

**The Public Advocate of Western Australia**

annual report 2005-2006

*Protecting people with decision-making disabilities*



# Foreword

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

In accordance with Section 101(1) of the *Guardianship and Administration Act 1990* of Western Australia, I am pleased to submit the Annual Report of the Public Advocate for the financial year 2005-2006.

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 2006, and also reflects the issues and general trends impacting upon the estimated 65,300 people in Western Australia with a decision-making disability.



**Michelle Scott**  
Public Advocate  
30 September 2006

Office of the Public Advocate  
Level 1, 30 Terrace Road  
East Perth WA 6004

Telephone (08) 9278 7300 or 1800 807 437  
opa@justice.wa.gov.au  
**[www.justice.wa.gov.au/publicadvocate](http://www.justice.wa.gov.au/publicadvocate)**

# Contents

About this report	4
The Office of the Public Advocate	5
Public Advocate's Report on Operations	7
Achievements and initiatives	18
Challenges and future directions	19
Organisational structure	20
Key performance indicators	21
Key service areas	23
Improving service	25
Guardianship services	27
Advocacy, investigation and legal services	34
Community education	40
Corporate services	44
Governance	45
Terminology	48
Publications and resources	49

## 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 confer on the State Administrative Tribunal jurisdiction in respect of guardianship and administration matters, to provide for the appointment of a public officer with certain functions relative thereto, to make provision for a power of attorney to operate after the donor has ceased to have legal capacity, and for connected purposes”.

The Public Advocate is the 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 which is tabled in each House of State Parliament.

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

This Annual Report is available in PDF format on the Department of the Attorney General website at [www.justice.wa.gov.au/publicadvocate](http://www.justice.wa.gov.au/publicadvocate).

Copies of this report are held in the State Library of Western Australia, the National Library, Canberra and at [www.pandora.nla.gov.au](http://www.pandora.nla.gov.au), the Pandora Web Archive of the National Library.

# 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 decision-making disability and whether an administrator or guardian is required;
- investigation of specified applications made to the State Administrative Tribunal (SAT) to assist it to determine whether a guardian or administrator is required; and
- guardianship services (for personal, 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.

## 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.

An estimated 65,300<sup>1</sup> Western Australians have a reported mental or behavioural disability which may limit their ability to make reasoned decisions in their own best interests.

These disabilities include intellectual and developmental disability, psychoses, neuroses and other mental and behavioural disorders, or brain injury acquired after disease or trauma.

A decision-making disability may be as the result of:

- **Dementia**

In 2004 there were over 17,000 Western Australians with dementia. By mid century, that number is forecast to increase to over 79,000.<sup>2</sup> Consequently the proportion of Australians with dementia living in WA is projected to increase from 8.5% to 10.8%, moving closer to WA's share of the total population. The age distribution of Western Australians with dementia shows the rapid increase among those over 85, mirroring national trends.

- **Intellectual disability**

In 2004-2005 13,853 Western Australians were registered with the Disability Services Commission Western Australia as having a primary intellectual disability.<sup>3</sup>

1. Persons with a Disability by Main Health Status: mental and behavioural disorder specifically limiting or restricting a person, WA 2003; Australian Bureau of Statistics, 4430.0 Disability, Ageing and Carers, Table 11, 2004.

2. Access Economics, Dementia Estimates and Projections: Western Australia and its regions, 2005

3. Disability Services Commission Annual Report 2004-2005, p 57

- **Acquired brain injury**

More than 29,000 Western Australians are estimated to have a brain injury acquired as a result of trauma, stroke, disease or substance abuse.<sup>4</sup> Each year, Headwest<sup>5</sup> estimates 600 additional Western Australians acquire a brain injury for which they require ongoing care. This may be 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. Not all of these Western Australians have a decision-making disability.

- **Mental illness**

An estimated one in four people will develop a short or long-term mental illness at some stage in their lives that may affect their decision-making ability. In 1998 in Western Australia, more than 71,000 were reported to have a psychiatric disability. Again, not all may have a decision-making disability.<sup>6</sup>

## Our Values

The five principles established 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 finances 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.

## 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
- total operating costs of \$2,433,000 (includes Department of the Attorney General corporate expenditure).

## Accountability

The Public Advocate is an independent statutory office holder, appointed by Government and accountable to the Western Australian Attorney General (prior to February 1 2005, to the Minister for Justice).

The Office of the Public Advocate was supported administratively and financially by the Department of Justice from 1 July 2005 to 31 January 2006 and by the Department of the Attorney General from 1 February 2006.

4. Definition, Incidence and Prevalence of Acquired Brain Injury in Australia, Australian Institute of Health and Welfare, 1999

5. Acquired Brain Injury Accommodation and Support Needs, Stanton, 1994 ([www.headwest.asn.au](http://www.headwest.asn.au))

6. Australian Institute of Health and Welfare analysis of ABS 1998 Survey of Disability, Ageing and Carers, confidentialised unit record file

# Public Advocate's Report on Operations 2005-2006

The 2005-2006 year has been one of consolidation for the Office of the Public Advocate and preparation for the changes and challenges ahead for the guardianship and administration system in Western Australia.

The *Guardianship and Administration Act 1990* is founded on principles intended to safeguard and affirm the rights of the estimated 65,300<sup>7</sup> Western Australians unable because of illness,



Michelle Scott

## ***Abuse, particularly of older people, continues to be a factor in new referrals and appointments of the Public Advocate as guardian.***

disability or injury to make decisions about their lives that most in the community take for granted.

In 2005-2006, the task for my Office has been to uphold and promote these principles in day to day decision-making and at the broader systemic level.

Acting in the best interests of people with decision-making disabilities and in the least restrictive way possible, continues to be the priority for individual case management and at hearings into applications for guardianship and administration before the State Administrative Tribunal.

This year, my role included making personal, medical and lifestyle decisions as guardian for 325 Western Australians, including 93 new people for whom it was determined that no one else was available or willing to act in their best interests.

This represents an increase of 9.4% in new guardianship orders appointing the Public Advocate, significantly more than the 5.9% annual rise forecast in an independent study for my Office conducted in 2004.

More than 19% of the new appointments were for individuals living outside the metropolitan area. In addition, I was guardian for two people living

outside Western Australia, a situation which posed additional challenges for the Office in managing their welfare and wellbeing.

My Office also began or continued more than 600 investigations in 2005-2006, either at the request of the State Administrative Tribunal (SAT) after a formal application for guardianship or administration, or following complaint from members of the community.

Of the 595 new investigations in 2005-2006, 200 (34%) involved people living outside the metropolitan area.

A feature of both the new guardianship appointments and of investigations during 2005-2006 has been their increasing complexity, a factor recognised by Government in May 2006 when it allocated additional funding over four years to my Office to meet increasing demand for service, especially in regional Western Australia.

As the independent statutory office holder, I also sought in 2005-2006 to incorporate the broader interests and welfare of vulnerable adults with decision-making disabilities in government policy and to promote their rights in the wider community and in the media.

7. See footnote 1.

## Public Advocate's Report on Operations 2005-2006



### The Office Staff

**Standing (l-r):** Jay Townsend, Debra Casey, Gwen Sumatluck, Laurie Lehmann-Bybyk, Jenny Melville, Leah Broderick, Chris Paparo, Prem-Tej Sacha, Bethany Faye, Peter Watts, Jo Keane, Liz Palmela, Beverley Turner, Malcolm Innes, Caroline Gitonga, Kim Dudgeon, Helen Hart, Maryann Howley.

**Seated (l-r):** Robyn Baker, Gino Coniglio, Serena Dale, Gillian Lawson, Michelle Scott – Public Advocate, Lisa Jones, Tim Macintyre, Janine Hawker, Denise Fallon. *Absent:* Nola Bradshaw

### *Cross cultural training continues to be a priority for my Office with staff participating in a further Aboriginal cross-cultural awareness program in November 2005.*

Abuse, particularly of older people, continues to be a factor in new referrals and appointments of the Public Advocate as guardian.

Almost one in three (32%) of the new investigations undertaken by my Office in 2005-2006 involved allegations of abuse of the person with the decision-making disability. This compares with 21% in 2004-2005. Of the 189 matters where abuse was claimed, 33% involved a victim over the age of 65.

Financial abuse was the most common form of abuse.

As a founding member of the Western Australian Alliance for the Prevention of Elder Abuse,

I contributed to raising awareness of this issue in government, in the community and in the media.

In particular, a focus on abuse of older people in Aboriginal and culturally and linguistically diverse (CALD) communities, continued this year.

My report, *Mistreatment of Older People in Aboriginal Communities – An Investigation of Elder Abuse*, was released and widely circulated in November 2005.

This report, the first of its kind in Australia, made 15 recommendations which at 30 June 2006, were being progressed by the Office for Seniors Interests and Volunteering.



## Public Advocate's Report on Operations 2005-2006

The research received widespread coverage in local, State and national broadcast and print media, including Indigenous media, as an important first step in raising awareness and developing local solutions to elder abuse in Aboriginal communities.

Similar research into elder abuse in CALD communities, involving extensive community consultation, was undertaken in 2005-2006, with a report to be released in July 2006.

In August 2005 I also published a report on services within the then Department of Justice for people with decision-making disabilities and made submissions to a number of important inquiries and forums. These included the Inquiry into the Management of Offenders in Custody and in the Community (Mahoney Inquiry), the Attorney General's Discussion Paper on Medical Treatment for the Dying, draft legislation to introduce advanced health care planning and enduring powers of guardianship in Western Australia and the WA Law Reform Commission's discussion paper on Aboriginal Customary Law. Following my submission to the Senate Select Committee on Mental Health in 2004-2005, I was invited to appear before the Committee at its Perth hearings in September 2005.

Cross cultural training continues to be a priority for my Office with staff participating in a further Aboriginal cross-cultural awareness program in November 2005.

The delivery of community education, investigation and guardianship services to regional Western Australia was significantly enhanced by videoconferencing technology in 2005-2006, with 12 videoconferences conducted, including two multisite training sessions to remote areas of the Pilbara and Kimberley.

The Office also began investigating new ways of delivering and managing community education online.

A new Manager, Advocacy, Investigation and Legal was appointed in April 2006 and a review of the Corporate Services area aimed at improving administrative support to the Office resulted in a restructure of several positions.

I acknowledge and thank the staff of my Office for their professionalism and dedication, sometimes in difficult circumstances. The Attorney General, who visited the Office at my invitation in May 2006, noted their considerable efforts on behalf of people with disabilities.

Their many individual achievements in 2005-2006 combined to enhance the reputation of the Office of the Public Advocate across government and in the community as a hard-working agency.

The outcome for people with decision-making disabilities is greater security and certainty in their lives and enhanced protection from exploitation and abuse.

I present the Report on Operations for the Office of the Public Advocate 2005-2006. It incorporates the achievements, challenges and future directions for the Office as well as an open account of its activities across core business sectors.

It also includes an evaluation of the Office's performance against the targets for the agency.



**Michelle Scott**

Public Advocate

30 September 2006

***The outcome for people with decision-making disabilities is greater security and certainty in their lives and enhanced protection from exploitation and abuse.***

## Expanding services for vulnerable people

The *Guardianship and Administration Act 1990* (the Act), provides for the safety and security of vulnerable people with decision-making disabilities wherever they may reside in Western Australia.

In Western Australia the Public Advocate has statutory responsibility to:

- act as guardian of last resort for adults with decision-making disabilities, when appointed by the State Administrative Tribunal (SAT);
- conduct investigations on referral from the SAT and when allegations arise from the community that the wellbeing of a person with a decision-making disability may be jeopardised, to determine whether a guardian or investigator may need to be appointed; and
- provide specialist information and advice to protect and safeguard the interests of people with decision-making disabilities and promote public awareness about the provisions of the Act.

