 (15%) were plenary guardianship orders to make all personal and lifestyle decisions on behalf of a represented person.

#### Authority Contained In Limited Guardianship Orders

Reason for Appointment	Number	Percentage
<b>Medical/Dental</b>	53	65%
<b>Accommodation</b>	49	60%
<b>With whom represented person is to live</b>	36	44%
<b>Education/Training</b>	2	2%
<b>Work</b>	3	3%
<b>With whom represented person is to associate</b>	21	26%
<b>Next Friend</b>	3	3%
<b>Guardian ad litem</b>	1	18%
<b>Other</b>	15	1%

**Condition Affecting Represented Person**

There is a continued need for Guardian of Last Resort across a range of demographic groups.

*Seniors*

The Public Advocate continues to make decisions on behalf of a significant number of seniors with dementia.

In 2001/2002, the Public Advocate was appointed as Guardian of Last Resort for 23 people with dementia which is comparable to last year's 24 appointments.

*People with Intellectual Disabilities*

The Public Advocate continues to be appointed as Guardian of Last Resort on behalf of a significant number of people with an intellectual disability.

During 2001/2002, out of 74 new appointments as Guardian of Last Resort, 28 people (38%) had an intellectual disability. This number remains high and reflects a continuing trend of people with an intellectual disability needing the appointment of the Public Advocate to make decisions on their behalf because there is either family conflict or no one else available or suitable to act.

**Condition Affecting Represented Person (for new appointments)**

	1998/1999		1999/2000		2000/2001		2001/2002	
	#	%	#	%	#	%	#	%
<b>Dementia</b>	16	42%	18	31%	24	40%	<b>23</b>	<b>31%</b>
<b>Intellectual Disability</b>	11	29%	32	54%	23	38%	<b>28</b>	<b>38%</b>
<b>Psychiatric Condition</b>	3	8%	2	3%	4	7%	<b>12</b>	<b>16%</b>
<b>Acquired brain injury</b>	6	16%	6	10%	9	15%	<b>11</b>	<b>15%</b>
<b>Other</b>	2	5%	1	2%	0	0%	<b>0</b>	<b>0%</b>
<b>TOTAL</b>	38		59		60		<b>74</b>	

**High Percentage of Represented Persons Partially Able to Contribute**

A significant number of people for whom the Public Advocate is appointed Guardian of Last Resort are partially able to contribute to the decision-making process. Of the combined total of 97 new and reinstated orders:

- ▶ 38 represented persons (39%) were partially able to contribute to decision-making.
- ▶ 31 represented persons (32%) were not able to contribute to decision-making.
- ▶ 28 represented persons (29%) were able to contribute to decision-making.

## Reasons for Guardianship

The two most common issues that precipitate the need for a guardian, and for which the Public Advocate is appointed as Guardian of Last Resort, relate to accommodation and medical/dental treatment.

### Accommodation

Decision-making authority in relation to accommodation is usually granted in situations where the person with a decision-making disability does not have family or friends to make decisions in their best interests, or where there is abuse or a dispute over a decision about where and with whom the person will live.

The need to make decisions about where a person with a decision-making disability will live continues to be the most common issue requiring appointment of the Public Advocate as Guardian of Last Resort. In 2001/2002, 38 new appointments (52%) related to accommodation compared to 25 in the previous year (up 52%).

The continued high number of appointments regarding accommodation issues seems to coincide with a continuing shortage of supported accommodation services for people with decision-making disabilities, as well as the need to consent to aged-care placements on behalf of people with dementia.

### Medical and Dental Treatment

Medical treatment authority is usually granted in situations where a represented person does not have family or friends who can make substitute decisions, or where there is dispute over a decision about medical treatment or the continuation of medical treatment.

During 2001/2002, the Public Advocate was appointed to make decisions on behalf of 17 new appointments (23%) requiring decisions to be made about their medical or dental treatment, compared to 27 in the previous year.

The decline in appointments for medical treatment decision-making can be attributed to the impact of the *Guardianship and Administration Amendment Act 2000 (WA)*, assented to in December 2000. The Act changed legislation in relation to medical and dental consent provisions by providing a hierarchy of people who can provide consent to treatment for people with decision making disabilities, without the need to apply to the Guardianship and Administration Board for the appointment of a guardian.



