



Office of the  
**Public Advocate**

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

The Public Advocate of Western Australia  
**Annual Report 2009/10**



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



Hon Christian Porter MLA  
ATTORNEY GENERAL

In accordance with Section 101(1) of the *Guardianship and Administration Act 1990* of Western Australia, I am pleased to submit the Annual Report of the Public Advocate for the year ending 30 June 2010.

This report records the operations and performance of the Office of the Public Advocate during 2009/10. It outlines the issues and general trends impacting upon the human rights of Western Australian adults who have a decision-making disability and come into contact with this Office.

The Office of the Public Advocate reports on financial and administrative matters to the Director General of the Department of the Attorney General.



Pauline Bagdonavicius

**PUBLIC ADVOCATE**

10 September 2010

Level 1  
30 Terrace Road  
EAST PERTH WA 6004

T: 1300 858 455  
TTY: 1300 859 955  
E: [opa@justice.wa.gov.au](mailto:opa@justice.wa.gov.au)  
I: [www.publicadvocate.wa.gov.au](http://www.publicadvocate.wa.gov.au)

# Contents

OVERVIEW .....	5
The Year in Review .....	5
OVERVIEW OF THE AGENCY.....	7
Operational Structure.....	7
Performance Management Framework .....	13
AGENCY PERFORMANCE .....	14
Advocacy and Investigation .....	14
Guardianship.....	26
Systemic Advocacy.....	38
Community Education .....	41
Corporate Services .....	45
SIGNIFICANT ISSUES IMPACTING THE AGENCY .....	47
DISCLOSURES AND LEGAL COMPLIANCE .....	50
Financial Statements .....	50
Key Performance Indicators.....	50
Ministerial Directives .....	53
Other Financial Disclosures .....	53
Government Disclosers .....	53
Other Legal Requirements .....	53
Government Policy Requirements .....	54
APPENDICES.....	55
Legislation .....	55
Publications .....	56
Glossary.....	58

# Overview

## The Year in Review

The commitment of staff, sound policies and effective partnerships with key agencies and service providers, enabled the Office of the Public Advocate to meet the challenges of an expanding legislative framework and demand for services in 2009/10.

Changes to the *Guardianship and Administration Act 1990* were brought about by the *Acts Amendment (Consent to Medical Treatment) Act 2008*. The most significant changes made by the legislation were the introduction of enduring powers of guardianship (EPGs) and advance health directives (AHDs), a new definition of 'treatment' and amendments to the order of substitute decision-makers for non-urgent treatment. These changes came into effect on 15 February 2010.

Generating awareness and understanding of the existence and proper operation of EPGs and the other key legislative changes, was a challenge and an achievement for the Office in 2009/10.

A suite of informative publications regarding EPGs were produced before the introduction of the legislation and EPGs and AHDs became the focus of the Office's community education program in 2009/10. The Office organised 84 training sessions for well over 2000 people in the Perth metropolitan area and regional centres.

The Office's EPG implementation team met the high output this project required in 2009/10 and demand for information on EPGs and AHDs looks set to continue through 2010/11. It remains to be seen what effect the legislative changes will have on the demand for the Office's investigation and guardianship services, which continued to grow in 2009/10.

There was a 16.5 per cent increase in the number of investigations referred to the Office by the State Administrative Tribunal this year. At 30 June 2010, 23 per cent more people were under the care of the Public Advocate as their guardian of last resort compared to 30 June 2009.

The increasing prevalence of dementia, due to Western Australia's ageing population, continues to be a significant factor contributing to the growth in demand for the Office's services. Of the 896 new matters referred to the Public Advocate for investigation in 2009/10, 41.5 per cent involved a person with dementia and of the 224 new guardianship appointments, 44 per cent involved a person with dementia.

The Office structure underwent changes this year, including the introduction of three senior guardian positions, aimed at improving the management of complex cases as well as supervision and career path structures. In recognition of the increased demand, the Department of the Attorney General also provided funding equivalent to two additional positions for the advocacy and investigation team and the guardianship team, for 2010/11.

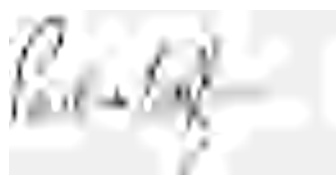
As the substitute decision-maker for adults with a decision-making disability, the Office is reliant on service providers from a range of sectors including disability, aged care, hospitals and health (including mental health and drug and alcohol), housing and accommodation. These agencies are responsible for providing services and support to persons for whom the Public Advocate is appointed guardian.

Positive partnerships with these stakeholders are fundamental to our role. The Office's involvement with the People with Exceptionally Complex Needs project and the Alliance for the Prevention of Elder Abuse, continued to provide opportunities to strengthen relationships with our key partner agencies.

I would like to take this opportunity to recognise the consistent effort and professional approach taken by staff over the year and to reiterate my thanks to the Director General, who appreciates the challenges before the Office.

Community guardianship program volunteers are a small group of altruistic people who donate their time and energy to advance the best interests of people with a decision-making disability. This group deserve thanks and admiration. Their efforts are invaluable.

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



Pauline Bagdonavicius

**PUBLIC ADVOCATE**

# Overview of the Agency

## Operational Structure

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

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

In 2009/10 the Office of the Public Advocate reported on financial and administrative matters to the Director General of the Department of the Attorney General. In accordance with this arrangement, the financial statements of the Office have been published in the Department’s annual report.

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

## Mission

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

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

## Function

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

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

## Values

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

- **Presumption of competence**

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

- **Best interests**

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

- **Least restrictive alternative**

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

- **Limited versus plenary**

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

- **Current wishes and previous actions**

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

## Stakeholders

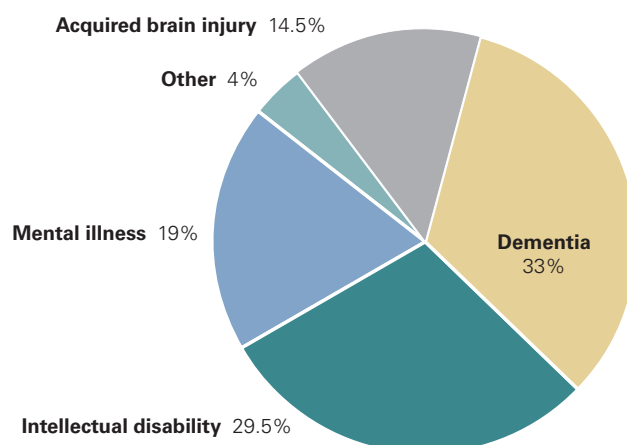
The Office of the Public Advocate's primary stakeholders are adults with a decision-making disability. A decision-making disability can result from dementia, an intellectual disability, an acquired brain injury or a mental illness.

At 30 June 2010, 596 adults with a decision-making disability were represented by the Public Advocate as their guardian of last resort. Of these 596 adults – referred to as represented persons – 33 per cent had dementia, 29.5 per cent intellectual disability, 19 per cent mental illness, 14.5 per cent an acquired brain injury and 4 per cent had some other form of decision-making disability.

**Figure 1 Profile of all guardianship orders appointing the Public Advocate by type of decision-making disability as at 30 June 2010**

### Type of decision-making disability

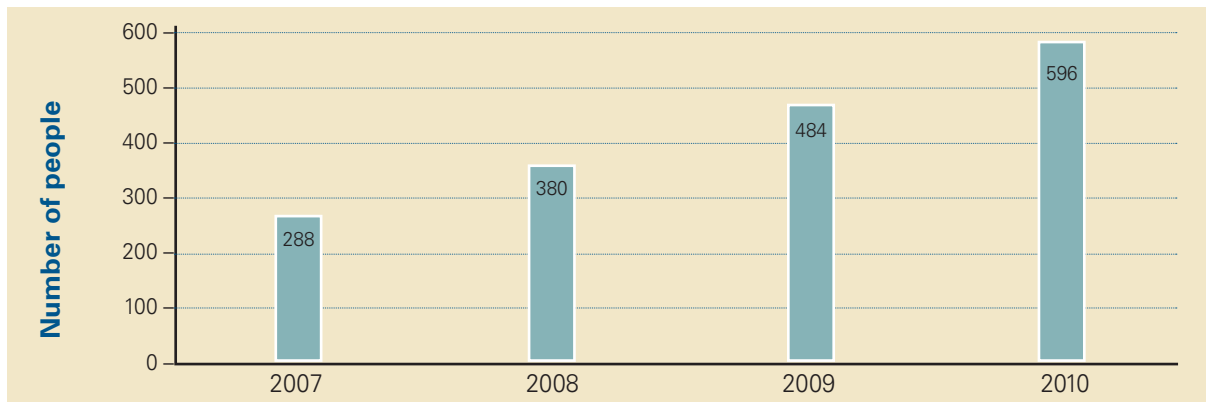
Acquired brain injury	87
Dementia	195
Intellectual disability	176
Mental illness	114
Other	24
<b>TOTAL</b>	<b>596</b>





The number of people for whom the Public Advocate is guardian for, has more than doubled over the last three years, from 288 in June 2007 to 596 in June 2010 (see Figure 2).

**Figure 2 People under guardianship orders appointing the Public Advocate as at 30 June**



The most significant demographic trend impacting on the growing rate of represented persons is the ageing of the population.

Like most developed countries, Australia's population is projected to grow and age over the next 40 years. From 2010 to 2050 it is estimated that the proportion of the population aged 65 and over, will nearly double to a quarter of the population. The baby boomer bulge in Australia's demographic profile means that the decade 2010 to 2020 will have a huge impact on the prevalence of dementia, the largest contributing factor for people represented by the Office of the Public Advocate.

### **Dementia**

A recent study by Access Economics for Alzheimer's Australia 'Keeping dementia front of mind: incidence and prevalence 2009-2050' estimates that there are currently around 245,000 Australians with dementia. By mid century they estimate that the number will have reached over 1.1 million. The projected rates of prevalence suggest that the Office of the Public Advocate can expect continued growth in the number of represented persons that far outweighs growth in the population.

A former report published by Access Economics<sup>1</sup> predicted that the number of Western Australians diagnosed with dementia will grow to more than 79,000 by 2050. Growth of dementia in Western Australia is the third fastest in Australia, after the Northern Territory and Queensland. Around 80 per cent of people with dementia in Western Australia live in the metropolitan area.

### **Intellectual disability**

The most commonly reported disability in Western Australia for people who received services under the National Disability Agreement is intellectual disability.<sup>2</sup> The Disability Services Commission of Western Australia funded and provided services to 10,631 Western Australians with intellectual disability as their primary condition in 2009/10. This accounted for 49 per cent of all service users.<sup>3</sup>

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

2 SCRGSP (Steering Committee for the Review of Government Service Provision) 2009. Report on Government Services 2009, Productivity Commission, Canberra. p.14.15 and Table 14a.13 Use of CSTDA Services by Primary Disability Group.

3 Disability Services Commission, 2010. Data request.

### **Acquired brain injury**

An acquired brain injury (ABI) results in deterioration of cognitive, physical, emotional or independent functions and can occur as a result of trauma, hypoxia, infection, substance abuse, degenerative neurological disease or stroke. In 2007, the Australian Institute of Health and Welfare estimated that people aged 65 years or over were more than twice as likely as those aged less than 65 years to have an ABI with activity limitations or participation restrictions.<sup>4</sup>

In 2009/10 the Disability Services Commission funded and provided services to 1167 Western Australians with an ABI reported as their main disabling condition.<sup>5</sup>

### **Mental illness**

In the 2007 National Survey of Mental Health and Wellbeing Survey, it was estimated that approximately 20 per cent of all Australians aged 16-85 years had experienced mental disorders in the previous 12 months. The prevalence of mental disorders declines with age from more than one in four (26.4 per cent) in the youngest age group (16-24 years) and to around one in 20 (5.9 per cent) in the oldest age group (75-85 years).<sup>6</sup>

This remains consistent with earlier reports such as the 1997 National Mental Health and Wellbeing Survey,<sup>7</sup> in which it was estimated that around 19 per cent of people in Western Australia had experienced a mental disorder in the previous 12 months, with the prevalence being highest amongst those aged 18-24 years and decreasing with age. Six percent of Western Australians aged 65 years and over reported some form of mental disorder. The prevalence of high or very high psychological distress in WA was 9.2 per cent in 2004.<sup>8</sup>

## **Secondary Stakeholders**

The people and organisations who provide support and/or assistance to adults with a decision-making disability, make up the Office of the Public Advocate's secondary stakeholders. These include:

- unpaid carers (this can include family and friends who provide ongoing support and assistance in an unpaid capacity<sup>9</sup>)
- paid carers
- government and non-government organisations.