### Statistical forecasts

In Western Australia, not only did the median age of population increase in 2005, but the number of people aged 65 and over in Western Australia increased by 3.2%,<sup>8</sup> the fastest rate of increase in the nation.

The growth of dementia in Western Australia is the third fastest in Australia, after the Northern Territory and Queensland. According to Access Economics, 17,000 Western Australians are diagnosed with severe to moderate dementia with that number expected to double by 2015 and to reach 79,000 by 2050. People with dementia now dominate the total number of investigations and new guardianship appointments.

While dementia is the most common condition influencing new appointments, people with intellectual disabilities dominate the overall number of guardianship orders appointing the Public Advocate. These orders may continue for 20 to 24 years on average.

At 30 June 2006, I was guardian for 256 Western Australians (232 at 30 June 2005); and 38% of those had an intellectual disability.

These factors, together with the increasing complexity of guardianship and the vulnerability of people with decision-making disabilities to exploitation and abuse, mean the demand for both guardianship and investigation services will continue to rise.

### Regional and remote services

#### **Key achievement for 2005-2006**

*Expanded community education, investigation and guardianship services in regional Western Australia.*

#### **Key priority for 2006-2007**

*Develop initiatives to protect people with decision-making disabilities in regional and remote areas, particularly Aboriginal people.*

Demand for guardianship and investigation services in regional Western Australia increased in 2005-2006. Of new guardianship appointments, 19% were for people living outside the metropolitan area, compared with 13% in 2004-2005. Of new investigations, 34% were on behalf of people in regional or remote Western Australia, compared with 21% in 2004-2005.

8. Population by Age and Sex, Western Australia; Australian Bureau of Statistics, 3235.5.55.001, June 2005.

Videoconferencing assisted the Office of the Public Advocate to deliver in a cost-effective manner, more community education, investigation and guardianship services to regional Western Australia in 2005-2006.

A total of 12 videoconferences were held, including two multisite training sessions attended by 27 service providers working with vulnerable Aboriginal people in remote Kimberley and Pilbara communities.

Information sessions to introduce the guardianship and administration system to service providers in Aboriginal communities were held in Geraldton, Albany, Bunbury and Kalgoorlie-Boulder.

## Meeting demand

### **Key priority for 2006-07**

*Establish new staff positions to help reduce the risk of exploitation, abuse and neglect for people with multiple and complex needs living in the community.*

In May 2006, the State Government recognised the need to ensure communities throughout Western Australia receive essential guardianship and administration services by increasing funding to my Office for 2006-2007.

An additional \$2 million in funding over four years will provide critical services to:

- reduce the risk to people with decision-making disabilities who have multiple, complex problems and the increasing number of people with dementia in WA;
- protect Aboriginal people with decision-making disabilities under the *Guardianship and Administration Act 1990*; and
- ensure regional and remote communities also receive essential guardianship and investigation services and community education.

## Community Guardianship Program

I initiated planning for the Community Guardianship in 2004-2005 as a way of promoting community responsibility for people with decision-making disabilities.

Recruitment in November and December 2005 attracted more than 60 inquiries from interested members of the community keen to volunteer as a guardian for a person in their local area, in need of someone to make lifestyle decisions for them.

The decisions might include where a person might live, the types of services available to make their life more comfortable and consent for minor medical or dental treatment.

The first group of 15 selected volunteers participated in two training sessions and the process of matching each with a person in need of guardianship began in February 2006.

A briefing on the project was held for Members of the State Administrative Tribunal who will begin hearing applications for appointment of community guardians in 2006-2007.

The volunteers come from a wide range of professional and community backgrounds. They include former and current teachers and allied health professionals and many have extensive backgrounds in the disability sector.



**CGP volunteers** with Public Advocate Michelle Scott (second from left) and program coordinators Lisa Jones and Serena Dale (centre front).

## Legislative reform

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

#### **Key achievement for 2005-2006**

*Established a working group to progress amendments to the Guardianship and Administration Act 1990 to further protect Western Australians with a decision-making disability*

I conducted a major review of the Act in 2004-2005 and have proposed 75 recommendations for amendments to the Act.

The proposed amendments arise from the experience of the Public Advocate over the past decade and are informed by feedback from stakeholders over this period. This review builds on previous consultations and a review undertaken by the Public Advocate in 1998.

I am a member of the working group which was formed in February 2006 to progress the amendments and is chaired by the President of the State Administrative Tribunal. It also includes the Public Trustee and the State Solicitor's Office.

Further consultation will occur in 2006-2007.

### **Advanced health directives and Enduring Powers of Guardianship**

In July 2005, I prepared a submission to a discussion paper released by the Attorney General in support of proposed changes to legislation in Western Australia to provide for advanced health care planning and for enduring guardianship.

In June 2006, the Attorney General introduced new legislation into State Parliament to provide for advanced health directives and amendments to the *Guardianship and Administration Act 1990* to provide for an Enduring Power of Guardianship.

The proposed new laws incorporate many of the recommendations of my own review of the Act and of my response to a draft released in May 2006.

An advanced health directive would allow people over 18 years of age to stipulate what medical treatment they would like to receive, should they lose capacity to make that decision in the future.

Legislation to provide for an Enduring Power of Guardianship will be introduced at the same time, bringing Western Australia into line with most other States.

Under the proposed new legislation and amendments to the *Guardianship and Administration Act 1990*, people aged 18 years and over will also be able to appoint a substitute decision-maker with the authority to consent to medical treatment on their behalf and to make other lifestyle decisions, should they lose the capacity to do so themselves in the future. Currently in Western Australia there is no provision in law for people to complete an Enduring Power of Guardianship and my view is that reform is needed to bring Western Australia into line with the legislative framework in other States and Territories.

### **Aboriginal Customary Law and the guardianship and administration system**

The WA Law Reform Commission released a discussion paper in December 2005 making a number of proposals for recognition in the State's legal system of Aboriginal Customary Law.

The cultural appropriateness of the guardianship and administration system in Western Australia was one of the issues canvassed in this paper.

I made a submission in response to the discussion paper, highlighting the need for:

- further dialogue with Aboriginal communities on how the guardianship and administration system can meet Aboriginal people's needs and be better integrated with customary law;
- access to cultural consultants when investigating guardianship and administration matters;
- flexible solutions within the guardianship and administration legislation to accommodate cultural issues and Aboriginal customary law;
- capacity assessments which take Aboriginal culture into account;
- ongoing visibility of my Office in regional and rural areas and in relationships with Aboriginal communities; and
- further exploration and work with Aboriginal communities in the area of mistreatment of older people and people with disabilities.

I also indicated my concerns about the vulnerability of Aboriginal adults with decision-making disabilities who come into contact with the criminal justice system.

## Raising awareness of vulnerable older people in the community

### Local responses to elder abuse in Aboriginal communities

#### **Key achievement in 2005-2006**

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

#### **Key priority for 2006-2007**

*Further develop initiatives to protect and support older people in culturally and linguistically diverse communities.*

In November 2005 I released the report of research my Office undertook into elder abuse in Aboriginal communities in Western Australia with funding from the Government's Active Ageing Strategy and the Aboriginal Policy and Services Directorate of the Department of Justice.

The Mistreatment of Older People in Aboriginal Communities – an Investigation into Elder Abuse in Aboriginal Communities in Western Australia was officially launched by the Minister for Justice at a function at Derbarl Yerrigan Health Service in Perth in November 2005, attended by more than 75 representatives of organisations directly connected or providing service to Aboriginal people.

The report generated widespread interest among Aboriginal communities and organisations providing services to those communities and in the Western Australian and national media. It revealed that abuse of older people does exist and that communities will support local solutions, increased resources to address elder abuse and "speaking out" strongly about the issue.

The report recommended 15 strategies, among them:

- more appropriate housing and respite care services for elderly Aboriginal people;
- improved access to drug and alcohol rehabilitation;
- better training for Aboriginal carers;
- programs aimed at teaching young people respect for their elders;
- appropriate community awareness and education programs aimed at reducing the risk of elder abuse; and
- support for local initiatives aimed at countering elder abuse.

The Office for Seniors Interests and Volunteering began implementing these recommendations in the first half of 2006.

The research project received valuable support and guidance from a reference group which comprised representatives of Derbarl Yerrigan Health Service, the Aboriginal Legal Service WA, the Office for Seniors Interests and Volunteering, Indigenous Community Volunteers, the Home and Community Care Program, Advocare Inc and the Aboriginal Policy and Services Directorate of the Department of Justice.

Many Aboriginal people and organisations consulted expressed a strong desire that Government consider seriously the findings of this report and continue the consultation about what to do next. I thank them for their contribution. I am optimistic that this research project will guide Government and other relevant organisations on this issue.

### **Local responses to elder abuse in culturally and linguistically diverse communities**

I received \$25,000 from the Government's Active Ageing Strategy and \$13,000 from the Office for Seniors Interests and Volunteering to consult with people and organisations in culturally and linguistically diverse (CALD) communities about elder abuse.

I appointed a reference group which began meeting in July 2005, with representatives of key stakeholders to guide the consultation including:

- Office of Multicultural Interests;
- Office for Seniors Interests and Volunteering;
- Australian Asian Association of WA (Inc);
- Italo-Australian Welfare and Cultural Centre (Inc);
- Chung Wah Association;
- Serbo-Australian Information and Welfare Centre (Inc), and
- Umbrella Multicultural Community Care Services (Inc).

Project officer Paula Cristoffanini facilitated community forums with more than 200 CALD seniors and 30 service providers to CALD communities in the metropolitan area. A campaign involving the distribution of brochures in English and eight languages, and wallet cards produced in association with WA Police and the non-government organisation Advocare (Inc), was conducted between July and November 2005.

A report of the project with 14 recommendations was completed and is being considered by Government.

The report concludes that elder abuse is an issue in CALD communities and recommends significant strategies for government working in conjunction with organisations representing the many CALD communities, to develop local solutions to the exploitation, abuse and neglect of older people within those communities.

It will be released in July 2006 and distributed widely to organisations working with CALD seniors.

### **Alliance for the Prevention of Elder Abuse – APEA:WA**

As a member of the Western Australian Alliance for the Prevention of Elder Abuse, I joined the Public Trustee, Advocare Inc, the Office for Seniors Interests and Volunteering, WA Police, the Department of Health, the Office of the Chief Psychiatrist, the Disability Services Commission and the Legal Aid Commission to develop a range of programs to protect vulnerable older people from exploitation, abuse and neglect.

The Alliance works to promote a whole of government framework that values and supports the rights of older people.

The Alliance developed a draft protocol in June 2006 to assist in raising awareness in government and non government agencies about the recognition and response to elder abuse by a family member, friend or other person of trust. It launched a website with links to the Public Advocate's web pages in December 2005.

## A collaborative approach

### **Key achievement 2005-2006**

*Commenced to develop with other agencies innovative mechanisms for addressing the complex needs of people with decision-making disabilities*

### **Key priority for 2006-2007**

*Contribute to the development of a new service model for mentally impaired accused people who are currently detained in prison due to the lack of other service options*

Current service systems do not always respond effectively to the needs of people with multiple and complex problems.

Typically this means people with more than one disability and with a history of acts of harm against themselves or others, or where they are extremely vulnerable. Among this group are individuals with mental illness unable or declining to access mental health services, often experiencing the effects of substance abuse; victims of serious financial abuse, especially seniors; and people with a decision-making disability whose challenging and offending behaviour brings them into contact with the criminal justice system.

These individuals have complex needs and require intensive support. They often require high intensity involvement of the Public Advocate and other agencies to ensure they or the community are not at risk.

### **Multiple and Complex Needs Project**

Individuals with multiple and complex needs require the services and support of a range of government and community agencies.

My proposal that the State Government undertake a Multiple and Complex Needs Project, incorporating a whole of government approach to developing a coordinated case management system for these individuals was accepted and

work began in June 2006 on this project which is being coordinated by the Department of Premier and Cabinet.