Issues for New Cases of Guardianship

	1998/1999		1999/2000		2000/2001		2001/2002	
	#	%	#	%	#	%	#	%
<b>Access to Services</b>	2	5%	6	10%	3	5%	<b>3</b>	<b>4%</b>
<b>Accommodation</b>	16	42%	27	46%	25	42%	<b>38</b>	<b>52%</b>
<b>Self Neglect</b>	1	3%	0	0	0	0%	<b>1</b>	<b>1%</b>
<b>Medical/Dental</b>	12	31.6%	22	37%	27	45%	<b>17</b>	<b>23%</b>
<b>Sterilisation</b>	1	3%	0	0	0	0%	<b>0</b>	<b>0%</b>
<b>Other Guardianship</b>	6	15.8%	3	5%	1	2%	<b>14</b>	<b>19%</b>
<b>Legal Issues</b>	0	-	1	2%	4	6%	<b>1</b>	<b>1%</b>
<b>Not Identified</b>	0	-	0	0	0	0%	<b>0</b>	<b>0%</b>
<b>TOTAL</b>	<b>38</b>		<b>59</b>		<b>60</b>		<b>74</b>	

**Abuse**

During 2001/2002, alleged abuse was involved in 17 (23%) out of 74 new cases in which the Public Advocate was appointed as Guardian of Last Resort.

Abuse Types

	1999/2000		2000/2001		2001/2002	
	#	%	#	%	#	%
<b>Physical</b>	0	0%	1	9%	<b>5</b>	<b>29%</b>
<b>Sexual</b>	2	10%	0	0%	<b>5</b>	<b>29%</b>
<b>Financial</b>	9	42%	6	55%	<b>4</b>	<b>24%</b>
<b>Psychological</b>	5	24%	0	0%	<b>1</b>	<b>6%</b>
<b>Neglect</b>	5	24%	4	36%	<b>2</b>	<b>12%</b>
<b>TOTAL</b>	<b>21</b>		<b>11</b>		<b>17</b>	

## Geographic Location of Represented Person

During 2001/2002, 61 out of 74 new appointments were made on behalf of people with a decision-making disability who lived in the metropolitan area and the remaining 13 that lived outside the metropolitan area.

Rural appointments pose particular challenges to the Public Advocate in establishing and sustaining personal contact with a represented person to ensure as much personal autonomy and respect for their wishes as possible. Nevertheless, the table below shows that the majority of new appointments relate to people living in the metropolitan area.

### Area in which Represented Person Lives (for new appointments)

	1999/2000	2000/2001	2001/2002
<b>Metropolitan</b>	52	53	<b>61</b>
<b>Rural</b>	7	7	<b>13</b>
<b>Rural</b> <i>South Western</i>	4	1	<b>5</b>
<i>Great South</i>	0	3	<b>0</b>
<i>Goldfields</i>	2	2	<b>0</b>
<i>Central Coast</i>	1	1	<b>6</b>
<i>North</i>	0	0	<b>2</b>
<i>Other</i>	0	0	<b>0</b>
<b>TOTAL</b>	59	60	<b>74</b>

## Cultural Background of Represented Person

Many people for whom the Public Advocate is appointed come from a diverse range of cultural backgrounds:

- ▶ twelve (12%) of new and reinstated appointments were made on behalf of people from an Aboriginal or Torres Strait Islander background.
- ▶ eleven (11%) of new and reinstated appointments were made on behalf of people from culturally and linguistically diverse backgrounds.

## Guardianship Challenges

The Public Advocate's role as Guardian of Last Resort is being confronted with even more complex and challenging decision-making in relation to personal and lifestyle issues. In particular:

### Need for Clarification of Guardianship/Case Management Role

The Public Advocate's role as guardian is as a legal decision-maker and not that of a case manager, service coordinator or a direct care-service provider. The Office does not have the authority or capacity to take on the role of providing day-to-day care. This does not negate the need for such care to be both available and provided but rather to acknowledge that the service provision or coordinating role does not rest with the Public Advocate and must remain the responsibility of the service agencies.

### Legal Issues

- ▶ Determining the role of a guardian when the represented person is subject to a community treatment order, or is involuntarily detained in an authorised hospital under the *Mental Health Act 1996*, because there is ambiguity around who has decision-making authority particularly in relation to accommodation decisions.
- ▶ Meeting the needs of a represented person who is on a custody order under the *Criminal Law (Mentally Impaired Defendants) Act 1996*, and detained at an authorised psychiatric hospital when there are insufficient community supports.
- ▶ Substantiating allegations of sexual abuse involving represented persons considered to be unreliable as witnesses due to their decision-making disability.

