

**The Public Advocate of Western Australia**

annual report 2004-2005



Department of Justice  
Government of Western Australia

# Foreword

The Hon. John D'Orazio BSc, MPS, MLA  
Minister for Justice and Small Business

In accordance with Section 101(1) of the *Guardianship and Administration Act 1990* of Western Australia, I am pleased to submit the Annual Report of the Public Advocate for the financial year 2004-2005.

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

This report, prepared in accordance with that Act, records the operations and performance of my Office during the year ending 30 June 2005, and also reflects the issues and general trends impacting upon the estimated 65,000 people in Western Australia with a decision-making disability.



**Michelle Scott**

Public Advocate  
30 September 2005

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## About this report

The *Guardianship and Administration Act 1990* (the Act) is

“an Act to provide for the guardianship of adults who need assistance in their personal affairs, for the administration of the estates of persons who need assistance in their financial affairs ... to make provision for a power of attorney to operate after the donor has ceased to have legal capacity, and for connected purposes.”

The Public Advocate is an independent statutory officer appointed by Government under the Act.

The Public Advocate is required to prepare and submit to the responsible Minister, an Annual Report on the performance of her functions.

The Minister is required to table the Public Advocate's Annual Report in each House of State Parliament.

The Office of the Public Advocate is administratively responsible to the Department of Justice. Its financial and administrative accountability requirements are fulfilled through the Director General of the Department of Justice.

This Annual Report is available in PDF format on the Department of Justice website

**[www.justice.wa.gov.au](http://www.justice.wa.gov.au)**

Copies of this report are archived in the State Library of Western Australia and in the National Library, Canberra.

# The Office of the Public Advocate

## Mission

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

A decision-making disability results from a mental illness, intellectual disability, dementia or an acquired brain injury. The functions of the Public Advocate are primarily set out in Section 97 of the *Guardianship and Administration Act 1990*.

## Role

The Office of the Public Advocate provides a range of vital services to ensure that vulnerable Western Australians with a decision-making disability are protected. These services include:

- information, advice and training on how to protect the rights of people with decision-making disabilities;
- investigation of concerns about the wellbeing of a person with a disability and whether an administrator or guardian is required;
- investigation of specified applications made to the State Administrative Tribunal (SAT), formerly the Guardianship and Administration Board, to assist the SAT to determine whether a guardian or administrator is required; and
- guardianship services (for medical and lifestyle related decisions) when the SAT determines that there is no one else suitable or willing to act as the person's guardian.

### Public Advocate

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East Perth, Western Australia 6004

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The Office has a staff of 24, responsible to the Public Advocate and supported financially and administratively by the Department of Justice. The Office of the Public Advocate is part of a wide range of government and private agencies impacting on the reduction of risk of neglect, abuse and exploitation in the community.

## Providers of service

The Public Advocate serves three main groups of Western Australians:

- **Primary group**  
Western Australians who have a decision-making disability;
- **Secondary group**  
Carers or service providers who support people with a decision-making disability;
- **Potential users**  
These people do not, at present, have a decision-making disability. They seek to safeguard their financial future by implementing an Enduring Power of Attorney (EPA) in the event that they could lose their decision-making capacity.

As many as 65,000 Western Australians<sup>1</sup> may be limited in their capacity to make reasoned decisions in their own best interests due to:

- **Dementia**  
The number of Western Australians with moderate to severe dementia is estimated at 17,000, of whom 70 per cent have Alzheimer's disease. The growth of dementia in Western Australia is the third fastest in Australia, after the Northern Territory and Queensland. By 2050, the number of Western Australians with dementia is projected to increase to 79,000 (*Source: Access Economics, Dementia estimates and projections: Western Australia and its regions, February 2005*).

1. Australian Bureau of Statistics, Disability, Ageing and Carers, Type of Disability, Western Australia, 2003

# The Office of the Public Advocate

- **Intellectual disability**

Nearly 12,000 Western Australians who are registered users of the Disability Services Commission are classified as having a primary intellectual disability. (Source: *Disability Services Commission Annual Report 2003-2004*).

- **Acquired brain injury**

An estimated 19,000 Western Australians have a brain injury acquired as a result of trauma, disease or substance abuse. (Source: *Australian Institute of Health and Welfare, 2003*).

Each year, 600 additional Western Australians acquire a brain injury for which they require ongoing care. This may be as a result of stroke, substance abuse, tumour, trauma, poisoning, infection and disease, haemorrhage, AIDS and a number of other disorders such as Parkinson's disease and Multiple Sclerosis (Source: *Headwest*).

- **Mental Illness**

An estimated one in four people will develop a short or long-term mental illness that may affect their decision-making ability. In 1998 in Western Australia, more than 71,000 people were estimated to have a psychiatric disability. Not all such disabilities affect the ability to make decisions. (Source: *Australian Institute of Health and Welfare analysis of ABS 1998 Survey of Disability, Ageing and Carers confidentialised unit record file*).

## Our Values

The five principles set out in the *Guardianship and Administration Act 1990* guide the Public Advocate in the provision of all services. They are:

- **Best interests**

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

- **Presumption of competence**

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

- **Least restrictive alternative**

A guardian or administrator is only appointed when a person's needs cannot be met in a less restrictive way, without impacting on their freedom of decision and action.

- **Limited versus plenary**

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

- **Current wishes and previous actions**

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

## Accountability

The Public Advocate is an independent statutory office holder, appointed by Government and accountable to the Western Australian Minister for Justice.

# The year in review

## Public Advocate Reports on 2004-2005

Events of the past year have brought into sharp public focus, the role of the Public Advocate and the guardianship and administration system in Western Australia.

As an independent advocate for vulnerable adults with a decision-making disability in our community, my role this year included day-to-day decision-making as guardian for 303 Western Australians where it was deemed that no other person was able or willing to act in their best interests.



Michelle Scott

As an independent statutory office-holder, the Public Advocate also has a responsibility to represent the broader interests of those whose disability not only affects their capacity to make reasoned decisions but also restricts their power to protect their own rights and welfare.

***As an independent statutory office-holder, the Public Advocate also has a responsibility to represent the broader interests of those whose disability not only affects their capacity to make reasoned decisions but also restricts their power to protect their own rights and welfare.***

In 2004-2005 my Office also conducted more than 780 investigations, either into formal applications before the State Administrative Tribunal for the appointment of a guardian or administrator, or where there was a concern from a member of the community for the personal or financial welfare of a person with a decision-making disability.

Educating the professions and the community, particularly around the abuse and mistreatment of older people with a decision-making disability, was a continued focus this year. New ways of delivering community education are being developed.

Changes to the application process for and hearings into guardianship and administration matters resulting from the establishment of the new State Administrative Tribunal in January 2005 have presented challenges, met largely by the appointment of a full-time Public Advocate liaison officer, located at the new Tribunal.

The appointment of additional staff in my Office necessitated an upgrade of the accommodation and a review of the information technology needs of the Office.

This is reflected in the substantial strategic achievements of the Office this year including a comprehensive review of the *Guardianship and Administration Act 1990* and significant contributions to government inquiries, working parties and strategic policy in the areas of justice, mental health, disability, elder abuse and end-of-life decision-making.

The Public Advocate's role as an advocate for systemic change is endorsed by Government in recognition that adults with a decision-making disability are limited in their ability to influence policy and practice.

In particular this year I have received welcome support from key stakeholders in the disability sector, including the Director General of the Disability Services Commission and her staff, the Chief Psychiatrist and his office, and the Public Trustee and her staff, and the many Government and non-Government agencies which work with the Public Advocate to protect people with decision-making disabilities.

## The year in review



The Office Staff

***Speaking out on behalf of Western Australians with decision-making disabilities and promoting change to the way our society and systems treat people with disabilities has made for a full and challenging year.***

I also thank the staff of my Office for their enthusiastic and professional contribution to their work – as staff of a small statutory agency, their role is critical and their achievements are significant.

Speaking out on behalf of Western Australians with decision-making disabilities and promoting change to the way our society and systems treat people with disabilities has made for a full and challenging year.

Against this background I present the Report on Operations for the Office of the Public Advocate 2004-2005. It contains the achievements, challenges and an open account of the activities of the Office across the core businesses and includes an evaluation of the Office's performance against the key performance targets for the agency.



# Report on Operations 2004-2005

## A Voice for Western Australians with Decision-Making Disabilities

The enactment of the *Guardianship and Administration Act 1990* (the Act) in 1992 recognised that many adult Western Australians who had lost their ability to make decisions about their own lives, needed an independent office-holder to safeguard their best interests.

The Public Advocate is appointed by the Government to protect adults with decision-making disabilities who may be at risk of abuse, exploitation or neglect.

### Elder Abuse

#### **Major achievement in 2004-2005:**

*The Public Advocate facilitated, together with other agencies, the establishment of a Western Australian Alliance for the Prevention of Elder Abuse to ensure a whole-of government response to an issue that has a direct impact on the need for the appointment of a guardian or administrator.*

In 2002, Curtin University's Freemasons Centre for Research into Aged Care Services conducted research on the prevalence of elder abuse in Western Australia and concluded, based on cases reported to that study, that 75 per cent of people aged 65 years and over who experienced abuse had a decision-making disability.

In 2004-2005, the Public Advocate facilitated the Western Australian Alliance for the Prevention of Elder Abuse, together with the Office of Seniors' Interests and Volunteering and Advocare Incorporated, to develop further policy and programs in this area, with particular emphasis on Aboriginal and culturally and linguistically diverse (CALD) communities in Western Australia.