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

5 Disability Services Commission, 2010. Data request.

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

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

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

9 *Carers Recognition Act 2004*.

### Potential stakeholders

People who do not have a decision-making disability but who seek to safeguard their future decision-making by completing an enduring power of attorney and/or an enduring power of guardianship, make up the Office of the Public Advocate's secondary stakeholders.

A person making an enduring power of attorney, does so in an attempt to secure their financial future by nominating a trusted family member or friend (known as their attorney), to make financial decisions on their behalf should they lose their decision-making capacity. The people being asked to act as an attorney are also potential stakeholders.

The legislation which introduced enduring powers of guardianship, came into effect on 15 February 2010. A person making an enduring power of guardianship, does so in an attempt to secure their future personal, lifestyle and treatment decision-making by nominating a trusted family member or friend (known as their enduring guardian), to make some or all of these decisions on their behalf should they lose their decision-making capacity. People who wish to appoint an enduring guardian and people being asked to act as an enduring guardian are therefore a recent addition to the Office's potential stakeholders.

### Agency stakeholders

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

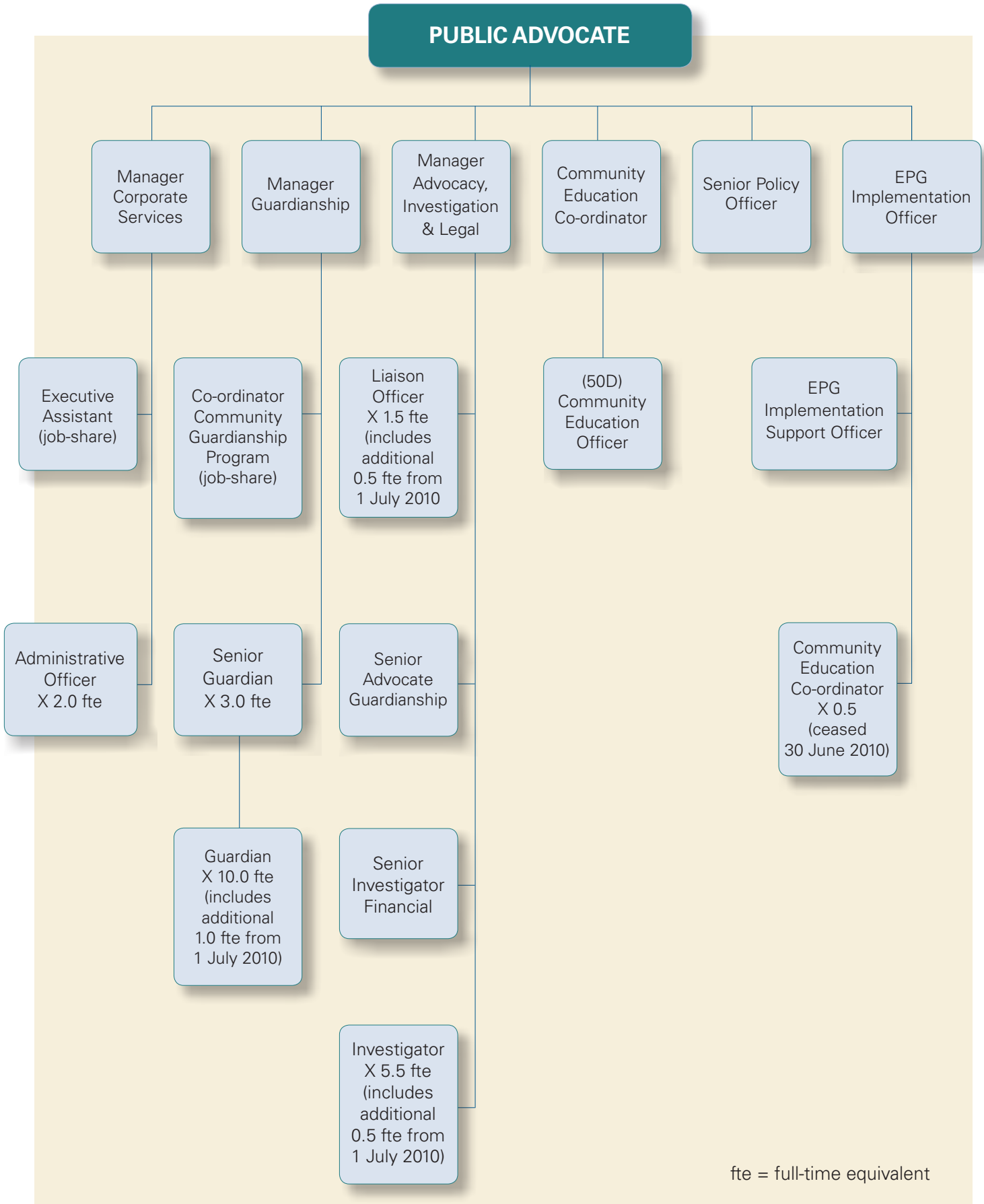
### Resources

The role and functions of the Public Advocate in 2009/10 were supported by:

- staff of 33.67 (full-time equivalent)
- expenditure of \$4,281,000\*

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

## Organisational Chart



## Performance Management Framework

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

### Government goal

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

### Department of the Attorney General goal

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

### Department purpose

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

### Office of the Public Advocate services

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

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

### Cross-agency initiatives

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

Throughout 2009/10 the Office worked closely with the Department of Health on the implementation of the *Acts Amendment (Consent to Medical Treatment) Act 2008*. This joint effort continues, with the Office of the Public Advocate responsible for the implementation of enduring powers of guardianship and the Department of Health responsible for advance health directives.

# Agency Performance

## Advocacy and Investigation

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

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

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

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

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

## The Year in Review

In 2009/10, the Public Advocate carried out 1040 investigations into the personal or financial welfare of adults with a decision-making disability. This included new matters and matters carried over from 2008/09. Of these, 952 needed investigation and advocacy services relating to applications for, or reviews of, guardianship or administration orders before the State Administrative Tribunal. The other 88 were referred directly to the Public Advocate by an individual or community-based organisation.

An additional 542 preliminary investigations were carried out by the liaison officer.

New investigations (as opposed to matters carried forward from previous years), account for the majority of investigations. In 2009/10 a total of 896 new investigations were carried out. Of these new investigations, 840 related to applications before the State Administrative Tribunal and 56 were referred to the Public Advocate by an individual or community-based organisation.

### Investigations referred by the State Administrative Tribunal

The 840 new investigations relating to applications for guardianship and administration referred by the State Administrative Tribunal, comprised of applications regarding guardianship, administration enduring powers of attorney and reviews of guardianship and administration orders.

Since 2005, when the State Administrative Tribunal began operation, investigations involving this Office have increased by 62 per cent. From 2008/09 to 2009/10 there was a 16.5 per cent increase.

During the year there was an overwhelming increase (over 200 per cent) in the number of applications the Tribunal listed as urgent. This placed demand on the Office's resources to attend hearings at short notice to represent the best interests of proposed represented persons.

In some instances, applications to the State Administrative Tribunal are made because the parties involved with a represented (or proposed represented) person, either disagree, or are seeking clarification, regarding who should be the person's substitute decision-maker.

Frequently in such circumstances, these parties nominate the Public Advocate for appointment because of the independence of the Public Advocate. The Tribunal however, is bound by the provisions of the *Guardianship and Administration Act 1990*, and therefore must consider least restrictive alternatives to the making of an order. If an order is determined to be necessary, people who are willing, suitable and available to be appointed as guardian, must be considered ahead of the Public Advocate – who is the guardian of last resort. Conflict or disagreement in itself therefore, does not necessarily mean there is the need for a guardian to be appointed. Nor does it preclude one or more of the parties involved from being appointed by the Tribunal.

## Case Study

### Public Advocate – guardian of last resort?

Mr F is a young man with an intellectual disability. He has been serving time in a rural-community based prison for a number of years, after the Supreme Court found that he was unfit to stand trial, under the *Criminal Law (Mentally Impaired Accused) Act 1996*.

A release-planning committee, consisting of service providers from various specialist fields, community advocates and friends of Mr F, had been meeting regularly since Mr F was imprisoned. The committee proposed a number of release plans to the Mentally Impaired Accused Review Board over this time. The Board considered the proposed release plans, but sought various adjustments and raised a variety of issues which would have to be addressed to ensure adequate support and safeguards were in place, before Mr F's release could be considered.

This planning occurred without the need for a legally appointed guardian, as the parties involved were able to consult with Mr F to ascertain his views and wishes and therefore act in his best interests. This was a less restrictive alternative to appointing a guardian.

However, when Mr F's release from prison became more imminent, the Department of Corrective Services (DCS) was unable to determine who had the authority to release some of Mr F's personal details to proposed carers. DCS therefore made an application to the State Administrative Tribunal, proposing that the Public Advocate be appointed Mr F's guardian.

The Office of the Public Advocate carried out an investigation regarding the application, in order to establish whether there was the need for a guardian to be appointed, and if so, who was suitable, willing and available. The investigation revealed a number of people in Mr F's life who could be considered as suitable guardians, therefore negating the need for the appointment of the Public Advocate.

When Mr F was interviewed by the investigator, he said he would prefer someone he knew and trusted be appointed as his guardian, rather than the Public Advocate. At the Tribunal hearing, the investigator advocated that if the Tribunal determined that there was a need for a legally appointed guardian, it should be one of Mr F's friends. The Tribunal agreed.

The Tribunal determined there was a need for a guardian, so that Mr F's personal details could be provided to the relevant parties in order for his release application to progress. Two people from Mr F's support network were appointed joint guardians to enable this to occur.

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



## Liaison officer

Since the State Administrative Tribunal began operating in 2005, the Office of the Public Advocate's liaison officer has strengthened the relationship and communication between the two agencies. The liaison officer performs a significant role in providing the Tribunal advice regarding applications it receives and making recommendations about the options available – including referral to the Office of the Public Advocate for further investigation. The liaison officer advises and liaises with Tribunal Members, Tribunal administrative staff, family members, service providers and other interested parties involved in the application process.

The number of referrals from the Tribunal has once again increased marginally from the previous year. The liaison officer conducted preliminary investigations into 542 applications for guardianship, administration and intervention in an enduring power of attorney, compared to 505 in 2008/09.

Over the four years, referrals to the liaison officer have doubled, from 270 in 2005/06 to 542 in 2009/10. The growing demand for the services of the liaison officer has been recognised by the Department, with an extra 0.5 full time employee position allocated at the end of the financial year. It is hoped that this additional resource will result in an improvement in the response time for completing preliminary inquiries by the liaison officer in 2010/11.

As at 30 June 2010, the liaison officer had not been involved in any investigations regarding the possible intervention into an enduring power of guardianship. It is expected that these will begin in 2010/11.

## Community-referred investigations

Section 97 (1)(c) of the *Guardianship and Administration Act 1990* gives the Public Advocate the power to conduct investigations into matters referred by the community, about a person of concern. Referrals come from a wide variety of sources and in 2009/10, came from people including family members, friends and neighbours of adults with impaired or suspected impaired decision-making capacity; members of the community; human service support agencies; and government and non-government agencies.

In total 88 such referrals were reviewed by the Office in 2009/10. Of those, 56 were closed during the financial year and 32 remained open as at 30 June 2010. In most cases, the focus of community-referred investigations was to establish whether the person of concern required a guardian or administrator, or was under an inappropriate order.

Some investigations take considerable time to obtain critical information to enable the Public Advocate to establish whether an application to the Tribunal should be made. The legislation does not provide the Public Advocate with the power to demand information from parties and this can constrain some investigations in which claims cannot be substantiated, such as financial abuse or other forms of abuse.

The case study on the following page, titled '*No power to compel parties for information and the need for interagency collaboration*', highlights some of the challenges faced when conducting an investigation under such circumstances. It also demonstrates the unfortunate effect on the proposed represented person, when proceedings are delayed due to insufficient evidence regarding capacity.

