



Office of the  
**PublicAdvocate**

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

The Public Advocate of Western Australia  
Annual Report 2013/14



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

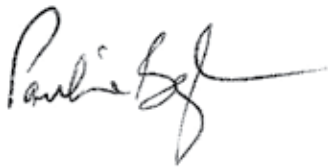


Hon. Michael Mischin MLC  
ATTORNEY GENERAL

In accordance with Section 101(1) of the *Guardianship and Administration Act 1990* of Western Australia, I am pleased to submit the Annual Report of the Public Advocate for the year ending 30 June 2014.

This report records the operations and performance of the Office of the Public Advocate during 2013/14. 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**  
5 September 2014

Level 2, International House  
26 St Georges Terrace  
PERTH WA 6000  
T: 1300 858 455  
E: opa@justice.wa.gov.au  
W: www.publicadvocate.wa.gov.au

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# Overview

## The Year in Review

With each year that goes by, Western Australia's ageing population creates new challenges for the Office of the Public Advocate (the Office) in meeting the growing demand for guardianship, investigation and advocacy services. This is particularly due to the prevalence of dementia in our rising population of seniors.

During 2013/14, 41 per cent of new appointments of the Public Advocate as guardian of last resort were for a person with dementia. Of the 925 new matters referred to the Public Advocate by the State Administrative Tribunal during the financial year, 46 per cent concerned a person with dementia. This is a consistent trend for the Office, and it is predicted that the impact of dementia will continue to be a significant factor for the Office in future years.

The number of represented persons with a mental illness also continues to rise, increasing by 15 per cent over the year for new appointments of the Public Advocate as guardian.

In 2013/14, 1,050 new investigations into the personal or financial welfare of people with a decision-making disability were commenced, of which 88 per cent, or 925 referrals, were made to the Office by the State Administrative Tribunal. This is consistent with the 923 new investigations referred by the Tribunal in 2012/13.

As at 30 June 2014, the Public Advocate was guardian of last resort for 1,218 people, an increase of 14 per cent over the number as at 30 June 2013. Of these people, 261 were adults aged 80 years and over, who account for 21 per cent of all guardianship appointments.

The Public Advocate has an ongoing involvement in the protection of seniors in Western Australia through membership of the Alliance for the Prevention of Elder Abuse in Western Australia (APEA:WA). During the last year, the Office worked closely with the other APEA:WA agencies to review and promote the revised "Elder Abuse Protocol: Guidelines for Action". This was one of many partnership opportunities in which the Office participated in 2013/14, in order to bring about cohesive working practices within the wider sector, to derive greater benefits for the Western Australian community through co-operation and collaboration.

Community education continued to be an area of focus for the Office, with training and information sessions held in metropolitan and regional venues for the benefit of service providers, private administrators and community members during the year. The future planning tools available in Western Australia, enduring powers of attorney and enduring powers of guardianship, continued to be promoted through the community education seminars, as well as more general information on the operation of the *Guardianship and Administration Act 1990* and its implications.

The Disability Services Commission's announcement in October 2013, regarding significant changes to their accommodation services, presented a new challenge for the Office. More than 50 people on guardianship orders appointing the Public Advocate may be impacted by the change to non-government accommodation providers. Where necessary, applications have been made to the State Administrative Tribunal for new or amended guardianship and/or administration orders, to ensure suitable arrangements were in place for the ongoing accommodation of these effected people. This transition process will continue throughout 2014/15.

In 2014/15, two pilot locations for the National Disability Insurance Scheme (NDIS) will introduce reforms to Western Australia's disability support system. The reforms will impact a number of the Office's clients, who receive disability support including accommodation and services. The Office will continue to work closely with the relevant stakeholders to prepare for the changes ahead.

The work of the Office of the Public Advocate could not happen without such a dedicated team of investigator advocates, delegated guardians, support staff and volunteers.

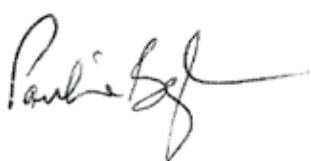
Through the \$5 million of additional funding over four years allocated to the Office in the 2011/12 State Budget, the number of staff has increased to 45 full-time equivalent positions as at 30 June 2014 to provide guardianship, investigation and advocacy services, and the associated management and administrative support of these services.

In addition, 21 volunteers from the community participate in the Community Guardianship Program. This program matches adults who currently have the Public Advocate appointed as their guardian, with suitable volunteers from the community who are willing and able to take over that guardianship role. At 30 June 2014, 14 of the volunteers had been appointed by the State Administrative Tribunal as guardian for an adult with a decision-making disability.

I would like to take this opportunity to thank all the staff and volunteers for their commitment to helping vulnerable people in Western Australia. Their tireless work to protect and promote the human rights of adults with a decision-making disability across the State is much appreciated.

The assistance and guidance provided by Cheryl Gwilliam, Director General of the Department of the Attorney General, has been invaluable throughout the year. I would like to thank her for her continued efforts in support of this Office and people with a decision-making disability in Western Australia.

I am pleased to provide this annual report of the Office's activities and achievements for the financial year 2013/14.



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 2013/14 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 dementia, an intellectual disability, an acquired brain injury, or a mental illness.

### Functions

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

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

## 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.

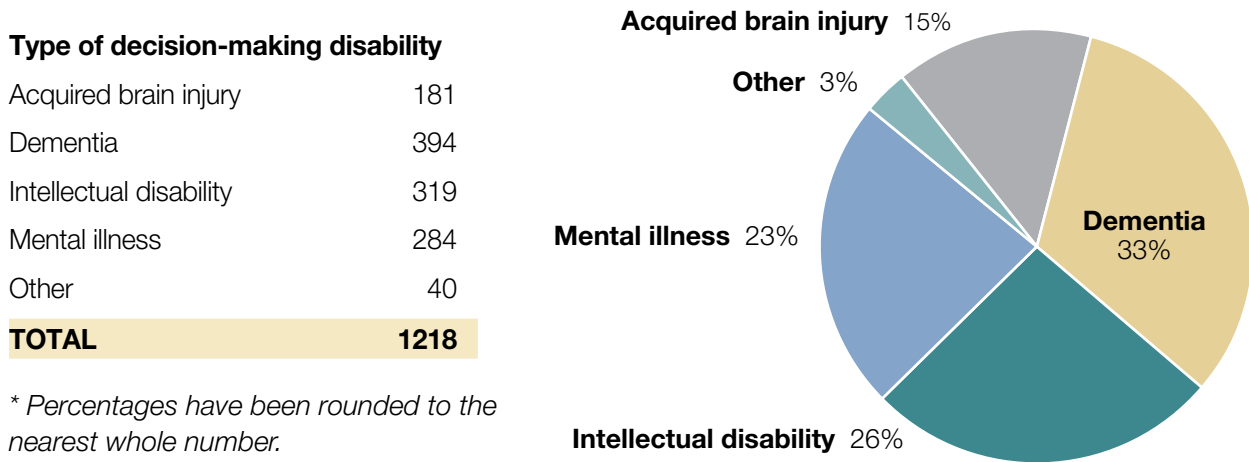
## Stakeholders

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 2014, 1,218 adults with a decision-making disability were represented by the Public Advocate as their guardian of last resort. Of these 1,218 adults – referred to as represented persons – 33 per cent had dementia, 26 per cent an intellectual disability, 23 per cent a mental illness, 15 per cent an acquired brain injury and 3 per cent had some other form of decision-making disability (see Figure 1).



**Figure 1 Profile of all guardianship orders appointing the Public Advocate by type of decision-making disability as at 30 June 2014**



The number of people for whom the Public Advocate is guardian, has more than doubled over the past four years, from 596 in June 2010 to 1218 in June 2014 (see Figure 2).

**Figure 2 People under guardianship orders appointing the Public Advocate by type of decision-making disability as at 30 June 2010 – 30 June 2014**

Type of decision-making disability	2010	2011	2012	2013	2014
Acquired brain injury	87	114	130	146	181
Dementia	195	249	297	348	394
Intellectual disability	176	221	263	283	319
Mental illness	114	154	207	251	284
Other	24	21	31	37	40
<b>Total</b>	<b>596</b>	<b>759</b>	<b>928</b>	<b>1065</b>	<b>1218</b>

While the most significant demographic trend impacting on the growing rate of represented persons is the ageing of the population, mental illness continues to emerge as an area of growth. The number of people with a mental illness for whom the Public Advocate is guardian, has more than doubled over the past four years, from 114 in June 2010 to 284 in June 2014 (see Figure 2).

### Dementia

A 2012 report by the Australian Institute of Health and Welfare entitled ‘*Dementia in Australia*<sup>1</sup>’ estimated that 298,000 Australians had dementia in 2011, of whom 62 per cent were women, 74 per cent were aged 75 and over, and 70 per cent lived in the community.

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

Although projection methods vary, the report notes that the number of people with dementia is projected to reach almost 400,000 by 2020, and around 900,000 by 2050. The projected rates of prevalence suggest that the Office of the Public Advocate can expect continued and significant growth in the number of represented persons.

The same report also estimated that the number of Western Australians with dementia will grow from 26,900 in 2011 to 38,800 in 2020, an increase of 44 per cent. The extent of change in the number of people in Australia estimated to have dementia by 2020 varied considerably across the jurisdictions, with the greatest increase (51 per cent) expected to be seen in the Northern Territory, followed by relatively large growth in Western Australia and Queensland (both 44 per cent).