### Elder Abuse in Aboriginal Communities

#### **Major achievement in 2004-2005:**

*The Public Advocate undertook research to explore the issue of the mistreatment of older people in the Aboriginal community and worked with Aboriginal people to identify local responses to mistreatment of older people.*

Funding of \$25,000 (part of a \$50,000 grant from the State Government's Active Ageing Strategy) and an additional \$50,000 from the Aboriginal Policy and Services directorate of the Department of Justice enabled my Office to employ Aboriginal project officers Maxine Chi and Sharon Bedford to research the mistreatment of older people in Western Australian Aboriginal communities.

The project officers worked with Aboriginal people to identify and develop local responses to elder abuse. They were supported by a reference group comprising representatives of key stakeholders including the Aboriginal Legal Service (WA), Derbarl Yerrigan Health Service, Office of Seniors' Interests and Volunteering (OSIV), Advocare Inc, Indigenous Community Volunteers, and the Home and Community Care Program.

The three-month timeframe to conduct the research was brief but the project officers travelled to Broome, Fitzroy Crossing, the Eastern Goldfields and Albany and participated in a teleconference with remote service providers in the Kimberley. An information sheet about the project was circulated widely among Aboriginal agencies and communities and presentations were conducted for interest groups.

A brochure and wallet card explaining elder abuse and promoting the services of the Public Advocate were produced in an easy to read format.

***Aboriginal people who participated in this research project were very strong in voicing their concern that elder abuse and the mistreatment and neglect of older people does exist and is a major concern that affects many families within their communities.***

Aboriginal comedy characters Mary G (actor Mark Bin Bakar) and Baamba (Stephen Albert) were contracted to be the faces of a Care and Respect for Older People in Aboriginal Communities campaign and will feature in radio scripts developed for broadcast in 2005-2006 on the National Indigenous Radio Station Network across northern Western Australia and beyond.

Aboriginal people who participated in this research project were very strong in voicing their concern that elder abuse and the mistreatment and neglect of older people does exist and is a major concern that affects many families within their communities.

The report of this project will be presented to the State Government and key agencies and a summary of the findings will be distributed to Aboriginal people and organisations in 2005-2006.

I would like to acknowledge the valuable contribution of Aboriginal people and community-based organisations who participated in the research project and consultation process.

### **Elder Abuse in Culturally and Linguistically Diverse (CALD) Communities**

***Major initiative commenced 2004-2005 for completion in 2005-2006:***

*Develop local responses to the abuse of older people from culturally and linguistically diverse backgrounds.*

The Active Ageing Strategy provided \$25,000 to fund a similar study by project officer Paula Cristoffanini into the mistreatment of older people in CALD communities.

A reference group with representatives of key stakeholders including OSIV and CALD communities is guiding the project.

A promotional brochure was produced and translated into Vietnamese, Chinese, Italian, Greek, Dutch, Polish, Serbian and Croatian.

The research methodology will include single language forums for the purpose of consulting with older people from CALD backgrounds; phone consultations with individuals of CALD backgrounds who have either experienced elder abuse or have witnessed or suspect such abuse; and consultations with service providers.

The objectives of the project are to:

- identify whether elder abuse is an issue in CALD communities;
- begin to develop an understanding of what constitutes elder abuse in CALD communities and identify any unique issues for these communities and/or particular cultural and linguistic groups;
- gather the views of CALD people on how best to identify and respond to elder abuse when it occurs;
- identify appropriate ways to raise awareness of the issue of elder abuse in CALD communities; and
- identify priorities and strategies to further address the issue in the future.

This project is expected to be completed by December 2005.

## Advocating for People with Multiple and Complex Needs

### **Major initiative for 2005-2006:**

*Develop in conjunction with other Government agencies, innovative mechanisms for addressing the complex needs of people with a decision-making disability.*

In my report for 2003-2004, I expressed the need for a whole-of-government response to people with decision-making disabilities, particularly those with complex needs.

Concerns have been raised by human service agencies, clients, carers and their advocates about the failure of the current service system to respond effectively to the needs of people who have multiple and very complex problems.

Many of these individuals have decision-making disabilities, particularly a mental illness, an intellectual disability or an acquired brain injury. These individuals are not solely the responsibility of the Public Advocate and generally require the services and support of a range of departments and service providers.

The current service system is characterised by numerous government agencies with discrete portfolios and area(s) of responsibility. Service responses for these individuals are often provided in the context of a single agency in response to a crisis. This often results in poor outcomes for the individual and substantial cost to government.

Research undertaken in Victoria (2003)<sup>2</sup> indicates that the average cost of providing services for one year to an individual with complex and multiple needs is \$248,000 (and a staggering \$56 million totally on an annual basis).

I have proposed that the Western Australian Government undertake a Multiple and Complex Needs Project, incorporating a whole of government

***I have proposed that the State Government undertake a Multiple and Complex Needs Project, incorporating a whole of government approach to developing and implementing a coordinated case management system for these individuals.***

approach to developing and implementing a coordinated case management system for these individuals.

I am pleased that the Human Services Directors General Group has established a senior officers' group to undertake this work in the second half of 2005.

### **Protocol with the Disability Services Commission; Department for Community Development**

In the meantime, my Office has been proactive in protecting vulnerable adults with a decision-making disability. A protocol was developed in 2004-2005 between the Office of the Public Advocate and the Disability Services Commission which enables the two agencies to share information about vulnerable clients.

A new protocol with the Department for Community Development, currently being developed, will result in more effective future planning for young adults with a decision-making disability who are under a Departmental care and protection order and for whom a guardianship order may be appropriate once they turn 18 years of age. A system of managing individual cases over some months so that any transition is a smooth one or of finding suitable alternatives to a guardianship order will be finalised in the second half of 2005.

2. Responding to People with Multiple and Complex Needs, Phase 1 Report, Department of Human Services, Victoria, 2003, p.7

***Agencies must work together in the interest of vulnerable people – a key recommendation of the Government's Gordon Inquiry into the response of Government Agencies to Family Violence and Child Abuse in Aboriginal Communities, which has major implications for services across Government.***

These initiatives arise from the recognition that agencies must work together in the interest of vulnerable people – a key recommendation of the Government's Gordon Inquiry into the response of Government Agencies to Family Violence and Child Abuse in Aboriginal Communities, which has major implications for services across Government.

### **Submission to the Senate Select Committee on Mental Health**

I outlined a range of concerns regarding people with a mental illness in my submission to the Senate Select Committee inquiry in May 2005. People with acute mental illnesses need highly specialised mental health treatment, which is generally not available in prisons. Their health and well being is affected because of a lack of understanding of their illness and they may be vulnerable to being preyed upon by other prisoners.

Other concerns included the urgent need for specialist services and supported accommodation for people with a mental illness and/or acquired brain injury.

The Public Advocate has a number of clients who are living in substandard and inappropriate accommodation due to the lack of suitable accommodation options.

Some progress has been made in providing independent housing and support services for people who require low levels of support.

There are very few options available for people who require higher levels of support and supervision.

My submission to the Senate Inquiry also stressed the need for better planning and development of services for older people with a decision-making disability; and consent and detention issues under the *Mental Health Act 1996* (MHA).

I am aware of numerous examples of people who are in authorised psychiatric hospitals as voluntary patients but where there has been no valid consent to their admission. These individuals are unable or unwilling to consent to their admission and should, therefore, be made involuntary under the provisions of the MHA. There seems, however, to be reluctance by mental health practitioners to use the provisions of the MHA to detain them. My concern is that these individuals are not lawfully detained and, therefore, are not afforded the protection of their rights provided to involuntary patients under the MHA. This includes the review of their status by an independent tribunal and access to the Council of Official Visitors, who can advocate to ensure protection of their rights.

The select committee will report in early 2006.

***My submission to the Senate Inquiry also stressed the need for better planning and development of services for older people with a decision-making disability; and consent and detention issues under the Mental Health Act 1996.***

## A More Responsive Justice System

Responding to people with a decision-making disability is a growing challenge for the criminal justice system.

Figures from Western Australia's Department of Justice indicate that 30% of the adult prison population have been formally assessed as having a mental illness. These figures are considered to be conservative as not all prisoners with a mental illness are identified. In addition, people with an intellectual disability and/or an acquired brain injury are also coming into contact with the justice system (Victoria reports that 1.66% of that State's prison population is 'registered' as having an intellectual disability<sup>3</sup>).

Research has confirmed that people with decision-making disabilities are over-represented in the criminal justice system.

My Office has taken positive steps to address these issues and to facilitate change.

### **Mentally Impaired Accused Individuals**

I am particularly concerned about a small group of people who have been found unfit to stand trial or not guilty by reason of unsoundness of mind and who are being detained in prison. These individuals are under the control of the Mentally Impaired Accused Review Board (established under the *Criminal Law (Mentally Impaired Accused) Act 1996*). These individuals have not been convicted of a crime but can remain in prison

***Responding to people with a decision-making disability is a growing challenge for the criminal justice system.***

for long periods because of a lack of alternative secure options and concerns about community safety. The lack of alternative services impacts greatly on Aboriginal people from remote areas, who are unable to return to their local communities.

This issue came to public prominence in 2004-2005, with debate in Government, the community and in the media about the appropriateness of housing such individuals in prisons where their challenging behaviours may place them at increased risk to themselves, to other prisoners or to staff.

The *Criminal Law (Mentally Impaired Accused) Act 1996* provides that people who are unfit to stand trial may be held on a custody order in a 'declared place' but to date no places have been declared in Western Australia.

I welcome the progress made by the Access to Justice Working Party, of which I am a member, which has succeeded in placing on the agenda of the Government's Human Services Directors General Group, the issue of establishing a 'declared place/services' for mentally impaired accused who are unfit to stand trial.

***I welcome the progress made by the Access to Justice Working Party, of which I am a member, which has succeeded in placing on the agenda of the government's Human Services Directors General Group, the issue of establishing a 'declared place/services' for mentally impaired accused who are unfit to stand trial.***

3. Oliver, S. & O'Brien, M. (2003), From corrections to the community: The need for transitional support services for offenders with a cognitive disability, Office of the Public Advocate Victoria, Melbourne, pp11-12.