Community-referred investigations appear to have decreased from previous years, with 201 recorded in 2008/09 and only 88 in 2009/10. The introduction of a new case management system however, has enabled better recording of all investigation types. For the first time this year, all investigations referred to the liaison officer, were able to be recorded separately. Previously, some liaison officer referrals were grouped with the community-referred investigations. The separation of the two statistics explains the apparent decrease in the number of community-referred investigations.

## Advocacy

Investigators advocate in the best interests of proposed represented persons at hearings before the State Administrative Tribunal. In 2009/10, they did so at more than 570 hearings.

### Case Study

#### **No power to compel parties for information and the need for interagency collaboration**

Mr P is a 53 year old man with a history of schizophrenia, frontal lobe damage and epilepsy. He had been separated from his wife for 5 years, while she remained in their marital home with their 14 year old daughter. Mr P continued to pay household expenses, council rates and child support, although he lived elsewhere.

Mr P's circumstances were referred to the Office of the Public Advocate by a solicitor from a community legal service, who had concerns about his vulnerability and inability to provide clear and consistent instructions in relation to Family Court proceedings and property matters. It was alleged that Mr P was easily manipulated by his wife and that she took advantage of him when his mental health was poor. Mr P had approached the community legal service to assist him in obtaining a divorce from his wife and to settle the marital property.

After some investigation, the Public Advocate made an administration and guardianship application to the State Administrative Tribunal, proposing that a limited guardian and limited administrator be appointed to assist Mr P with his personal affairs.

Prior to the Tribunal hearing, the investigator tried to obtain information relating to Mr P's capacity to make reasonable and informed decisions. This was a difficult task.

Mr P's treating psychiatrist declined to provide a capacity report, stating that he did not believe it was his role. Mr P's case manager from the local mental health service was also reluctant to provide a report in writing, but noted during a phone conversation that she believed Mr P did have capacity. Despite this view, she refused to put her views in writing. Numerous requests were also made to Mr P's regular psychiatrist but no report was provided.

## Case study (continued)

While these professionals were reluctant to provide written reports, they were all very clear in their views relating to Mr P and the need to protect his rights. Mr P's treating psychiatrist contacted the Tribunal directly to advise that he felt Mr P was too ill to participate in the scheduled hearing and that it should be adjourned to enable him to participate at a later date. It was felt that Mr P would provide a significant contribution to the hearing and that he should be given the opportunity to do so.

At the first hearing, the Tribunal was able to appoint a limited guardian with the powers of next friend and guardian *ad litem*, to assist Mr P with his Family Court matters. The Tribunal was able to do so, because the test in the Act, to make a guardianship order, is lower than that for administration. Mr P's psychiatrist attended the hearing by telephone and stated that he believed that although Mr P had had numerous hospital admissions in the past five years, he was still capable of managing some of his own affairs. The administration application was therefore adjourned for three months, in order for further investigation to occur.

Following this adjournment the investigating officer found it very difficult to gather additional information relating to Mr P's circumstances. During this time Mr P was admitted to hospital on numerous occasions resulting in the next scheduled hearing having to be postponed a number of times as he was unable to attend.

During this period, Mr P's guardian was unable to completely fulfil their delegated authorities, because without an appointed administrator, no one was available to make financial decisions on Mr P's behalf – leaving Mr P in 'limbo'.

Eight months after the initial applications were made and two weeks before the next scheduled hearing, the investigating officer received a telephone call from Mr P's friend who was proposing to be appointed administrator. She advised that Mr P had been admitted to hospital again. She felt that Mr P was being admitted to hospital so often, because the unresolved financial matters were causing him additional stress and worsening his mental health.

In a final attempt to gather capacity information relating to Mr P's mental illness, the investigating officer contacted his local hospital where he was admitted before being taken to a mental health specific facility. The investigator explained the situation to the medical records officer, who agreed to provide copies of past and recent admission notes detailing Mr P's mental health condition and increased frequency of admission.

Despite Mr P's inability to attend the scheduled hearing, it was agreed by all parties that the issues had been left undecided for too long. The Tribunal determined there was now sufficient evidence, medical and otherwise, to overturn the presumption of capacity, allowing them to appoint a limited administrator for Mr P in relation to matters surrounding his property and divorce settlement.

Even though the Public Advocate was unable to obtain medical information relating to Mr P, the co-operation of some agencies and the support of Mr P's friend enabled the investigating officer to obtain sufficient information and evidence to support the Public Advocate's application for administration and to enable the Tribunal to appoint a limited administrator for Mr P.

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

## Issues for Advocacy and Investigation

### Financial abuse of the elderly

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

A significant proportion of the investigations carried out involved financial abuse as the main reason for the application being made to the State Administrative Tribunal. Other reasons included disputes within families about where a person should reside or what medical treatment they should receive. Many older Western Australians do not have support networks such as family and friends to assist them when they lose the capacity to make their own decisions. This often results in the appointment of the Public Advocate or the Public Trustee being necessary.

### Transition of young people

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

In 2009/10 18 applications for a guardian and/or administrator were considered by the State Administrative Tribunal, for a young person involved with the Department for Child Protection prior to them having turned 18 years old. The Public Advocate was appointed as guardian for 12 of these young people.

Of the other six applications, two resulted in the appointment of carers as the young people's guardians; three applications for guardianship were dismissed by the Tribunal as there was a less restrictive alternative to the making of an order; and one was adjourned until early 2011 – closer to the time the young person turns 18.

The Office of the Public Advocate has been involved in the Department for Child Protection's leaving care planning, prior to the application being made to the Tribunal, for almost half of the applications made this year.

In recognition of the need to improve the collaboration between the two agencies, a revision of the memorandum of understanding was underway at the time of reporting. The focus of the review is to ensure that referrals are received by the Office of the Public Advocate at an earlier stage and to improve the quality and timeliness of applications made by the Department for Child Protection to the Tribunal. The revised memorandum of understanding is expected to be completed in early 2010/11.

## Court referrals

The Children's, Magistrates and Supreme Courts continue to seek the advice of the Public Advocate when there are concerns that a person appearing before the court (in civil matters) is unable to understand proceedings and may need a guardian to assist. In 2009/10 there were six referrals received from the three courts, which was an increase of one from the previous year.

While these referrals are few in number, the investigation work involved requires considerable time and effort to seek evidence about the proposed represented person's background and their capacity to participate in the matter before the court. In most cases the court has very little information about the person and therefore considerable time is taken to gather this information. The powers afforded to the Public Advocate under the *Guardianship and Administration Act 1990* do not authorise the Office to compel parties to provide information.

## Investigations for people in remote communities

The remoteness of some communities, combined with the Office of the Public Advocate's limited resources, presents unique challenges. Investigating the need for a guardian or administrator for a person who lives in a remote community requires a different approach as gaining information is often difficult. To overcome this, the Office has forged good working relationships with local service providers including legal aid, who are able to assist in gathering information, which would ordinarily be obtained directly by the investigator. The willingness of legal aid solicitors and other professionals in regional and remote areas, to work collaboratively with the Public Advocate in an attempt to serve the best interests of mutual clients, is an invaluable resource.

Following is a case study which demonstrates some of these difficulties involving an Aboriginal client. From 2005/06 to 2009/10 the number of investigations concerning an Aboriginal person has increased from two per cent to 10 per cent (see Figure 8).

## Case study

### **Working with remote north-west Aboriginal people and service agencies**

Mrs E lives in a remote Aboriginal community. The Office of the Public Advocate received a referral from a court in the north-west of the State, to conduct an investigation to determine whether Mrs E required a guardian.

The referral contained limited information about Mrs E, other than the fact that she was currently involved in care and protection matters which were being heard by the Children's Court regarding her daughter. There was no information to indicate whether Mrs E had a decision-making disability or any other personal information about her circumstances. There was however, information regarding a grant she had received from legal aid, which included funds for an assessment of capacity. The details of this assessment however, were not available to the Office of the Public Advocate. The referral also gave the details of Mrs E's assigned legal aid lawyer.

The referral highlighted the possible inability of Mrs E to instruct a lawyer in court proceedings and raised the question of whether a guardian should be appointed to act on her behalf in this capacity.

The investigating officer made contact with the lawyer, who had extensive knowledge of the community in which Mrs E lived, including details of who in the community could provide information about Mrs E's situation. The lawyer had met with Mrs E and her family, but was unable to determine whether she had the capacity to instruct a lawyer. The remoteness of the area made it difficult for a psychiatrist to see Mrs E for a capacity assessment.

After some negotiations, it was agreed that the capacity assessment findings from the legal aid grant, could be released to the Office of the Public Advocate, to assist with the investigation.

Based on the capacity assessment, together with information provided by the court and legal aid, the investigator made an application to the State Administrative Tribunal for consideration of the appointment of a guardian to act as Mrs E's next friend in the Children's Court proceedings.

Before the Tribunal hearing, the investigator – with the assistance of the legal aid lawyer – was able to gather more information by speaking to people in the community who knew Mrs E.

Mrs T – a friend of Mrs E and her family, who lived in the same community – was identified as someone who was willing, suitable and available to be appointed as Mrs E's guardian.

The Tribunal hearing was conducted via video conference. Based on the information presented by the investigator, the Tribunal appointed Mrs T as limited guardian to act on Mrs E's behalf in the court proceedings.

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

## Our Customers

Of the 896 new matters referred to the Public Advocate for investigation in 2009/10, nearly half of them (41.5 per cent) involved a person with dementia, while 18 per cent had an intellectual disability, 18.5 per cent a psychiatric condition, 13.5 per cent an acquired brain injury and 8.5 per cent had another disability (see Figure 3).

Guardianship matters (personal, lifestyle and treatment) were the dominating factor in investigations this year, with 77 per cent of applications reporting decisions about matters such as accommodation, medical treatment and service provision, being required for the proposed represented person. Financial concerns accounted for 22.5 per cent of investigations (see Figure 4).

People with a decision-making disability are vulnerable to abuse. Allegations of abuse were made in 134 of the 896 new investigation matters received by the Office of the Public Advocate in 2009/10 (see Figure 5). Again this year, the most commonly reported form of abuse was financial, accounting for 46.5 per cent of all allegations. This was followed by neglect (25 per cent), physical abuse (11 per cent), psychological abuse (10.5 per cent) and sexual abuse (seven per cent), some of which relates to historical abuse.

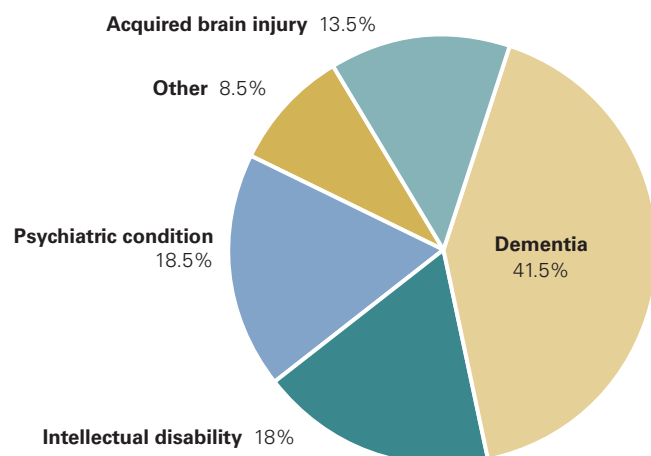
In 73 of these cases of alleged abuse, the victim was aged over 65 years (see Figure 6). Financial abuse of those aged over 65 was significantly higher (56 per cent) than other reported forms of abuse.

Most new investigations (76 per cent) were carried out in the metropolitan area (see Figure 7). Ten per cent of the 896 new matters referred for investigation in 2009/10 were regarding a person of Aboriginal or Torres Strait Islander descent (see Figure 8).