The project is expected to be completed by December 2006.

### **Declared place/service model**

I am represented on an inter-departmental senior officer's group reporting to Directors General, which continued to work in 2005-2006 on developing a model for a "declared place" or "declared service" for mentally impaired accused people who are unfit to stand trial or who have been found not guilty of an offence due to unsoundness of mind.

The group is due to report in July 2006.

I am confident that ongoing inter-agency cooperation can result in the development of appropriate release plans for mentally impaired accused people who are inappropriately incarcerated in prison.

### **Protocols with other Government agencies**

I remain concerned that assaults, particularly sexual assaults, of people with decision-making disabilities are significantly under-reported in Western Australia.

In 2005-2006 I commenced discussions with the WA Police with the aim of developing a protocol for working with vulnerable adults with decision-making disabilities who are victims of alleged sexual assault.

Ongoing discussions were held in 2005-2006 with the Department for Community Development with a view to developing a less restrictive alternative to guardianship for people with decision-making disabilities who are under State care and protection orders, and who are approaching 18 years of age.

## **Report into Justice services**

In August 2005 I released a report into programs and services for people with decision-making disabilities in the Department of Justice in Western Australia.

It provides an overview of issues and needs for adults with decision-making disabilities who come into contact with the Department of Justice.

The intent of the report was to assist with future planning and service development for this vulnerable group of people.

I initiated this project because of concerns that people with decision-making disabilities are over-represented in the criminal justice system and their needs are not being adequately met.

The report documents the services and programs currently available for this group and identifies systemic issues and themes that require consideration to better address their needs.

Some of the findings of the report also formed the basis for a submission I made to the Inquiry into the Management of Offenders in Custody and in the Community (Mahoney Inquiry).

## **Senate Select Committee on Mental Health**

I was invited to appear before the Senate Select Committee on Mental Health at its hearings in Perth in September 2005.

My submission to the inquiry made particular reference to people with mental illness in prisons, the lack of suitable community accommodation options for mentally ill people, the need for joint agency planning and delivery of mental health services, and the urgent need for culturally appropriate services for Aboriginal people and people from culturally and linguistically diverse communities.

The report of the Committee, tabled in Federal Parliament in April 2006, made 13 recommendations which are being progressed by the Council of Australian Governments (COAG), the Federal and some State and Territory Governments.



## Improving service

### **Key achievement for 2005-06**

*Commenced a feasibility study on the most appropriate case management system to enhance service provision to OPA clients*

My Office has commenced planning to introduce a new electronic case management system to provide for improved service for clients of the guardianship and investigation services.

The new system will also replace the existing database system, Office of the Public Advocate Statistical Collection Access System (OSCAS).

A new complaints management system was introduced in 2005-2006 to achieve greater transparency and efficiency in responding to concerns.

Customers of the guardianship and investigation services were surveyed in April, May and June 2006 on the quality and accessibility of information about the Office of the Public Advocate on the Department of the Attorney General website.

The responses will be used to develop more accessible web presence and as the basis of an investigation into the provision of online training for community members and service providers.

## External relations

In March 2006, along with the Public Trustee and Members of the State Administrative Tribunal I welcomed delegates of the Australian Guardianship and Administration Committee to Perth for their bi-annual meeting.

The committee comprises representatives from all Australian States and Territories.

## Achievements and initiatives

In 2005-2006 the Office of the Public Advocate:

- made personal and lifestyle decisions for 325 people for whom the Public Advocate was guardian;
- conducted 595 new investigations during the year;
- responded to 87 new community-referred investigations;
- 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 93 people, an increase of 9.4% on new guardianship orders;
- closed 67 Guardian of Last Resort cases, including the revocation of 46 cases by the State Administrative Tribunal;
- responded in person to 4239 public enquiries for information and 114 after hours calls to guardians;
- allocated decision-making authority within one working day of the State Administrative Tribunal appointing a guardian, with a 93.5% efficiency rate;
- continued to attract high levels of customer satisfaction for guardianship and investigation services, recording an overall satisfaction rate of 82% for guardianship and an overall satisfaction rate of 85% in the investigations area;
- recruited and trained volunteers for a community guardianship program to directly involve the community in guardianship services;
- 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 mistreatment of older people in culturally and linguistically diverse (CALD) communities and worked with CALD service providers and communities to identify local responses to the mistreatment of older people;
- produced for wide distribution throughout the State, publications to promote care and respect for older people in CALD communities;
- provided information, education and advice to more than 500 service providers, community members and carers;
- achieved a 97% satisfaction rate in community education surveys asking respondents to rate the quality and benefit of information provided.

# Challenges and future directions

## Challenges

In 2005-2006 the Public Advocate faced the challenge of:

- reducing the risk to people with decision-making disabilities who have multiple, complex problems and the increasing number of people with dementia in WA;
- developing protocols with relevant agencies working with vulnerable adults with decision-making disabilities who are victims of alleged sexual assault;
- responding more effectively to Aboriginal people and their families;
- better meeting the needs of people with decision-making disabilities in the criminal justice system;
- improving service delivery to regional Western Australia;
- implementing a case management system that provides accessible, accurate and timely information to better evaluate programs and strategies.

## Future directions

In 2006-2007 the Public Advocate will:

- develop initiatives to protect people with decision-making disabilities in regional and remote areas, particularly Aboriginal people;
- establish new staff positions to help reduce the risk of exploitation, abuse and neglect for people with multiple and complex needs living in the community;
- further develop initiatives to protect and support older people in culturally and linguistically diverse communities;
- contribute to the development of a new service model for mentally impaired accused people who are currently detained in prison due to the lack of other service options.

# Organisational structure

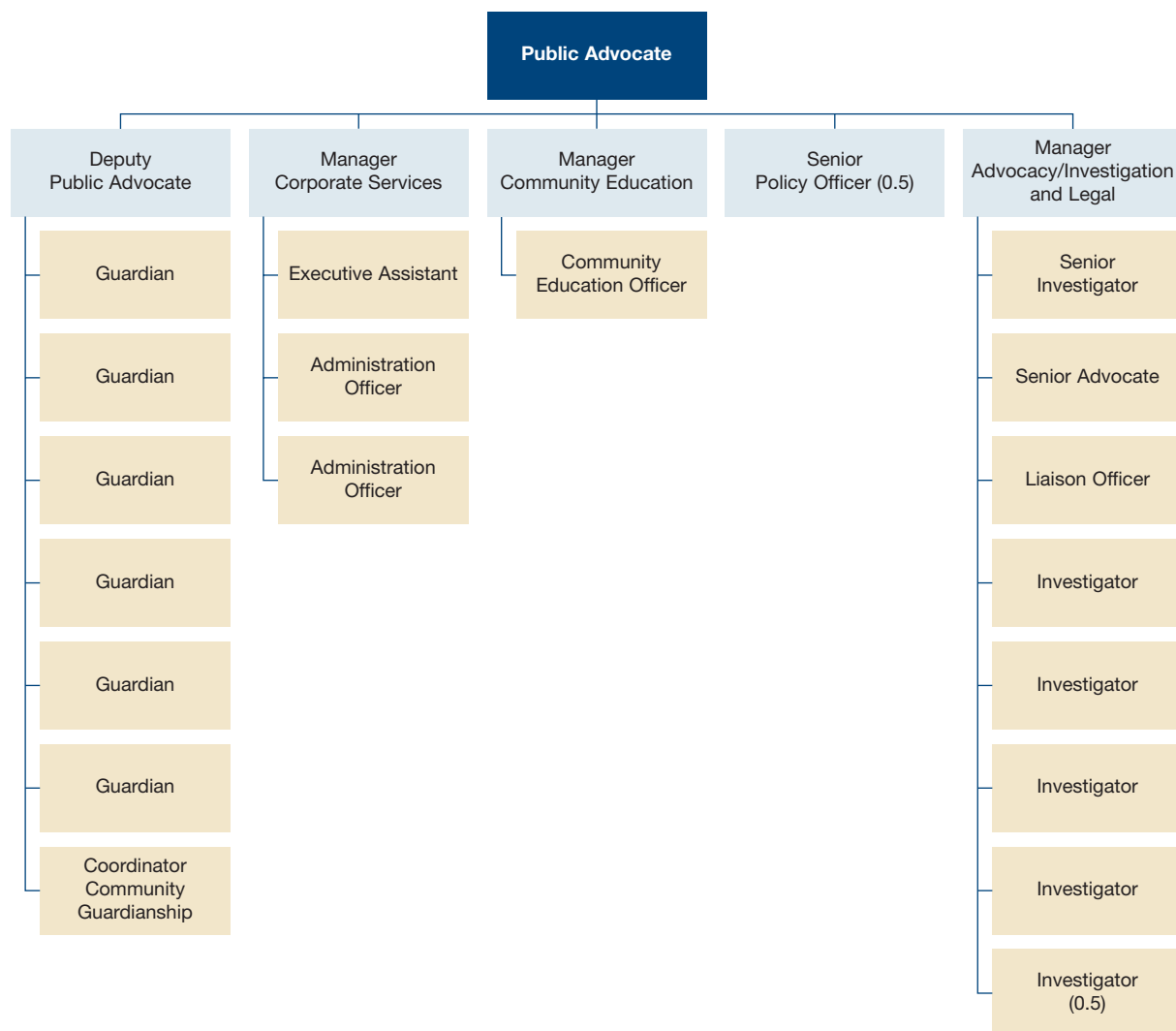


Fig. 1 Office of the Public Advocate Structure at 30 June 2006

# Summary of audited key performance indicators

In any society, the ability of a community to care for those who are unable to care for themselves is a measure of its maturity. In Western Australia, the maintenance of a safe and orderly community requires that the State safeguards the rights of adults with limited decision-making ability and reduces their risk of neglect, exploitation and abuse.

The Public Advocate represents and advances the best interests of people with a decision-making disability at hearings of the State Administrative Tribunal for the appointment of a guardian or administrator and in the community.

The set of key indicators against which the performance of the Office of the Public Advocate is measured is referred to as the Justice System Framework. A set of effectiveness indicators measure the achievement of the Government goal-related outcome: "the right to justice and safety for all people in Western Australia is preserved and enhanced".

As a result of the implementation of the Justice System Framework the output Advocacy and Guardianship Services was changed to Advocacy, Guardianship and Administration Services for 2005/06 onwards.

Three key performance indicators (KPI) for the Office of the Public Advocate were removed as they were no longer relevant. One new KPI was added from July 1 2005 to reflect OPA's community education role.

The KPIs removed were:

- The extent to which recommendations were accepted by the State Administrative Tribunal (SAT).
- The extent to which the problem precipitating the need for the Public Advocate to be appointed as guardian of last resort has been resolved.
- The percentage of advocacy cases completed within 8 weeks.

The KPI added was:

- Percentage of customers satisfied with information and advice provided by the Office of the Public Advocate.

## Service 6. Advocacy, Guardianship and Administration Services

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

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

6.1	The proportion of cases provided with advocacy relative to the number in need of service.
2004-05	100%
<b>2005-06</b>	<b>100%</b>
Target	95%

This performance indicator measures the number of matters allocated for advocacy as a percentage of the total referrals, including community referrals. It indicates the extent to which OPA is able to protect the rights of adults with decision-making disabilities and reduce the risk of neglect, exploitation and abuse.

## Summary of audited key performance indicators

### 6.2 Undertakes a community education role by providing training, information and advice to secondary customers i.e. people with a direct personal or professional involvement with OPA's primary customers

6.2	Percentage of customers surveyed satisfied with information and advice provided by OPA.	
	2004-05	N/A
	<b>2005-06</b>	<b>97%</b>
	Target	90%

This indicator measures the satisfaction level of clients in respect to information and advice received at professional training and community information sessions. Feedback questionnaires are distributed at the conclusion of each training course to the target group. It is measured by collating the ranking level (1 = high satisfaction and 4 = unsatisfied).