### Medical and Psychological Treatment Decisions

- ▶ Assessing the medical needs of represented persons who have complex medical conditions, chronic illnesses or are terminally ill.
- ▶ Determining the use of physical or chemical restraint.
- ▶ Assessing the reproductive rights of vulnerable women with decision-making disabilities.
- ▶ Consenting to programs for behavioural management of represented persons who have disruptive or self-injurious behaviour involving contentious treatment.

### Accommodation Decisions

- ▶ Finding accommodation when there is such a severe lack of secure and appropriate facilities for mentally impaired defendants (other than prison or an authorised hospital).
- ▶ Meeting the accommodation support requirements of people with decision-making disabilities who continue to abuse alcohol and/or illicit drugs.

- ▶ Securing individual support funding for represented persons in critical need of accommodation support.
- ▶ Taking into account the right of the represented person to remain in their own home rather than a residential care placement, when there are significant concerns about their self-care and associated risks.

### **Rural Services and Support**

- ▶ Providing an equitable service to represented persons who live in rural and regional areas.
- ▶ Securing appropriate accommodation and support services in rural areas.
- ▶ Meeting the agency's minimum standard of visiting all represented persons on a quarterly basis.

### **Working Relationships with Family and Interested Parties**

- ▶ Working with relatives who may be opposed to the involvement of the Public Advocate as guardian for their family member.
- ▶ Preserving the involvement of significant others when a represented person is removed from their care.
- ▶ Balancing the rights of the represented person to make their own decisions against their need for protection.

### **Workability of Guardianship Orders**

- ▶ The Public Advocate is given authority as guardian to investigate and make decisions in the best interests of people with decision-making disabilities. However the Public Advocate may not be able to enforce these decisions, for example making a person take medication or reside in a particular place, which then places them at risk.

## **Major Achievements and Outcomes**

Outputs used to measure the performance of Guardian of Last Resort focus primarily on the individual and specific needs of those people for whom the Public Advocate has been appointed substitute decision-maker. Likewise, service achievements that help promote the best interests of the Public Advocate's primary customers are similarly measured. For example, during 2001/2002, the Public Advocate has:

- ▶ made personal and lifestyle decisions for a total of 206 represented persons (consisting of 74 new appointments and 132 cases carried forward from the previous year).
- ▶ resolved the issue, that lead to the appointment of the Public Advocate, with a 100% effectiveness rate.

- ▮ exceeded the target for timeliness in allocating decision-making authority within one working day of appointment, with a 100% efficiency rate.
- ▮ advocated on behalf of represented persons involved in legal proceedings before the courts.
- ▮ ensured protection for vulnerable represented persons at risk of neglect, abuse or exploitation.
- ▮ secured individualised accommodation funding for represented persons through the Disability Services Commission.
- ▮ ensured the provision of culturally sensitive and appropriate services for Indigenous people, and people from diverse cultural and linguistic backgrounds.
- ▮ made medical treatment decisions in relation to palliative care, contraception and major and minor surgery.

## Administrator of Last Resort

Under the *Guardianship and Administration Act 1990*, the Public Advocate may be appointed as an Administrator of Last Resort (usually as a result of extraordinary circumstances) or upon the death of an appointed administrator under Section 99.

Where the Public Advocate takes on the role of Administrator following the death of the appointed administrator, an application would normally be made to the Guardianship and Administration Board for another appropriate person to be appointed to the role.

During 2001–2002, the Public Advocate was responsible for making administration decisions on behalf of five represented persons.

# Case Studies

## **CASE STUDY: 1** **Resolving a Legal Problem**

Mrs L is a widow and has a dementia. She was assessed by the Aged Care Assessment Team as needing residential care.

Mrs L's daughter has chosen a hostel that requires an in-going entry fee. The sale of Mrs L's home is needed to cover the cost of her hostel care.

Mrs L does not understand the offer and acceptance forms, or the transfer of land documentation. Nor does she have the capacity to sign these legal documents.

Given Mrs L's diagnosed decision-making disability, the Department of Land Administration (DOLA) requires proof of a legally appointed administrator to effect the sale of the property.

Mrs L's daughter applies to the Guardianship and Administration Board to be appointed her mother's administrator. This will enable her to make decisions on her mother's behalf, including the authority to sell Mrs L's home so she can move into an aged care hostel.