**Figure 3 Profile of new investigations by type of decision-making disability 2009/10**

### Type of decision-making disability

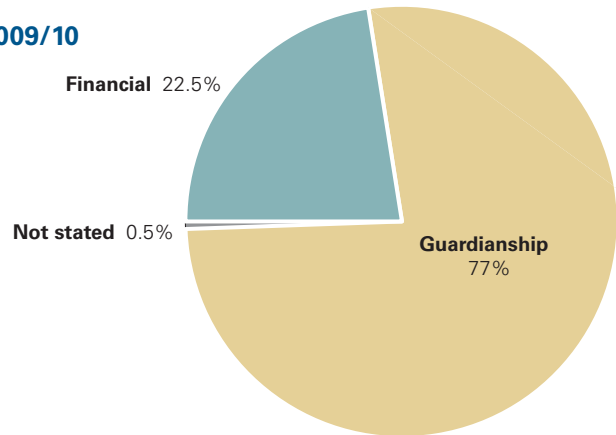
Acquired brain injury	121
Dementia	373
Intellectual disability	159
Psychiatric condition	165
Other	78
<b>TOTAL</b>	<b>896</b>



**Figure 4 Profile of new investigations by issue 2009/10**

**Issue**

Financial (administration and enduring powers of attorney)	203
Guardianship (including reviews of guardianship orders)	688
Not stated	5
<b>TOTAL</b>	<b>896</b>

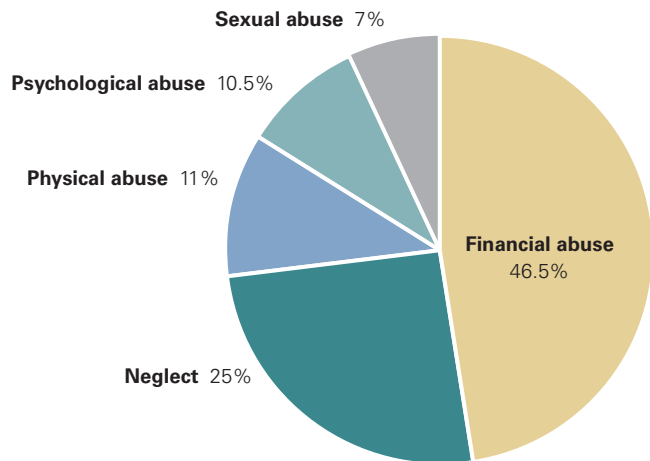


**Figure 5 Profile of new investigations alleging abuse by type of abuse 2009/10 (including statistics of elder abuse)**

<b>Abuse type</b>	<b>134 people*</b>
Financial abuse	83
Neglect	45
Physical abuse	20
Psychological abuse	19
Sexual abuse	12
<b>TOTAL</b>	<b>179</b>

\*Abuse was alleged in 134 investigations, however, in some instances more than one alleged abuse type was reported in the application.

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

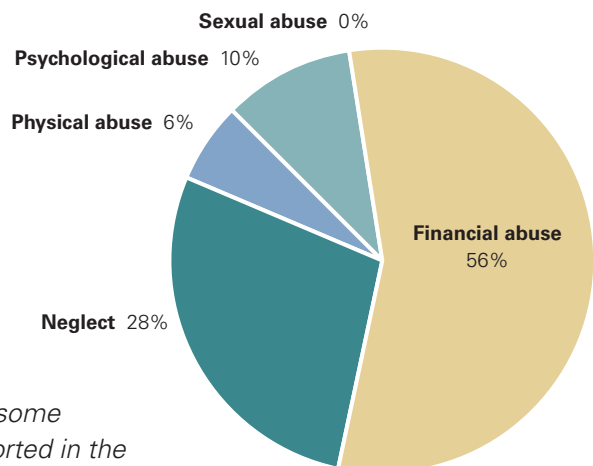


**Figure 6 Profile of new investigations alleging elder abuse (aged over 65) by type of abuse 2009/10**

<b>Abuse type</b>	<b>73 people*</b>
Financial abuse	53
Neglect	26
Physical abuse	6
Psychological abuse	9
Sexual abuse	0
<b>TOTAL</b>	<b>94</b>

\*Abuse was alleged in 73 investigations, however, in some instances more than one alleged abuse type was reported in the application.

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

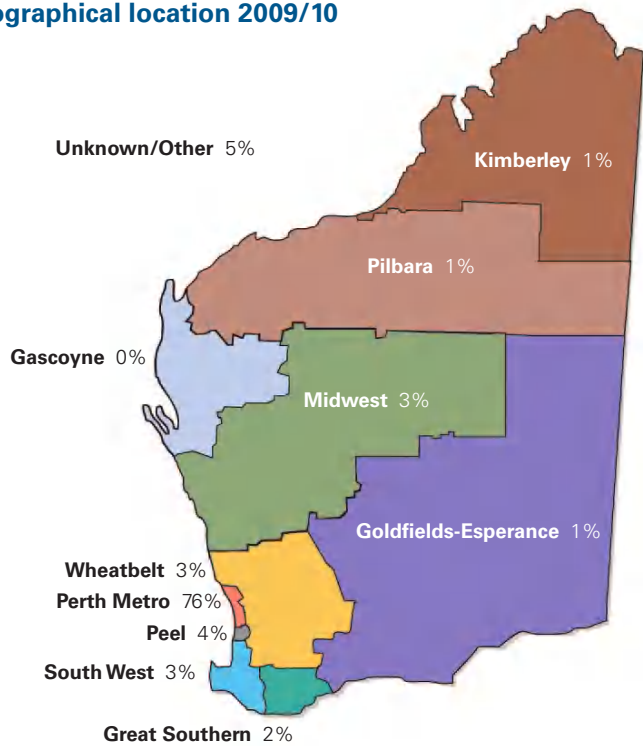




**Figure 7 Profile of new investigations by geographical location 2009/10**

**Geographical location**

Gascoyne	2
Goldfields-Esperance	10
Great Southern	19
Kimberley	10
Mid West	28
Peel	39
Perth Metro	683
Pilbara	9
South West	29
Wheatbelt	25
Unknown/Other	42
<b>Total</b>	<b>896</b>



**Figure 8 Profile of new investigations, by Aboriginality or Torres Strait Islander descent, from 2005/06 to 2009/10**

Year	Total	Non ATSI*	ATSI*	ATSI* as a percentage of total
2005/06	611	601	10	2
2006/07	624	609	15	2
2007/08	757	715	42	6
2008/09	833	777	56	7
2009/10	896	808	88	10

\*ATSI = Aboriginal or Torres Strait Islander

## Guardianship

The Public Advocate makes personal, lifestyle and treatment<sup>10</sup> decisions in the best interests of an adult with a decision-making disability when the State Administrative Tribunal determines there is no one else suitable, willing and available to be appointed as that person's guardian.

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

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

## The Year in Review

In 2009/10 there were 224 new appointments of the Public Advocate as guardian of last resort, compared to 231 new appointments in 2008/09.

At 30 June 2010, the Public Advocate had responsibility as guardian of last resort for 596 adults with a decision-making disability, compared to 484 at 30 June 2009, representing an increase of 23 per cent.

During the year, the Public Advocate made personal, lifestyle and treatment decisions for 723 people compared to 601 in 2008/09. These decisions covered a range of personal circumstances including:

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

---

<sup>10</sup> Treatment refers to any medical, surgical, or dental treatment or other health care, including a life-sustaining measure or palliative care.

For the third year running, people with dementia accounted for the largest proportion of new appointments of the Public Advocate as guardian. Of the 224 people newly appointed in 2009/10, 99 had dementia (44 per cent). This is a reflection of the ageing population, the subsequent increasing prevalence of dementia in the community and the growing number of people without family or friends who are suitable, willing and available to take on the role of decision-maker.

The Public Advocate allocated a guardian to a represented person within one working day of notification of appointment in 94 per cent of cases. The slight shortfall from the 95 per cent target set for this measure of timeliness reflects the increased demand for the Office's guardianship services.

To meet the needs of the Office's 78 represented persons of Aboriginal or Torres Strait Islander descent, guardians liaised with Aboriginal agencies, service providers, Aboriginal community members and their families to ensure culturally appropriate practices were adopted.

### **Restructure of the guardianship team**

In 2009/10 the Office of the Public Advocate's guardianship team underwent a restructure. Three senior guardian positions were created from existing resources in an attempt to improve the overall management of complex cases and to provide a supervision structure as well as career path opportunities for members of the guardianship team. The co-ordinator community guardianship program position was reclassified in recognition of its role in recruiting and assessing volunteers and managing the program.

### **Community guardianship program**

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

In April 2010, a targeted campaign to recruit new volunteers to the community guardianship program was undertaken. Assessment of candidates was underway at the time of reporting. At 30 June 2010 there were a total of 13 volunteers in the program, nine of whom had been appointed as guardian by the State Administrative Tribunal.

## Issues for Guardianship

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

- While the majority of the Public Advocate's represented people live in the Perth metropolitan area, there are a number who live in regional locations. At 30 June 2010, some 41 of the 224 new appointments were for people who lived outside the Perth metropolitan area. Ensuring adequate support and services are provided to these clients, maintaining contact with them and conducting visits often poses unique challenges to the Public Advocate.
- In 2009/10 guardians and investigators made more than 18 trips to regional areas. In some cases, the Public Advocate has had to determine the suitability of accommodation options for represented persons living outside of Western Australia.
- The issues surrounding decisions which guardians are required to make may be complex, as a number of represented persons have multiple and complex needs. These people may have more than one diagnosed condition combined with a drug or alcohol problem and challenging behaviour. Sometimes as a result of their behaviour they come into contact with the criminal justice system. Decision-making for such people involves the guardian working with a number of agencies which together provide an intensive level of support.
- Due to the increasing number of elderly people for whom the Public Advocate is appointed guardian, decisions regularly have to be made regarding treatment decisions for people who have complex medical conditions, chronic illnesses or are terminally ill. The challenge for the Public Advocate is carefully weighing up the wishes of the represented person and those of their family members and friends, alongside the views of the treating physicians about what is in a person's best interests regarding treatment or end of life care.
- Guardians may experience pressure to locate services, seek funding and co-ordinate the provision of services for represented persons. The shortfall of appropriate services and the refusal of represented persons to accept help compound this problem. Where people have a dual diagnosis, for example, an intellectual disability and a mental illness, the task of encouraging an agency to take the lead role may be very difficult.
- Making decisions about whether a represented person remains in their own home or is placed in residential care, when concerns exist around their self-care, is often a source of conflict between guardians and represented persons and/or their relatives. Guardians must balance the rights of a represented person to remain at home and their need for care.
- In many cases the Public Advocate has been required to determine the need for chemical and/or physical restraint for represented persons. This can involve seeking a guardianship review hearing before the State Administrative Tribunal. In some cases, the Public Advocate has had to consent to psychological programs for behavioural management of disruptive or self-injurious represented persons.

- The appointment of the Public Advocate can result in major disagreement within the family of the represented person. In cases where the represented person has experienced abuse, exploitation or neglect, contact between the person and their family may often need to be supervised. During the year, the Public Advocate arranged supervised access to represented persons where there was risk of abuse. In some cases, guardians must work with represented persons whose parents or relatives also have a decision-making disability.
- People with a decision-making disability may be extremely vulnerable to sexual assault and sexual exploitation. The Public Advocate intervenes in these matters and seeks Police involvement (via the Sexual Assault Squad), referral to the Sexual Assault Resource Centre and medical and counselling services. The Public Advocate has noted the particular vulnerability of young people with intellectual disabilities and women with mental illnesses, to sexual assault. This group often lack adequate self protective behaviours and/or family and agency support services.
- Making decisions for represented people from an Aboriginal or Torres Strait Islander background requires an understanding of cultural differences. The family members of these represented people sometimes oppose or do not recognise the authority of the Public Advocate as their relative's guardian.
- The Public Advocate makes decisions for people who are frequent and sometimes serious offenders, whether detained in a psychiatric hospital or prison, or living in the community. These individuals can pose a risk to themselves as well as members of the community and often require intensive support and cross-agency collaboration which might involve the Police, the Department of Corrective Services' Intellectual Disability Diversion Program, Legal Aid, and Mental Health Services.
- The Public Advocate continues to undertake the legal functions of 'next friend' and guardian *ad litem* which is to initiate or defend any civil legal proceedings respectively. This usually involves a guardian providing instructions to a lawyer during care and protection proceedings (taken by the Department for Child Protection) on behalf of a represented person's child or baby, who was apprehended at birth. This function is undertaken by the Public Advocate where the State Administrative Tribunal determines that a represented person is unable to conduct their own legal affairs due to a lack of decision-making capacity.

## Case study

### Revocation

Mrs A is a 72-year-old woman with severe dementia. She is cared for by her husband of 50 years in their family home. They have no dependents or extended family members.

After becoming aware of Mrs A's home care arrangement, a service provider became concerned for her welfare. The service provider therefore made a guardianship application to the State Administrative Tribunal. The Public Advocate was appointed guardian for Mrs A for a period of 4 months with the authority to determine the services she might require and to decide where and with whom she should live.