In the previous '*Dementia in Australia*' report (AIHW 2007)<sup>1</sup>, information from Western Australia was used to estimate that 5 per cent of Home and Community Care (HACC) funding was for people with dementia. Using data from 2010 based on the assessment of 12,000 clients by Silver Chain (a major provider of HACC services in Western Australia), the Australian Institute of Health and Welfare estimates that 10.2 per cent of HACC clients aged 60 years and over had dementia in 2009/10.

### **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 24,017 people, of which 8,311 were Western Australians with intellectual disability as their primary condition in 2013/14.<sup>3</sup>

### **Acquired brain injury**

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

In 2013/14 the Disability Services Commission funded and provided services to 1,170 Western Australians with an acquired brain injury reported as their primary 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

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, 2014. Data request; Disability Services Commission methodology in calculation of numbers was amended in 2010/11. The data does not include users of Community Aids and the Equipment Program.

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, 2014. Data request; Disability Services Commission methodology in calculation of numbers was amended in 2010/11. The data does not include users of Community Aids and the Equipment Program.

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 per cent of Western Australians aged 65 years and over reported some form of mental disorder. The prevalence of high or very high psychological distress in Western Australia was 9.2 per cent in 2004.<sup>8</sup>

### **Secondary stakeholders**

The people and organisations that 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.

### **Potential stakeholders**

Adults 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 potential stakeholders.

People who have been appointed as attorney (under an enduring power of attorney) or as enduring guardian (under an enduring power of guardianship), or family members and friends of people with a decision-making disability who may seek information on how to prepare for the future decision-making support needs of that person, are also 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 2013/14 were supported by:

- approved establishment of 45 (full-time equivalent) staff
- expenditure of \$6.0m<sup>10</sup>

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.

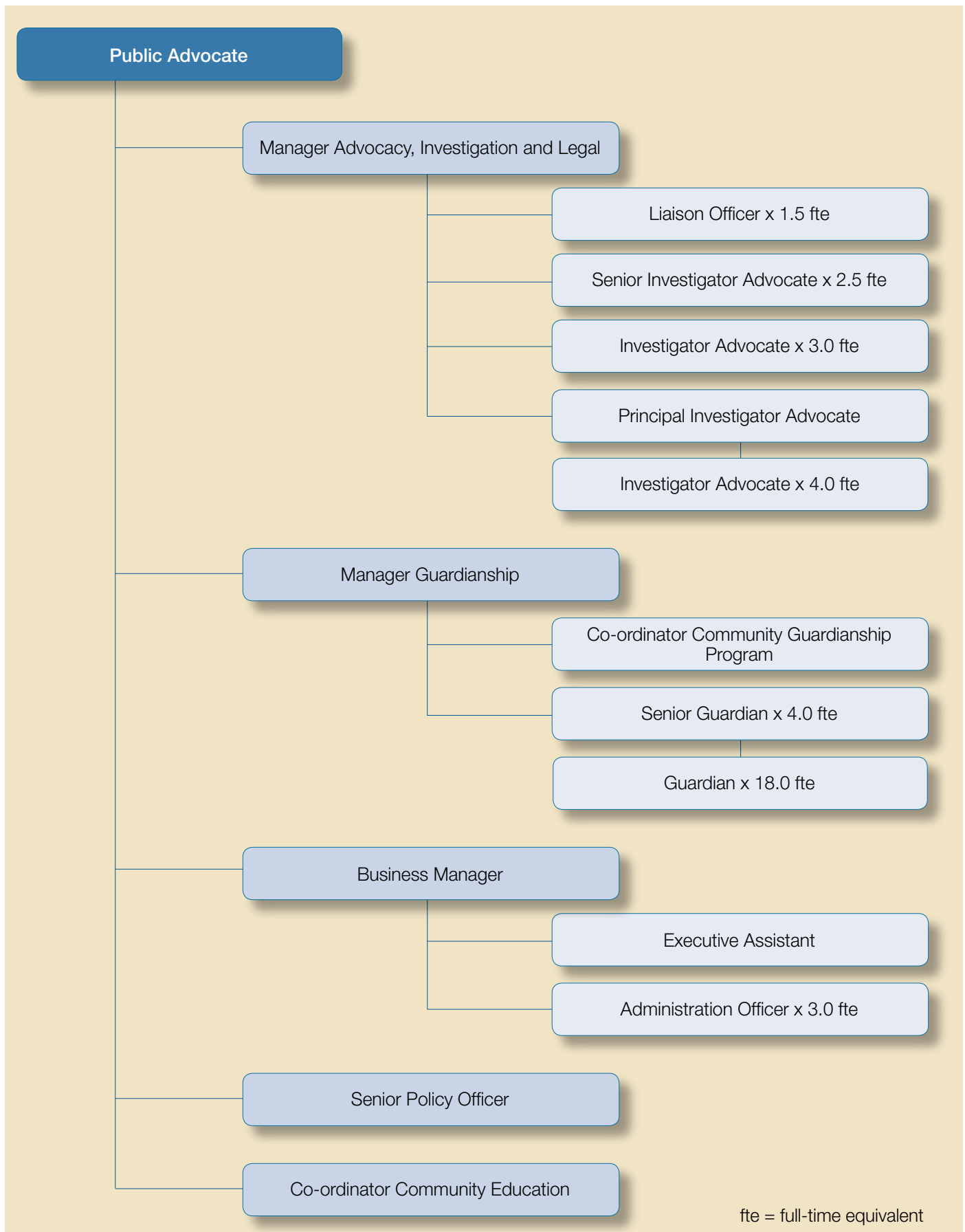
7 This survey was repeated in 2007 but no state or territory data was obtained.

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

9 *Carers Recognition Act 2004*.

10 Expenditure 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

The work of the Office of the Public Advocate reflects the State Government goal of:

*Results-based service delivery: greater focus on achieving results in key service delivery areas for the benefit of all Western Australians.*

### Department of the Attorney General purpose

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

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

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

### Office of the Public Advocate services

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

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

### Cross-agency initiatives

The Office of the Public Advocate works closely with the Public Trustee with regard to administration matters. The two offices work together in providing training for private administrators, to enable private administrators to better understand their role and responsibilities.

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

# Agency Performance

## Advocacy and Investigation

The 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:

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

In carrying out their enquiries, investigator advocates interview a range of interested parties including family, friends 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, investigator advocates advance the best interests of the person with the decision-making disability. They explore whether there are less restrictive ways of resolving the concerns outlined in an application for the appointment of a guardian or administrator, for example by advising the person making the application of community services which could assist the person with a decision-making disability without the need for a substitute decision-maker to be appointed.

## The Year in Review

In 2013/14, the Public Advocate carried out 1,202 investigations into the personal or financial welfare of adults with a decision-making disability. These included new matters and matters carried over from 2012/13. Of these, 1,077 needed investigation and advocacy relating to applications for, or reviews of, administration or guardianship orders before the State Administrative Tribunal. The remaining 125 investigations were referred directly to the Public Advocate by a member of the public or a community-based organisation, or another government agency or body.

An additional 206 preliminary investigations were carried out by the liaison officer, which assisted the Tribunal in gathering further information relevant to the hearing.

### Investigations referred by the State Administrative Tribunal

There were 925 new investigations referred by the State Administrative Tribunal. These comprised of applications regarding guardianship, administration, enduring powers of attorney, enduring powers of guardianship and reviews of administration or private guardianship orders.

As in 2012/13 guardianship order reviews where the Public Advocate was appointed as a guardian have been captured in the guardianship statistics and are reported in that section of the report.

New investigations have remained constant, with 923 new investigations in 2012/13 and 925 new investigations in 2013/14. In the previous financial year an increase of 4.4 per cent had been reported.

The State Administrative Tribunal requested the attendance of an investigator advocate at 90 urgent hearings in 2013/14. This reflects a continued demand on the Office's resources to attend hearings at short notice to represent the best interests of proposed represented persons.

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

The following case study provides an example of how investigator advocates work within the principles of the *Guardianship and Administration Act 1990*, to identify if there are "least restrictive alternatives" available in each situation.

## Case Study

### **Enduring Power of Guardianship and Least Restrictive Alternatives through the Hierarchy of Treatment Decision-Makers.**

Mrs K is 77 years old and has advanced dementia.

Prior to Mrs K's dementia progressing to the point that she was unable to make reasonable decisions, she completed an Enduring Power of Guardianship in which she appointed her friend, Miss T, as her enduring guardian.

Mrs K had been living with Miss T, who was also her main carer, until recently when it became too much for Miss T to continue looking after Mrs K, as her care needs had increased significantly.

Miss T, in consultation with Mrs K and Mrs K's family members, found a suitable aged care facility and arranged for Mrs K to move there.

Due to health problems of her own, Miss T was finding it increasingly hard to act as Mrs K's enduring guardian, and instead, the decision-making was being left to family members.

Mrs K became unwell and consent was needed for treatment, but the doctor was not able to contact her enduring guardian, Miss T, and was unhappy taking consent from family members, when she knew Mrs K had appointed Miss T as her enduring guardian.

After reviewing the options for people who had authority to make treatment decisions, consent was taken from Mrs K's youngest daughter, which is in line with the alternative treatment decision-makers, as set out in the *Guardianship and Administration Act 1990* (see Diagram A).