This new KPI under the Justice System Framework introduced in 2005-2006, was trialled for one year in 2004-2005 before adoption. It relates directly to one of the key elements of OPA's outcome statement of providing information and advice to the community about the guardianship and administration system.

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

6.3	Guardian of Last Resort appointments allocated within one working day.	
	2004-05	93%
	<b>2005-06</b>	<b>93.5%</b>
	Target	95%

This indicator measures the timeliness of the Public Advocate in allocating a guardian to a represented person in order to make decisions on their behalf and protect them from neglect, abuse or exploitation. A guardian is appointed by the SAT only when it is in the best interests of the person 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.

It is measured by the number of appointments of the Public Advocate as guardian of last resort made by the SAT at a hearing and accepted by the Public Advocate's delegate within one working day of receipt of the Guardianship Order.

### 6.4 Average cost per case of providing advocacy and guardianship services

6.4	The average cost of providing advocacy and guardianship services.	
	2004-05	\$2,219
	<b>2005-06</b>	<b>\$2,395</b>
	Target	\$1,886

This indicator measures the average cost per case of providing advocacy and guardianship services on behalf of people with decision-making disabilities. This indicator is calculated by dividing the total number of advocacy and guardianship services by the total cost of providing the service.

The variance of 27% from the budget target 2005/06 is due to non-recurrent additional funding received from the Government's Active Ageing Strategy, the Office for Seniors' Interests and Volunteering and the Aboriginal Policy and Services Directorate of the Department of Justice to undertake two research projects, one in relation to Elder Abuse in Aboriginal Communities and research into Elder Abuse in Culturally and Linguistically Diverse (CALD) communities.

# Summary of key service areas

## Service area – advocacy, investigation and legal

### Objective

Investigating and making 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.

## Service area – guardian of last resort

### Objective

To make personal, medical and lifestyle decisions on behalf of people with a decision-making disability, when the State Administrative Tribunal considers a guardian should be appointed and 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 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 assist 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.

## Summary of key service areas

### Service area – community education

#### Objective

To help 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

- 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.
- develops a framework for the delivery of effective community and professional education and training promoting the rights of people with a decision-making disability;

### Service area – corporate services

#### Objective

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

#### Function

- These services are supported by the Department of the Attorney General under a Service Level Agreement and costs are proportionately allocated to the Public Advocate and reflected in the Treasury Budget Statements.
- plans and provides office management and administration requirements; and
  - provides financial and human resource management, procurement, information technology and physical resource management.



## Improving service

The Public Advocate conducted three customer surveys in April, May and June 2006.

Customers of the guardianship and investigation services were asked to rate their level of satisfaction with:

- the level of access to staff and services;
- the attention, professionalism and empathy shown by the staff;
- the office's response to criticism and complaints;
- the information made available to relevant parties;
- the way their privacy is protected; and
- the sensitivity of staff to the needs of the person with a disability and others.

Surveys were distributed to people with a direct personal or professional involvement in the lives of people with a decision-making disability. These were family members, friends, carers and people providing a direct service to the person with the disability.

The Public Advocate considers all recommendations and concerns expressed in the completed surveys with a view to improving service to all customers.

A total of 471 surveys were sent to customers of the guardianship and investigation services over the three month period.

There were 79 surveys (39%) returned by customers of the guardianship area at 30 June 2006; and 57 (28%) by customers of the investigation area.

The overall level of satisfaction for guardianship and investigation services is measured as an average percentage of those respondents who selected "satisfied" or "very satisfied" to the areas surveyed.

In 2005-2006 the overall satisfaction rate for guardianship services was 82%. Although lower than for 2004-2005 (86%), the result is positive, especially when many of the matters involving the Public Advocate entail considerable family conflict and difficult decision-making, both of which significantly impact on the level of satisfaction.

The overall level of satisfaction for investigation services was 85%, unchanged from 2004-2005, indicating a continuing high level of satisfaction with the services provided by the Office.

Comments from the 2006 Guardianship survey included:

***"Representation for people with a disability is of the highest standard to ensure that the best medical practices are available ... ensuring all options are examined and understood before making a decision."*** (DSC worker, Perth metropolitan area)

***"Could not be happier with the staff and the response that we received and the way they informed us and kept us up to date."*** (Family member)

***"The appointed Guardian was very approachable and kept me informed at all times. She had the client's welfare foremost and fought to promote what was in the client's best interest. I was really impressed by her caring and professional approach."*** (Care coordinator, Perth metropolitan area)

***"It is very hard to be a community psych nurse and try to facilitate medical and psych treatment when everything has to go through the guardian first, who isn't immediately available or on hand, particularly when the person under the guardian is very difficult to manage."*** (Regional community mental health worker)

## Improving service

Comments from the 2006 Investigation survey included:

***“I found the Public Advocate compassionate, supportive, well-informed and reassuring (and) capable of eliciting frank and cooperative interaction with the caregivers in the family. The Public Advocate could do a follow-up contact at say, 2 months and 4 months, to assess continued appropriateness of care.”***

(Service provider)

***“My interaction with the Public Advocate was a godsend prior to the SAT dates. What angers me and frustrated us was the process and stress of attending State Administrative Tribunal. Mediation should have been attempted first.”*** (Family member)

***“(I) was very impressed with the service provided from the Public Advocate’s officer as she represented the families’ case. (Investigator) showed great respect towards the Aboriginal family and the situation which needed to be addressed.”***

(Aboriginal service provider)

## Guardianship services

During 2005-2006, the Public Advocate made personal and lifestyle decisions for a total of 325 people. This included 93 new appointments as guardian of last resort.

### Increasing demand

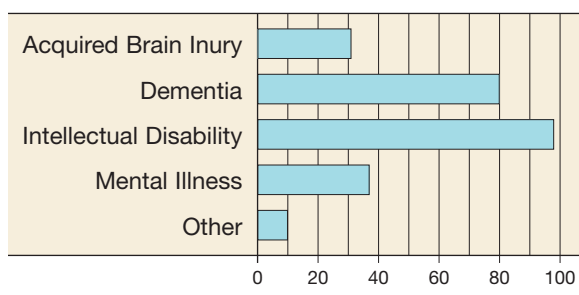
At 30 June 2006 the Public Advocate had an ongoing responsibility for 256 people with decision-making disabilities. This is higher than the number at 30 June 2005, which was 232.

There were 67 closed cases during 2005-2006, including the revocation on application by the Public Advocate, of 46 appointments by the State Administrative Tribunal (SAT).

There were 38 re-appointments on review by the SAT. No appointments were made as a result of the death of a private guardian.

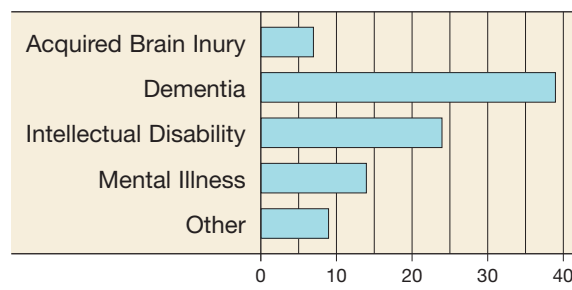
In the independent report prepared for the Public Advocate in 2004, Data Analysis Australia forecast an annual growth of 5.9% in new guardianship orders appointing the Public Advocate over the next 5 years. However, in 2005-2006 the number of new guardianship orders increased by 9.4%.

**Fig. 2 Profile by condition of disability of all guardianship orders where Public Advocate appointed to 30 June 2006**



Demand for the appointment of the Public Advocate as guardian is increasing because of an ageing population, an increasing prevalence of dementia and an overall rise in the number of people with decision-making disabilities, many with long term disability.

**Fig. 3 Profile by condition of disability of new guardianship orders appointing the Public Advocate 2005-2006**



Of the 93 new appointments in 2005-2006, 42% were diagnosed with dementia; 26% had an intellectual disability; 25% had a mental illness or other condition affecting their decision-making disability; and 7% had an acquired brain injury.

The Data Analysis study also predicted the growth in the number of guardianship orders appointing the Public Advocate would be dominated by people with intellectual disabilities, estimating this group would account for more than half of the guardianship work done by the Public Advocate.

The latest figures support this forecast. Of the 256 people for whom the Public Advocate was guardian at 30 June 2006, 98 (38%) had an intellectual disability, 80 (31%) had dementia, 37 (15%) had a mental illness and 31 (12%), an acquired brain injury. There were 10 (4%) without a specific diagnosis.

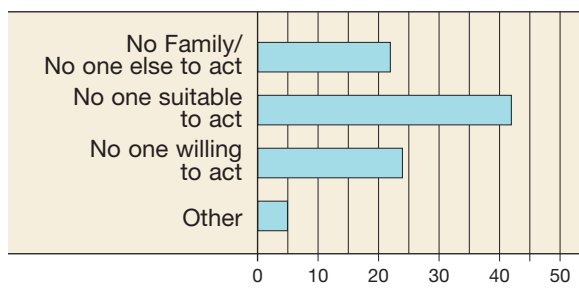
The two most common issues prompting the State Administrative Tribunal to make new Public Advocate appointments were medical treatment and health care (stipulated in 71 orders) and accommodation (68 orders).

The high number of medical treatment orders reflected the lack of a suitable person (spouse, child, relative or friend) to act on a person's behalf, or their unsuitability or refusal to act.

In 42 out of the 93 new appointments, no other person was suitable or available to make decisions on behalf of the person with the disability.

## Guardianship services

**Fig. 4 Profile of new guardianship orders appointing the Public Advocate by reason for appointment 2005-2006**

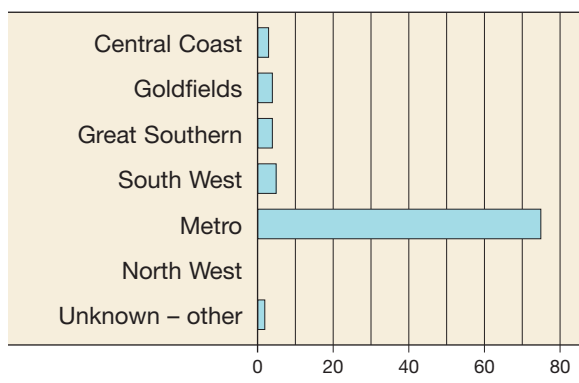


The high number of orders for which accommodation decisions were required continued to reflect concern for the lack of appropriate supported accommodation for people with decision-making disabilities; conflict about where a person should reside; and the need to consent to residential care on behalf of people with dementia, especially those who neglect their welfare, refuse support services and oppose entering residential care.

Abuse was alleged in 19 cases in which the Public Advocate was appointed.

Of the 93 new appointments, 18 (20%) were for people living outside the metropolitan area.

**Fig. 5 Profile of new guardianship orders appointing the Public Advocate by geographical location 2005-2006**



The Public Advocate was appointed for 4 people who were of either Aboriginal or Torres Strait Islander descent, and 7 people born outside of Australia.

Guardians took 114 after hours calls compared to 81 last year and considerable regional travel.

Of the new appointments, 93.5% were allocated within one working day of the order being received; meaning the appointment of just six people did not meet this target.

### Extent and duration of guardianship appointments

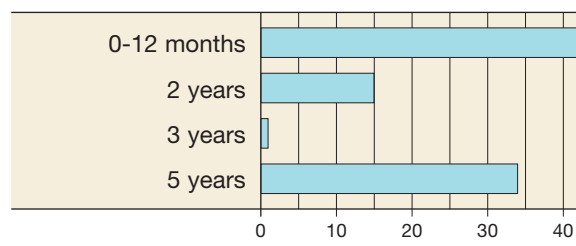
The majority of the 93 new guardianship orders made by the SAT were limited orders in accordance with the principle of least restrictive alternative in the *Guardianship and Administration Act 1990*. There were 15 plenary orders and 78 limited orders.