Mrs A's husband was distressed about the appointment of the Public Advocate, as he felt that he was the most appropriate person to make decisions for his wife. Mr A also believed the appointment of the Public Advocate was based on incorrect information that ultimately resulted in him losing his right to care for his wife independently.

At the time of the guardianship appointment, Mr A was anxious about the possibility that his wife might be placed in a residential aged care facility, because when he had previously attempted to move his wife into residential care, the experience had been negative and therefore he had returned his wife to the family home. It was also clear that Mr A was yet to comprehend and accept the extent of his wife's dementia.

It was obvious to the guardian however, that Mr A was devoted to Mrs A and was determined to do his best for her. His primary focus was on the wellbeing of Mrs A and to care for her for as long as possible. Mr A was receptive to discussing his concerns with the guardian and working together to ensure Mrs A's best interests were maintained.

In partnership with Mr A and external services, the Public Advocate was able to work through the care needs and safety concerns raised by the service provider in the guardianship application and to achieve positive outcomes for Mrs A.

New activities were located to occupy Mrs A and Mr A gained a better understanding of dementia, which enabled more effective caring and management of his wife's disruptive behaviours. Mr A re-engaged respite services for his wife. Services were also located to provide emergency care for Mrs A should Mr A be unable to fulfil his role as her carer and Mrs A was waitlisted at three aged care facilities of Mr A's choice.

The State Administrative Tribunal subsequently accepted the guardian's recommendation that the guardianship order be revoked as Mr A had demonstrated a willingness to make adjustments to the management and care of his wife. He also showed more insight concerning his wife's specific needs and stated he would ask for help if he became unable to cope in his role as her carer.

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

## Case study

### People with exceptionally complex needs

Mr B is a 23 year old man with an intellectual disability, as a result of foetal alcohol syndrome. He also has a significant substance use problem.

The State Administrative Tribunal appointed the Public Advocate as Mr B's plenary guardian for two years to make all personal, lifestyle and treatment decisions on his behalf. The Tribunal was concerned for Mr B's welfare as he led an itinerant lifestyle, had multiple health problems including self-harm and posed a high risk to the community as a sexual and violent re-offender.

On being appointed guardian, the Public Advocate quickly established that Mr B had very complex needs requiring intensive support and co-ordinated services. The Public Advocate successfully referred Mr B to the 'People with Exceptionally Complex Needs (PECN) Project' as he met all of the entry criteria.

As a result of his involvement with PECN, a detailed support plan was developed for Mr B involving multiple agencies. The support plan focused on Mr B's health issues, the need for suitable accommodation and personal and community safety. The Interagency Executive Committee for the PECN project provided final approval for the plan which also included a funding commitment in relation to accommodation support services.

Suitable accommodation and support workers were located for Mr B and he was referred to a drug rehabilitation program. The support workers ensured that Mr B attended regular medical appointments with a local General Practitioner and appointments for his drug rehabilitation. Mr B was also monitored by the Police Sexual Offender Management Squad.

The Office of the Public Advocate continues to work closely with the PECN co-ordinator and other partner agencies, to support Mr B in the community and to reduce the risks of future homelessness, relapse in his health conditions, substance abuse and risk of re-offending.

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

## Case study

### Vulnerable adults and the use of the internet

Miss J is a 32 year old woman with a mental illness. She is single, unemployed and lives alone. Her brother made an application to the State Administrative Tribunal to become Miss J's guardian when he became aware that his sister's welfare was at risk as a result of an internet relationship she had established with an older man (Mr T).

At the Tribunal hearing, evidence was provided that Miss J was not compliant with her medications and as a result, her psychiatric condition was unstable. At the time of the hearing, she had been in a relationship (via the internet) for two months, with Mr T, who was making plans to move in to Miss J's home to allegedly care for her.

Miss J advised the Tribunal that she had met Mr T on a number of occasions and he had been to her home. She felt that while he was a lot older than her, she trusted him completely and regarded him as her boyfriend. She added that while Mr T had borrowed some money from her savings account, she knew he would pay her back.

Miss J's brother had met Mr T and said that in his opinion, Mr T was exploiting his sister's vulnerability as she was lonely and mentally unwell and making poor judgements about Mr T's character. He felt that as Mr T had been evicted from his rental accommodation for non-payment, he was looking for free accommodation with his sister.

The Tribunal agreed that Miss J was incapable of making reasonable judgements about her welfare and was in need of a guardian. Miss J told the Tribunal that she objected to her brother being appointed as her guardian because he had "interfered with her life".

The Tribunal appointed the Public Advocate as Miss J's guardian, with the authority to decide who could have contact with her and where and with whom she should live.

The Public Advocate's delegated guardian met with Miss J and Mr T and established that it was not in Miss J's best interests that Mr T move in to her apartment. Miss J would be in breach of her tenancy agreement and more importantly, Mr T's motives were not altruistic in nature as he was not offering to care for Miss J as she had hoped.

The guardian designed a contact plan so that Mr T had to limit his visits to Miss J to once a week. These visits were to be at her social club, to ensure that people could oversee their interactions.

After two months of the Public Advocate's appointment as guardian, Miss J told the guardian that Mr T was no longer in contact with her and he had removed her from his Facebook social networking site, so she could no longer contact him.

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



## Revocations

Guardianship orders are reviewed when either an application for review is made to the State Administrative Tribunal, or when the order is nearing expiry. In 2009/10 guardians from the Office of the Public Advocate were involved in numerous reviews of guardianship orders. The purpose of reviewing an order is to determine whether the represented person still requires the Public Advocate as their guardian, or whether changes to what authority is given in the order are required.

Of these reviews, 59 orders were revoked by the State Administrative Tribunal because there was no longer a need for a substitute decision-maker as a result of:

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

A total of 127 guardianship orders were closed during 2009/10.

## Our Customers

The two most common issues leading to the appointment of the Public Advocate as guardian of last resort were treatment / health care and accommodation (where a person should live), which made up 25 and 20 per cent (respectively) of all guardianship orders made in 2009/10 (see Figure 9).

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

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

Of the 224 new appointments of the Public Advocate as guardian of last resort in 2009/10:

- Once again, the most common type of decision-making disability was dementia, with 99 (44 per cent) of the newly appointed people affected by this condition. This was followed by 43 people (19 per cent) with a mental illness, 41 people (18.5 per cent) with an intellectual disability, 32 people (14.5 per cent) with an acquired brain injury and nine people (four per cent) with another disability (see Figure 10).

- 181 people lived in the Perth metropolitan area, 41 lived in regional areas and two lived elsewhere (see Figure 12).
- Abuse of a person with a decision-making disability was a factor in 13 cases (six per cent) and of these, four were 65 years of age or older. (See Figures 13 and 14).

Of the 596 adults with a decision-making disability that the Public Advocate was guardian for at 30 June 2010, 78 were of Aboriginal or Torres Strait Islander descent (see Figure 16) and 75 were from a culturally diverse background<sup>11</sup>.

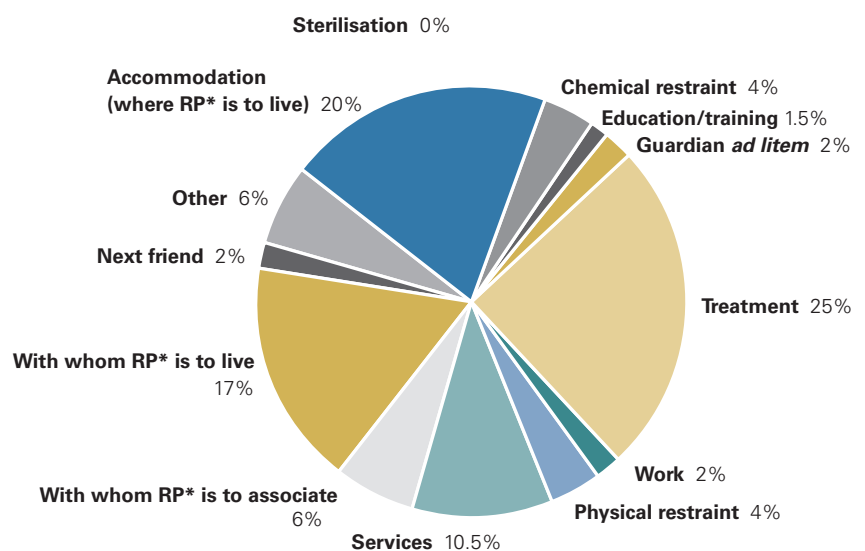
Guardians took 439 after-hour calls in 2009/10, taking 216 hours (an increase from 127 hours the previous year).

**Figure 9 Functions given to the Public Advocate for all guardianship orders as at 30 June 2010**

#### Function

Accommodation (where RP* is to live)	386
Chemical restraint	78
Education/training	26
Guardian ad litem	36
Treatment	493
Next friend	43
Physical restraint	75
Services	202
Sterilisation	2
With whom RP* is to associate	121
With whom RP* is to live	335
Work	39
Other	120
<b>TOTAL</b>	<b>1956</b>

\*RP = represented person

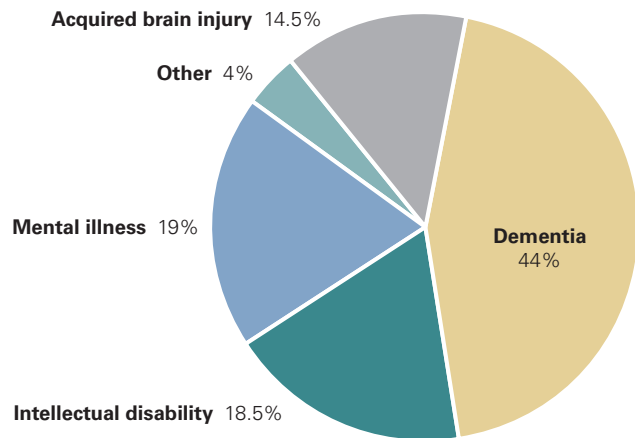


<sup>11</sup> The Western Australian Public Sector defines 'people from culturally diverse backgrounds' as people born in countries other than those categorised by the Australian Bureau of Statistics as Main English Speaking (MES) countries (i.e. Australia, United Kingdom, Ireland, New Zealand, South Africa, Canada and United States of America).

**Figure 10 Profile of new guardianship orders appointing the Public Advocate by type of decision-making disability 2009/10**

**Type of decision-making disability**

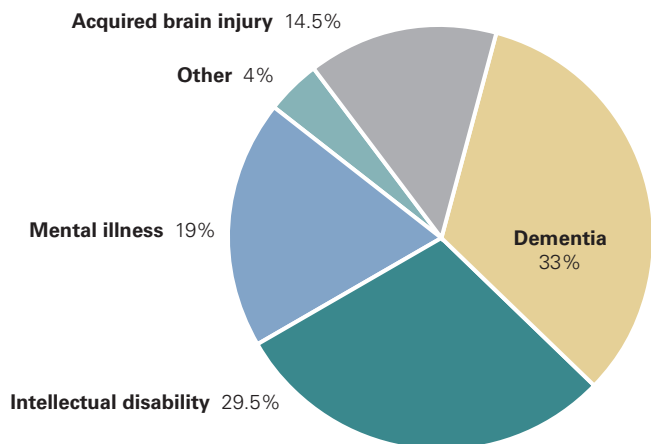
Acquired brain injury	32
Dementia	99
Intellectual disability	41
Mental illness	43
Other	9
<b>TOTAL</b>	<b>224</b>



**Figure 11 Profile of all guardianship orders appointing the Public Advocate by type of decision-making disability as at 30 June 2010**

**Type of decision-making disability**

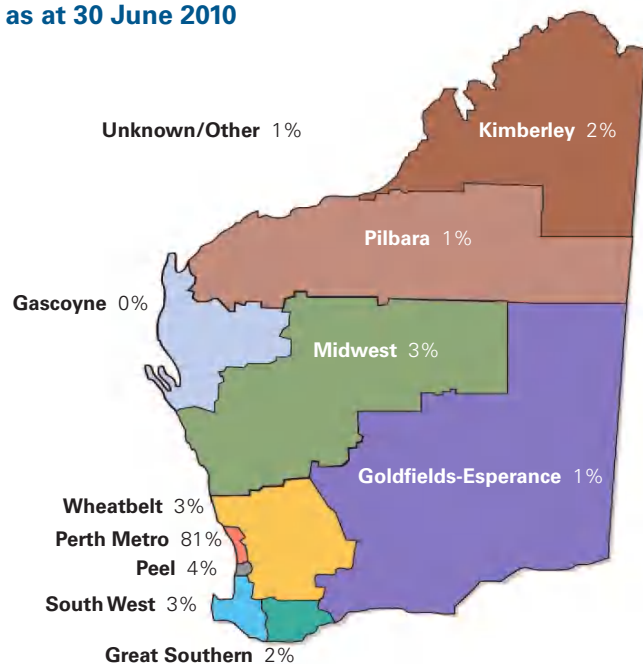
Acquired brain injury	87
Dementia	195
Intellectual disability	176
Mental illness	114
Other	24
<b>TOTAL</b>	<b>596</b>