However, following this event the facility manager felt that she should contact the enduring guardian and discuss whether she was able to continue in the role. When the facility manager met with Miss T she advised that she could not continue as Mrs K's enduring guardian. It was agreed that the facility manager would make an application to the State Administrative Tribunal (the Tribunal) for the appointment of a guardian for future decision-making for Mrs K and for the enduring power of guardianship to be revoked.

The Tribunal requested that the Office of the Public Advocate attend the hearing to advocate in Mrs K's best interests.



At the Tribunal hearing, the investigator advocate recommended that as Miss T was no longer willing or able to act as Mrs K’s enduring guardian, the enduring power of guardianship should be revoked. The Tribunal Member agreed and revoked the enduring power of guardianship.

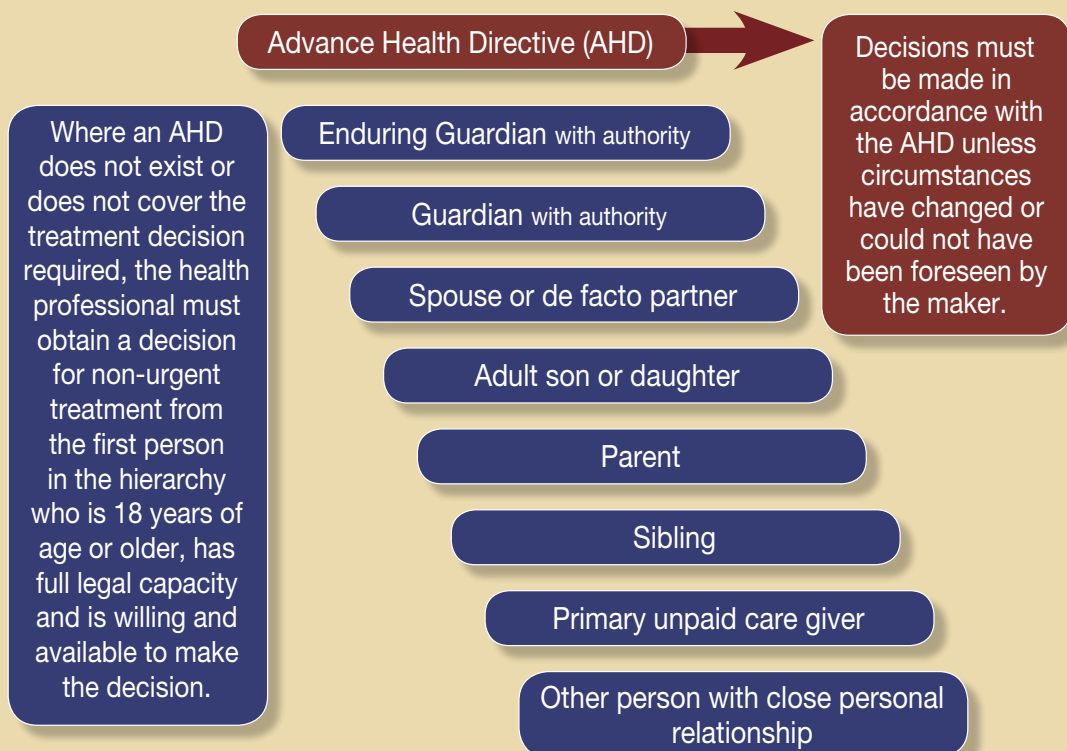
In relation to the appointment of a guardian, the investigator advocate recommended that as Mrs K’s accommodation and services were stable, there was no need for a guardian for these decisions.

With regard to Mrs K’s medical treatment decisions, her family members were willing and able to make treatment decisions in Mrs K’s best interests. Under the legislation, they were legally able to do so in accordance with the principle of least restrictive alternatives, and the application for the appointment of a guardian was dismissed.

**Diagram A**

**Hierarchy (order of priority) of treatment decision-makers**

If you are unable to make decisions for yourself and non-urgent treatment is needed, treatment decisions will be made according to the following list:



**Note:** In all case study examples, names and details have been changed to protect confidentiality.

## Liaison officer

The role of the Office of the Public Advocate's liaison officer is to respond to requests from the State Administrative Tribunal seeking additional advice about applications, and make recommendations to the Tribunal about the options available, including referral to the Public Advocate for further investigation.

The liaison officer may advise and liaise with Tribunal Members, Tribunal administrative staff, family members, service providers and other interested parties involved in the application process.

Changes within the State Administrative Tribunal case management approach commenced in 2012/13 and have continued in 2013/14, with the Tribunal using case managers to gather information prior to determining if the matter needs to be assessed by the liaison officer.

In 2013/14, the liaison officer conducted preliminary investigations into 206 applications for guardianship, administration and intervention in enduring powers of attorney and enduring powers of guardianship. This is a significant decrease to the 469 preliminary investigations carried out in 2012/13, which appears to be an outcome of the Tribunal's new case management approach.

## Community-referred investigations

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

Referrals for investigation come from a wide variety of sources. In 2013/14, this included referrals from family members, friends and neighbours of adults with impaired or suspected impaired decision-making capacity; human services and other support agencies; and government and non-government agencies.

In total 125 such referrals were reviewed by the Office in 2013/14, a decrease of 41 referrals from the previous year. Of those 125, 81 were closed during the financial year and 44 remained open at 30 June 2014.

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

Some investigations take considerable time to obtain critical information such as medical records, to enable the Public Advocate to establish whether an application to the State Administrative Tribunal should be made.

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

Occasionally the Public Advocate is asked to investigate the concerns of family members who are unable to resolve longstanding disputes or disharmony themselves.

The following case study titled 'Community Referred Investigation – A Good Outcome', provides an example of an investigator advocate's work which involved consultation with multiple interested parties, including a neighbour, a healthcare professional, friends and family members.

## Case Study

### **Community Referred Investigation – A Good Outcome.**

Mr H was involved in a car accident a few years ago, which left him with an acquired brain injury. He lived with his wife, who was his main support, until she died unexpectedly.

Some months after she died a neighbour contacted the Office of the Public Advocate, after becoming concerned about Mr H's well-being. The neighbour noticed that in the months following his wife's death, Mr H was beginning to lose weight and was not as well dressed as he had been. The neighbour was concerned about Mr H's ability to care for himself.

It appeared to the neighbour that no support services had been put into place for Mr H to take on the roles that his wife had carried out for him.

An investigator advocate from the Office began investigating Mr H's situation, to determine whether Mr H lacked capacity to make decisions for himself, and consequently, whether there was a need for a guardian and/or administrator to be appointed.

As part of the investigation the investigator advocate talked to Mr H and his neighbour to find out about any family members or friends of Mr H who would be suitable to be appointed as guardian and/or administrator if needed, or who could provide some informal support to Mr H to enable him to remain living in his home.

The investigator advocate spoke to and met with Mr H on several occasions, as well as his friends and relatives, and his doctor. His family had been able to engage some local support services to assist Mr H, and the investigator advocate was able to talk to them.

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Although Mr H had an acquired brain injury, family members, medical professionals and support staff were unable to agree that this was so severe as to mean that Mr H could not make his own decisions in relation to his support services and medical treatment. However there was common agreement that Mr H did not have capacity to manage his own finances, especially since he was the sole beneficiary of his wife's will and had a substantial inheritance.

Mr H had strong views on where he wanted to live, which was to remain in the home he and his wife had shared, but did not understand that he needed support services to be able to do this.

As part of the investigation, the investigator advocate spoke to Mr H about the possible need for a guardian or administrator, and asked who he wanted to make decisions for him and in fact whether he agreed with the idea that anyone else needed to make decisions for him. Mr H changed his mind several times over the course of the investigation, and was unsure who he would want in such a role.

Several family members expressed their willingness to be appointed as Mr H's substitute decision-maker, but this generated conflict amongst family members, and sometimes with Mr H.

One of the complexities with the investigation was in gathering information about Mr H's capacity, which was needed to enable the Public Advocate to determine if it was necessary to make an application to the State Administrative Tribunal (the Tribunal).

Ultimately this information was gathered, and it was determined that although there were some informal supports available, it was necessary to make applications for the appointment of both a guardian and an administrator.

At the hearing, the investigator advocate advocated for Mr H to retain authority to make his own medical treatment decisions, as he seemed capable of making these decisions and his doctor was willing to take his consent for treatment. It was recommended that due to his lack of understanding about his need for support services a guardian should be appointed to make decisions about where he lived, and the services he received to support him at home.

Due to his complex finances and substantial inheritance it was determined that he lacked capacity to manage his financial affairs and an administrator was appointed. However he was able to retain management of his pension, as it was felt he had capacity to manage this smaller amount of money.

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The investigation had identified that when any family member attempted to take a decision-making role for Mr H, it led to tension and a breakdown in relationships, which was not felt to be in Mr H's best interests as the family support was important in assisting him to remain at home. The investigator advocate therefore recommended that it was in Mr H's best interests that independent substitute decision-makers be appointed.

The Tribunal appointed the Public Trustee as Mr H's plenary administrator, to make all decisions relating to his finances. The Public Advocate was appointed with limited authority to make decisions about where Mr H lived and the support services he received.