The Public Advocate was appointed guardian for a period of between one and 12 months in 43 (46%) of all new cases.

The number of five year appointments rose slightly – 34 in 2005-2006 compared with 31 in 2004-2005.

The Public Advocate consistently recommends that the length of an order should reflect only the period of time needed to resolve a represented person's issue or issues.

**Fig. 6 Length of new guardianship orders appointing the Public Advocate in 2005-2006**



## Guardianship services

### Revocation focus in guardianship work

There has been an ongoing focus on work aimed at securing a less restrictive alternative for the individuals for whom the Public Advocate is appointed guardian.

In 2005-2006, 46 guardianship orders were revoked by the SAT on application by the Public Advocate, compared with 56 in 2004-2005.

In some of these cases, a family member, or other alternative decision-maker was appointed the person's guardian. In other cases, there was no further need for a guardian.

Revocation was successful where:

- the SAT was satisfied that the person had regained capacity;
- where the issues leading to the Public Advocate appointment were resolved;
- where the guardianship appointment had no effect;
- where there was no longer a need for ongoing medical treatment or health care; and/or
- where family members, or alternative decision-makers, could provide support.

### Increasing complexity in guardianship appointments

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

Guardians are required to make decisions for people with decision-making disabilities 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 guardian working with a

number of agencies to provide an intensive level of support.

Frequently, there is also a lack of coordination in the provision of services to people with decision-making disabilities, particularly where there may be a dual diagnosis. The task of encouraging appropriate agencies to accept responsibility is becoming more difficult where people have a dual diagnosis, e.g. intellectual disability and mental illness. Other complex matters include:

- Restraint: the Public Advocate has been required to determine the need for chemical and/or physical restraint for a number of people for whom she is guardian;
- Mentally impaired accused and frequent offenders: the Public Advocate makes representations to the Mentally Impaired Accused Review Board and makes decisions which support people with decision-making disabilities who are frequent offenders;
- Heightened family conflict: the appointment of the Public Advocate is often made where there is major disagreement within the family of the person with a disability. In cases where the person with the decision-making disability has been abused, neglected or exploited, contact between the person and their family may often need to be supervised.
- Sexual assault: people with decision-making disabilities are extremely vulnerable to sexual assault and sexual exploitation. The Public Advocate intervenes in these matters and seeks Police involvement and referral to appropriate medical and counselling services.
- Cultural and linguistic diversity: working in a culturally appropriate manner with Aboriginal family members.
- Accommodation: meeting the accommodation support requirements of people with decision-making disabilities when there are insufficient or inappropriate community options.

## Guardianship services

Additional guardians will be recruited in 2006-2007 after the Government acknowledged in May 2005, the Public Advocate's concerns about the increasing complexity and number of guardianship appointments. Three new positions will provide the following benefits:

- assist to meet the expected increased demand for guardianship services;
- respond to the increasing level of clients with complex and multiple needs;
- provide an enhanced regional service; and
- ensure the effective monitoring of all clients.

### **Public Advocate as guardian for people living interstate or overseas**

The reach 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 by the Guardianship and Administration Board in 2004, determined. In 2005-2006 the Public Advocate was guardian for two people living outside of Western Australia.

### **Community Guardianship Program (CGP)**

The Public Advocate commenced planning for an innovative program to recruit and train community members to act as guardians for individuals in their community with a decision-making disability.

The Community Guardianship Program will offer:

- an opportunity for community involvement in supporting and protecting people with decision-making disabilities;
- a more personal level of involvement; and
- opportunities for local knowledge to benefit the individual, especially in rural and remote areas.

A future recruitment strategy will be to match Aboriginal people with decision-making disabilities with Aboriginal volunteers to ensure the provision of culturally appropriate services.

The program aims to raise community awareness of the rights of people with decision-making disabilities and will help promote increased community responsibility for guardianship.

In 2005-2006, the program successfully recruited 15 volunteers who have attended an information session and two full days of training. The process of matching represented persons to community guardians has begun.

## Case studies

### A collaborative approach

The Public Advocate was appointed by the State Administrative Tribunal as Limited Guardian for P, a 26-year-old Aboriginal man, who had brain damage as a result of substance abuse.

P had a history of minor offending and lacked insight into the consequences of his behaviour. The Tribunal provided the Public Advocate with the functions to make representation to the Mentally Impaired Accused Review Board and the relevant Government department to develop options for his release from prison.

When the Public Advocate was appointed, P had been charged with robbery and was found incapable of pleading to the charge. He was sent to prison on a custody order under the *Criminal Law (Mentally Impaired Accused) Act 1996*.

P found it extremely difficult to adapt to a prison environment and posed a risk to others. He was moved to a specialist unit where he was locked in his cell for most of the day.

The Public Advocate was highly concerned about P's deteriorating situation and the long-standing difficulties experienced in trying to develop a suitable community release plan for him.

To formulate a viable plan for P's release the Public Advocate initiated a multiple Government agency committee comprising senior representatives of the Department for Corrective Services, Mental Health Division and the Disability Services Commission.

With agency cooperation, and a joint funding agreement, a release plan was successfully developed. It proposed that P return to his remote Aboriginal community, to live with members of his family, with the assistance of care staff to help manage his transition and to provide support and guidance to the community on his care needs.

The proposed release plan was accepted by the Mentally Impaired Accused Review Board and P was released from prison on a conditional release order.

### Revocation: the least restrictive alternative

S is 43 years old and has an intellectual disability. Five years ago she was diagnosed with bipolar affective disorder and she receives assistance from mental health services. In addition, S has diabetes and urinary incontinence.

S has a history of living in sub-standard accommodation and being unable to manage her personal hygiene, her diabetes and her finances. S's social worker made an application to the State Administrative Tribunal to have a guardian and administrator appointed. The social worker wanted a guardian to ensure S had adequate accommodation, could manage her health issues and could be taught to budget.

As S had no contact with her family or close friends, the Tribunal appointed the Public Trustee as S's administrator and the Public Advocate as her limited guardian with the functions to determine her accommodation requirements and her medical treatment.

S objected to the appointment of the Public Advocate as her guardian and it quickly became apparent that she was resistive to the decision-making of the delegated guardian. However, she was reasonably cooperative with community mental health workers.

During the period of the order S remained opposed to the Public Advocate's appointment. The Public Advocate however, continued to work closely with community mental health services.

Within nine months the Public Advocate recommended that S's guardianship order be revoked as matters related to her accommodation and health were being effectively addressed by community-based services.

The Public Advocate proposed that the support and intervention from S's mental health treating team represented an existing less restrictive alternative to the appointment of a guardian.

The Tribunal accepted that the previously perceived need for guardianship was replaced by the existence of a least restrictive alternative while also acknowledging the guardian's inability in this case to enforce accommodation decisions.



### Complex guardianship decision-making

T is 18 years old and has a mental illness; he has been abusing drugs and alcohol since the age of 14. An application was made by the Department for Community Development for the Public Advocate to become T's guardian on the expiration of his care and protection order.

The State Administrative Tribunal appointed the Public Advocate as T's guardian as there was clear psychiatric evidence that he was incapable of looking after his own health and safety.

The Public Advocate was appointed as his plenary guardian as T did not have any family member suitable or able to act on his behalf. T had been removed from his mother's care as a young child and had no contact with his father.

T's foster parents had provided a degree of stability over the past 4 years but when he turned 18 and his care and protection order expired, T left home to move in with friends he had only recently met.

At the time of the Public Advocate's appointment T was sharing a unit with two unemployed men who encouraged his drug and alcohol abuse. Due to increasing periods of intoxication T stopped taking his medication and his mental health rapidly deteriorated.

As a result of his unstable behaviour, T was told to leave the unit and for a period of two weeks he was reported to Police as a missing person. He was eventually located in an extremely poor condition after he contacted his foster mother. T's physical and mental health had deteriorated and he lacked insight into his need for medical help and assistance.

The Public Advocate sought the involvement of T's doctor who assisted with his admission, as an involuntary patient, to an authorised hospital. T's hospital admission aided his recovery. He responded well to medication and to the removal of access to drugs and alcohol.

The Public Advocate worked with the hospital team to develop a suitable discharge plan for T. The plan addressed T's needs for regular oversight to ensure he complied with his medication, suitable supported accommodation, constructive activities, and counselling support regarding his substance abuse issues.

While T agrees to reside in a psychiatric hostel, the Public Advocate maintains close involvement with him.

However, he often threatens to leave to live with the new friends he makes. He has also returned to taking drugs and alcohol, and this increases the likelihood of him becoming non-compliant with his medication.

T has also recently been arrested for possession of amphetamines and he needs assistance to get legal representation before he goes to court. The Public Advocate is seeking the services of Legal Aid on his behalf.

## Advocacy, investigation and legal services

The function of the Public Advocate's investigation and advocacy service is:

- to conduct investigations into matters referred by the State Administrative Tribunal (SAT);
- to attend hearings and advocate in the best interests of the person who is the subject of a guardian and/or administration application;
- to investigate any report that a person is in need of a guardian or administrator or under an inappropriate order and where necessary lodge applications to the SAT.

### Trends in investigation referrals

The Public Advocate undertook 611 investigations in 2005-2006, either ongoing from the previous financial year or newly referred by either the SAT or by a member of the public.

Of the 595 new investigations undertaken in 2005-2006, the majority were referred to the Office of the Public Advocate by the SAT, with 87 matters referred by members of the community.

The Office continued to work closely with the SAT to streamline the process of referral, resulting in further refinement in 2005-2006.

The Public Advocate's Liaison Officer screens applications lodged with the SAT for possible investigation by the Public Advocate.

This service provides valuable and timely advice to SAT which makes the final decision on whether applications for guardianship and administration are referred to the Public Advocate for investigation.

The Liaison Officer further assists the SAT by conducting brief investigations into matters that may assist the SAT to deal with an application without further Public Advocate involvement.

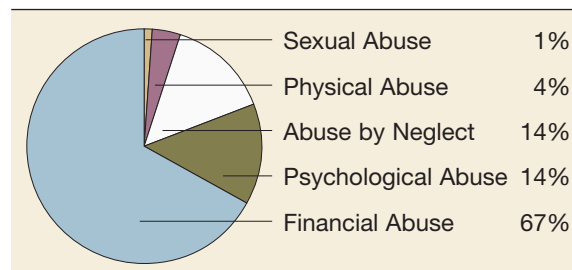
This year the number of referrals from the SAT to the Public Advocate for investigation declined by 12.4%. The reduction is in part due to efficiencies in the referral process.

In 2005-2006 the Liaison Officer made 270 recommendations for investigation, attended 13 hearings on short notice on behalf of the Public Advocate, and on 6 occasions provided immediate on-site advice to SAT members.

Abuse is now a factor in one in three new matters referred to the Public Advocate for investigation.

Of the 595 new matters, 189 (32%) involved allegations of abuse of a person with a decision-making disability, a marked increase on figures for the previous year (21%).

**Fig. 7 Profile by type of abuse of alleged elder abuse 2005-2006**

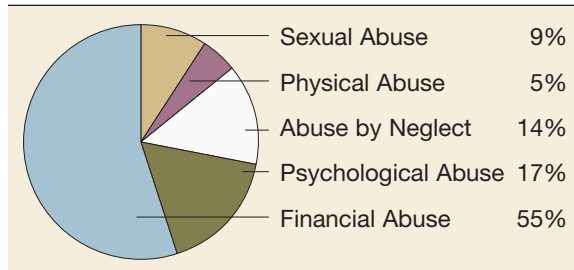


In 63 (33%) of these 189 cases, the victim was aged over 65.

Financial abuse was again the most commonly reported form of abuse in new investigation matters (55%), followed by psychological abuse (17%), neglect (14%), sexual abuse (9%) and physical abuse (5%).