**Figure 12 Profile of new guardianship orders appointing the Public Advocate by type of decision-making disability as at 30 June 2010**

**Geographical location**

Goldfields-Esperance	3
Great Southern	4
Kimberley	4
Mid-West	7
Peel	9
Perth Metropolitan	181
South West	7
Wheatbelt	7
Other	2
<b>Total</b>	<b>224</b>

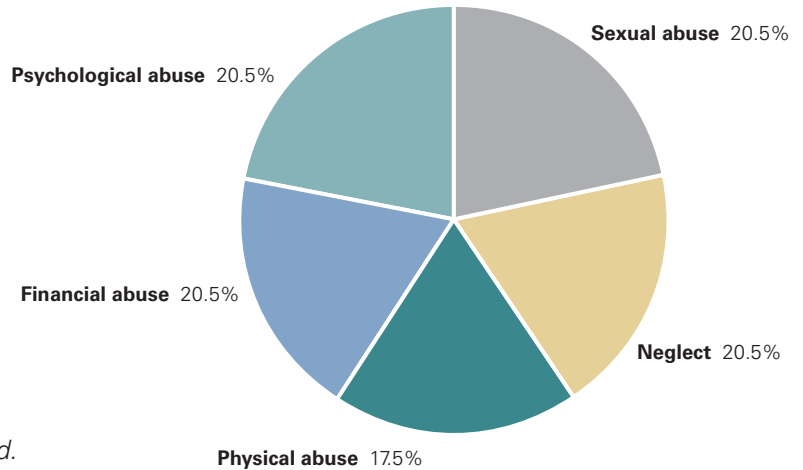


**Figure 13 Profile of new guardianship orders appointing the Public Advocate by type of alleged abuse 2009/10 (including elder abuse)**

Abuse type	13 people*
Financial abuse	6
Neglect	6
Physical abuse	5
Psychological abuse	6
Sexual abuse	6
<b>TOTAL</b>	<b>29</b>

\*Alleged abuse was reported in 13 people's cases, however, in some instances more than one alleged abuse type was reported.

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

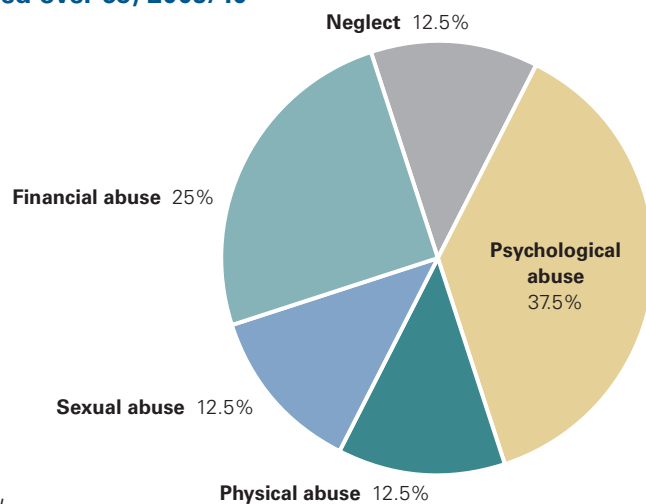


**Figure 14 Profile of new guardianship orders appointing the Public Advocate by type of alleged elder abuse (aged over 65) 2009/10**

Abuse type	4 people*
Financial abuse	2
Neglect	1
Physical abuse	1
Psychological abuse	3
Sexual abuse	1
<b>TOTAL</b>	<b>8</b>

\*Alleged elder abuse was reported in 4 people's cases, however, in some instances more than one alleged abuse type was reported.

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



**Figure 15 Profile of new guardianship orders appointing the Public Advocate, by Aboriginality or Torres Strait Islander descent, from 2005/06 to 2009/10**

Year	Total	Non ATSI*	ATSI*	ATSI* as a percentage of total
2005/06	95	93	2	2
2006/07	118	114	4	3
2007/08	187	172	15	8
2008/09	231	206	25	11
2009/10	224	197	24	11

\*ATSI: Aboriginal or Torres Strait Islander

**Figure 16 Profile of all guardianship orders appointing the Public Advocate, by Aboriginality or Torres Strait Islander descent, from 2005/06 to 2009/10**

Year	Total	Non ATSI*	ATSI*	ATSI* as a percentage of total
2005/06	256	242	14	5
2006/07	288	271	17	6
2007/08	388	350	38	10
2008/09	484	436	48	10
2009/10	596	518	78	13

\*ATSI: Aboriginal or Torres Strait Islander

## Systemic Advocacy

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

### The Year in Review

#### Redress WA

In December 2007, the State Government committed \$114 million to Redress WA, a scheme aimed at helping adults - who as children, were abused and/or neglected<sup>12</sup> - to move forward with their lives.

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

A strong partnership between the Offices of the Public Advocate and Public Trustee has been in place with regard to Redress WA, and it has continued to advance the best interests of people under guardianship and administration orders appointing the Public Advocate and Public Trustee.

During 2009/10 the Public Trustee took the lead role in negotiating the settlement of Redress WA claims. The Public Trustee has consulted the Public Advocate and sought the Office's view regarding offers made by Redress WA throughout this process. At 30 June 2010, three offers had been received, one of which had been accepted.

#### **Re-negotiation of the memorandum of understanding – procedures for young people with a decision-making disability leaving the care of the Department for Child Protection**

The need to strengthen the memorandum of understanding put in place in 2007 was highlighted through consideration of information made available to the Public Advocate by the Department for Child Protection to assist the Office identify people for whom applications to Redress WA should be made.

As a result, the Office also reviewed the records for the nine young people for whom the Department for Child Protection made applications to the State Administrative Tribunal in 2008/09 where the Public Advocate was appointed guardian.

This review showed that leaving care planning for young people with a decision-making disability needed to be improved. It also indicated that there was a need for the Department for Child Protection to address funding issues earlier in the planning process and to provide more comprehensive information in applications for guardianship and/or administration to the State Administrative Tribunal.

---

<sup>12</sup> In State care in Western Australia before 1 March 2006.

The Department for Child Protection has included the review of the memorandum of understanding as one of the deliverables in its strategic project on Leaving Care, to improve current processes and supports and explore options for additional supports for young people transitioning from care to independent living. The revision of the memorandum of understanding was close to completion at the end of the financial year.

### **People with exceptionally complex needs**

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

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

The project operates through the partnership of senior officers from the Disability Services Commission, Mental Health Commission, Mental Health Services and the Drug and Alcohol Office of the Department of Health, Department of Corrective Services, Department of Housing, and the Office of the Public Advocate. It is also part of the National Partnership Agreement on Homelessness.

Given the complexity of the cases, it was anticipated that the project would facilitate intervention for five people during 2009/10. As at 30 June 2010, nine people were participating, seven of whom have guardianship orders appointing the Public Advocate. This includes one person who had been identified as ready to exit from the program, after having become more stable with various support services in place.

### **Across government strategies on homelessness**

The Public Advocate is a member of the Across Government Senior Officers group for the National Partnership Agreement on Homelessness. In 2009/10 this group assisted the Department for Child Protection to implement across government initiatives to address homelessness.

### **Elder abuse**

The Public Advocate continues to be involved in responding to elder abuse as a member of the Alliance for the Prevention of Elder Abuse (WA). The Office of the Public Advocate was just one of the Alliance Members who held a World Elder Abuse Awareness Day event on 15 June 2009, to increase awareness of elder abuse and the role of service providers and community members in identifying and reporting abuse.

Two half-day sessions held by the Office of the Public Advocate on 15 June 2010 provided an opportunity for community members and service providers to consider how adults can protect themselves in the event they lose capacity in the future, by completing an enduring power of attorney and an enduring power of guardianship.

## Policy reviews

Submissions were made to a number of inquiries by the Public Advocate. Some of the more significant ones were:

- **Australian Guardianship and Administration Council**

Co-ordination of the review of the National Standards of Public Guardianship (finalised on 7 October 2009). The standards provide the minimum expectations of guardianship staff in making substitute decisions on behalf of people with a decision-making disability, whose guardian is the Public Guardian/Advocate in each of the States and Territories.

- **State Mental Health Policy and Strategic Plan 2010-20 for Western Australia**

Submission contributing to the development of the priorities for mental health services in Western Australia (30 July 2009). Priorities included the need to promote community integration, improve service responses for people with complex needs and multiple diagnoses, provide accommodation through social housing to enable people with mental illness to be discharged from hospital into the community, improve the accountability requirements of the private psychiatric hostels, and plan and develop services for older people with a decision-making disability who also have a mental illness.

- **WA Legislative Assembly Education and Health Committee: *Inquiry into the Adequacy and Appropriateness of Prevention and Treatment Services for Alcohol and Illicit Drug Problems in Western Australia***

A significant number of adults on guardianship orders appointing the Public Advocate have substance abuse problems and a decision-making disability, which may be further compounded by mental health issues. The need for integrated service responses and the limited service options for this group of people was highlighted in this submission (August 2009).

- **NSW Legislative Council Standing Committee on Social Issues**

Appeared before the Committee's *Inquiry into substitute decision-making for people lacking capacity* (via video link). The Public Advocate discussed the functions of the Office of the Public Advocate in Western Australia and in particular, explained the community guardianship program and related issues (5 November 2009).



## Community Education

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

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

### The Year in Review

The *Guardianship and Administration Act 1990* underwent significant changes this year, with the introduction of the *Acts Amendment (Consent to Medical Treatment) Act 2008*. This legislation amended the *Guardianship and Administration Act 1990*, with the most significant changes being the introduction of enduring powers of guardianship (EPGs) and advance health directives (AHDs) on 15 February 2010.

The focus of the community education program in 2009/10 therefore, shifted almost entirely to EPGs – which are the responsibility of the Office of the Public Advocate.

The Office developed a state-wide training strategy to include face-to-face and video conference sessions to educate community members and service providers in the health, aged-care, disability and other related sectors about the changes to the legislation and the operation of EPGs and AHDs.

While the sessions focused primarily on EPGs and changes to the legal order of substitute decision-makers for non-urgent treatment decisions, information on AHDs was also provided. In some instances, the Office presented sessions in conjunction with the Department of Health. Information and training on AHDs however, remains the responsibility of the Department of Health.

In excess of 2000 people attended 84 training and information sessions organised by the Office of the Public Advocate in 2009/10. Fifty seven of these were aimed at service providers from the aged care, health and disability sectors and 27 were for community members.

Of the 84 training and information sessions conducted by the Office of the Public Advocate in 2009/10, 80 focused on EPGs, one focused on guardianship and administration and three were directed at private administrators, and run in conjunction with the Public Trustee.

Sixty of the sessions were conducted in the metropolitan area, 18 were conducted in the Kimberley, Pilbara, South West, Great Southern, Peel, and Wheatbelt regions and six were conducted via video conference to regional areas. Training in the metropolitan area and the regions is continuing.

In recognition of World Elder Abuse Awareness Day, the Office conducted two half-day training sessions to raise people's awareness and understanding of elder abuse. Thirty-six service providers were given information on how to recognise and prevent elder abuse and 54 community members were educated on the potential benefits of using enduring powers of attorney and enduring powers of guardianship as planning tools to prevent elder abuse by choosing the person they would like to make decisions on their behalf if they lost capacity.

People attending Office of the Public Advocate presentations are asked to complete a survey indicating their level of satisfaction with the seminar and the information provided. Of the 1527 who responded to the surveys in 2009/10, 95 per cent were satisfied with the content and conduct of the session.

### **Customer contact/enquiries**

A total of 4505 people used the Office of the Public Advocate's advisory service in 2009/10, compared to 4054 in 2008/09. Contact was made via the telephone, email, mail and in person. The increase in demand can largely be attributed to the addition of enduring powers of guardianship (EPGs), which featured in the enquiries for the first time this year.