In the months following the appointments, family members reported to Mr H's guardian that Mr H was much more settled, living independently in his own home, but with services assisting him on a daily basis. His financial situation had become much more stable and he was able to cover his living expenses including the support services, as well as having a cash allowance that gave him freedom. He was also managing to save money for future years when his care needs may increase.

Mr H's relationships with family members also improved as there was no tension surrounding those making decisions for him with which he did not agree.

## Advocacy

In addition to conducting investigations, it is the role of an investigator advocate to advocate in the best interests of people for whom a guardianship and/or administration order is being proposed (proposed represented persons), at hearings before the State Administrative Tribunal. In 2013/14, they did so at a total of 789 hearings compared to 805 hearings in the previous financial year.

In these matters an investigator advocate will seek to gather information where possible to expand on the issues raised in the application. This information is used in advocating at the hearing.

## Collaboration with other States and Territories

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

These people had left their State or Territory without notice and were reported to be residing in Western Australia. Where possible, staff assist their counterparts to ensure the safety and protection of these vulnerable adults.

## 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.

In a significant proportion of the investigations carried out in 2013/14, financial abuse was 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.

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

The information collected by this Office indicates that elder abuse was a concern in 125 of the 925 investigations, and of this 58 per cent related to financial abuse (see Figure 6). This abuse occurred in the absence of a substitute decision-maker, and by a person who saw the opportunity to exploit an individual. Often this occurs where the victim is socially isolated or dependent on their family for support.

This Office looks at the importance of balancing the possibility of abuse with the protection afforded by appointing someone to oversee the individual's care and support.

The following case study is an example of how the Office's investigator advocates can investigate potential financial abuse and exploitation of the elderly under the terms of the *Guardianship and Administration Act 1990*.

### Case Study

#### **Investigation into the operation of an enduring power of attorney, following the death of a donor.**

Mr P was an 88 year old man with advanced dementia.

Before he passed away, Mr P's granddaughter applied to the State Administrative Tribunal (the Tribunal), as she believed her cousin (one of Mr P's grandsons) who Mr P had appointed as his attorney under an enduring power of attorney, was not managing their grandfather's finances appropriately.

The Tribunal referred the application to the Office of the Public Advocate to conduct an investigation, to determine whether Mr P's attorney was acting in his best interests, or whether there was the need for an administrator to be appointed in the attorney's place.

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During the investigation, Mr P passed away. However, the Tribunal decided that although it would not be possible to appoint an administrator, it would continue with the hearing about the application for intervention with regard to Mr P's enduring power of attorney and the actions of the attorney, Mr P's grandson.

The Tribunal also ordered that the grandson, as attorney, submit records and accounts to the Tribunal to show how he had managed his grandfather's finances.

At the hearing, the applicant asserted that although Mr P had passed away, she and other family members (including the executor of Mr P's will) felt the investigation of how his attorney had acted should continue.

The Tribunal also highlighted that the attorney had not provided the records or accounts as ordered by the Tribunal.

The family were interested in transactions carried out under Mr P's enduring power of attorney while he was still alive, including clarity about where the proceeds from the sale of Mr P's property had been deposited.

Section 107 of the *Guardianship and Administration Act 1990* states that,

*“the donee of an enduring power of attorney shall exercise his powers as attorney with reasonable diligence to protect the interests of the donor and, if he fails to do so, he is liable to the donor for any loss occasioned by the failure”.*

It further states that the donee,

*“shall keep and preserve accurate records and accounts of all dealings and transactions made under the power”.*

Although the responsibility for dealing with Mr P's deceased estate had passed to the executor of Mr P's will, the Tribunal was still able to review the way in which the enduring power of attorney had operated during Mr P's lifetime.

The Tribunal adjourned the hearing and ordered the attorney to produce records and accounts for transactions carried out under the enduring power of attorney while Mr P was still alive, within two months.

The Member advised that the executor of Mr P's will, may then use that information, or lack of, to take civil action against the attorney, potentially to recover monies owed to Mr P's estate, if that was in fact established.

The above case study demonstrates how, even when the donor has passed away, the attorney (donee) can still be held to account for his actions under the enduring power of attorney, and that safeguards are in place to prevent financial abuse of the elderly.

## Transition of young people leaving State care

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

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

Wherever possible, the principal investigator advocate attends leaving care planning meetings for young people aged 16 years and over, and provides advocacy at the State Administrative Tribunal, where applications have been made for the appointment of a guardian and/or an administrator. This involvement is consistent with the memorandum of understanding between the two agencies.

In 2013/14, the Office has identified that the State Administrative Tribunal held hearings for 27 young people with decision-making disabilities, lodged by the Department for Child Protection and Family Support. The Public Advocate and the Public Trustee were appointed as guardian and administrator for 24 young people, with the Public Trustee appointed administrator for another two young people and one private guardian and administrator appointed for one young person transitioning from State care.

## Court referrals

The Children's, Family, 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 or administrator to assist.

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

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



## Our Customers

Of the 925 new matters referred to the Public Advocate for investigation by the State Administrative Tribunal in 2013/14, 427 of them (46 per cent) involved a person with dementia, while 18 per cent had a mental illness, 14 per cent an acquired brain injury, 18 per cent an intellectual disability and 4 per cent had another decision-making disability (see Figure 3).

Guardianship matters (personal, lifestyle and treatment) were once again the dominating factor in investigations this year, with 73.3 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 (including enduring powers of attorney) accounted for 26.6 per cent of investigations (see Figure 4).

The introduction of enduring powers of guardianship (in February 2010) allows adults to choose who will make their personal, lifestyle and treatment decisions if they lose capacity, therefore avoiding potential conflict.

Avoiding conflict altogether is not always possible, and subsequently a small number of applications, where an enduring power of guardianship had been made, went to the State Administrative Tribunal. Generally these focused on the capacity of the person to make the power and whether (or not) the enduring guardian was acting in the person's best interests.

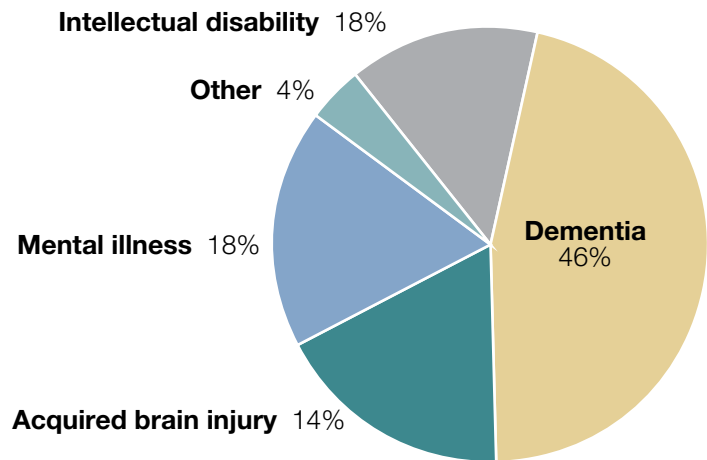
People with a decision-making disability are vulnerable to abuse. Allegations of abuse were made in 229 of the 925 new investigation matters received by the Office of the Public Advocate in 2013/14 (see Figure 5). Again this year, the most commonly reported form of abuse was financial, accounting for 51 per cent of all allegations. This was followed by neglect (17 per cent), psychological abuse (14 per cent), physical abuse (12 per cent), sexual abuse (6 per cent), some of which relates to historical abuse which was revealed during the investigation.

In 125 of the investigations of alleged abuse, the victim was 65 years or older (see Figure 6). Financial abuse of those 65 or older was significantly higher (58 per cent) than other reported forms of abuse.

Most new investigations (76 per cent) were carried out in the metropolitan area (see Figure 7). 10 per cent of the 925 new matters referred for investigation in 2013/14 were regarding a person of Aboriginal and Torres Strait Islander descent (see Figure 8).

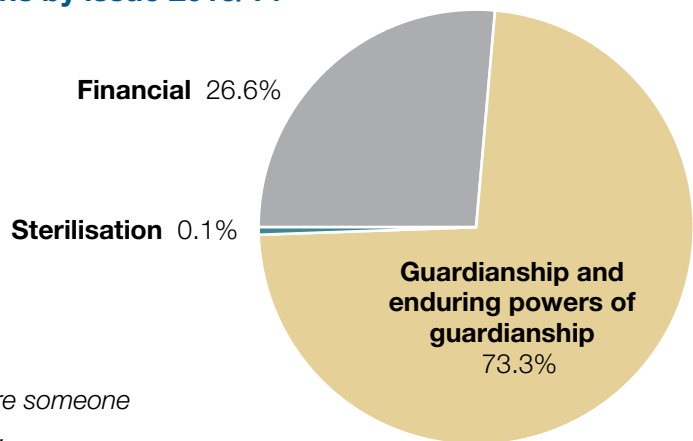
**Figure 3 Profile of new investigations by type of decision-making disability 2013/14**

Type of decision-making disability	
Acquired brain injury	132
Dementia	427
Intellectual disability	163
Mental illness	167
Other	36
<b>TOTAL</b>	<b>925</b>