The legal problem has been resolved.

## **CASE STUDY: 2** **Safeguarding the Best Interests of a Person With a Decision-Making Disability**

Mr M is a widower who is virtually immobile and has dementia. He has been cared for at home for the past two years by Mrs E, a long-term friend.

The Silver Chain nurse who visits Mr M has become concerned for his care. Mr M has recurring bedsores which respond slowly to treatment and he has been losing weight for the past two months.

Mrs E disagrees with Mr M's nurse that he should be admitted into hospital for medical treatment and assessment.

Mr M is unable to indicate his wishes in relation to his care although it is evident that he is very fond of Mrs E.

Mrs M's nurse mentions applying for guardianship to determine who should make decisions on behalf of Mr M. Mrs E contacts the Office of the Public Advocate seeking help to maintain Mr M in his own home. A guardian arranges a meeting with Mr M, Mrs E and the nurse and facilitates an arrangement that all parties can agree upon.

Mr M will be admitted to hospital for two weeks to treat his bedsores and to diagnose his loss of weight. Mr M is then to be returned to the care of Mrs E with the help of respite assistance and care services in the home.

The situation is resolved satisfactorily as Mr M receives medical assistance and returns to his home and the need for a guardianship application is averted.

### **CASE STUDY: 3**

#### **Presumption of Competence**

The Public Advocate received a call from a professional who reported that her client, Ms S, might have lost the capacity to make decisions about the management of her finances. The professional's concern was that Ms S, a self funded retiree living in her own home, planned to lend almost all of her cash, a significant sum, to her daughter Ms C and would then derive income from the loan repayments.

Upon receiving this report, The Public Advocate commenced a Community-Referred Investigation (CRI) and contacted Ms S and her family members. Ms S's son, Mr J, was afraid that his mother would be leaving herself without any access to cash, should she need to purchase products or care, to maximise her ability to live independently. He was also afraid that his mother, who was not taking prescribed medication and was therefore physically ill, was also getting very forgetful. His concern was that his mother might have lost the capacity to make decisions in her best interests, regarding the management of her money. Although Mr J was afraid of creating conflict within the family he concluded that the financial risk to his mother outweighed his need to maintain family harmony and lodged an application for administration.

Ms S's daughter held the view that her mother was competent and as the loan would be secured by a first mortgage with the principal being able to be called upon without any reason, that her mother's funds would be well protected. She further considered that her mother should be able to benefit from the higher interest rate, than that offered by the bank, that would be payable if Ms S lent her the money.

The Public Advocate continued her investigation after the application was lodged and gathered further medical evidence regarding Ms S's competence. In this instance, specialist medical evidence was that Ms S was probably not competent to manage her financial affairs but had sufficient capacity to execute an Enduring Power of Attorney.

At the hearing the Public Advocate advocated that there was no evidence that Ms S did not have the capacity to execute an Enduring Power of Attorney and accordingly, there was a less restrictive alternative to an administration order available and that the application should be dismissed.

The Board upheld the Public Advocate's recommendation, the application was dismissed and Ms S executed an Enduring Power of Attorney.

## CASE STUDY: 4

### Medical Treatment Decision-Making

Mrs C applies to the Guardianship and Administration Board to be appointed guardian for her sister Ms D. Ms D has chronic schizophrenia and she has proved unable to guard herself against unwanted pregnancies and she lacks insight about her high-risk sexual activities.

The psychiatric social worker has tried numerous times during Ms D's hospital admissions to get her to attend relationship counselling to learn about safe sex and protective behaviours. Ms D has failed to attend any of these appointments.

Ms D has had a child taken into care two years ago and has had a recent miscarriage.

The treating medical team at the hospital have assessed Ms D as having little likelihood of caring for any future offspring and believe another pregnancy would be detrimental to her health and well being.

The Guardianship and Administration Board appoint Mrs C to be her sister's guardian. They are very impressed by Mrs C's caring attitude to her sister and her proposal to explore the contraceptive options for her. Mrs C was given a limited guardianship order for medical and health care treatment.