# Report on Operations 2004-2005

## **Report into Programs and Services For People with Decision-Making Disabilities within the Department of Justice**

This report, commenced by my Office in 2005, will be widely circulated in 2005-2006.

The report focuses on adults with decision-making disabilities who come into contact with the criminal justice system in Western Australia, bringing together information about court, prison and community based services.

As well as being a valuable audit of Department of Justice services in Western Australia, it discusses 11 systemic issues to be addressed to meet the needs of people with decision-making disabilities who come into contact with the justice system in Western Australia.

## **Submission to the Inquiry into the Management of Offenders in Custody and in the Community (Mahoney Inquiry)**

As I have indicated, offenders with decision-making disabilities who are acknowledged to be highly represented in the criminal justice system, need special consideration.

While there have been some important initiatives in recent years in this area such as the Intellectual Disability Diversion Program and the Community Forensic Mental Health Service, there is scope for substantial improvement.

I will complete a submission to the Inquiry, which is expected to report in 2005-2006.

## **A New Legislative Framework**

### **A Year of Transition – the Public Advocate and the State Administrative Tribunal (SAT)**

**Major achievement for 2004-2005:**  
*Implemented policies and procedures in conjunction with the newly created State Administrative Tribunal to improve quality of services to our clients.*

The *State Administrative Tribunal Act 2004* and associated enabling legislation came into force on 1 January, 2005 and the new Tribunal assumed the functions of the Guardianship and Administration Board on 24 January, 2005.

My Office planned ahead for an effective transition by establishing the position of the Public Advocate

liaison officer, located at the Tribunal. The liaison officer has an important role in providing information to members and staff, as well as ensuring appropriate referrals are made to my Office for investigation. My Office and the Human Rights Stream of SAT have also recently agreed on a range of policies and procedures to ensure that there is good communication and practice between both agencies.

Agreement has also been reached to provide a range of reports and documents electronically.

The SAT has its own portal on the Department of Justice website. All applications for guardianship, administration or intervention into Enduring Powers of Attorney are now made through the SAT.

### **Review of the Guardianship and Administration Act 1990**

**Major achievement for 2004-2005:**

*Undertook a major review of the Guardianship and Administration Act 1990 in order to overcome deficiencies in the Act and to further facilitate the protection of the rights of people with decision-making disabilities.*

**Major initiative for 2005-2006:**

*Develop amendments to the Guardianship and Administration Act 1990 to further protect Western Australians with a decision-making disability.*

I began a major review of the *Guardianship and Administration Act 1990* in July 2004, to ensure the legislation is contemporary and reflects developments in Australia and overseas.

In December, a discussion paper with 75 recommendations was forwarded to the SAT, the State Solicitor's Office, the Public Trustee and the Department of Land Information for comment. At 30 June 2005, responses to the discussion paper were being considered.

Further consultation will occur in 2005-2006 as well as the drafting for consideration by Government of amendments to the Act.

### **Medical Treatment for the Dying – Proposed Changes to Legislation in Western Australia**

I welcomed the release by the Attorney General, of a discussion paper on issues surrounding end-of-life decision-making. The discussion paper canvassed the rights of individuals to make decisions about their future health care and the protection of health professionals and substitute decision-makers from civil and criminal liability.

Currently, Western Australia has no legislation providing for advance health care planning or for enduring powers of guardianship. However, this legislation exists in most other States and Territories.

I am a member of the Government working group overseeing the consultation on the discussion paper "Medical Treatment for the Dying", along with representatives from the Department of Health, the State Solicitor's Office and the Director of Public Prosecutions.

I will prepare a submission on the issues raised in the discussion paper and look forward to future developments in this important area of reform.

## A Continuing Demand For Service

Most of the estimated 65,000 Western Australians with a decision-making disability rely on the committed support of family and friends. However, for a smaller number of Western Australians, this may not be possible.

In 2004-2005, the Public Advocate provided personal, medical and lifestyle decision-making as guardian of last resort for more than 300 Western Australian adults. The SAT may only appoint the Public Advocate when it is satisfied that there is no one else who is suitable or willing to act as guardian.

In response to the growing demand for guardianship services, two new guardians were appointed in 2004-2005, taking the total number of guardians to seven.

The appointment of a full-time liaison officer to the SAT has resulted in a more efficient process for referral of investigation matters to the Public Advocate from the Tribunal.

As well, there were 679 new referrals to the Public Advocate for investigation into the possible appointment of a guardian or administrator, 51 from members of the community.

An innovative community guardianship program commenced in March, with the aim of involving members of the community in guardianship services for people for whom the level of decision-making required is moderate.

### Community Guardianship Program

#### **Major achievement for 2004-2005:**

*Implemented an innovative community guardianship program to directly involve the community, including regional communities in guardianship services.*

The community guardianship program involves recruiting volunteers as guardians, raising community awareness and promoting community responsibility for guardianship.

Suitable volunteers will be appointed as guardians by the SAT upon application by the Public Advocate. They will be matched with a person with a decision-making disability using criteria such as location, similar cultural or language background, age and interests, and provided with ongoing training and support.

A part-time coordinator was appointed and work began to develop policies and procedures for the recruitment of volunteers and a promotional strategy, initially in the metropolitan area. Another part-time coordinator will be appointed in 2005-2006 when it is hoped the program can be extended to include regional areas.

This program will provide a more personal involvement with the person in need, by utilising the local knowledge of a community member and will also offer volunteers the opportunity to support vulnerable people in their community.

### **Case management**

Work began on developing an improved case management system to enhance the provision of service to people for whom the Public Advocate is appointed guardian and in relation to those individuals where the Public Advocate undertakes an investigation.



# Report on Operations 2004-2005

## Complaints management

The Public Advocate has had a policy in place for handling complaints about its service for some years. However, it is clear that improvements can be made to the way the Office manages complaints. I have reviewed the complaints management process and new procedures will be in place in 2005-2006 to record and investigate complaints, to report on the timeliness and efficiency of handling complaints and to track the progress of resolution. It will also identify issues for service improvement.

## New technology to service regional areas

The demand for the delivery of guardianship and investigation services and education about the guardianship and administration system, to regional and remote areas of Western Australia and, more particularly, to Aboriginal communities, is growing.

Videoconferencing equipment was installed in 2004-2005 with assistance from the Department of Justice's Courts Technology Group.

The first videoconference client meeting was conducted in May and planning is underway for a community education session for service providers to Aboriginal communities in the Pilbara.

## External Relations

### Media

There was widespread national and State media coverage about Government and community response to the needs of vulnerable adults.

I commented publicly about a number of issues including the way the mental health debate was portrayed in the media in Western Australia; the conviction and sentencing of a carer for theft by deception from an elderly client; and the rights of people with decision-making disabilities in the State's prisons. There has also been prominent coverage throughout the year about guardianship, end-of-life decision-making, the rights of the mentally ill and elder abuse.

I was interviewed extensively in the regional press and on regional radio about the research project into elder abuse in Aboriginal communities.

Media coverage of such issues reflects a wider concern in the community about the rights of vulnerable adults.

### Australian Guardianship and Administration Committee

I attended meetings in Sydney and Brisbane along with representatives from all Australian States and Territories. In June, I attended the *Disability and the Criminal Justice System: Achievements and Challenges Conference* and inspected the Victorian Forensic Mental Health facility.



**Michelle Scott**

Public Advocate  
30 September 2005

## Achievements and initiatives

In 2004-2005, the Office of the Public Advocate:

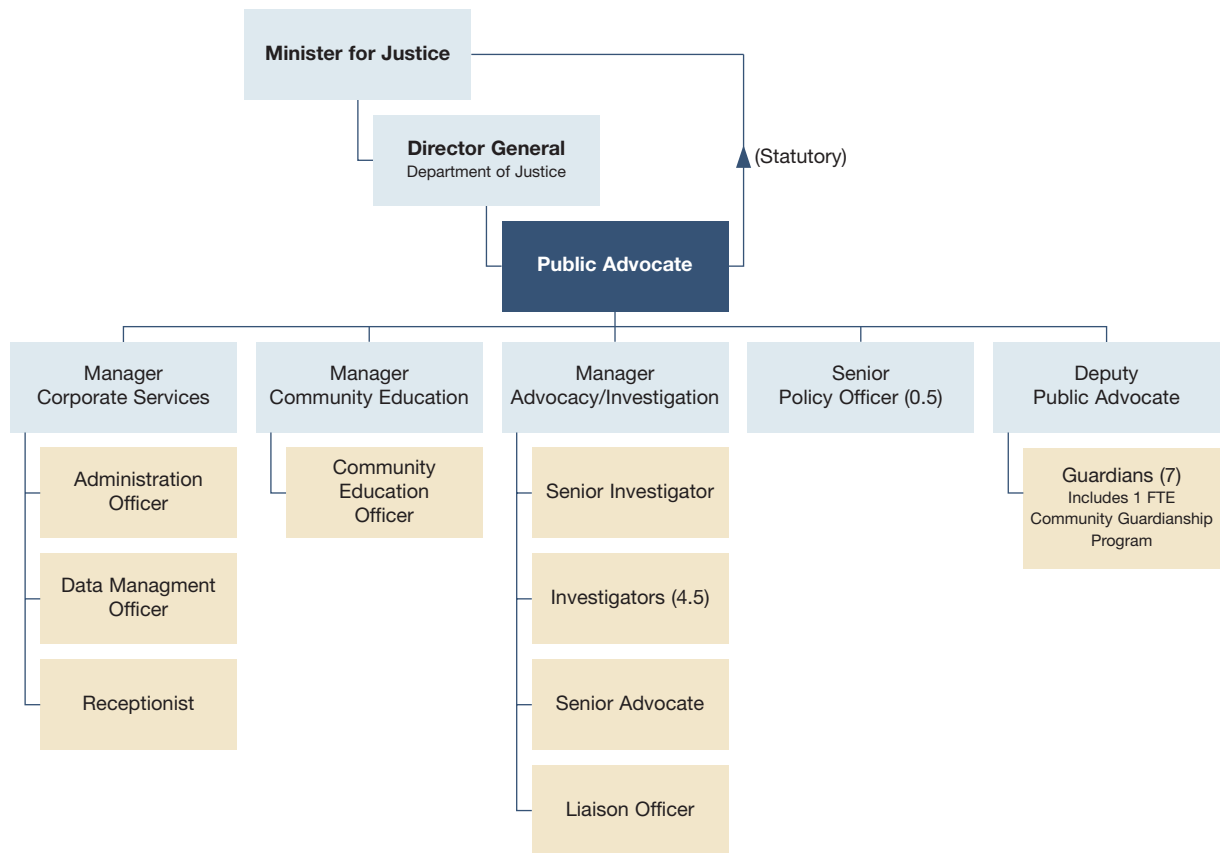
- conducted 783 investigations during the year
- responded to 73 community-referred investigations, and completed inquiries into 60
- was able to undertake investigations in 100% of all new cases identified as requiring investigation
- was appointed Guardian of Last Resort on behalf of an additional 85 people
- closed 71 Guardian of Last Resort cases, including the revocation of 56 cases by the Guardianship and Administration Board (before 24 January 2005) or subsequently, by the State Administrative Tribunal
- made personal, medical and lifestyle decisions for 303 people for whom the Public Advocate was guardian
- responded in person to 4,227 public enquiries for information and 81 after hours calls to guardians
- resolved the issue that led to the appointment of the Public Advocate with a 100% effectiveness rate
- had its recommendations adopted in 96% of matters referred for investigation by the State Administrative Tribunal into whether a guardian or administrator should be appointed
- allocated decision-making authority within one working day of the State Administrative Tribunal appointing a guardian, with a 93% efficiency rate
- continued to attract high levels of customer satisfaction with an overall satisfaction rate of 86% for guardianship services and 85% for investigation and advocacy services
- implemented an innovative community guardianship program to directly involve the community in guardianship services
- implemented policies and procedures in conjunction with the newly created State Administrative Tribunal
- undertook a major review of the *Guardianship and Administration Act 1990* in order to overcome deficiencies in the Act and to strengthen the protection of the rights of people with decision-making disabilities
- undertook research to explore the issue of the mistreatment of older people in the Aboriginal community and worked with Aboriginal people to identify local responses to mistreatment of older people
- produced for wide distribution throughout the State, publications to promote care and respect for older people in Aboriginal communities
- facilitated the establishment of the Alliance for the Prevention of Elder Abuse in Western Australia to ensure a whole-of-government response to elder abuse

## Future directions

In 2005-2006 the Public Advocate will:

- develop local responses to the abuse of older people from culturally and linguistically diverse backgrounds
- optimise the use of video-conferencing technology to expand the provision of community education, investigation and guardianship services to regional Western Australia
- draft amendments to the *Guardianship and Administration Act 1990*
- develop, in conjunction with other Government agencies, innovative mechanisms for addressing the complex needs of people with decision-making disabilities
- develop an improved case management system to enhance service provision to clients

# Organisational structure



## Resources

During the past year, the roles and responsibilities of the Public Advocate in relation to the needs of Western Australians with a decision-making disability and other key stakeholders were supported by:

**24 (FTE) staff** and total operating costs of \$2,425,422 (includes Department of Justice corporate overheads expenditure)

# Summary of key service areas

## Service Area – Corporate Services

### Objective

Supports through effective administration, management and information systems and ensures that Government accountability requirements are fulfilled.

### Function

- plans and provides Office management and administration requirements; and
- provides financial and human resource management, procurement, information technology and physical resource management.

These services are supported by the Department of Justice under a Service Level Agreement and costs are proportionately allocated to the Public Advocate and reflected in the Treasury Budget Statements.

## Service Area – Guardian of Last Resort

### Objective

Makes personal, medical and lifestyle decisions on behalf of people with a decision-making disability, when the State Administrative Tribunal considers that there is no one else suitable or willing to act.

### Function

- ensures that timely decisions are made in the best interests of the represented person;
- protects the represented person from neglect, exploitation and abuse; and
- ensures wherever possible that the decisions made on behalf of the person with the decision-making disability:
  - take into account the expressed wishes of the represented person or reflect their previous wishes and actions;
  - preserve personal autonomy;
  - enable the person to live and participate in the community;

- encourage and assists the person to make judgements and become capable of caring for themselves;
- are supportive of the person's relationships with others; and
- maintain familiar cultural, language and religious practices and contacts.

## Service Area – Investigation and Advocacy

### Objective

Investigates and makes recommendations in the best interests of people with decision-making disabilities, on the need for guardianship or administration at hearings of the State Administrative Tribunal, and in the community.

### Function

- examines and reports on whether it is in the best interest of adults with decision-making disabilities to have a guardian or administrator appointed by the State Administrative Tribunal;
- ensures that the appointment of a guardian or administrator is appropriate; is in the best interests of the person with the decision-making disability and is made only when there is no other way of meeting the person's needs;
- investigates any complaint or allegation from the community that a person may be at risk of neglect, exploitation or abuse and may be in need of a guardian or administrator;
- investigates whether a person held in custody under the *Criminal Law (Mentally Impaired Accused Act) 1996* is in need of an administrator; and
- informs and advises Government, community and business organisations on the best interests of adults with decision-making disabilities in the development of legislation, policy and services.

# Summary of key service areas

## Service Area – Community Education

### **Objective**

Helps promote the rights of people in Western Australia with decision-making disabilities through the provision and operation of the *Guardianship and Administration Act 1990* through community education, awareness and understanding.

### **Function**

- develops a framework for the delivery of effective community and professional education and training promoting the rights of people with a decision-making disability;
- publishes written and other material accessible to the community;
- develops partnerships with other government agencies, non-government organisations and community groups to disseminate information about the guardianship and administration system; and
- promotes family and community responsibility for guardianship.

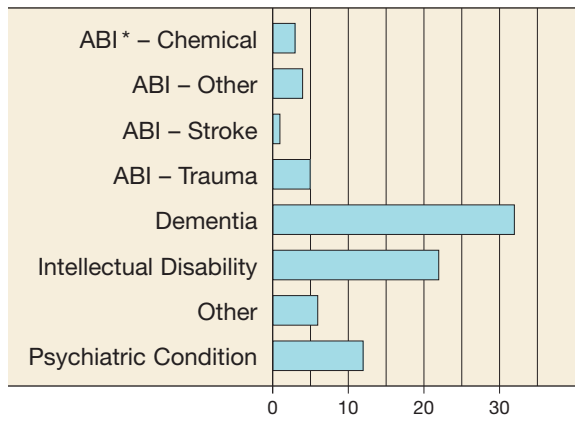
# Guardianship services

## Highlights

During 2004-2005, the Public Advocate made personal and lifestyle decisions for a total of 303 people, a significant caseload for the 7 FTE guardians. Those decisions included:

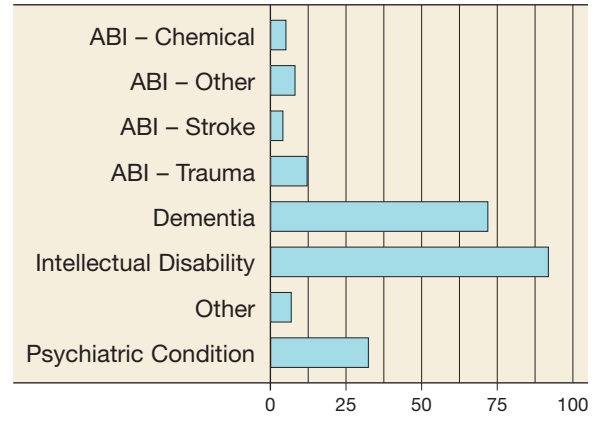
- medical treatment decisions about palliative care, contraception and major and minor surgery;
- determinations about the need for the physical or chemical restraint of a person with a decision-making disability;
- decisions about accommodation, including the securing of individual funding through the Disability Service Commission;
- decisions about supervised contact where there was a risk of abuse;
- liaison with Aboriginal agencies, service providers, communities and family members to ensure culturally appropriate practices for Aboriginal people;
- liaison with the Public Trustee as appointed administrator to determine lifestyle decisions with financial outcomes.