# Advocacy, investigation and legal services

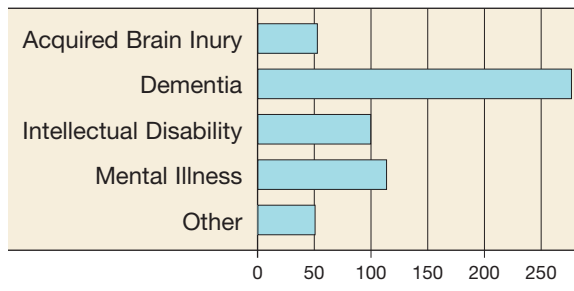
**Fig. 8 Profile by type of abuse alleged of new investigations alleging abuse 2005-2006**



There was a considerable rise in the incidence of psychological abuse (17% compared with 6% in 2004-2005).

Dementia was the prevailing disability in almost half the new applications for guardianship and administration referred to the Public Advocate for investigation. It was the condition affecting the person with the disability in 277 matters (47%) for investigation in 2005-2006.

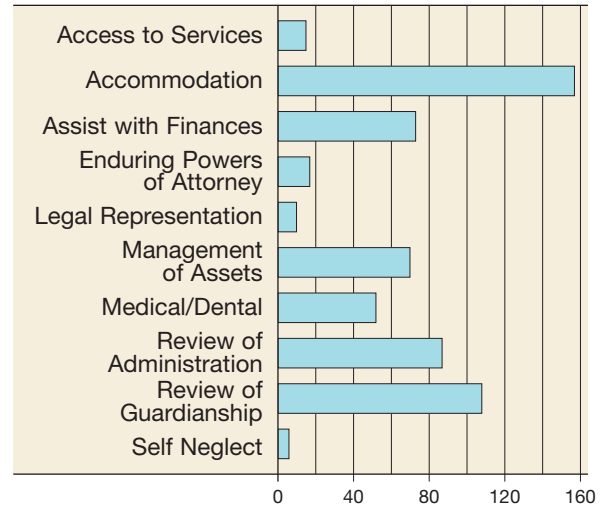
**Fig. 9 Profile of new investigation referrals by condition of disability 2005-2006**



Of the 595 new investigations, 114 (19%) involved individuals with a mental illness, 100 (17%) people with an intellectual disability and 53 (9%) people with an acquired brain injury.

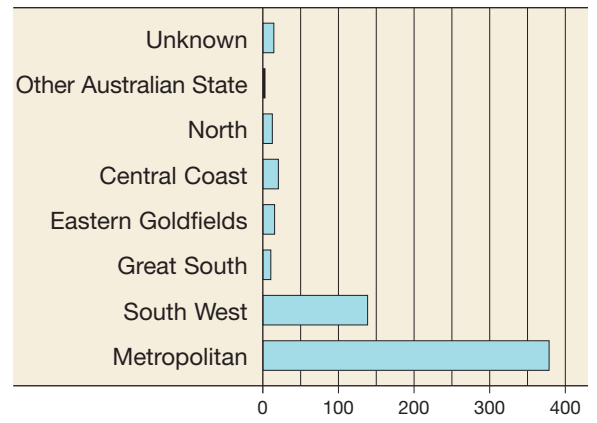
This year accommodation (26%) continued to be the major issue identified as precipitating new applications to SAT. Nine per cent of investigations concerned issues around consent for medical or dental treatment.

**Fig. 10 Profile by issue of new investigation referrals 2005-2006**



Of the new investigations in 2005-2006, 34% involved people living outside the metropolitan area, compared with 20% in the previous year.

**Fig. 11 Profile by geographical location of new investigation referrals 2005-2006**



Protocols developed in conjunction with government agencies with a significant regional presence have assisted investigators to meet this demand. Investigators are using videoconferencing technology to improve service, particularly to regional and remote areas.

## Advocacy, investigation and legal services

### **Challenges for investigation services**

The responsiveness and cohesion of the system providing human services (accommodation, disability support, justice, health and mental health services) to people with a decision-making disability continues to be a major issue for investigators and advocates.

Vulnerable people are finding it increasingly difficult to negotiate these services, with the result that an application is made to the SAT seeking the appointment of the Public Advocate as the guardian of last resort in these circumstances.

Working with agencies to achieve a less restrictive alternative to the appointment of a guardian or administrator continues to be a challenge for the investigation service.

This year, the section commenced a major project reviewing some 28 matters referred under Section 98 of the *Guardianship and Administration Act 1990* concerning mentally impaired accused individuals.

It is expected this project will be completed early in 2006-2007.

Discussion continued in 2005-2006 with the Department for Community Development on improved service provision and lifestyle planning for minors with a decision-making disability under a State care and protection order who are approaching 18 years of age.

## Case studies

### Mediation improves outcome for family

G took regular medication for a chronic mental illness and was a long term client of a community mental health service near her home, regularly attending its day respite centre.

Centre staff supervised her treatment and had an arrangement to transport G to and from her home, which she shared with her elderly husband.

Over time, the relationship between centre staff and G's family deteriorated and the family removed her as a patient of the service.

The service was concerned for G's health and welfare and applied to the State Administrative Tribunal for the appointment of the Public Advocate as guardian to manage G's medical treatment (including respite), accommodation and for the appointment of an administrator to manage her financial affairs. It argued that G's family would not provide appropriate care.

At the time of the application, it was clear that communication between the family and the health service had completely broken down, with neither party willing to consider the other's view of how and where G should be cared for.

The Tribunal appointed G's daughter as plenary administrator but adjourned the hearing and asked the Public Advocate to report on less restrictive alternatives to guardianship for G.

The Public Advocate conducted an investigation into G's circumstances and the parties were interviewed to determine what was in G's best interests. The Public Advocate recommended mediation as a way of restoring communication between the family and the agency.

The mediation was convened at the Tribunal with the agreement of all parties. It was conducted by a Tribunal member with no previous involvement in the matter who invited the Public Advocate's representative to attend as an observer.

The process of mediation allowed everyone to voice their concerns and other parties the opportunity to respond.

It resulted in the parties agreeing on a workable outcome, allowing G to stay in her home but to resume attending the respite centre on a regular basis. At a subsequent, relatively short hearing of the Tribunal, G's daughter was appointed her guardian, with the agreement of all the parties.

The Public Advocate's involvement contributed to an outcome that all parties were happy with in an atmosphere of reduced confrontation.

### Support services counter need for guardianship order

C was diagnosed with a mental illness that impaired her judgment and had a history of numerous admissions to psychiatric facilities over a long period.

The Public Trustee had been her appointed Administrator for some years, initially with limited authority over property but subsequently with plenary powers to manage her assets.

In trying to manage C's financial affairs, the Public Trustee attempted to establish accounts (by directly debiting funds) with various services including supermarkets, telecommunication services and pharmacies. However, it was alleged C would cancel or change her mind about services. The Public Trustee was also concerned that C was moving out of safe housing and wanted the Public Advocate appointed to make accommodation decisions.

C had consistently opposed the appointment of an Administrator. She applied to the SAT to have the most recent administration order revoked.

The Public Trustee lodged an application for a review of the order and the appointment of the Public Advocate, claiming that a guardian could provide a co-ordinating and communication role between the various agencies supporting C to prevent her from falling through service system gaps.

C's treating psychiatrist told the Tribunal that C was mostly able to manage her physical health. While he expressed some reservations about nutrition and self care at times when C was mentally unwell, he concluded her underlying condition had largely been managed by mental health services in conjunction with C's doctor.

Furthermore, the psychiatrist indicated mental health services would remain involved to assist with C's accommodation options.

The Public Advocate submitted to the Tribunal that the current situation appeared to be consistent with the least restrictive alternative principle of the *Guardianship and Administration Act 1990* and it was likely the appointment of the Public Advocate would only add an unnecessary decision-making layer to the existing support structure.

While the Tribunal considered there was a need for an administrator because C was incapable of making reasonable judgments with respect to her financial affairs, it did not consider on the evidence before it that there was a need for the appointment of a guardian.

The Tribunal was satisfied that when she was discharged into the community, it was likely that C would receive a range of services under the auspices of a community treatment order.

### Financial abuse

B is a widower in his 90s diagnosed with dementia who until recently was living in his own home with two people he regarded as friends and who were providing practical care for him.

B has no other friends or family members living in his locality.

An acquaintance of one of the carers realised that B's friends were withdrawing large amounts of cash on a regular basis from B's account.

While the acquaintance believed this was inappropriate, he felt uncomfortable about challenging the carers.

The acquaintance telephoned a community-based advocacy organisation who referred him to the Public Advocate's telephone advisory service. The call resulted in the Public Advocate commencing a community-referred investigation into B's financial welfare and wellbeing.

The Public Advocate's investigator ascertained that B had signed an Enduring Power of Attorney appointing the carers as his joint attorneys, to act together and separately to manage his finances.

B's substantial superannuation payments were being totally withdrawn each fortnight and \$200,000 in savings had been withdrawn with no evidence as to how B had utilised the funds.

His only remaining assets were his fortnightly income as a self-funded retiree and his house.

The Public Advocate reported the matter to the Police and made an urgent application to the State Administrative Tribunal for an Administration order to protect B's income and property.

B was entirely dependent on his carers and was distressed at the abuse of trust.

Meanwhile, the Tribunal appointed the Public Trustee as B's plenary administrator. The Public Trustee took steps to employ paid carers for B in his own home.

The Police investigation subsequently resulted in a successful criminal prosecution and the jailing of one of B's carers. The Public Trustee began the process of trying to recover B's funds.

## Community education

The Public Advocate has a responsibility to advise and educate members of the community and organisations providing human services to the Western Australian community about the rights, dignity and autonomy of people with a decision-making disability and the provisions in the *Guardianship and Administration Act 1990* (and other relevant Acts) for their protection against abuse and exploitation.

The ongoing challenge for Community Education services is to promote the needs of the most vulnerable people in our community in a positive way to the professions and support networks, through formal training, on the World Wide Web, in the media and in the general community.

### **Informing the community**

The Public Advocate conducted a total of 19 training and information sessions for service providers working with vulnerable people across Western Australia in 2005-2006, including two multisite videoconferences.

Eight of these sessions (42%) were conducted in regional centres, compared with 26% in 2004-2005.

Seven information sessions were specifically tailored for providers of service to vulnerable Aboriginal communities, in light of a recommendation from the Public Advocate's report *Mistreatment of Older People in Aboriginal Communities*.

Attendances at the professional fee paying seminars advertised in the Public Advocate's Training Calendar were high, indicating the demand from the health, disability, financial and legal sectors for professional development in this area.

With the cooperation of the Public Trustee, Private Administrators are advised at the outset of their appointment by the State Administrative Tribunal of the Training Calendar and can now self-select training at a time suitable to them. This has resulted in considerable efficiencies in managing community education for this group.

Improvements were also made to the delivery of information to this group and the Public Advocate consulted on the publication by the Public Trust Office of a revised Guide for Private Administrators.

### **Videoconferencing**

While videoconferencing can not entirely replace face to face contact with guardians, investigators and community educators, it has been a useful and cost-effective adjunct to effective communication and community education in regional areas.

The Community Education service managed the Office's videoconference facility in 2005-2006. Staff were provided with training in the operation of the Office's videoconference equipment and guidelines as to its use.

Twelve videoconferences were conducted by the Office in 2005-2006 including two multisite training seminars to a total of 27 service providers in the Kimberley and the Pilbara.

### **Telephone Advisory Service (TAS)**

There were 4,239 calls to the Public Advocate's telephone advisory service in 2005-2006, a marginal increase on the number in 2004-2005. In all, staff answered just over 5,100 separate inquiries.

Enquiries about Enduring Power of Attorney (EPA) continued to dominate calls to TAS (41%). Although the proportion of calls about EPA rose slightly in 2005-2006, it is still considerably lower than comparable figures in the years prior to the introduction of the dedicated 24 hour EPA Information Line.