**Figure 4 Profile of new investigations by issue 2013/14**

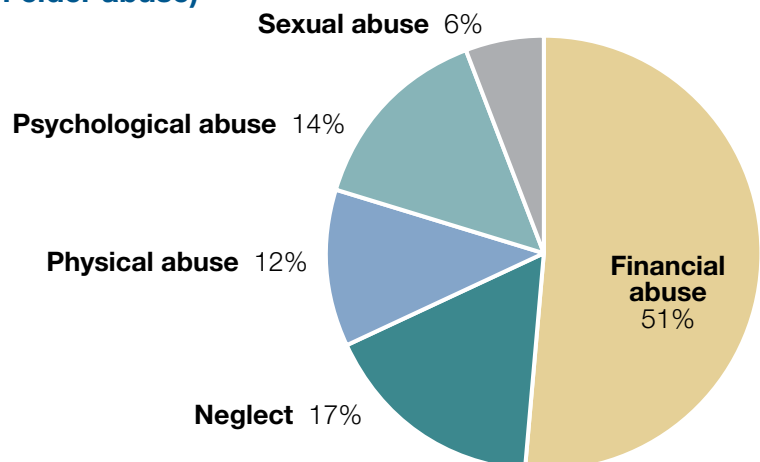
Issue	
Financial (administration and enduring powers of attorney)	246
Guardianship* and enduring powers of guardianship	678
Sterilisation	1
<b>TOTAL</b>	<b>925</b>



*\*Including reviews of guardianship orders where someone other than the Public Advocate was appointed.*

**Figure 5 Profile of new investigations alleging abuse by type of abuse 2013/14 (including statistics of elder abuse)**

Abuse type 229 investigations*	
Financial abuse	173
Neglect	57
Physical abuse	39
Psychological abuse	49
Sexual abuse	19
<b>TOTAL</b>	<b>337</b>

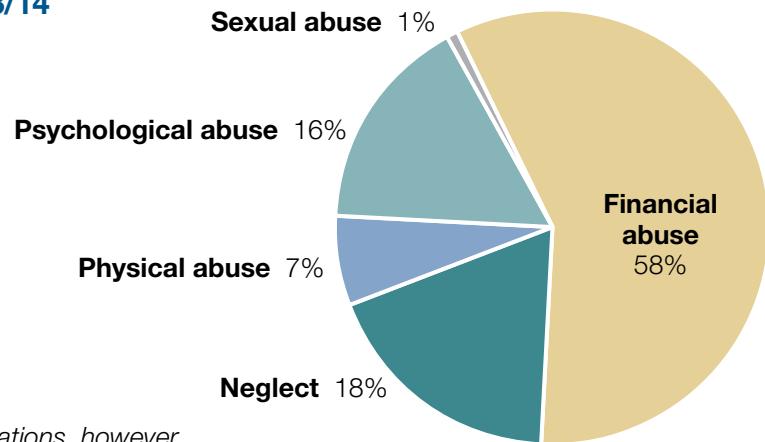


*\*Abuse was alleged in 229 investigations, however, in some instances more than one alleged abuse type was reported in the application.*

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

**Figure 6 Profile of new investigations alleging elder abuse (aged 65 or older) by type of abuse 2013/14**

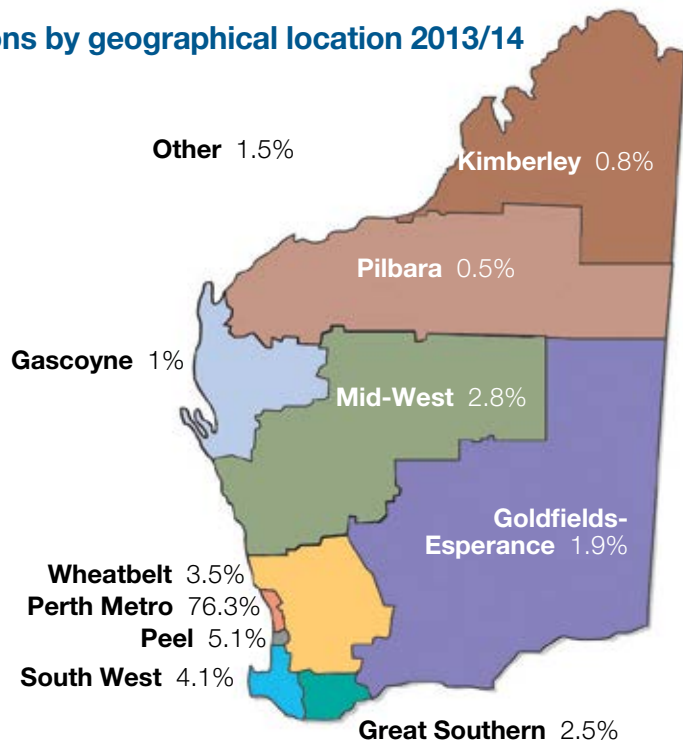
Abuse type	125 investigations*
Financial abuse	104
Neglect	33
Physical abuse	12
Psychological abuse	29
Sexual abuse	1
<b>TOTAL</b>	<b>179</b>



\*Elder abuse was alleged in 125 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 2013/14**

Geographical location	
Gascoyne	9
Goldfields-Esperance	18
Great Southern	23
Kimberley	7
Mid-West	26
Peel	47
Perth Metro	706
Pilbara	5
South West	38
Wheatbelt	32
Other	14
<b>Total</b>	<b>925</b>



**Figure 8 Profile of new investigations by Aboriginality and Torres Strait Islander descent from 2009/10 to 2013/14**

Year	Total	Non ATSI*	ATSI*	ATSI* as a percentage of total
2009/10	896	808	88	10
2010/11	989	901	88	9
2011/12	884	818	66	7
2012/13	923	854	69	7
2013/14	925	833	92	10

\*ATSI = Aboriginal and Torres Strait Islander

## Guardianship

The Public Advocate makes personal, lifestyle and treatment<sup>11</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, and appoints the Public Advocate.

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:
  - o take into account the expressed wishes of the represented person or reflect their previous wishes and actions
  - o preserve personal autonomy
  - o enable the person to live and participate in the community
  - o encourage and assist the person to make judgements and become capable of caring for themselves
  - o are supportive of the person's relationships with others
  - o maintain familiar cultural, language and religious practices and contacts.

## The Year in Review

In 2013/14 there were 340 new appointments of the Public Advocate as guardian of last resort, compared to 371 new appointments in 2012/13.

At 30 June 2014, the Public Advocate had responsibility as guardian of last resort for 1,218 adults with a decision-making disability, compared to 1,065 at 30 June 2013, representing an increase of 14 per cent.

As at 30 June 2014, the Public Advocate was appointed as the sole guardian for 1,164 of the total of 1,218 represented persons. In relation to the remaining 54 appointments of the Public Advocate, there were 47 represented persons on a guardianship order which appointed the Public Advocate and private guardian(s) with different functions, and seven represented persons for whom the Public Advocate and the private guardian (a family member) were appointed with the same functions as guardian.

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<sup>11</sup> Treatment refers to any medical, surgical, or dental treatment or other health care, including a life-sustaining measure or palliative care.

During the year, the Public Advocate was involved with 1,865 guardianship orders and reviews of orders, comprising of existing appointments as at 30 June 2013, new appointments of the Public Advocate as guardian for the first time during the year, and periodic reviews of guardianship orders by the State Administrative Tribunal or reviews sought by the Public Advocate or other parties. This compared to 1,593 orders and reviews in 2012/13. As the guardian of last resort, the Public Advocate made personal, lifestyle and treatment decisions in relation to a range of matters including:

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

People with dementia continue to account for the largest proportion of new appointments of the Public Advocate as guardian of last resort. Of the 340 people newly appointed in 2013/14, 139 had dementia (41 per cent) (see Figure 11).