**Fig. 1 Profile by condition of disability of new guardianship orders appointing the Public Advocate.**

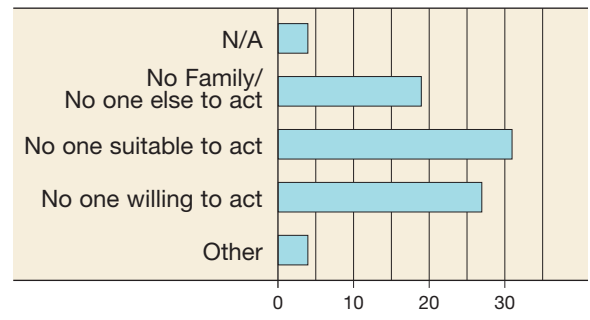


\*Acquired Brain Injury

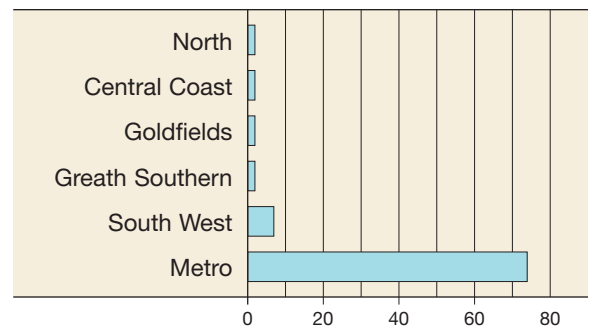
**Fig. 2 Profile by condition of disability of all guardianship orders appointing the Public Advocate at 30 June 2005**



**Fig. 3 Profile of new guardianship orders by reason for appointment**

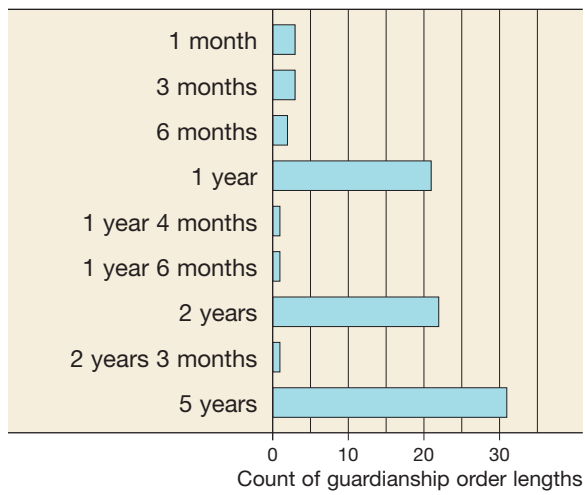


**Fig. 4 Profile of new guardianship orders by geographical location**



## Guardianship services

**Fig. 5 Length of new guardianship orders appointing the Public Advocate**



There were 85 new appointments (a 10% increase on the previous year), continuing a trend towards an increasing responsibility for guardianship services. Dementia was the most common disability type for the new appointment (38%), and in 78% of cases, the Public Advocate was appointed to make decisions about where the person was to live. Of the new orders, 6% were for Aboriginal people and at least 14 % were for people born outside Australia.

While dementia is the most common condition in new guardianship appointments for the Public Advocate (see Figure 1), the growth in the number of guardianship orders appointing the Public Advocate is dominated by people with intellectual disabilities (see Figure 2). This is due to the long average length of these orders – these orders may last 20 to 24 years on average.

The length of the guardianship orders made by the State Administrative Tribunal (SAT) varied from one month to 5 years but there was a reduction in the number of 5-year appointments, compared with 2003-2004 (31 compared with 45). This is consistent with the least restrictive alternative principle in the *Guardianship and Administration Act 1990*.

Of the 85 new guardianship orders, 81 were limited orders and 4 were plenary orders.

Abuse was a factor in 14 of the new cases (16%). Physical abuse was reported in four instances; there was one report of sexual abuse, two of psychological abuse, two of financial abuse and five reports of neglect.

The SAT confirmed the appointment of the Public Advocate as guardian in 22 instances, following review of the guardianship order.

At 30 June 2005 the Public Advocate was Guardian of Last Resort for 232 people. The SAT revoked 56 orders appointing the Public Advocate, where the appointment was considered no longer to be in the person's best interest or where a family member, carer or friend was identified as being a suitable guardian – this compares with 52 revoked orders in 2003-2004.

A community guardianship program coordinator was engaged and began developing policies and procedures in preparation for recruiting and training volunteers as guardians by December 2005.

***While dementia is the most common condition in new guardianship appointments ... the growth in the number of guardianship orders appointing the Public Advocate is dominated by people with intellectual disabilities.***



## Guardianship services

A memorandum of understanding completed with the Disability Services Commission, will provide a framework for ensuring information is shared appropriately when a person with a decision-making disability may be at risk.

A system to record and update key information about each person for whom the Public Advocate is guardian was developed to facilitate decision-making and action by guardians.

Guardians also took 81 after-hour calls in 2004-2005, and undertook considerable travel to visit people around the State.

Two new guardians were appointed in 2004-2005 with one position allocated to the Community Guardianship Program.

### **Challenges for guardians**

#### **Public Advocate as guardian for a person living overseas**

The reach and authority of the *Guardianship and Administration Act 1990* and of the Public Advocate, can extend beyond Western Australia, to other States and even overseas, as a decision this year by the Guardianship and Administration Board (now SAT) determined.

#### **End of life decision-making**

A decision of the Full Board of the Guardianship and Administration Board (now SAT), has clarified what is meant by "treatment" in Section 119 of the *Guardianship and Administration Act 1990*.

#### **Complex clients**

Delegated guardians are being required to make decisions for people with a decision-making disability who have multiple and complex needs. These people may have more than one diagnosed condition combined with a drug or alcohol problem and challenging behaviour. Sometimes as a result of their behaviour, they come into contact with the criminal justice system. Decision-making for such people involves the delegated guardian working with a number of agencies to provide an intensive level of support.

## Case studies

### Complex Guardianship Decision-Making

The Public Advocate was appointed Guardian with accommodation, medical treatment, contact and next friend authority for James, a 23-year-old man, who several years earlier had sustained a brain injury following a motor cycle accident.

Since the accident it was reported that James's use of illicit drugs and alcohol had escalated to the point that he was no longer managing his health or welfare. He was displaying aggressive behaviour, which had ostracised his family and friends, and he was now precluded from seeing his 3-year-old son since his relationship had ended with his de facto partner.

At the time of the Public Advocate's appointment, James had been evicted from his home, due to rent arrears and destruction of property. He also had overdue fines for convictions he had received. He was homeless and seeking shelter with drug-addicted acquaintances. It was clear his health was declining, due to his unstable and poor living circumstances, as evidenced by his extreme weight loss and persistent chest infections.

James's decision-making disability meant he lacked insight into his plight and refused offers of help from his family and all community-based services.

Upon appointment as guardian, the Public Advocate took immediate steps to ensure James would receive medical assistance and new accommodation. A care agency was selected which could provide case management. James was highly resistant to the initial approaches made by the care agency, however an emergency hospital admission for pneumonia saw a marked change in his disposition. James also expressed some relief in having family members visit him in hospital.

The Public Advocate provided consent for James's hospital treatment, located a new GP for him and helped him to obtain a referral for drug and alcohol counselling.

A new home was found for James and the Public Advocate on a number of occasions utilised her contact authority to expel unwanted 'guests' that attempted to exploit James's vulnerabilities. A highly desirable but fragile relationship with his family began to re-form.

Later, at James's request, the Public Advocate, through Legal Aid, successfully assisted him as next friend in the Family Court to gain regular supervised contact opportunities with his son.

### Public Advocate Appointed 'Next Friend' For a Person With Complex Needs

Sally is a 22 year old woman from a major regional centre who was diagnosed in her mid-teens with bipolar affective disorder and prescribed regular medication.

Sally's problems start when she stops taking her medication. Her family describe her as going "off the rails". Her mental illness and her general health deteriorate and she cannot control her behaviour, making her vulnerable and difficult to manage.

During one of these periods, Sally left home and moved to the city where she found accommodation with acquaintances. She was no longer in contact with either her doctor or her mental health team and dropped out of the system.

A neighbour, sensing her vulnerability, began visiting Sally on a regular basis and pressured her for sex and money. Sally's life began to spiral downwards and her mental condition and physical health further deteriorated.

Sally's older sister was living in the same city but felt powerless to help her. She contacted authorities but when a mental health worker went to visit Sally, he was verbally abused by the neighbour.

The neighbour then accused Sally of reporting him and he became physically aggressive.

After an urgent hearing, the Public Advocate was appointed guardian for Sally with next friend, accommodation, medical and contact authority.

The Public Advocate successfully sought a violence restraining order against the neighbour. Although Sally was ambivalent, she agreed to the Public Advocate's recommendation that she move to a psychiatric hostel in another area where her medication and safety could be supervised.

The delegated guardian monitored who could and could not visit Sally and arranged for her to see a new doctor who assessed her general health and tested her for sexually transmitted diseases.

The Public Advocate continues to ensure that Sally's wellbeing is safeguarded by the mental health services, supported accommodation and other services that have been put in place for her.

### The Least Restrictive Alternative

Sarah is 25 years old and lives in a group home that provides 24 hour support. Sarah has an intellectual disability and diabetes.

Sarah needed a guardian to consent to a general anaesthetic for minor surgery. The Public Advocate was appointed with authority to make decisions about her treatment and health care, as Sarah had no contact with her parents and their whereabouts were unknown. Sarah had no other family members or friends who could give medical consent on her behalf.

The surgery proceeded and was successful. The Public Advocate then continued to monitor Sarah's health.

After a year of being Sarah's guardian it was apparent to the Public Advocate that Sarah was very healthy and well cared for in the group home. Her diabetes was being well managed by her doctor and the care staff.

The Public Advocate asked the State Administrative Tribunal (SAT) to review the guardianship order.

The SAT revoked Sarah's guardianship order. It agreed that the issue leading to the Public Advocate's appointment had been resolved and there was no further need for a substitute decision-maker.

Sarah's comprehensive support system was sufficient to meet her needs without the restrictive appointment of a guardian.

### Appointing Public Advocate as Guardian Overseas

Late last year, the Full Board of the Guardianship and Administration Board in WA (now SAT) upheld the appointment of the Public Advocate as guardian for Mrs K, a 75 year-old woman with dementia.

The ruling set a precedent because Mrs K was at the time in the United States.

The Board initially appointed the Public Advocate as limited guardian for Mrs K in April 2004, while she and her husband were still living in Western Australia, after family members disagreed about where she was to live.

Mrs K's husband of 13 years, an American citizen, was appointed her plenary administrator. He wanted to return to the United States and take his wife. Other family members in Australia expressed concern that this would not be in Mrs K's best interests.

Within a month, while the Public Advocate was still negotiating Mrs K's future care, her husband, according to the Board's transcript of proceedings, "put in train arrangements for the removal of the represented person from Australia to ... the United States in contravention of the order of the Board".