In some instances, enquirers sought advice on multiple topics. Enduring powers of attorney dominated enquiries, accounting for 35.5 per cent of all enquiries received this year. Enquires regarding guardianship accounted for 22 per cent and although only coming into operation in February 2010, EPGs accounted for 13.5 per cent.

The Office's telephone advisory service (TAS) provides recorded information on guardianship, administration and enduring powers of attorney and gives callers the option of speaking to a receptionist or an advisory officer. Information regarding EPGs was added to the service in July 2009 in preparation for the *Acts Amendment (Consent to Medical Treatment) Act 2008* coming into effect.

**Figure 17 Enquiries to the advisory service by mode of handling 2009/10**

	Jul 09	Aug 09	Sep 09	Oct 09	Nov 09	Dec 09	Jan 10	Feb 10	Mar 10	Apr 10	May 10	Jun 10	Total
<b>Telephone</b>	316	308	292	272	319	324	345	477	495	391	452	370	4361
<b>Interview</b>	3	3	6	5	2	4	6	5	9	9	10	6	68
<b>Email/letter</b>	5	6	4	2	8	4	4	6	22	6	3	6	76
<b>TOTAL</b>	<b>324</b>	<b>317</b>	<b>302</b>	<b>279</b>	<b>329</b>	<b>332</b>	<b>355</b>	<b>488</b>	<b>526</b>	<b>406</b>	<b>465</b>	<b>382</b>	<b>4505</b>

**Figure 18 Enquiries to the advisory service by subject 2009/10**

Subject of enquiry	Jul 09	Aug 09	Sep 09	Oct 09	Nov 09	Dec 09	Jan 10	Feb 10	Mar 10	Apr 10	May 10	Jun 10	Total	Total as % of all enquiries
<b>Guardianship</b>	133	110	107	104	113	139	105	120	100	84	102	101	1318	22
<b>Administration</b>	64	63	78	62	86	60	61	67	65	37	76	61	779	13
<b>Enduring powers of attorney</b>	149	156	166	142	161	164	173	185	220	188	245	174	2123	35.5
<b>Enduring powers of guardianship</b>		2	6	8	16	18	70	175	229	96	118	76	814	13.5
<b>Advance health directives</b>		4	1	2	5	9	43	126	115	31	61	42	439	7
<b>General</b>	49	40	32	33	42	26	32	27	51	102	40	48	530	9
<b>TOTAL</b>	<b>395</b>	<b>375</b>	<b>390</b>	<b>351</b>	<b>423</b>	<b>416</b>	<b>484</b>	<b>700</b>	<b>780</b>	<b>538</b>	<b>642</b>	<b>502</b>	<b>6003</b>	<b>100</b>

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

## Services to Aboriginal people

Among the printed resources the Office provides to training attendees, is a brochure regarding the guardianship and administration system and the role of the Public Advocate in protecting vulnerable adults. This brochure has been developed specifically for Aboriginal people and aims to explain the concepts in a simple and easy to understand format.

In addition to this targeted resource, service providers with a high proportion of Aboriginal clients, who attended the Office's training sessions, are given practical examples in terms of how the guardianship and administration system could be used to assist Aboriginal people to ensure culturally appropriate outcomes are achieved.

The introduction of enduring powers of guardianship (EPGs) and advance health directives (AHDs) has been of significant interest to many of these service providers.

The use of these tools has been highlighted by the EPG implementation team at several regional training sessions, by adapting examples of how the new tools can be used by Aboriginal people to overcome difficulties they may face.

For example, service providers in the health sector reported that many of their Aboriginal clients express their dissatisfaction with the health system's process for obtaining treatment decisions, as often, the person who is consulted for a decision, is not the appropriate person in terms of their cultural norms. Making an EPG would enable Aboriginal people to legally nominate the person who is culturally appropriate to make these decisions.

In March the Public Advocate and the Department of Health's Chief Medical Officer presented information regarding the *Acts Amendment (Consent to Medical Treatment) Act 2008*, to over 100 participants at a two-day conference organised by the Department of Health's Aboriginal Advisory Committee. Information regarding AHDs and EPGs was presented and hard-copy publications were distributed.

In May two staff members from the EPG implementation team attended the Pilbara Indigenous Women's Gathering in the East Pilbara, where they spoke to a group of approximately 30 Aboriginal women on advocacy in relation to the *Guardianship and Administration Act 1990*. Attendees comprised of State and Federal government representatives, health professionals and community leaders.

### **Publications and website**

Prior to the *Acts Amendment (Consent to Medical Treatment) Act 2008* coming into effect, the Enduring Power of Guardianship (EPG) implementation team produced a range of EPG resources including:

- a simplified version of the EPG form, which meets the requirements of the *Guardianship and Administration Regulations 2005*
- a comprehensive guide to EPGs, including information for people contemplating making the power, information for people being asked to act as an enduring guardian and step-by-step instructions on how to complete the form
- an information kit (a summarised version of the guide)
- information sheets regarding EPGs, including limited information about advance health directives (AHDs) and information on planning for the future
- information/training packages for community members and targeted service providers
- dedicated website pages, including limited information on AHDs and links to the Department of Health's website pages.

An overarching brochure about the introduction of AHDs and EPGs was developed in conjunction with the Department of Health.

## Corporate Services

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

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

These services are supported by the Department of the Attorney General under a service-level agreement and costs are proportionally allocated to the Public Advocate and reflected in the Treasury Budget statements. The budget allocation and subsequent expenditure for 2009/10 are as follows:

**Figure 19 Budget allocation and expenditure 2009/10**

	Total Cost of Output
\$'000 Actuals 2009-10	4281
\$'000 Budget 2009-10	4161 (revised budget)
\$'000 Variations from Budget	(120)

## The Year in Review

### Human resources

The staff training committee continued to co-ordinate and develop staff training opportunities through the staff training program in 2009/10. The program aims to meet the specific needs of staff in the Office of the Public Advocate.

### Office technology

The Public Advocate Case Management system (PACMAN) was operational for its first full year in 2009/10.

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

### Interpreter services

To help ensure that language is not a barrier to services for customers for whom English is a second language, the Office uses translation and interpreter services. During 2009/10 interpreter services were provided in Aboriginal, Cantonese, Deaf, Arabic, Greek, Italian, Macedonian, Mandarin, Portuguese, Serbian, Tamil and Thai.

### **Freedom of information**

Two valid applications were received during 2009/10 for the release of information. One application was refused as it sought information about third parties and the other was being reviewed by the Information Commissioner at 30 June 2010.

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

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

### **Customer feedback**

In 2009/10, the Office of the Public Advocate received 13 formal compliments and one suggestion. The Office also received 17 formal complaints during the year, which were all resolved after the complainants were contacted by the Public Advocate or a senior manager.

For people who lodge a formal complaint with the Public Advocate, either in writing, via email or over the telephone, the Office undertakes to:

- respond to all grievances within 10 working days of the complaint being received
- keep records of all relevant proceedings including details of the grievance, the investigation, methods of resolution and customer feedback
- make documentation of the investigation available to the person who lodged the complaint (except where this contravenes confidentiality requirements)
- communicate the outcome in writing, together with any corrective action to be taken, to all parties.

# Significant Issues Impacting the Agency

## Growth in demand for services

The demand for investigation, advocacy and guardianship services from the Office of the Public Advocate continues to increase. In 2009/10, the total number of investigations increased by 15 per cent and the number of new appointments as guardian of last resort increased by 23 per cent. At 30 June 2010, the Public Advocate was guardian for 23 per cent more people than at the same time last year.

Western Australia's ageing population and the resulting increase in the number of people with dementia are significant factors contributing to the increasing demand for the Office's services. In 2009/10, 41.5 per cent of new matters referred for investigation involved a person with dementia and 44 per cent of the people for whom the Public Advocate was appointed guardian for the first time, have dementia.

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

As noted in the Office of the Public Advocate's 2008/09 Annual Report, the Public Advocate received a repeat study by Data Analysis Australia in November 2008. The revised forecasts show a substantial increase in the number of appointments of the Public Advocate as guardian of last resort, with an annual growth rate of a minimum of 12.7 per cent for the next five years. This growth rate is considered likely to be an underestimate.

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

The report notes that the revised forecasts are substantially higher than the original forecasts because of:

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

The effects of the baby boomer generation will impact strongly on organisations such as the Office of the Public Advocate, in which elderly people are increasingly the users of the service. It is expected that this will continue to be a factor until 2022/2023, when it is anticipated that the growth of this older demographic (60 to 85 years) will stabilise.

In view of the sustained demand for the Public Advocate's investigation and guardianship services, the Department of the Attorney General allocated additional funding in 2009/10, equivalent to one position for the advocacy and investigation team and one for the guardianship team. These new resources will come into operation in early 2010/11.

## The Acts Amendment (Consent to Medical Treatment) Act 2008

The introduction of Part 2 of the *Acts Amendment (Consent to Medical Treatment) Act 2008* impacted greatly on the Office of the Public Advocate in 2009/10.

The Office was provided with \$1million for the first four years of the implementation of the legislation, starting in 2009/10.

The *Acts Amendment (Consent to Medical Treatment) Act 2008* brought about major changes to the *Guardianship and Administration Act 1990*. The key changes, which became effective on 15 February 2010, were:

- the introduction of enduring powers of guardianship (EPGs) and advance health directives (AHDs)
- a new definition of treatment<sup>13</sup>
- changes to the legal order of who should be consulted to make non-urgent treatment decisions on behalf of an adult if they lose capacity (see Figure 20).

An EPG enables a person to choose who they want to make personal, lifestyle and treatment/healthcare decisions for them if they later lose the capacity to do so themselves and an AHD enables a person to make clear directions about what treatment they would and would not want to receive in certain medical situations.

The implementation of the amendments to the *Guardianship and Administration Act 1990* was and continues to be, the joint responsibility of the Office of the Public Advocate and the Department of Health's Office of the Chief Medical Officer. The Office of the Public Advocate is responsible for EPGs and the Department of Health is responsible for AHDs.

Preparing for the implementation of the legislation placed considerable demand on the Office's resources throughout 2009/10 and will continue to do so in 2010/11.

A small but dedicated team of staff have been responsible for the implementation of the legislative changes. The Office of the Public Advocate's 'EPG implementation team' consists of the Public Advocate, the EPG implementation officer, the EPG implementation support office and the community education co-ordinator. Several other staff members have also assisted in the project.

In July 2009, the Office – in conjunction with the Department of Health's Office of the Chief Medical Officer – held consultation sessions with 69 stakeholder groups and the State Administrative Tribunal. The consultation sessions informed the development of the amendments to the *Guardianship and Administration Regulations 2005*, which now contain the prescribed EPG and AHD forms. The revised regulations were published in the Government Gazette on 15 September 2009. A further amendment to remove the reference to residential address for witnesses to the form, was gazetted on 18 December 2009.

In addition to producing an EPG form, guide and kit, and a joint brochure regarding EPGs and AHDs, the Office updated a number of its existing publications, published new content on its website and recorded new information on its telephone advisory service – regarding EPGs (for more detailed information, refer to the Community Education section of this report).

<sup>13</sup> Treatment' is now defined in the *Guardianship and Administration Act 1990*, as: medical or surgical treatment, including a life sustaining measure and palliative care, dental treatment or other health care.



In order to educate community members and relevant service providers about the introduction of the new tools and their proper operation, the Office developed a state-wide training strategy. Community members and service providers from the health, aged-care, disability and other related sectors received interactive presentations about the new tools. These were delivered by members of the EPG implementation team, either in person or via video conference. Training attendees were provided with copies of all of the Office's publications and were given time to ask questions. Dedicated EPG training sessions; the provision of EPG information via the Office's website and telephone advisory service; and the provision of EPG guides and kits will continue throughout 2010/11.