After a trial in May and June 2006, detailed information about the number of calls and type of inquiry is now recorded electronically by guardians and investigators, rather than manually, to improve management of the service.



## Community education

### Publications

The Enduring Power of Attorney Kit was substantially revised in February 2006 following the passage of the *Oaths, Affidavits and Statutory Declarations Act 2005* and changes to the legislation around witnessing.

A review of the marketing of the Kit was conducted with recommendations to widen its availability accepted. It is hoped this will occur in 2006-2007.

New telephone advisory service wallet cards, new presentation folders and a new general Office of the Public Advocate brochure were designed and produced.

### Website and online content management

This important area of communication is subject to continual change and review. The Public Advocate has improved access for the general public to its pages on the Department of the Attorney General website.

A review of content on the Public Advocate pages was commenced in 2005-2006 and will be ongoing in 2006-2007.

A revised Enduring Power of Attorney Kit was made available on the website in early February 2006 along with revisions incorporating an explanation and examples of marksman and readover clauses, for use by people with a physical disability or cultural barrier (language or literacy) completing an EPA.

The Public Advocate's Guide for Service Providers was also designed as an electronic document and made available on the website.

The Public Advocate participated in an evaluation of learning management systems and began participation in June 2006 in a trial of an e-learning content development and training management system.

Customers of the Public Advocate's guardianship and investigation services were surveyed in April,

May and June 2006 on the quality and accessibility of the information available about guardianship, administration and advocacy services on the Department of the Attorney General website:

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

There were 107 responses to this survey. The results showed:

- 90% of respondents accessed the internet;
- 50% had accessed the Public Advocate pages;
- 37% said they found the information easily;
- 15% said the information answered their questions; and
- 60% expressed an interest in online training.

This information will assist in the re-design of the website.

### Special projects

The Community Education service managed and supported community education and communication strategies for a number of projects and programs conducted by the Office in 2005-2006. These included:

- Care and Respect for Older People campaign in association with Public Advocate research into elder abuse in Aboriginal Communities;
- Care and Respect for Older People campaign in association with Public Advocate research into elder abuse in culturally and linguistically diverse (CALD) communities; and
- Community Guardianship Program.

### Media liaison and monitoring

The role and achievements of the Office was highlighted in broadcast and print media coverage in the local, State and national media during 2005-2006.

Topics covered included financial abuse, elder abuse (especially in Aboriginal communities),

## Community education

services for mentally-impaired accused people, mental health services, guardianship issues and Enduring Power of Attorney.

### Community Education partnerships with Aboriginal communities

One of the recommendations of the Public Advocate's Report into the Mistreatment of Older People in Aboriginal Communities, published in November 2005, was for community education and awareness programs to be developed in collaboration with key stakeholders.

Since the publication of the report, information sessions for service providers working with vulnerable Aboriginal adults have been held in Geraldton, Albany, Bunbury and at Derbarl Yerrigan Health Service in Perth.

More than 50 people from a range of community and government agencies attended the session at Derbarl Yerrigan Health Service.

Further sessions for service providers in Aboriginal communities will be scheduled for 2006-2007 in both the south metropolitan area

and in regional centres. Additional sessions will be developed and run in consultation with people working with Aboriginal communities.

The Public Advocate has been successful in securing additional funding in the 2006 State Budget to expand community education in regional Western Australia and especially to Aboriginal communities.

An additional position will be made available to boost Community Education services in 2006-2007.

**Fig. 12 Community education attendance 2005-2006**

Attendance at training & information sessions.	
Protecting Vulnerable Adults (service providers)	170
Protecting Vulnerable Aboriginal Adults (service providers and community members)	126
Enduring Power of Attorney	92
Private Administrator (in conjunction with the Public Trust Office)	111
Community members	30

**Fig. 13 Telephone Advisory Service enquiries by topic 2005-2006**

Activity Statistics – Type of Enquiries	Type of Enquiries												Total
	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	
<b>Guardianship</b>	72	96	85	85	85	104	84	79	113	65	102	80	<b>1050</b>
<b>Administration</b>	90	97	90	85	103	121	96	81	123	71	118	83	<b>1158</b>
<b>EPA</b>	163	182	207	170	191	144	164	172	199	138	204	137	<b>2071</b>
<b>General</b>	48	69	60	64	57	73	67	85	107	54	79	59	<b>822</b>
<b>Total</b>	373	444	442	404	436	442	411	417	542	328	503	359	<b>5101</b>

**Fig. 14 Telephone Advisory Service enquiries by mode of handling 2005-2006**

Mode of Handling	Mode of Handling												Total
	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	
<b>Phone</b>	316	366	364	325	329	353	342	330	423	269	389	290	<b>4096</b>
<b>Interview</b>	5	11	15	12	21	7	2	7	21	6	21	15	<b>143</b>
<b>Total</b>	321	377	379	337	350	360	344	337	444	275	410	305	<b>4239</b>

THE AUSTRALIAN THURSDAY NOVEMBER 10 2005

6 THE NATION

# Aboriginal elders 'routinely abused'

Amanda Banks

ABORIGINAL elders are being abused in their own communities — brutally harassed for their money on pension days, physically and sexually assaulted, robbed and neglected. The indigenous elders often tolerated the abuse, fearing they would lose their children and grandchildren to authorities and "welfare" in yet another legacy of the stolen generation. A report by the West Australian Public Advocate, the first of its kind in the nation, has found financial abuse is the most common type of abuse against Aboriginal elders.

possibilities to extended family, poor health and limited resources. A breakdown in respect for elders, particularly in urban areas, was also partly to blame for the problems, the report said. The three-month, \$75,000 project involved consultation with service providers and "raising" information from consultations is that some Aboriginal families are dealing with "abuse" on a daily basis from close and extended family members," the report said. "This abuse takes the form of financial, physical, social and psychological abuse and usually occurs during 'pay weeks'."

clients' keywords under an informal arrangement that allowed only certain family members to withdraw money on the elders' behalf. "This situation has occurred because of past experiences where family members, especially those affected by alcohol, were demanding monies from the elders and taking money from them on their pay days," the report said. Financial abuse of elderly people in the Perth metropolitan area was most likely to occur when they were most vulnerable, especially when they had been drinking. "Elderly people in the past, over, job loss, especially

grandson and broke his hip after refusing a request for money. The elder was sent to a hospital hundreds of kilometres from his home where he died after several weeks. The case raised concerns that police had taken no action to lay charges, while others in the community believed traditional punishment was appropriate. The report said sexual abuse was less common against elders, but most likely to occur when the perpetrator — and in many cases the victim — was affected by alcohol. In some cases, the perpetrator was a family member.

# 'Jails' for mentally ill not answer

Steve Lewis Patricia Karvelas

A LEADING health expert has warned governments against returning to "institutional" care for the mentally ill as John Howard called on the states to meet their responsibilities under a new national agreement. Ian Hickie, head of the Brain & Mind Research Institute at Sydney University, also warned that a plan to expand Medicare

ing the pressure off the public health system. But Professor Hickie, who has been advising Canberra on mental health reform, cautioned against "simple notions of locking people up". "We have to be careful we are not talking about warehousing people, simply taking people off the streets and not providing clinical care," he said. "So yes, we need accommodation and we need that accom-

ing the pressure off the public health system. But Professor Hickie, who has been advising Canberra on mental health reform, cautioned against "simple notions of locking people up". "We have to be careful we are not talking about warehousing people, simply taking people off the streets and not providing clinical care," he said. "So yes, we need accommodation and we need that accom-

BC Online

AMA urges mental health checks for prisoners. 10/11/2005  
This is the print version of story <http://www.abc.net.au/news/newsitems/200605/s1641206.html>  
Last Update: Thursday, May 18, 2006, 9:06am (AEST)

## AMA urges mental health checks for prisoners

The Australian Medical Association (AMA) wants all prisoners checked by mental health teams when they are taken into custody, because of the high level of mental illness within jails.

A report by AMA president Mukesh Haikerval also ca for inmates to be given access to Medicare and the Pharmaceutical Benefits Scheme.

Dr Haikerval says the initiative would especially target Aboriginal people, who are over-represented in prisons.

"The justice system needs to be careful at the way it treats people with mental illness," he said. "Unfortunately we see that because there are often treatment facilities for people with mental illness or because people are abusing drugs they tend to gravitate into prison."

"Often this isn't the best environment to rehabilitate them, it's not the best environment to treat mental health problems."

The Australian Indigenous Doctors Association, says the should be assessed by a mental health professional or a

be a useful thing to happen globally

## News

# Care of mentally ill failing: MP

CATHY O'LEARY MEDICAL EDITOR

WA needs to revert to a system of mental institutions because the move to get psychiatric patients out into the community has failed, MLA Janet Woodland claims.

She said people with long-term mental illness were best cared for in an institutional-style setting rather than with their families, who often struggled to cope.

The Independent member for Alfred Cove said that though some people had grim memories of Dickens-type psychiatric hospitals, they were nothing like that now.

Dr Woodland said mental institutions had been gradually phased out over the past 20 to 30 years in favour of residential living units.

just will not work. They say they have tried it before and were bitterly disappointed with the result. She said there was an urgent need for more acute mental health beds in a hospital setting, as well as more community placements for people

'Since then carers have certainly been exploited and the system has been seriously failing.'

PAUL SKERRITT

who could live independently and institutional care for serious long-term mental health patients. Australian Medical Association WA president Paul Skerritt, who is a psychiatrist, said though he agreed the mental health system was

concerns were raised in the 60s that being in an institution was a bad thing, politicians exploited it by getting people out hospital but without providing the proper facilities for them," he said. "Since then carers have certainly been exploited and the system has been seriously failing."

"But what would be preferable would be to provide the proper facilities to allow people to live in the community rather than lock them up again."

Dr Skerritt said where possible the best way to care for people with mental illness was to place them in a home-like environment with more support than they currently received.

The problems of de-institutionalised care were sometimes overplayed and the solution was not to turn back the clock.

The clinics where people

patients outside Perth, a tendency to replace face-to-face services with phone counselling and excessive use of physical restraint and sedation when patients were being transferred. Also, patients and their families were often kept in the dark about their treatment.

The report found the system was broken and failing the mentally ill and their families and urged the Federal Government to take more responsibility for solving the crisis.

In response to the report, Health Minister Jim McGinty said WA led

# Wanted: a team of guardians

Volunteers are being encouraged to become involved in the lives of people with decision-making disabilities.

The Public Advocate is starting the theme to help some of more than 5000 West Australians who have lost the ability to manage some basic aspects of their lives.

They may have dementia, an acquired brain injury, a mental illness or an intellectual disability that prevents them making day-to-day decisions.

The Office of the Public Advocate protects such people and promotes their rights, dignity and autonomy, sometimes acting as guardian of last resort.

# Opinion

The West Australian | Established

## Recognition for living wills is long overdue

It is welcome news, if long overdue, that the State Government has made it a priority to give legal status to living wills.

At present there is no way for West Australians to ensure that their lives will not be artificially prolonged if they are incapacitated through illness or accident, even if they have recorded their wishes in writing.

Tasmania and NSW are the only other States which have made living wills legal.

Attorney-General Jim McGinty, who flagged proposed legislation 12 months ago, now says it is in the final stages of preparation.

Apart from giving legal clout to living wills, the Bill will enable a person to give power of attorney to a nominee who can ensure their wishes are carried out.

This is important because medical staff have to discernard living wills and to insist

# Elder abuse a worry for Aboriginals

ELOISE DORTCH

The abuse of elders by family members — including grandchildren — is a growing concern among Aboriginals, a new report says.

The study, commissioned by Public Advocate Michelle Scott, was based on interviews with Aboriginals and community workers over three months in Perth, the Great Southern, Goldfields and Kimberley.