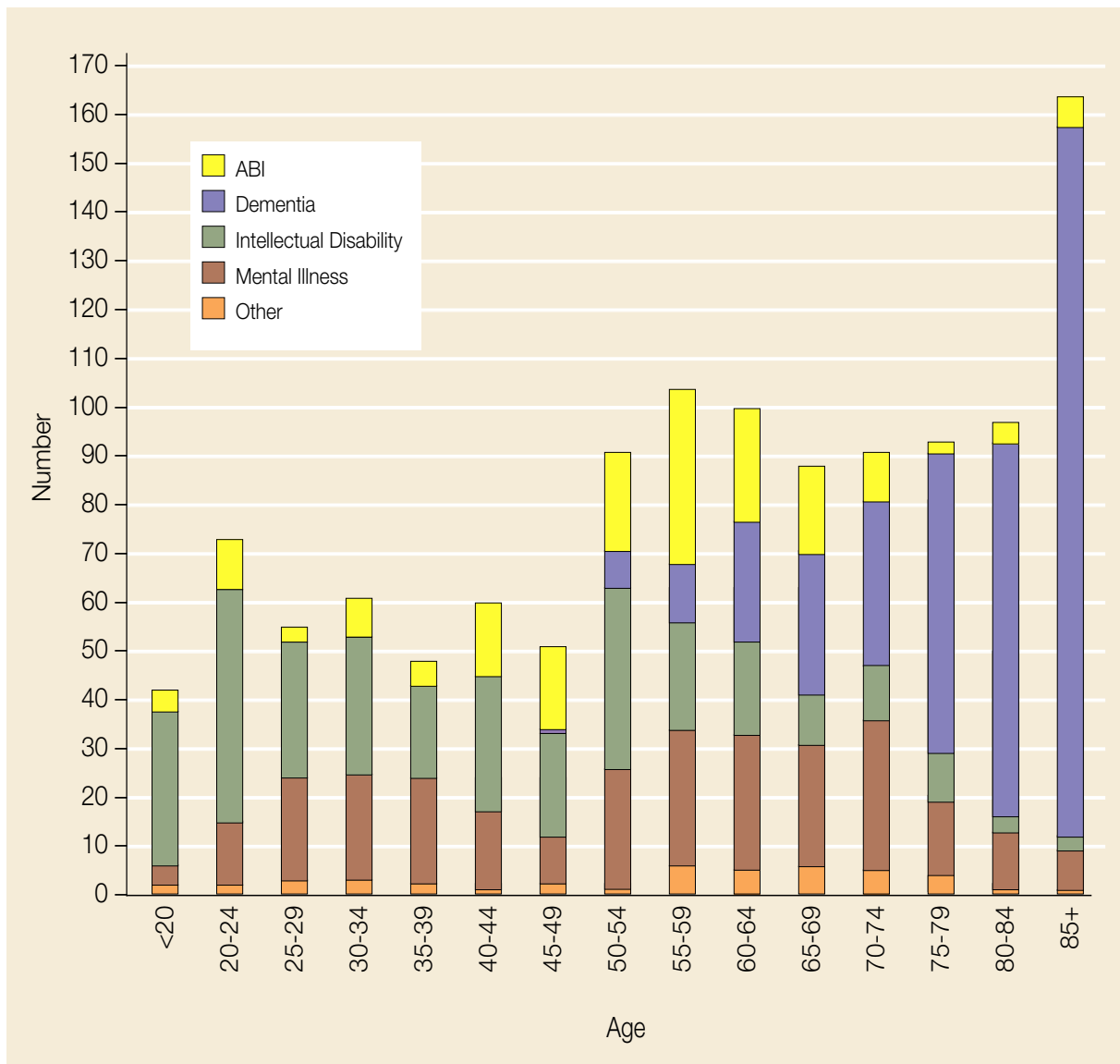
The Office is guardian of last resort for 261 adults aged 80 years and over, who account for 21 per cent of all guardianship appointments. Of these 261 people, 85 per cent of them have dementia listed as their primary decision-making disability (see Figure 9).

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. This is just below the 95 per cent target set for this measure of timeliness.

To meet the needs of the Office's 174 represented persons of Aboriginal and Torres Strait Islander descent, guardians liaised with their families, Aboriginal community members, Aboriginal agencies and service providers, to ensure culturally appropriate practices were adopted.

**Figure 9 Profile by age and disability type of people on guardianship orders appointing the Public Advocate as at 30 June 2014**



### Advocacy at reviews of guardianship orders appointing the Public Advocate

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

In 2013/14, the guardianship team attended 387 review hearings conducted by the State Administrative Tribunal, in which they advocated in the best interests of the represented person. This compared to 232 hearings in 2012/13.

## Community guardianship program

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

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

At 30 June 2014, the program had 21 volunteers engaged in the community guardianship program. Of these, 14 had been appointed by the State Administrative Tribunal as their represented person's guardian, replacing the Public Advocate and providing a more personal level of involvement in their life. Three of the 21 volunteers had been matched with a represented person, who they were taking time to get to know, while still receiving extensive induction training from the Office.

During the year, one of the volunteers made end of life decisions for their represented person, through their final days. This volunteer has expressed their desire to be matched with another represented person in the future.

Work is progressing to find suitable matches for the remaining four volunteers.

In 2013/14, one of the program's volunteer community guardians received a commendation for outstanding service in the Disability Services Commission's Count Me In Awards 2013. In November 2013, volunteers attended the Red Ribbon garden party event held at Government House, hosted by Volunteering WA.

The following case study is an example of how the Office's volunteer community guardians can make a personal connection to the represented person, and provide a less restrictive alternative to the appointment of the Public Advocate.

## Case Study

### **Community Guardianship: Offering comfort and support through end of life decision making.**

There were complications during labour when Miss R was born. The complications resulted in her mother passing away and Miss R was left with an intellectual disability.

With no other family available or willing to care for Miss R, she lived in State care throughout her childhood and moved to supported accommodation as an adult.

Miss R's health deteriorated as she aged, and it became necessary for a guardian to be appointed to make medical treatment decisions on her behalf. As Miss R didn't have any family to take on this role, the Public Advocate was appointed.

The Office of the Public Advocate's Community Guardianship Program Co-ordinator recommended Miss R as being suitable for the Community Guardianship Program. Shortly after, Miss R was matched with Community Guardianship Program volunteer, Mrs D.

Mrs D began getting to know Miss R slowly, visiting her regularly at her group home. These visits became more frequent as Miss R became familiar with Mrs D. The two developed a friendship and soon Mrs D started taking Miss R on day trips.

For the first time in Miss R's life she had a friend, someone who often spent time with her and helped her with activities; someone other than support staff and carers who were paid to be involved in Miss R's life, or fellow residents.

With the agreement and assistance of the Office of the Public Advocate's Community Guardianship Program Co-ordinator, Mrs D eventually applied to the State Administrative Tribunal (the Tribunal) to be appointed as Miss R's guardian to make medical treatment decisions. The Tribunal revoked the appointment of the Public Advocate as Miss R's guardian, and appointed Mrs D.

For the next few years Mrs D acted as Miss R's guardian and the two saw each other regularly. Miss R's life was immeasurably enriched through the involvement of Mrs D.

Miss R became unwell with a virus, from which she developed several complications. Miss R was eventually taken to hospital with pneumonia and while in hospital she was diagnosed with cancer.

As Miss R was in her early 80's and given a terminal prognosis, Mrs D was faced with having to plan for end of life and palliative care treatment decisions for Miss R.

Mrs D took Miss R to doctor's appointments, gathered opinions and advice and made informed decisions regarding Miss R's treatment. She stayed by Miss R's side until she passed away in hospital.



## 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. In 2013/14 some 86 of the 340 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 challenges for the Office of the Public Advocate.
- In 2013/14 guardians and investigator advocates made more than 25 trips to regional areas. In some cases, the Public Advocate had to determine the suitability of accommodation options for represented persons living outside of Western Australia.
- The issues surrounding decisions which guardians are required to make may be multifaceted, as a number of represented persons have multiple and complex needs. 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. Making decisions for these 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 Office of the Public Advocate intervenes in these matters and seeks Police involvement (usually via the Sex Crime Division), referral to the Sexual Assault Resource Centre and medical and counselling services. The Public Advocate has noted the particular vulnerability of young people with intellectual disabilities and women with mental illnesses, to sexual assault. This group often lack adequate self protective behaviours and/or family and agency support services.
- Making decisions for represented people from an Aboriginal and Torres Strait Islander background requires an understanding of cultural differences. The family members of these represented people sometimes oppose or do not recognise the authority of the Public Advocate as their relative's guardian.
- The Public Advocate makes decisions for people who are frequent and sometimes serious offenders, whether detained in a psychiatric hospital 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 may involve the Police, Disability Services Commission, the Department of Corrective Services, Legal Aid, Mental Health Commission and the Department of Health's Mental Health Services.
- The Public Advocate continues to undertake the legal functions of 'next friend' and guardian *ad litem* which is to initiate or defend any civil legal proceedings respectively. This usually involves a guardian providing instructions to a lawyer during protection proceedings taken by the Department for Child Protection and Family Support on behalf of a represented person's child/children. This function is undertaken by the Public Advocate where the State Administrative Tribunal determines that the represented person is unable to conduct their own legal affairs due to a lack of decision-making capacity.

The following three case studies provide examples of the variety of situations and issues encountered by delegated guardians when carrying out their work in the best interests of represented persons.

## Case Study

### **Ensuring contact with all family members.**

Mrs C is a frail, 73 year old widow with dementia and poor mobility, who was living in her own home, cared for by her daughter.

Mrs C did not see her two sons often as her daughter had fallen out with them some years ago. The sons found it difficult to visit the family home or keep in contact with their mother as their sister was always present.

However, from their infrequent visits, the two sons formed the view that their sister was no longer able to adequately manage their mother's care. They noticed that Mrs C's mobility had decreased, she often fell and appeared to need a carer present at all times, which their sister could not do while also working part-time.

Mrs C's sons attempted to discuss their concerns with their sister and voice their opinion that their mother needed to move to a nursing home, where she could receive appropriate care. Mrs C's daughter did not agree with her brothers and eventually refused them access to her.

The brothers applied to the State Administrative Tribunal, and as a result, the Public Advocate was appointed Mrs C's guardian, with limited authority to determine where and with whom she would live, and with whom she had contact.

The delegated guardian from the Office of the Public Advocate spoke at length with Mrs C, but because of Mrs C's dementia, she was limited in her ability to form a view regarding her situation. The guardian also spoke to each member of Mrs C's family, her doctor and the service providers who provided in-home help.

The home help service confided in the guardian and said they did not think Mrs C's daughter was coping well and that sometimes Mrs C was left home alone for extended periods.

The guardian also arranged a referral from Mrs C's doctor for an aged care assessment. Mrs C was assessed to require high level care in a residential aged care facility. The guardian encouraged family members to identify facilities they preferred for their mother, and subsequently the family made applications to the facilities on this list.

When a place became available Mrs C was offered a room in a nursing home in the same suburb as her daughter's home, where she could receive the high level care she needed. This offer was accepted by the delegated guardian and Mrs C moved into the facility.