With Mrs K now in the US, the Public Advocate questioned whether she had jurisdiction to act as guardian.

A single Board member, however, was satisfied that Mrs K was domiciled in Australia and that the Board had the authority to issue an order for guardianship.

The Full Board subsequently agreed. In its judgement it said that even though the processes to represent Mrs K were now largely rendered ineffectual, the need for an independent guardian to continue to seek to advance (her) interests outside the jurisdiction was palpable. At the same time, proceedings were under way in the United States.

The Public Advocate had input into the United States proceedings where Mrs K's husband was appointed her personal guardian, monitored by a court-appointed guardian. An independent guardian in the United States was also appointed for her estate.

### Withdrawal of Treatment

This application to the Guardianship and Administration Board (now SAT) followed the admission to hospital of Mr BTO, an elderly man who was found unconscious at his home. The hospital social worker asked the Board to appoint a guardian.

Mr BTO remained unconscious, unresponsive and unable to give consent to treatment or care. It was revealed he had suffered a large stroke and doctors then sought direction as to whether it was in his best interests to continue to be artificially fed and hydrated.

It was stated that if artificial feeding and hydration were removed, Mr BTO would most likely die within a matter of days.

In his decision, the President of the Full Board Justice Barker concluded that “the concept of treatment adopted by the Act appears to include not only medical or surgical procedures designed actively to treat a person’s illness or condition, but also the provision of care in the form of oversight of a person’s condition and medical advice as to (how) it may best be managed”.

In Mr BTO’s case “any action that might be taken in respect of the represented person to withdraw the non-natural provision of hydration and nourishment would, in the opinion of the Board, constitute “treatment” that may be lawfully provided to him with his consent or the consent of any person authorised by law to consent on his behalf under the Act.”

The Board’s judgement confirmed that a person in the hierarchy outlined by Section 119 of the *Guardianship and Administration Act 1990* (guardian, spouse or de facto, regular unpaid carer, nearest relative etc), can lawfully give consent to the withdrawal of non-natural hydration or nourishment.

Justice Barker did note that: “Decisions of this nature are extremely difficult to confront and to make. They go to the essence of our existence as human beings. They also involve complex questions of ethics, morality and law.”

In this case, the Board appointed Mr BTO’s son as plenary guardian.

# Investigation and Advocacy services

## Highlights

Applications for the appointment of guardians and administrators are lodged with the State Administrative Tribunal (SAT).

The large majority of the 679 new investigations undertaken by the Public Advocate in 2004-2005 were referred by the SAT (or before 24 January, by the Guardianship and Administration Board).

There were 51 matters referred by members of the community. Other matters requiring investigation were as a result of guardianship or administration applications, or review applications, filed to the SAT.

The referral framework developed in 2003-2004 was further refined in consultation with SAT. It is used to assess possible referrals to the Public Advocate. However, the SAT makes a final decision on the need for a Public Advocate investigation.

The position of Public Advocate liaison officer located at the Guardianship and Administration Board was established in 2003-2004 and permanently filled this year. The liaison officer has been instrumental in effecting a smooth transition to a new regime under the SAT.

The liaison officer:

- assists in the screening of applications and early identification of matters lodged with the SAT for possible involvement of the Public Advocate;
- identifies where mediation or a directions hearing could be useful;
- conducts brief investigations that may assist the SAT deal with the matter without further Public Advocate involvement;

- liaises with senior registry staff of SAT on matters of complexity and Public Advocate policy and practice;
- when requested, offers immediate on-site advice to SAT Members;
- when requested, attends hearings on short notice to further the best interests of the person with a decision-making disability; and
- when requested, offers advice to parties to SAT proceedings before and after hearings.

Since January 2005 the liaison officer has made 158 recommendations for investigation, conducted 14 brief investigations and attended 9 hearings and 4 consultations.

There were requests for 19 urgent assessments, mostly resulting in a recommendation for investigation. Urgent assessments were not undertaken by the liaison officer after 30 March, when the SAT assumed full responsibility for the assessment of urgent matters.

There were 144 allegations of abuse involving a person with a disability among the 679 new matters for investigation in 2004-2005.

In 81 of these cases (56%), the victim of the abuse was aged over 65.

Financial abuse was the most common form of abuse (59%), followed by physical abuse (13%), neglect (13%), sexual abuse (8%) and psychological abuse (6%).

The investigation figures again highlight the prevalence of dementia as a major disabling condition and a trigger for applications for guardianship and administration. In 47% of new investigations, dementia was the condition affecting the person with the disability.

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# Investigation and Advocacy services

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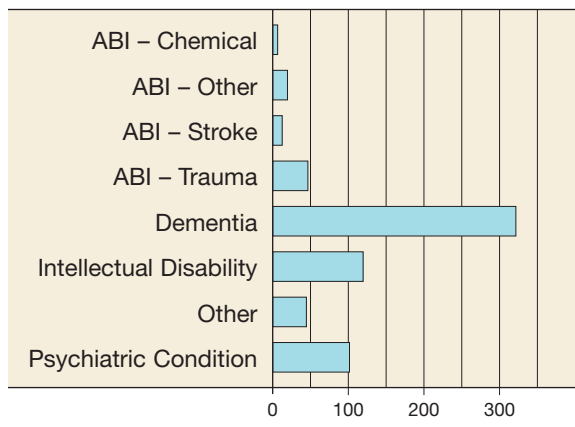
By contrast 17% of investigations were for people with an intellectual disability, 15% for people with a mental illness, and 12% for people with an acquired brain injury.

## Challenges for Advocacy and Investigation

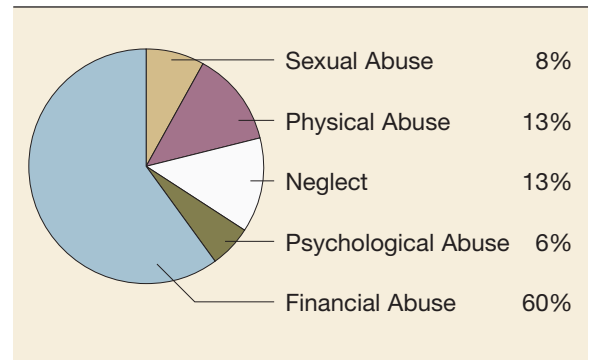
### The Public Advocate as Administrator of Last Resort

The Public Advocate successfully challenged her appointment in July 2004 by the Guardianship and Administration Board as administrator of the estate of Mrs SM. The Full Board ruled that the Public Advocate should not be appointed administrator if there was a suitable or willing alternative. The Full Board said that fees charged by the Public Trustee to manage an estate should not render it as unsuitable to be appointed.

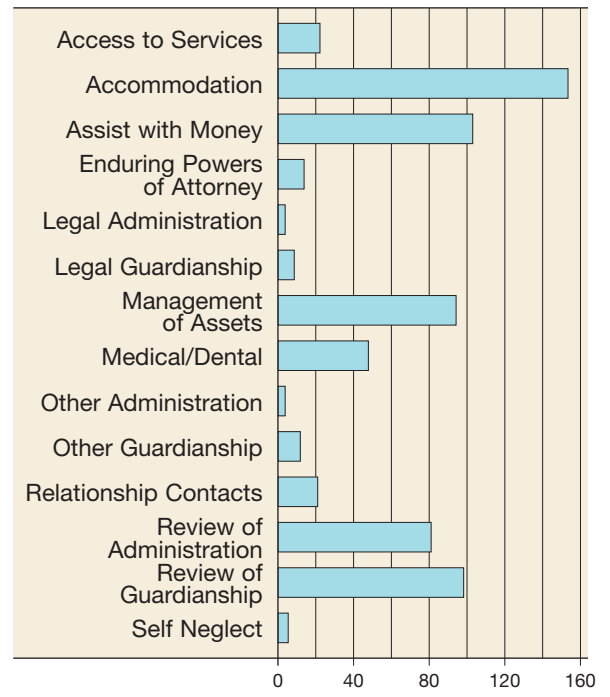
**Fig. 6 New referrals by condition of the person with a disability**



**Fig. 7 The type of abuse reported in new investigations in 2004-2005 where abuse is reported**



**Fig. 8 2004-2005 New investigations by issue**





## Case studies

### Where there is an Alternative to a Guardianship Order

Adam, a young Aboriginal man who was a ward of the State living in a country town, was about to turn 18. The Department for Community Development applied for the appointment of a guardian for Adam because his elderly carer felt unable to continue in the role and other family members felt unsure about making decisions for Adam. At the hearing the Public Advocate was appointed as limited guardian to decide where Adam should live and what culturally appropriate services were required to meet his complex health needs.

Adam's delegated guardian continued to consult with his family and began working closely with two family members and service providers to settle Adam into an appropriate accommodation option.

Once the support was in place, the family were willing to take over the decision-making role for Adam.

The Public Advocate then successfully applied to the State Administrative Tribunal to have the guardianship order reviewed. The SAT considered that the relevant family members, acting in Adam's best interests, offered a less restrictive alternative to formal guardianship. It revoked the order.

### OPA Investigation Rules Out The Need For a Guardian

Max, an elderly man with progressive dementia, was recently admitted from his nursing home, to hospital for urgent medical treatment. The nursing home did not provide any contact details to the hospital for Max's family or other people who knew him.

The Public Advocate was proposed as Max's guardian to give consent for medical treatment after the hospital made an application to the SAT.

Under Section 119 of the *Guardianship and Administration Act 1990* there is provision for people who maintain a close personal relationship with someone who has a decision-making disability, to provide medical consent for that person without needing to be appointed guardian. The Act sets out a hierarchy of people who can consent, which includes family members.

The Public Advocate's liaison officer at the State Administrative Tribunal was asked to assess Max's case for urgent attention. She undertook a brief investigation which revealed that in a recent accommodation move, contact details for Max's children were not transferred.