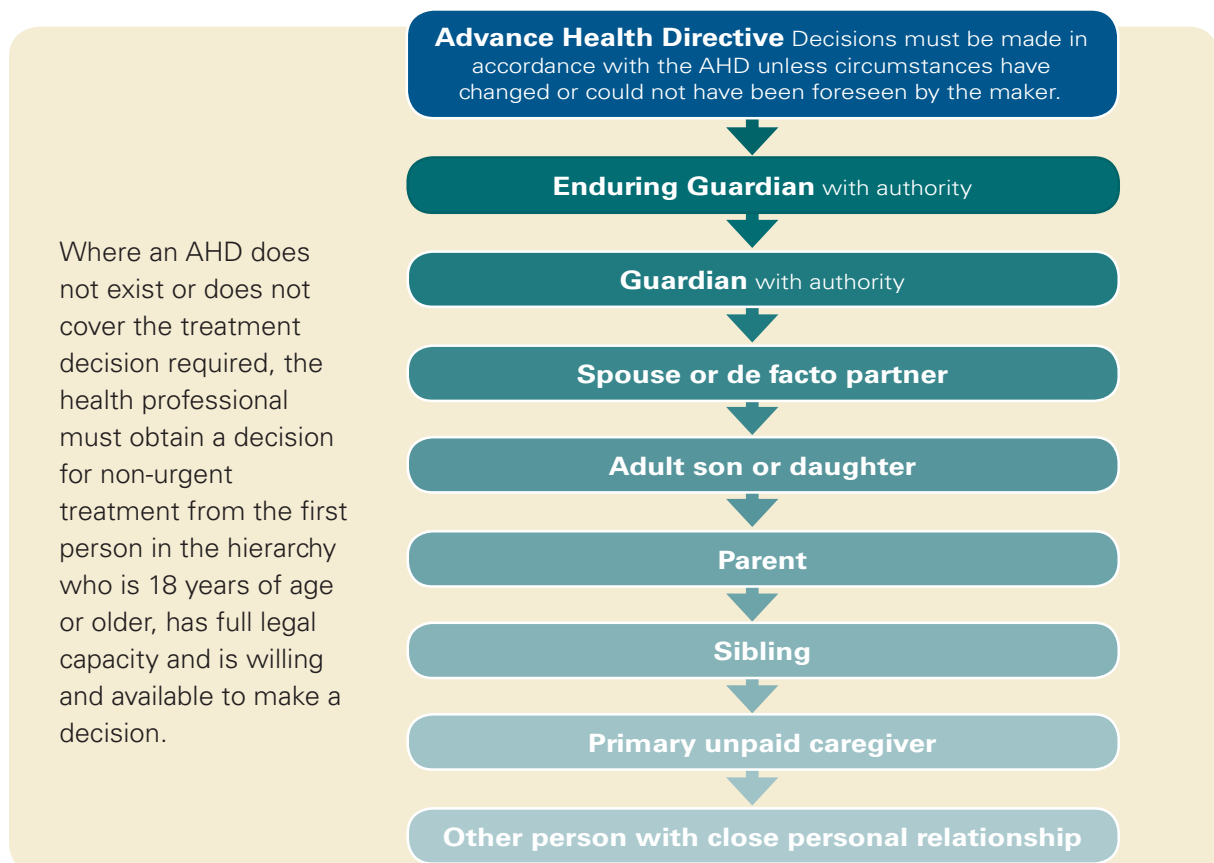
### Future impact of enduring powers of guardianship (EPGs) and advance health directives (AHDs)

EPGs and AHDs are powerful planning tools which give Western Australian adults the ability to nominate a substitute decision-maker and to make specific treatment decisions in the event they later lose capacity. Conflict between interested parties however, will remain an issue. When issues arise and applications are made to the State Administrative Tribunal, or members of the public contact the Office with concerns, investigations by the Office will be required.

At 30 June 2010, the Office of the Public Advocate had not received any referrals for the investigation of matters concerning EPGs, AHDs or treatment decisions.

The impact on the demand for investigation services regarding these matters is yet to be determined. The impact on the workload of the guardianship team will also be monitored.

**Figure 20 Hierarchy of decision-makers for non-urgent treatment**



# Disclosures and Legal Compliance

## Financial Statements

See the Department of the Attorney General annual report.

## Key Performance Indicators

### Notes to the Performance Indicators

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

## Advocacy, Guardianship and Administration Services

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

Effectiveness indicators	Actual 2006-07	Actual 2007-08	Actual 2008-09	Target 2009-10	Actual 2009-10	Comment on significant variation
<p><b>Proportion of customers provided with advocacy, relative to the number of referrals</b></p> <p>This indicator measures the number of matters allocated for advocacy as a percentage of the total referrals, including community referrals.</p>	100%	100%	99%	95%	99%	N/A
<p><b>The percentage of customers surveyed, satisfied with information and advice provided by the Office of the Public Advocate</b></p> <p>This indicator measures the satisfaction level of clients in respect to the information and advice received at training sessions.</p>	97%	97%	97%	90%	95%	N/A

Effectiveness indicators	Actual 2006-07	Actual 2007-08	Actual 2008-09	Target 2009-10	Actual 2009-10	Comment on significant variation
<p><b>Guardian of Last Resort allocated in one day</b></p> <p>This indicator measures the timeliness of the Public Advocate in allocating a guardian to a represented person in order to make decisions on their behalf and protect them from neglect, abuse or exploitation. A guardian is appointed only when considered necessary, and when there is no one else suitable or available to take on the role.</p>	92%	93%	91%	95%	94%	N/A

Efficiency indicator	Actual 2006-07	Actual 2007-08	Actual 2008-09	Target 2009-10	Actual 2009-10	Comment on significant variation
<p><b>Average cost of providing advocacy and guardianship services</b></p> <p>This indicator measures the average cost per case of providing advocacy and guardianship services on behalf of people with decision-making disabilities.</p>	\$2,506	\$2,582	\$2,229	\$2,150	\$1,851	The implementation of a new case management system in May 2009 provided a more accurate recording of services in 2009-10 compared with previous years. In addition, the increase in investigations and represented persons on guardianship orders resulted in a reduced cost per individual service.

## Advocacy, Guardianship and Administration Services

Effectiveness Indicator	Description
Proportion of customers provided with advocacy relative to the number of referrals	<p>This indicator measures the ability to provide advocacy to clients identified as requiring advocacy and is considered a key indicator because it shows the extent to which the Office of Public Advocate is able to protect the rights of adults with a decision-making disability and reduce the risk of abuse, exploitation or neglect. Data for this indicator was extracted from the Office's case management system (PACMAN).</p> <p>The Office of the Public Advocate receives applications referred by the State Administrative Tribunal, as well as community referrals, and assesses their priority before allocating the highest priority applications to investigators. Applications not able to be allocated are placed on a waitlist.</p>
The percentage of customers surveyed satisfied with the information and advice by the Office of Public Advocate	<p>Feedback questionnaires are distributed to the target group at the conclusion of every training course. The level of satisfaction with the services delivered is measured by collating the ranking level (1 = high satisfaction and 4 = unsatisfied) assigned to the feedback questions by clients.</p> <p>In 2009-10 2251 people attended community education sessions held by the Office of the Public Advocate. All attendees were given survey forms at the end of each session. 1527 responses were received, yielding a response rate of 68%. The survey's sampling error rate is 1.42% and the confidence interval was at 95%.</p> <p>The indicator relates directly to one of the key elements of the Public Advocate's outcome statement of providing information and advice to the community about the Guardianship and Administration system.</p>
Guardian of Last Resort allocated in one day	<p>This indicator is based on the Public Advocate's best practice to ensure the needs of the represented person are met immediately. It is measured by the number of appointments of Guardians of Last Resort made by the State Administrative Tribunal at the hearing and accepted by the Public Advocate's delegate within one working day of receipt of the guardianship order.</p> <p>The Public Advocate is appointed as guardian of last resort only when considered necessary, and when there is no one else suitable or available to take on the role. The information for this was extracted from the Office's case management system (PACMAN).</p>

Efficiency Indicator	Description
Average cost per case of providing Advocacy and Guardianship services	<p>This indicator is calculated by dividing the total cost of providing advocacy, guardianship and administration services by the number of advocacy and guardianship services provided. The information for this indicator was extracted from Advisor (DotAG's budgeting system) and the Office's case management system (PACMAN).</p>

## Ministerial Directives

Nil.

## Other Financial Disclosures

See the Department of the Attorney General annual report.

## Government Disclosures

See the Department of the Attorney General annual report.

## Other Legal Requirements

### Advertising

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

**Figure 21 Advertising**

Adcorp and Whitepages: Government Gazette, community guardianship program, community education and recruitment advertising	\$19,523
<b>TOTAL EXPENDITURE</b>	<b>\$19,523</b>

### Disability Access and Inclusion Plan Outcomes

See the Department of the Attorney General annual report.

### Compliance with Public Sector Standards and Ethical codes

The Office of the Public Advocate, as part of the Department of the Attorney General, complied with the Public Sector Standards, the WA Code of Ethics and the agency's code of conduct. The code of conduct outlines the ethical principles, obligations and standards applying to staff. It aims to instil the values of "respect, integrity, unity and diversity, justice and collaboration" in all our people. The code specifies standards of behaviour and helps inform employees how to exercise judgement and accept personal responsibility in their professional roles.

In adhering to these policies, the Office of the Public Advocate made seven conflict of interest declarations and reported four offers of gifts, hospitality or other benefits which exceeded a value of \$25.

During the year three staff participated in training to raise their awareness on ethical conduct and public sector standards.

### **Record keeping**

Records are maintained in accordance with the Department of the Attorney General's records keeping plans. For more details, please refer to the Department of the Attorney General annual report.

## **Government Policy Requirements**

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

### **Occupational Safety, Health and Injury Management**

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

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

Due to the relatively small size of the Office, there is no formal Occupational Safety and Health Committee. Staff are able to, and encouraged, to raise occupational safety and health issues in monthly team meetings. The Manager Corporate Services is responsible for investigating any issues raised and co-ordinating the reporting and claims process. During 2009/10 there were no fatalities and one lost time injury.

# Appendix 1 Legislation

## Legislative Authority

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

## Related legislation

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

*State Administrative Tribunal Act 2004*

*Health Act 1911*

*Supreme Court Act 1935*

*Magistrates Court (Civil Proceedings) Act 2004*

*Public Trustee Act 1941*

*Disability Services Act 1993*

*Mental Health Act 1996*

*Community Protection (Offender Reporting) Act 2004*

*Criminal Law (Mentally Impaired Accused) Act 1996*

*Criminal Investigation (Identifying People) Act 2002*

*Criminal Investigation Act 2006*

*Carers Recognition Act 2004*

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

*Corruption and Crime Commission Act 2003*

*Electoral Act 1907*

*Equal Opportunity Act 1984*

*Financial Management Act 2006*

*Freedom of Information Act 1992*

*Occupational Safety and Health Act 1984*

*Public Interest Disclosure Act 2003*

*Public Sector Management Act 1994*

*State Records Act 2000*

*State Supply Commission Act 1991*

*Workers' Compensation and Rehabilitation Act 1981*

## Appendix 2 Publications

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

### Information sheets

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

### Position statements

- Decisions About Treatment
- Restraint
- Role of the Public Advocate as Guardian of Last Resort in Accommodation Decisions
- Role of the Public Advocate as Guardian of Last Resort in Treatment Decisions
- Role of the Public Advocate as Guardian of Last Resort in Contact Decisions

### Brochures

- Office of the Public Advocate
- New laws offering you choices to make an advance health directive and appoint an enduring guardian
- Community Guardianship Program
- Caring for and respecting older people
- Are you worried about a vulnerable adult who needs help making decisions?  
(a brochure for Aboriginal people).

### Enduring Power of Attorney information kit and guide

The kit and guide can be downloaded for free from the Office of the Public Advocate's website [www.publicadvocate.wa.gov.au](http://www.publicadvocate.wa.gov.au), or purchased from the State Law Publisher, 10 William Street, PERTH, WA, 6000, [sales@dpc.wa.gov.au](mailto:sales@dpc.wa.gov.au) or at selected newsagents.



### **Enduring Power of Guardianship information kit and guide**

The kit and guide can be downloaded for free from the Office of the Public Advocate's website [www.publicadvocate.wa.gov.au](http://www.publicadvocate.wa.gov.au), or purchased from the State Law Publisher, 10 William Street, PERTH, WA, 6000, [sales@dpc.wa.gov.au](mailto:sales@dpc.wa.gov.au) or at selected newsagents.

### **Professional guides**

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

\*Under review and therefore currently unavailable.

### **Research reports**

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

### **Newsletters**

- OPA News
- Community Guardianship

### **Annual Report**

## Appendix 3 Glossary

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

**Advance Health Directive (AHD):** A document in which a person makes decisions about their future treatment.

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

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

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

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

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

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

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

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

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

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

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