A contact plan was devised by the delegated guardian to ensure all family members had contact with their mother, and to minimise conflict. The plan set out days and times each family member was able to visit Mrs C, so that all three of her children were able to spend time with their mother.

## Case Study

### **Regaining capacity following abstinence from alcohol.**

Mr J is a 63 year old man with a long history of alcohol abuse. His alcohol abuse led to him developing alcohol-induced dementia.

Mr J's sister had previously been appointed as his guardian, to make decisions about where Mr J would live and his medical treatment, after the State Administrative Tribunal (the Tribunal) found that he did not have the capacity to make these decisions for himself.

A decision was made for Mr J to move to the secure dementia ward of a nursing home where he had been living for approximately 18 months. Having had no access to alcohol during this time, Mr J's health significantly improved, including his cognitive capacity, and he expressed his desire to move out of the aged care facility and back to his own home.

His sister was not willing to consent to him leaving the aged care facility to return to his home, as she believed he would start drinking again and not be able to care for himself.

Unsuccessful in his attempts to convince his sister to allow him to move back to his own home, Mr J made an application to the Tribunal for a review of the guardianship order, seeking for the Tribunal to revoke the guardianship order.

After receiving Mr J's application, the Tribunal made a referral to the Office of the Public Advocate to conduct an investigation into whether the order was working in the best interests of Mr J. The Office was asked to investigate whether Mr J still needed a guardian appointed to make accommodation and treatment decisions, and/or an administrator appointed to make financial decisions.

After meeting with Mr J, his family members, staff at the nursing home and health professionals, the investigator advocate provided a report to the Tribunal.

The investigator advocate identified that while Mr J had regained sufficient capacity to make his own medical treatment decisions, and was able to make his views known about moving out of the nursing home to live in his own house, he seemed to lack insight into his ongoing need for services to assist him to live independently or the ability to organise these services.

The investigator advocate also reported that Mr J did not appear to be able to manage his finances adequately, demonstrated by the fact that he was unable to make his fortnightly allowance last.

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The Tribunal Member determined that Mr J was not capable of making decisions around the services he received or how to plan for his transition back to independent living, and therefore made an order appointing a guardian to decide what was needed in relation to where Mr J lived and what services he received.

While the Tribunal Member understood the concerns held by Mr J's sister and other family members, who had endured difficult times caused by Mr J's alcohol abuse, it was decided that an independent guardian should be appointed to consider where Mr J should live. This would include consideration of a trial arrangement where Mr J would be living in his own home.

The existing guardianship order appointing Mr J's sister was revoked, as the Tribunal Member determined that she could not make an independent decision as to what was in Mr J's best interests, as she held the view that he would not be able to live independently. Consequently, the Public Advocate was appointed as Mr J's guardian, with limited authority to decide where he lived and what services he received.

The delegated guardian from the Office of the Public Advocate then met with Mr J, his family members, relevant service providers and health professionals, to discuss his accommodation options and explore if it was feasible for him to return home. Based on professional assessments it was determined that Mr J could return home on a trial basis. Once sufficient services and safeguards were in place to enable this, Mr J returned home.

While the trial was initially successful, after some months Mr J began drinking again. His physical and mental health deteriorated and he began refusing services in an attempt to hide his drinking. This resulted in the guardian making the decision to end the trial, and Mr J returned to the nursing home again. However a regular support service was maintained to enable Mr J to go on social outings in his local community.

## Case Study

### **Medical treatment decision-making in the best interests of a represented person.**

Mr E is a 25 year old man with Cerebral Palsy and an acquired brain injury.

Historically, Mr E's father has been opposed to medical intervention, fearing the treatment recommended by health professionals for his son may harm him.

Due to a limited ability to swallow, Mr E was unable to maintain his daily nutritional requirements through eating and therefore needed further nutrition through a daily nasal-gastric tube feeding schedule.

Mr E believed that he was old enough to move out of home and move into supported accommodation with other young adults. He also wanted to start a recognised training course at TAFE. However, the need for him to receive daily nasal-gastric tube feeding limited his accommodation and study options.

Health professionals recommended that Mr E have a Percutaneous Endoscopic Gastrostomy feeding tube inserted (commonly referred to as a PEG) as an alternative means of receiving nutrition. This procedure involves a tube being surgically inserted into Mr E's stomach, through which he would receive liquid nutrients. Mr E's father was not willing to provide consent for this procedure, as he felt it was risky and had limited benefits.

Mr E argued that as an adult, he should be able to make his own decisions, including what medical treatment he receives. He wanted to have a PEG feeding tube inserted as he knew this would mean that his nutritional requirements could be met more easily, and as a result he would be able to live with other young adults in supported accommodation and attend TAFE.

Although Mr E communicated his wishes, health professionals questioned his capacity to make his own decisions. Mr E's doctor applied to the State Administrative Tribunal (the Tribunal) for the appointment of a guardian, which in turn requested the Office of the Public Advocate investigate the case and present their findings.

After a thorough investigation, it was recommended that a guardian should be appointed with authority to make treatment decisions for Mr E. The investigator advocate recommended the appointment of the Public Advocate as an independent guardian to make treatment decisions for Mr E.

*continued*

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The Tribunal agreed with this recommendation and the Public Advocate was appointed as Mr E's guardian with limited authority to make treatment decisions.

Following the appointment of the Public Advocate as guardian, the main decision to be considered was whether Mr E should have a PEG feeding tube inserted. The delegated guardian gathered information on the risks and benefits of the procedure, spoke with Mr E to gather his views and wishes, and spoke with his father about the options being considered.

Ultimately the decision was made by the Public Advocate that Mr E would have a PEG tube inserted. As a result, Mr E has since moved into supported accommodation with other young adults. He has also completed a course at TAFE and is starting another, now that he has more freedom to move around the community and interact with people.

## 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 2013/14 guardians from the Office of the Public Advocate were involved in 451 reviews of guardianship orders.

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

Of these 451 reviews, 85 orders were revoked by the State Administrative Tribunal because there was no longer a need for a substitute decision-maker as a result of:

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

A total of 190 guardianship orders were closed during 2013/14.

## Our Customers

The most common issue leading to the appointment of the Public Advocate as guardian of last resort continues to be treatment decisions; with 85 per cent of all guardianship orders appointing the Public Advocate at 30 June 2014 including these decisions (see Figure 10).

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

Decisions relating to accommodation are the second largest contributor to the appointment of the Public Advocate. At 30 June 2014, 75 per cent of all guardianship orders appointing the Public Advocate authorised decision-making regarding where they were to live, and 72 per cent authorised decision-making regarding with whom the represented person lives.



The high number of appointments regarding accommodation decisions, reflects concern for appropriate supported accommodation for people with a decision-making disability, conflict surrounding where and with whom 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 opposed to entering residential care.

Of the 340 new appointments of the Public Advocate as guardian of last resort in 2013/14:

- the most common type of decision-making disability was dementia, with 139 (41 per cent) of the newly appointed people affected by this condition. This was followed by 90 people (27 per cent) with a mental illness, 54 people (16 per cent) with an intellectual disability, 49 people (14 per cent) with an acquired brain injury, and 8 people (2 per cent) with another disability (see Figure 11)
- 254 people lived in the Perth metropolitan area and 86 lived in regional areas (see Figure 13)
- abuse of a person with a decision-making disability was a factor for 97 people (29 per cent) and of these, 48 (49 per cent) were 65 years of age or older (see Figures 14 and 15).

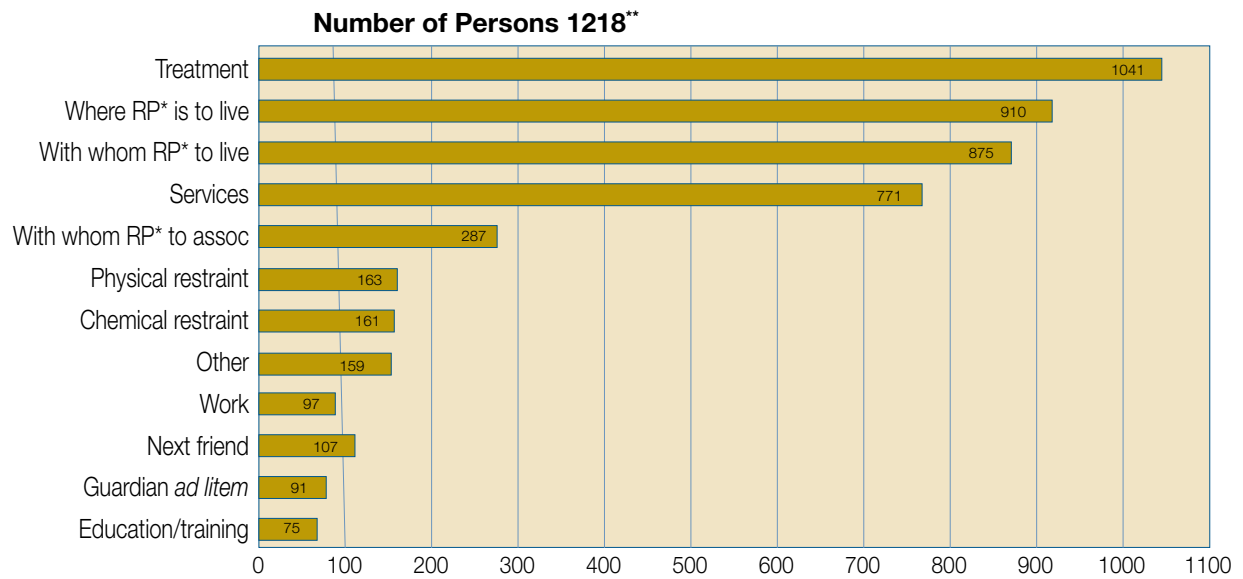
Of the 1,218 adults with a decision-making disability for whom the Public Advocate was appointed as guardian at 30 June 2014, 174 were of Aboriginal and Torres Strait Islander descent (see Figure 17) and 183 were from a culturally diverse background<sup>12</sup>.