In fact, the children had visited Max at his new nursing home but their visit had gone unnoticed. The liaison officer contacted the children who were not only very willing to be involved in making decisions for Max's medical treatment but were concerned that the hospital had not contacted them in the first instance.

The children made direct contact with the treating doctor and the hospital successfully sought the withdrawal of the guardianship application.

## Community education

Boosting the promotion of the guardianship and administration system, the role of the Public Advocate and the rights of vulnerable adults in regional Western Australia and particularly among Aboriginal communities was the focus of the community education area in 2004-2005.

Guardians and investigators conducted 28 public presentations or training seminars with surveys at each session returning an overall satisfaction rate of 94% from participants. These were advertised on the Public Advocate's training calendar or coincided with regional visits by staff.

Of the total presentations, 26% were in regional Western Australia, compared with 15% in 2003-2004.

Training was also provided successfully by two video conferences involving 90 participants across a total of 20 sites across Western Australia. New videoconferencing equipment was installed in the Office of the Public Advocate.

The Office produced and developed brochures and wallet cards designed to promote the Public Advocate's role in the area of elder abuse and to encourage care and respect for older people in Aboriginal communities, after research as part of the Mistreatment of Older People in Aboriginal Communities project revealed the need for such material.

Training sessions for Aboriginal service providers were held in the Goldfields and in Geraldton. In the metropolitan area, 50 Aboriginal service providers attended an information session organised in conjunction with Advocare at the Noongar Alcohol and Substance Abuse Service centre in East Perth in May, 2005.

The Care and Respect for Older People brochures were also designed and printed for culturally and linguistically diverse communities. They were translated into Italian, Greek, Polish, Dutch, Serbian, Croatian, Vietnamese and Chinese.

Five Public Advocate position statements were drafted and published and the Guide for Service Providers, EPA Kit and Public Advocate Information Sheets were revised and reprinted to reflect the establishment of the State Administrative Tribunal.

Major changes were drafted to the Guardianship, Administration and Advocacy web pages on the Department of Justice website.

### Telephone Advisory Service

There were 4,227 calls to the Public Advocate's telephone advisory service in 2004-2005. The total number of calls was down on last year due to the first full year of a pre-recorded telephone information line that answered many public inquiries regarding enduring power of attorney. However, the complexity of issues has increased significantly. Staff answered inquiries about 5,000 separate topics.

**Fig. 9 Community education provided 2004-2005**

<b>OPA training calendar</b> (includes subscribed training for service providers, EPA and private administrator)	6
Information sessions for professionals (metro and regional)	11
Information sessions for community groups and the public	8
Training for Aboriginal service providers	3
Videoconferencing	2

## Mentally ill getting jail terms

REGINA TITELIUS

A lack of mental health services in WA is leading to an alarming number of people ending up in prison, with one in four metropolitan prisoners having a mental illness, according to WA's Public Advocate, Michelle Scott.

In her submission to the Senate select committee on mental health, which will be presented today at a public hearing in Perth, Ms Scott said mentally ill people were being jailed because there was a critical shortage of services.

## New unit for mentally ill defendants

JESSICA STRUTT AND NATALIE O'BRIEN

Nine mentally impaired defendants have been kept "warehoused" in WA jails for years at a time and faced the prospect of never being released because they were found unfit to stand trial for their alleged crimes. The cases, which include the so-called "ice-cream boy" who was jailed indefinitely 10 years ago for stealing an ice-cream and is being held in the special handling unit at Casuarina Prison, have prompted consistent calls for a dedicated facility to care for them.

housed" in jail because there was no other place to put them. Mr McGinty, a former British central intelligence agent, is formalising the program. However, he says he would like to see a dedicated unit for mentally ill defendants. It would also help reduce the brain damage caused by long-term imprisonment.

## Calls for purpose-built facility

By Megan Sadler and Alana Buckley-Carr

THE ongoing mental health issues of a Goldfields man, jailed indefinitely 10 years ago for stealing an ice cream, has sparked a call for a purpose-built facility because he poses a danger to society.

The calls come as the 25-year-old who was jailed indefinitely after being found incapable of standing trial due to years of chronic substance abuse, languishes in prison after being in and out of institutions for a decade.

"If prison is not an option then a proper facility needs to be developed. It is a health problem, it isn't a justice issue," Mr Eggington said.

"They are vulnerable and the harsh environment of the prison increases the chances of something happening to them.

"This young fella's case highlights the need for what we are calling for and what would be appropriate."

Eastern Goldfields

## Volunteers recruited for new guardianship roles

THE Office of the Public Advocate has launched a new community guardianship program.

The program will provide an opportunity for community involvement in supporting and protecting people who are vulnerable because they can no longer make reasoned decisions. Under the program,

suitably matched and trained guardian from the community may better serve a person's need," she said.

Public Advocate Michelle Scott secured funding for the program last year.

"Many vulnerable adults in the community could benefit from the support of a volunteer, especially one who shares their cultural or language background," Michelle said.

## Abuse of Aboriginal aged focus of new consultation

AN ABORIGINAL project officer has been recruited by the Office of the Public Advocate to research the abuse of older Aboriginal people throughout the State.

Maxine Chi will travel to remote and regional communities as part of the office's consultation process.

Aboriginal communities and holds a Master of Arts in Indigenous Research and Development from Curtin University. "People in remote communities often experience cultural or sexual abuse. Maxine's considerable experience working with Aboriginal communities will be a valuable asset."

## Rise in abuse of elderly

By Kym Daly

A BREAKDOWN in family values has been blamed for a rise in the abuse of elderly people in Goldfields indigenous communities.

Bega Garnbirringu Health Service counsellor and social worker Michael McGuinness said the mistreatment of elderly people was becoming "a big problem" in the region. While respect for elders has long been a feature of Aboriginal culture,

will consult with people and organisations providing services to people to identify elder abuse is a pair were in K week to canvas best to identify mistreatment.

The research, Curtin University suggested was presented to the House of Parliament last week.

## Parliament paves way for new super tribunal

LEGISLATION to establish the State Administrative Tribunal was passed by both Houses of Parliament last week.

The new tribunal, which is expected to become operational in January,

decisions by Government and industry boards.

It will also deal with a range of personal matters and commercial disputes.

With the legislation passed, Project Director Andrew Marshall said the project

ject to establish the tribunal at the nomination of the Chief Justice.

The first executive manager of the tribunal is expected to be announced on Monday after a formal process.

## Corporate services

The Office of the Public Advocate is supported administratively and financially by the Department of Justice.

The budget allocation and subsequent expenditure for 2004-2005 is as follows:

	<b>Total Cost of Output</b>
<b>\$'000 Actuals 2004-2005</b>	2,425
<b>\$'000 Budget 2004-2005</b>	2,344
<b>\$'000 Variations from Budget</b>	(81)

This year additional funding was provided to refurbish the Office, install videoconferencing facilities and to support research into elder abuse in Aboriginal communities.

The Office was refurbished to accommodate additional staff and to address some deficiencies. The fit-out included the relocation of the conference room to the first floor Office level.

The videoconferencing facility is compatible with the existing Government conferencing network.

Further efforts were made to enhance the Office's statistical information database to improve the integrity of the data collected.

Work began on a gap analysis study to identify the feasibility of an electronic case management system to support all service areas across the Office.

The Office's computers were upgraded and an information systems plan was developed to meet requirements for the next three years.

The Office's physical records were reviewed and rationalised in accordance with the *State Records Act 2000*. Confidential records have been securely archived.

Statewide advertising was conducted to fill three new positions in 2004-2005 with a recruitment consultant engaged to facilitate the process.

The Office employed a graduate for six months under the Department of Justice's graduate development program.

The Office's complaints management system was reviewed.

## Improving service

Each year the Public Advocate surveys customers of the guardianship and investigation services, asking them how satisfied they are with the level of access to staff and services; whether services are sensitive to people's needs; with the attention, professionalism and empathy shown by the staff; with the Office's response to criticism and complaints; with the information made available to relevant parties and with protection of their privacy.

Because the primary customers of the Public Advocate are people not able to make reasoned decisions for themselves, it is difficult to survey the group directly for feedback on customer satisfaction. The surveys are distributed to secondary customers, who have a direct personal or professional involvement in the lives of people with a decision-making ability.

The Public Advocate surveyed a representative sample of recipients of its guardianship and investigation services over three months from March to May 2005. There were 175 surveys sent to customers of guardianship services and 285 surveys sent to customers of investigation services.

There were 71 surveys returned by customers of the guardianship area (a response rate of 41%) and 75 by customers of the investigation area (26%).

The overall level of satisfaction for guardianship services (measured as an average percentage of those respondents who answered "satisfied" or "very satisfied" to nine areas surveyed) was 86%. The overall level of satisfaction for investigation services was 85%.

The result is particularly positive considering that the Public Advocate's involvement often occurs in cases of intense family conflict, where these factors can significantly impact on the satisfaction rating, particularly where difficult decisions are made.

***"I liked the open and honest approach whilst maintaining confidentiality. Great to see that the client's best interests are paramount and that my observations are considered in any decision-making by the Public Advocate"*** (respondent to Public Advocate Investigation Survey, 2005)

***"I have found both guardians open, approachable, professional and willing to tackle the hard issues. They have also been willing to consult and have given weight to the views of the person with a disability. This has made my role easier."***  
(respondent to Public Advocate Guardianship Survey, 2005)

The Public Advocate considers all recommendations and concerns expressed in the surveys, such as this comment from a rural and remote area service provider:

***"(The Public Advocate) is heavily reliant on existing local resources to provide a case management role and act as intermediary. This places additional pressure on already overburdened local resources."***

and this comment from a service provider who applied for guardianship for a person with a decision-making disability.