# Community Education

*Promoting community awareness and understanding of the Guardianship and Administration Act 1990, of sources of help and support available in the community, and of other options which may be an alternative to Guardianship and Administration.*

## Key Strategies

- ▶ To promote public and professional awareness and understanding about the rights and needs of people with decision-making disabilities, including access to resources, advice and support available to support and enhance their quality of life.
- ▶ To respond to public enquiries and initiate information and community education strategies that raise awareness about the principles, provisions, requirements and application of the *Guardianship and Administration Act 1990*.
- ▶ To provide published and electronic information and resources that directly and indirectly support service providers and the general community in making appropriate applications and/or referrals on behalf of people with decision-making disabilities.

## Performance Indicators

During 2000/2001, a rationalisation of performance measures for the Public Advocate resulted in a change to how the effectiveness of community education and information service responsibilities is assessed. The Department of Justice no longer requires these measures for auditing purposes.

Nevertheless, in order to continue and strengthen our Community Education services, and ensure that information and advice is adequately and effectively meeting the needs of our customers, customer satisfaction ratings are still collected for internal monitoring, refinement and improvement of service quality.

During 2001/2002, 90% of customers surveyed expressed their satisfaction with the information and advice provided by Community Education, compared to a satisfaction rating of 97% in 2000/2001 and 90% in 1999/2000.

## Services Provided

### Advice and Information

The Office responded to 3,556 enquiries on 4,469 topics.

The Telephone Advisory Service (TAS) provides an accessible point of contact for people who have a personal or professional interest in the rights and needs of people with decision-making disabilities. Advice and information is offered on a broad range of relevant issues for professionals, service providers and lay people.

During 2001/2002, almost all enquiries (97%) were handled through the Telephone Advisory Service. Information was provided to people (3%) in a personal interview.

### Topics of Enquiry

	1998/1999		1999/2000		2000/2001		2001/2002		Change	
	#	%	#	%	#	%	#	%	1 year	3 years
<b>Guardianship</b>	376	13%	509	13%	525	12%	<b>665</b>	12%	+3%	+61%
<b>Administration</b>	602	22%	762	20%	763	18%	<b>1,020</b>	18%	+1%	+30%
<b>EPA</b>	1,439	52%	2,087	54%	2,363	56%	<b>2,172</b>	48%	+13%	+52%
<b>General</b>	371	13%	521	13%	557	14%	<b>612</b>	14%	+7%	+189%
<b>TOTAL</b>	2,788		3,879		4,208		<b>4,469</b>		+8%	+58%

The number of enquiries received over the past four years has increased significantly across all topics. More than half of all enquiries over the past four years have related to Enduring Powers of Attorney. The number of general enquiries has increased 189% since 1998/99.

### Community Education

	1998/1999	1999/2000	2000/2001	2001/2002	Change	
					1 year	3 years
<b>Number of Enquiries</b>	2,382	3,405	3,584	<b>3,556</b>	-1%	49%
<b>Topics of Enquiry</b>	2,788	3,879	4,208	<b>4,469</b>	+6%	+60%
<b>Total Public Talks and Presentations</b>	51	84	71	<b>43</b>	-37%	-12%

Performance measures are based on the number of enquiries, and topics of enquiry. The overall number of enquiries was 3,556 in 2001/2002 which is comparable to 3,584 in 2000/01.

### Public Presentations and Training Seminars

A total of 45 public presentations and training seminars were held throughout 2001/2002, consisting of scheduled training for service providers and key professionals and groups, and information sessions requested by members of the public and/or community groups. Four country presentations were also held in Bunbury, Karratha, Broome and Port Hedland. A video conference was provided via multi-links to North West Service Providers.

#### Activity

	1998/1999	1999/2000	2000/2001	2001/2002
<b>Public Presentations</b>	37	64	56	<b>24</b>
<b>Country Presentations</b>	5	0	6	<b>4</b>
<b>Training Seminars for Service Providers</b>	5	4	2	<b>3</b>
<b>Administrators' Training Seminars</b>	4	5	5	<b>5</b>
<b>Professionals' EPA Forum</b>	n/a	1	2	<b>3</b>
<b>Community Seminars</b>				<b>4</b>
<b>TOTAL</b>	<b>51</b>	<b>84</b>	<b>71</b>	<b>43</b>

**Comment:** The total number of public presentations dropped from 71 to 45 due to the introduction of free community seminars and an agency focus on the provision of formal training seminars for professionals.

## Issues and Trends

### Service to Professionals

An expected increase in the number of people with decision-making disabilities, as a direct result of the ageing population, necessitates a much broader-based community response to protect and promote the rights of vulnerable people.