Ms Scott said it was the first in Australia to focus on abuse of older Aboriginal people.

A similar report by Curtin University on non-Aboriginal West Australians aged over 65 found they were increasingly at risk of family abuse.

made to say "No, I don't want it," he said. "That's their way."

"You do get occasions when they go to someone else's household and they just take them to the cleaners."

The report included more sinister anecdotes, such as a boy who pushed his grandfather when he refused to give him money. The man fell off his veranda and broke his hip. He was in hospital for several weeks, several hundred kilometres from home, where he subsequently died.

Ms Scott said many Aboriginals were concerned about the problem of elder abuse and wanted to fix it.

She called on the State Government to respond to the

# This shame must stop

Indigenous Elders are being routinely abused and mistreated in a national shame that for so long has been swept under the carpet.

A recent Mail investigation has confirmed the findings of a report by the West Australian Public Advocate Michelle Scott that Indigenous Elders in her State were crying out for help, wanting recognition of the

issue and, ultimately, an appropriate response, not restricted to Western Australia and demands immediate attention.

Full report — Page 8

# Damning report reveals tragic plight of the mentally ill

DAWN GIBSON

A suicidal patient in Esperance was told to drive to Perth — an eight-hour trip — because local psychiatric services were inadequate.

Others in the south coastal town who needed acute care were tranquillised, strapped to a stretcher and transported to Perth.

One WA family told of a mother who killed herself after being on a psychiatric waiting list for four months.

series of national forums held to gather information for a report on Australia's mental health crisis.

The damning 1000-page report, compiled by the Mental Health Council of Australia, the Human Rights and Equal Opportunity Commission and the Brain and Mind Research Institute, described how the mentally ill were treated as second-class citizens compared with people with physical illnesses.

In WA, the main problems included very poor access to basic levels of services, particularly for

patients outside Perth, a tendency to replace face-to-face services with phone counselling and excessive use of physical restraint and sedation when patients were being transferred. Also, patients and their families were often kept in the dark about their treatment.

The report found the system was broken and failing the mentally ill and their families and urged the Federal Government to take more responsibility for solving the crisis.

In response to the report, Health Minister Jim McGinty said WA led

the nation in per capita spending on mental health. The State Government had allocated an extra \$173 million over three years to improve mental health services, lifting overall spending to more than \$300 million per year.

The report acknowledged the State Government's efforts but suggested throwing money at the problem would not make it go away.

"Although very recently new funding commitments have been made, other aspects of current planning suggest that the size and scope of the

problem is not apparent to those who drive health reform in WA," it said. It recommended all Australian governments increase mental health spending one per cent a year for five years and that the Federal Government lead mental health reform.

Launching the report in Sydney, Federal Health Minister Tony Abbott acknowledged there was a need for improved services, but said the system would work better if the Federal Government had total control because it would end back-passing and cost-shifting.

## Corporate services

The Office of the Public Advocate was supported administratively and financially by the Department of Justice from 1 July 2005 to 31 January 2006 and by the Department of the Attorney General from 1 February 2006.

The budget allocation and subsequent expenditure for 2005-2006 is as follows:

**Fig. 15 Office of the Public Advocate budgeted allocation and actual expenditure 2005-2006**

	<b>Total Cost of Output</b>
<b>\$'000 Actuals 2005-2006</b>	2,433
<b>\$'000 Budget 2005-2006</b>	2,330
<b>\$'000 Variations from Budget</b>	(103)

This year additional funding was provided to support research into elder abuse in Aboriginal communities and in culturally and linguistically diverse communities.

The videoconferencing facility trialled in 2004-2005 was fully commissioned and linked to the Department of Justice network server and portal in 2005-2006. A contract for technical support was renewed.

The Office's business systems steering committee has commenced planning to introduce a new electronic case management system to provide for an improved case management system for clients. The new system will also replace the existing database system, Office of the Public Advocate Statistical Collection Access System (OSCAS).

Following a review of the office's complaints management system in 2004-2005, new processes were implemented to improve transparency and efficiency in dealing with complaints (see Governance, p 45).

A review of the accommodation needs of the Office was conducted and draft plans prepared for a reallocation of workspace to accommodate new staff in 2006-2007.

A major review of the functions and roles of the Corporate Services positions was conducted between November 2005 and June 2006.

As a result, three positions were restructured to enable multi-skilling of Corporate Services staff and a sharing of responsibilities on a team basis. This has resulted in improved continuity and level of service to staff of the Office and to external clients.

The Public Advocate is represented on the steering group of the Department of the Attorney General which oversees the record-keeping compliance of the agency.

Staff were provided with a set of guidelines on Conflict of Interest in the WA Public Sector. A register of actual or potential conflicts of interest is maintained by the Manager, Corporate Services. None was reported in 2005-2006.

The Office of the Public Advocate's Instruction 7/96 specifies the agency's policies and procedures with regard to the confidentiality requirements of the *Guardianship and Administration Act 1990*.

# Governance

## Access and equity

The Office of the Public Advocate's practice is guided by the following service standards:

- **Access:** Staff are accessible. Services are physically accessible.
- **Individual needs:** Services are sensitive to people's individual needs.
- **Dignity:** Services promote personal dignity, independence and choice wherever possible.
- **Privacy:** Staff respect privacy of customers and do not release personal information unless required to protect the person's safety or to explain the decision-making process.
- **Information:** The Office of the Public Advocate provides information about services and advice to customers to enable greater choice and to ensure accountability.
- **Professionalism:** Services meet the highest professional and service standards.
- **Feedback:** The Office of the Public Advocate encourages and is responsive to customer feedback about its services.
- **Grievances:** The Office of the Public Advocate treats customer complaints seriously and deals with them as soon as possible to ensure a satisfactory resolution.

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 the Attorney General website at [www.justice.wa.gov.au/publicadvocate](http://www.justice.wa.gov.au/publicadvocate) 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, as can the Annual Report.

The Public Advocate web pages can be accessed through the website of the Australian Guardianship and Administration Committee and the website of the Alliance for the Prevention of Elder Abuse.

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

## Public participation in the formulation of Public Advocate policy and performance:

The Office of the Public Advocate undertakes public consultation where appropriate. Participation in the consultative process is encouraged through the media, the electorates of State Parliamentarians, mail-outs or through invitation from the Office.

Individuals or organisations are also able to post comments in the Contact and Feedback section of the Guardianship, Administration and Advocacy page at the website address: [www.justice.wa.gov.au/publicadvocate](http://www.justice.wa.gov.au/publicadvocate)

## 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 2005-2006 the Public Advocate received two valid applications for information under the *Freedom of Information Act 1992*. No information was held by the Public Advocate in relation to one application and the second applicant did not proceed with the application. The average time taken by the Public Advocate to respond to the matters was six days. One request for release of correspondence originating from the Office of the Public Advocate and held by a third party was received and granted.

Anyone who wishes to access information held by the Public Advocate should contact the Freedom of Information Coordinator on 9278 7300 or 1800 807 437. They may be invited to submit their request in writing.

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

### **Complaints management**

The Public Advocate implemented a new complaints management system in 2005-2006 to achieve greater transparency and efficiency in responding to concerns. Twenty complaints were recorded and resolved in 2005-2006.

If you wish to lodge a formal complaint with the Public Advocate, either in writing, via email or telephone, the Office undertakes to:

- respond to all grievances within 14 days of the complaint being received;
- keep records of all relevant proceedings including details of the grievance, the investigation, methods of resolution and customer feedback;
- make documentation of the investigation available to the person who lodged the complaint (except where this contravenes confidentiality requirements); and
- communicate the outcome in writing, together with any corrective action to be taken, to all parties.

### **Ombudsman complaints**

No formal complaints were received in 2005-2006.

### **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.

New publications, including brochures about elder abuse and a revised Enduring Power of Attorney Kit, along with updated Information Sheets are made available in alternative formats to people with disabilities upon request.

Revisions were made to the Public Advocate pages on the web to incorporate an explanation and examples of marksman and read over clauses, for use by people with a physical disability completing an Enduring Power of Attorney.

Recognition of the needs of patients with a decision-making disability was enhanced by a program conducted in consultation with general practitioners in Perth. Patient files are marked to ensure medical treatment staff are alerted that the Public Advocate is guardian for the patient and must be contacted for consent when medical treatment is required.

The Public Advocate conducted two training sessions in 2006 for providers of services to people with decision-making disabilities in the aged care, disability services and mental health areas.

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

### **Cultural diversity and language services**

The Office of the Public Advocate conducted consultation between July and December 2005, with service providers and older people in culturally and linguistically diverse (CALD) communities, with the assistance of interpreters, as part of research into elder abuse in these communities.

The project was funded by the Government's Active Ageing Strategy (\$25,000) and the Office for Seniors Interests and Volunteering (\$13,000). Forums for older people were generally conducted in the participants' own language using facilitators identified by host community organisations.

## Governance

New community education brochures for culturally and linguistically diverse communities translated into eight languages other than English, were widely distributed to agencies and organisations providing multicultural services in Western Australia.

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 2005-2006 11 on-site interpreters and 1 telephone interpreter were used. The translation service was provided in Serbian, Croatian, Polish, Italian, Macedonian and Vietnamese.

Staff participated in a further Aboriginal cross-cultural awareness program in November 2005.

### Waste paper recycling and Energy Smart Policy

The Office monitors and reports on energy consumption and wastepaper recycling in accordance with these policies. The Office also recycles printer and copier toner cartridges.

### 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/ Media Decisions: Recruitment Advertising & Community Education	2,528
Department of Premier and Cabinet: Intersector – Recruitment Advertising	819
Direct Mail Organisation	0
Market Research Organisation	0
<b>Total Expenditure</b>	<b>3,347</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.

### Related legislation

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

- The State Administrative Tribunal Act 2004
- The State Administrative Tribunal (Conferral of Jurisdiction) Amendment & 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
- The Carers Recognition Act 2004

### 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 Safety and Health Act 1984
- The State Supply Commission Act 1991
- The Financial Administration and Audit Act 1985
- 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 in English, Chinese, Vietnamese, Italian, Greek, Dutch, Polish, Serbian, Croatian
- Care and Respect in Aboriginal Communities Poster
- Office of the Public Advocate brochure
- Community Guardianship Program brochure
- Telephone Advisory Service wallet cards

### Office of the Public Advocate Information Sheets:

1. Introduction to the Guardianship and Administration System
2. Role of the Public Advocate
3. Role of the State Administrative Tribunal
4. Guardianship
5. Administration
6. Sterilisation
7. Public Advocate – Customer Complaints and Service Standards
8. Enduring Power of Attorney

### Office of the Public Advocate Position Statements

1. Consent to Medical and Dental Treatment
2. Restraint
3. Role of the Public Advocate as Guardian of Last Resort in Accommodation Decisions
4. Role of the Public Advocate as Guardian of Last Resort in Medical Decisions
5. Role of the Public Advocate as Guardian of Last Resort in Contact Decisions

All available online at

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

### Enduring Power of Attorney Kit

Can be purchased at State Law Publisher, 10 William Street, PERTH, WA 6000 or at selected Newspaper newsagents. No recommended retail price. Also available as a free download at [www.justice.wa.gov.au/publicadvocate](http://www.justice.wa.gov.au/publicadvocate)

- Enduring Power of Attorney Poster “The Power to Choose” (A4 size)

### Professional guides

- A Guide for Service Providers 2005 Edition (Practice Manual) (\$38.50)

Also available as a free download at

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

### Research reports

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

Also available at

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

### Newsletter

- Office of the Public Advocate Newsletter (electronic document only)

Available at

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

### Annual Report

Available at

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

or upon request to:

Office of the Public Advocate  
Level 1, 30 Terrace Road  
EAST PERTH WA 6004  
or email [opa@justice.wa.gov.au](mailto:opa@justice.wa.gov.au).