***"I was of the opinion that if a person didn't have any family, a guardian was there for emergencies, as needed, but it seems this is not the case. Also I was promised paper work that hasn't arrived. Thus at this time I feel the service could better service the disadvantaged people it is supposed to serve."***

The Public Advocate undertook to provide this respondent with relevant information and explained more fully that the role of the Public Advocate is as a substitute decision-maker.

# Summary of key audited performance indicators

*In Western Australia, the maintenance of a safe and orderly community requires that the state protects the rights of adults with reduced decision-making abilities.*

## Service: 9. Advocacy and Guardianship Services

To advocate for the best interests of people with decision-making disabilities, both at hearings of the State Administrative Tribunal, to decide the need for a guardian and/or administrator, and in the community to investigate complaints or allegations of abuse, exploitation or neglect; and to act as guardian when appointed by the State Administrative Tribunal.

*Note: The State Administrative Tribunal (SAT) handles matters that were previously the responsibility of the Guardianship and Administration Board (GAB). The GAB ceased to operate on 23 January 2005. The SAT assumed responsibilities for guardianship and administration matters from 24 January 2005. This change did not alter processes that relate to the calculation of the Office of the Public Advocate's performance indicators*

What the Office of the Public Advocate set out to do in 2004-2005:

### 9.1 Undertake investigations of concerns about the wellbeing of a person with a decision-making disability and whether an administrator or guardian is needed.

9.1	The proportion of cases provided with advocacy relative to the number in need of service
2003-04	97%
<b>2004-05</b>	<b>100%</b>
Target	95%

This indicator measures the extent to which OPA is able to protect the rights of adults with decision-making disabilities and reduces their risk of neglect, exploitation and abuse. The favourable result recorded this year, as compared to the budgeted target, is due in part to a reduction in the number of referrals received from the SAT.

### 9.2 Have the Public Advocate's recommendations in regard to applications for guardianship and administration accepted before the State Administrative Tribunal.

9.2	The extent to which advocacy service recommendations are accepted by the State Administrative Tribunal
2003-04	96%
<b>2004-05</b>	<b>96%</b>
Target	95%

Guardians and investigators advocate for the best interests of people with a decision-making disability by providing comprehensive information and proposals, when requested, to the SAT. A key measure of the success of advocacy is the acceptance of OPA's recommendations because those recommendations are based on 'best interest' principles of the *Guardianship and Administration Act 1990*.

## Summary of key audited performance indicators

### 9.3 Resolve the issue that led to the appointment of the Public Advocate as guardian.

9.3 Extent to which the problem precipitating the need for the Public Advocate to be appointed as Guardian of Last Resort has been resolved	
2003-04	100%
<b>2004-05</b>	<b>100%</b>
Target	95%

The Public Advocate is appointed by the SAT as Guardian of Last Resort when it is considered necessary and where no one else is suitable or available to take on the role of substitute decision-maker on behalf of the person with a decision-making disability. Resolution occurs when the Public Advocate's guardianship services help to resolve the problem prompting the initial application. Resolutions of problems range from protecting the person with the decision-making disability from neglect, abuse or exploitation; resolving conflict over major lifestyle decisions and providing legal consent.

### 9.4 Complete investigations within eight weeks of referral

9.4 Advocacy and community referred cases completed within eight weeks of receipt	
2003-04	74%
<b>2004-05</b>	<b>79%</b>
Target	63%

This indicator measures the performance of the Public Advocate to complete investigations and community referrals within eight weeks of them being allocated. It is to a large extent determined by the SAT as the SAT alone sets hearing dates for applications. Improved performance is directly related to the timeframe for scheduling set by the SAT.

### 9.5 Allocate guardian of last resort appointments within one working day

9.5 Guardian of Last Resort appointments allocated within one working day	
2003-04	94%
<b>2004-05</b>	<b>93%</b>
Target	95%

A guardian is appointed only when considered necessary by the SAT and when there is no one else suitable or available to take on the role. This indicator is based on the Public Advocate's best practice to ensure the needs of the represented person are met immediately.

### 9.6 Meet a target average cost per case of providing advocacy and guardianship services

9.6 The average cost of providing advocacy and guardianship services	
2003-04	\$1,725
<b>2004-05</b>	<b>\$2,219</b>
Target	\$2,270

This indicator is calculated by dividing the total number of advocacy and guardianship services by the total cost of providing the service. The variance between 2003-2004 and 2004-2005 actuals for the Office's efficiency indicator was due to an increase in expenditure for an additional two staff members. The Department of Justice also provided additional funding for office refurbishments, research projects and a video conferencing facility.



# Governance

## Access and equity

The Public Advocate ensures that all its services are accessible to the public, particularly in relation to gender, disability, ethnic origin and place of residence.

The Public Advocate's web pages are located at the Department of Justice website at [www.justice.wa.gov.au](http://www.justice.wa.gov.au) where more detailed information about the guardianship and administration system can be found under the heading *Guardianship, Administration and Advocacy*. The Enduring Power of Attorney kit can also be downloaded from this website.

The Public Advocate is also listed in the physical and electronic pages of the White Pages and in the Australian Government Directory.

## Freedom of information

The *Guardianship and Administration Act 1990* requires the Public Advocate to maintain the confidentiality of its customers and the details of any proceedings before the SAT. However, the Public Advocate will explain the basis for decision-making and wherever possible, will provide access to information if it is seen to be in the best interests of the represented person or proposed represented person.

In 2004-2005 the Public Advocate received two valid applications for information under the *Freedom of Information Act 1992*. Access in full was provided to one applicant and the other application was referred in full to another agency. The average time taken by the Public Advocate to respond to the matters was 11 days.

## Ombudsman complaints

In 2003-2004 a complaint lodged with the Public Advocate was referred to the Western Australian Ombudsman. The Ombudsman concluded this year that the complaint was unsubstantiated.

No formal complaints were received in 2004-2005.

## Disability services

The Public Advocate implemented all the recommendations of a disability access audit undertaken in 1998 and continues to monitor barriers that may inhibit equal access to services. Copies of any Public Advocate brochure or information sheet can be made available in alternative formats upon request. New publications for Aboriginal communities produced by the Office of the Public Advocate were designed to be easily read by people with glaucoma and other difficulties with vision.

All staff induction includes training in awareness and understanding of the needs of people with disabilities.

## Cultural diversity and language services

Copies of Public Advocate brochures and information sheets are made available in other languages on request. New community education brochures for culturally and linguistically diverse communities were translated into eight languages other than English.

To ensure that language is not a barrier to services for customers with limited fluency in English, the Public Advocate subscribes to translation and interpreter services. In 2004-2005 18 on-site interpreters and 9 telephone interpreters were used. The translation service was provided in Russian, Croatian, Portuguese and Vietnamese.

Staff attended a highly beneficial Aboriginal cross-cultural awareness training workshop in June, 2005.

## Advertising and marketing expenditure

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

Advertising amount	\$
Marketforce Productions: Recruitment Advertising and Community Education	2,428
Department of Premier and Cabinet: Intersector – Recruitment Advertising	460
Direct Mail Organisation	0
Market Research Organisation	0
<b>Total Expenditure</b>	<b>2,888</b>

## Legislative authority

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

## Waste Paper Recycling and Energy Smart Policy

The Office monitors and reports on energy consumption and wastepaper recycling in accordance with these policies. Energy consumption increased marginally in 2004-2005 as a result of the refurbishment of the Office and increased demand for computer equipment.

## Related legislation

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

- The State Administrative Tribunal Act 2004 and the State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004
- 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 Accused) Act 1996

## Management and accountability legislation

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

- The Equal Opportunity Act 1984
- The Public Sector Management Act 1994
- Freedom of Information Act 1992
- The Electoral Act 1907
- State Records Act 2000
- The Workers' Compensation and Rehabilitation Act 1981
- The Occupational Health and Safety Act 1984
- The State Supply Commission Act 1991
- The Financial Administration and Audit Act 1995
- The Public Interest Disclosure Act 2003

# Terminology

## **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 an interested party that a person is in need of a Guardian or Administrator, or is under inappropriate guardianship or administration.

This type of investigation is carried out under Section 97(1)(c) of the *Guardianship and Administration Act 1990*.

## **Enduring Power of Attorney (EPA):**

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

## **Guardianship:**

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

## **Individual Advocacy:**

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

## **Interested Parties:**

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

## **Limited Guardianship or Administration Order:**

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

## **Plenary Guardianship or Administration Order:**

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

## **Proposed Represented Person:**

Refers to the person for whom an application for appointment of a Guardian or Administrator is made.

## **Represented Person:**

Refers to a person for whom a Guardian or Administrator has been appointed.

## **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.

## Publications and resources

### Care and Respect for Older People (Prevention of Elder Abuse)

brochures and wallet cards

### Office of the Public Advocate Information Sheets

- Introduction to the Guardianship and Administration System
- Role of the Public Advocate
- Role of the State Administrative Tribunal
- Guardianship
- Administration
- Sterilisation
- Public Advocate – Customer Complaints and Service Standards
- Enduring Power of Attorney

### Enduring Power of Attorney Kit

- EPA A4 Poster "The Power to Choose"

### Professional guides

- A Guide For Service Providers 2005 Edition (Practice Manual) (\$38.50)
- Private Administrators' Guide (\$10.00 or free in the first instance to appointed administrators)
- The Practical Guide to Enduring Powers of Attorney in Western Australia (Professional Guide) 1999 Edition (\$30.25)

### Research reports

- Needs of Indigenous People in the Guardianship and Administration System in Western Australia (\$16.50)
- Safeguarding the Financial Interests of Vulnerable Seniors
- Office of the Public Advocate Newsletter (published twice a year)

### Annual Reports (PDF versions)

- Public Advocate Annual Report 2001-2002
- Public Advocate Annual Report 2002-2003
- Public Advocate Annual Report 2003-2004
- Public Advocate Annual Report 2004-2005