The key objective is to educate and inform appropriate and specific service providers, including medical practitioners, social workers and legal/financial professionals, about the provisions and safeguards available under the *Guardianship and Administration Act 1990*.

Some elements being developed or explored within the Community Education strategy include:

- ▶ the notion of training the Trainer to facilitate a compounding effect that would better reach multi-levels of relevant service providers and their respective customer and/or client groups.
- ▶ targeting medical specialists (i.e. doctors, psychiatrists) and legal/financial and/or banking professionals.
- ▶ tele-conference training via satellite from Perth to existing links located throughout the State to provide education to service providers located in rural and remote areas.

### Revenue Raising Options

- ▶ Products and training courses have been reviewed and developed to strengthen and increase Community Education resources.
- ▶ A third edition of the Guide for Service Providers was produced.

### Availability of Information and Advice

The availability of public information and advice about guardianship and administration is a key role of Community Education.

Top priority has been given to increasing community and professional awareness and utilisation of the Telephone Advisory Service (TAS), staffed from 8.30am – 5pm weekdays to provide one-on-one information and advice.

An important function of TAS is to provide a direct communication link to people in remote and isolated locations throughout Western Australia through its country toll free number.

## Major Achievements and Outcomes

During 2001/2002 the following outcomes were achieved:

- ▶ Responded to 3,556 enquiries (97% telephone, 3% personal interviews).
- ▶ Developed a new 24-hour Enduring Power of Attorney telephone information line to assist callers with their enquiries.
- ▶ Increased the level of resources available for Community Education through the sales of information products and training courses for service providers and professionals, which derived revenue of \$8,600 to recoup and cover costs.
- ▶ Provided four new Community Seminars for the general public on the topics of Guardianship and Administration and Enduring Power of Attorney.

# Corporate Services

*To ensure the services provided by the Public Advocate are supported through effective administration, management and information systems and that government accountability requirements are fulfilled.*

## Key Strategies

- ▶ To plan and provide Office management and administration requirements.
- ▶ Financial and human resource management, procurement and physical resource management.

The Department of Justice provides the following support services to the Public Advocate:

- ▶ Asset Management
- ▶ Financial Services
- ▶ Human Resources
- ▶ Information Services
- ▶ Organisational Performance

The Public Advocate has a Corporate Services Service Level Agreement with the Department of Justice. Costs are proportionately allocated to the Public Advocate on an accrual basis and reflected in the Treasury Budget Statement.

## Outcomes

### **Staff Training and Development**

Training and staff development opportunities in the area of adult guardianship and administration are limited. However training opportunities have been identified and utilised at specialised conferences and courses available both in Western Australia, nationally and sometimes overseas.

Administrative staff (together with all other staff) participate in the Employee Performance Management System (EPMS), and are regularly given opportunities to participate in appropriate training courses designed to improve their knowledge and skills in a wide range of disciplines.

During 2001/2002, a total of \$7,776 was spent on Training and Development.

Seminars and workshops attended by staff included:

- ▶ Aged Care Standards Agency Seminar – July 2001
- ▶ Win-Win in E-Government Seminar – July 2001
- ▶ The Australian Association of Social Workers (WA) State Conference – August 2001
- ▶ Working with People with Challenging Behaviour Workshop – September 2001
- ▶ Duty of Care: Physical illness in people with mental illness (Research Launch) – October 2001
- ▶ Guardianship and Administration National Conference 2001 – October 2001
- ▶ Tenth International Women in Leadership Conference – November 2001
- ▶ Mental Health: The Past, Present and Future Conference – November 2001
- ▶ Western Australian Council of Social Services “A Voice for Children” seminar – December 2001
- ▶ Forum on what constitutes Domestic Violence – December 2001
- ▶ Women in Leadership Forums – October 2001/December 2001
- ▶ Competency and Dementia Presentation – April 2002
- ▶ 2002 Grace Vaughan Memorial Lecture – Professor L L’Donoghue – April 2002
- ▶ People with disabilities and the criminal justice system seminar (Legal Aid) – June 2002

### **Equal Employment Opportunity and Recruitment Outcomes**

- ▶ The Public Advocate selects and employs staff in compliance with Equal Employment Opportunity legislation. There is currently 20 full-time equivalent staff (FTE), consisting of 14 female and six male staff.
- ▶ Staff come from a wide range of professional backgrounds and disciplines, including social work, psychology, accounting and the media. This diverse mix provides useful access to specialist skills that can be applied to tasks and issues ranging from the investigation of financial abuse, to substitute decision-making about highly sensitive matters.
- ▶ Recruitment selection processes ensure candidates have the necessary aptitude, skills and personal integrity to work in a highly challenging and demanding environment.

### Occupational Health and Safety

During 2001/2002, one employee has been covered through Worker's Compensation. A total of \$18,479 was refunded from the Insurance Commission of Western Australia to offset expenditure.

### Information Technology

The Office has developed a "purpose built" web-enabled, integrated client database management system called O.S.C.A.S (Office of the Public Advocate Statistical Collection Access System).

The database enables the recording of the history and demographics of matters where the Public Advocate has an involvement. It also enables the collation and reporting of output information to satisfy the Office's and Department of Justice's reporting requirements.

In addition, statistical information derived from the system will provide information for analysis to identify trends and issues, to assist with systemic advocacy planning and for research purposes.

## Finance and Budgeting

Financial and budget management is included as one output – Advocacy and Guardianship services under the Department of Justice appropriation. The budget allocation for the Public Advocate is included in the Department's Financial Statements and audited by the Office of the Auditor General.

A Financial Summary of the budget allocation and total expenditure on a net accrual cost (net expenditure and depreciation) basis, is provided below:

### Budget Summary

ITEM	\$'000 Actuals 2001/2002	\$'000 Budget Estimate 2001/2002	\$'000 Variations from Budget	Notes
Salaries and Allowances	1,137	1,145	(8.0)	
Administration Expenses	410	443	(33)	1
Building/Accommodation	129	115	14	
Revenue/Workers' Compensation Recoup	(39)	(82)	43	2
TOTAL	1,637	1,621	16.0	

1. The variance is caused by an over-allocation for superannuation expenses by the Department of Justice.
2. The variance is caused by an under recoup of workers' compensation of \$30,000 due to lower than anticipated claims.  
This occurred as a result of the unexpected resignation of a staff member on Riskcover entitlements.

**Advertising and Marketing Expenditure**

The Office of the Public Advocate includes the following statement relating to advertising, direct mail and market research expenditure, as required under section 175ZE of the *Electoral Act 1907*.

<b>Advertising</b>	<b>Amount (\$s)</b>
Marketforce Productions (Recruitment Advertisements)	6,659
Department of Premier and Cabinet (Intersector – Recruitment Advertising)	191
Direct Mail Organisation	0
Market Research Organisation	0
<b>TOTAL EXPENDITURE</b>	<b><u>6,856</u></b>



# Appendix

## Publications and Resources

### OFFICE OF THE PUBLIC ADVOCATE

- ▶ Office of the Public Advocate brochure (general introductory brochure)
- ▶ Customer Service Standards and Grievance Procedures brochure

### GUARDIANSHIP AND ADMINISTRATION BROCHURE SERIES

- ▶ An Introduction to Guardianship and Administration in Western Australia
- ▶ Before You Apply for Appointment of a Guardian or Administrator
- ▶ An Application has been Made for Appointment of a Guardian or Administrator
- ▶ You have been Appointed to Make Decisions on Behalf of a Person with a Decision-making Disability.

### ENDURING POWERS OF ATTORNEY

- ▶ Enduring Powers of Attorney – updated Information Kit and Form (Making a Decision to Safeguard Your Own Financial Future)
- ▶ EPA A4 Poster “The Power to Choose”

### PROFESSIONAL GUIDES

- ▶ A Guide for Service Providers 3rd Edition (Practice Manual) – (\$38.50)
- ▶ The Practical Guide to Enduring Powers of Attorney in Western Australia (Professional Guide) (\$30.25)

### RESEARCH REPORT

- ▶ Safeguarding the Financial Interests of Vulnerable Seniors
- ▶ Needs of Indigenous People in the Guardianship and Administration System in Western Australia (\$16.50)

### NEWSLETTER

- ▶ Office of the Public Advocate Newsletter (published twice a year)

### ANNUAL REPORT

- ▶ Annual Report of the Public Advocate

### VIDEO

- ▶ Guardianship and Administration (12 minute information videotape) (\$22.00)

### STATIC DISPLAY BOARDS

- ▶ Office of the Public Advocate and the Guardianship and Administration System
- ▶ Enduring Powers of Attorney
- ▶ Safeguarding the Financial Interests of Vulnerable Seniors