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

In 2013/14 guardians took 595 after hour calls which took 206 hours.

<sup>12</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 Functions for which Public Advocate has been appointed for all guardianship orders as at 30 June 2014**



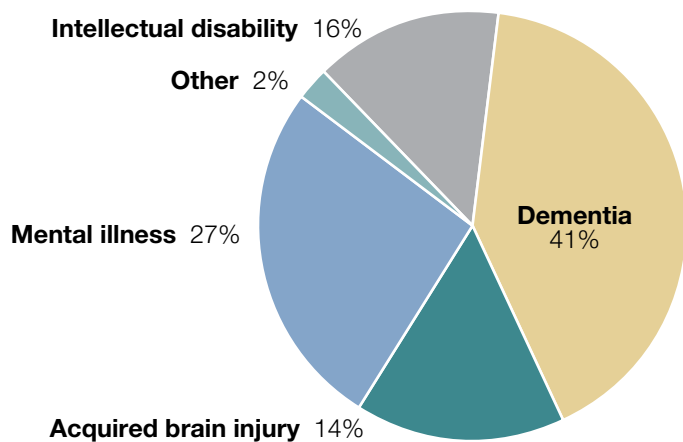
\*RP = represented person

\*\* An order can be made for multiple functions

**Figure 11 Profile of new guardianship orders appointing the Public Advocate by type of decision-making disability 2013/14**

**Type of decision-making disability**

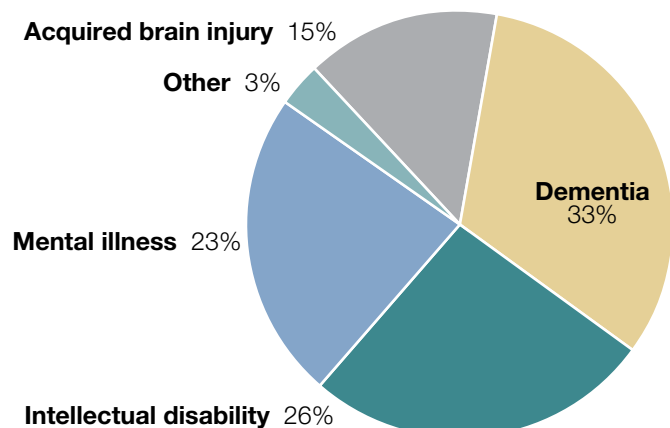
Acquired brain injury	49
Dementia	139
Intellectual disability	54
Mental illness	90
Other	8
<b>TOTAL</b>	<b>340</b>



**Figure 12 Profile of all guardianship orders appointing the Public Advocate by type of decision-making disability as at 30 June 2014**

**Type of decision-making disability**

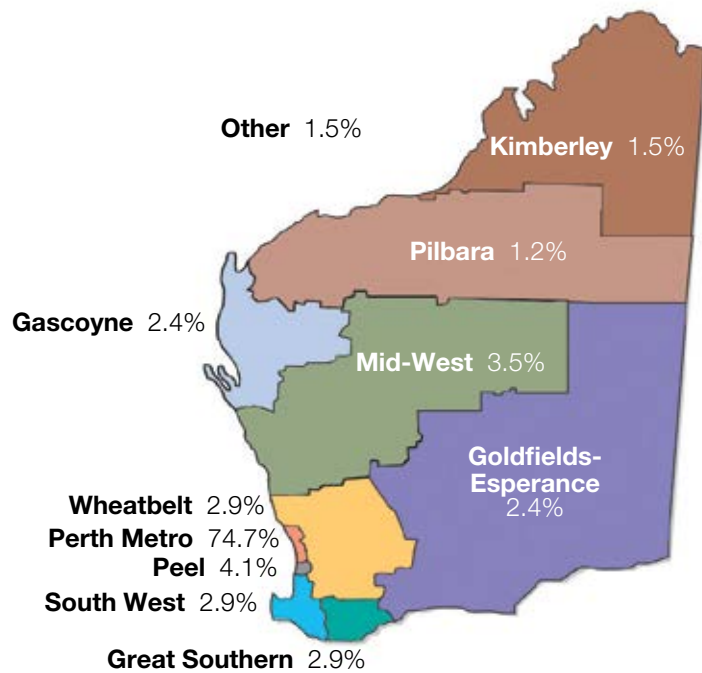
Acquired brain injury	181
Dementia	394
Intellectual disability	319
Mental illness	284
Other	40
<b>TOTAL</b>	<b>1218</b>



**Figure 13 Profile of new guardianship orders appointing the Public Advocate by geographical location 2013/14**

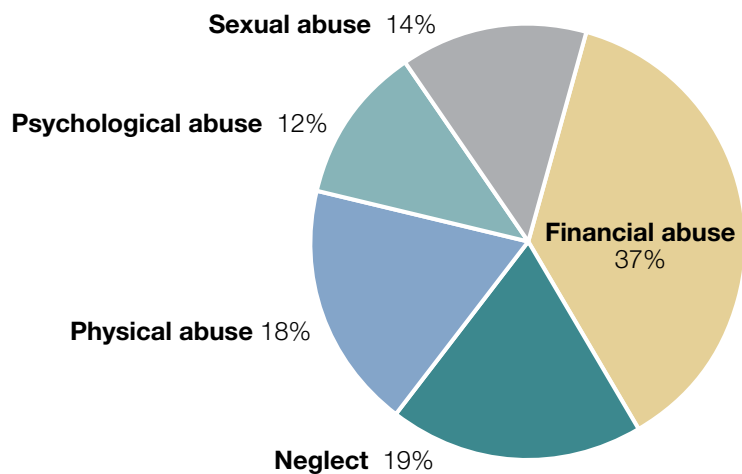
**Geographical location**

Gascoyne	8
Goldfields-Esperance	8
Great Southern	10
Kimberley	5
Mid-West	12
Peel	14
Perth Metropolitan	254
Pilbara	4
South West	10
Wheatbelt	10
Other	5
<b>Total</b>	<b>340</b>



**Figure 14 Profile of new guardianship orders appointing the Public Advocate by type of alleged abuse 2013/14 (including elder abuse)**

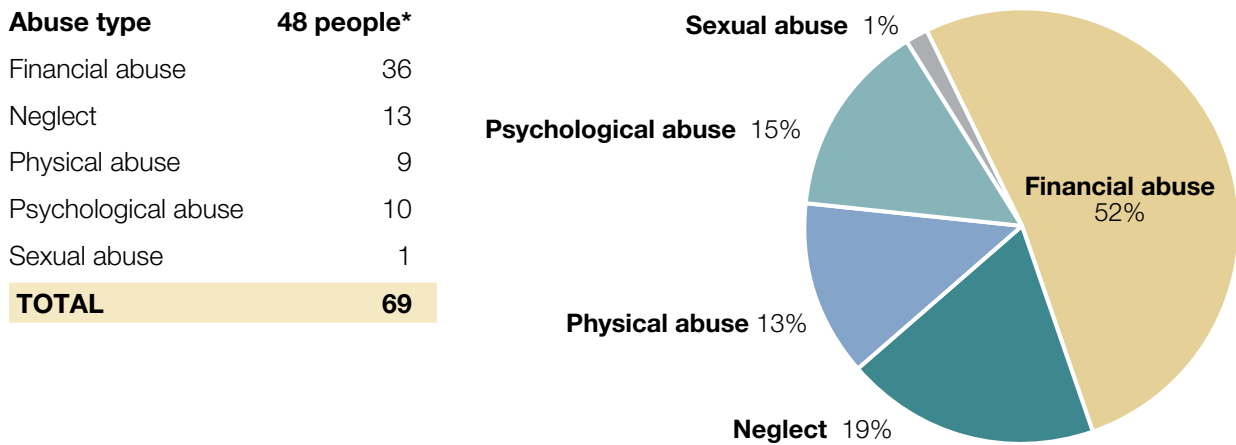
<b>Abuse type</b>	<b>97 people*</b>
Financial abuse	57
Neglect	29
Physical abuse	28
Psychological abuse	18
Sexual abuse	21
<b>TOTAL</b>	<b>153</b>



\*Alleged elder abuse was reported in 97 people’s cases, however, in some instances more than one alleged abuse type was reported.

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

**Figure 15 Profile of new guardianship orders appointing the Public Advocate by type of alleged elder abuse (aged 65 or older) 2013/14**



\*Alleged elder abuse was reported in 48 people’s cases; however, in some instances more than one alleged abuse type was reported.

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

**Figure 16 Profile of new guardianship orders appointing the Public Advocate by Aboriginality and Torres Strait Islander descent from 2009/10 to 2013/14**

Year	Total	Non ATSI*	ATSI*	ATSI* as a percentage of total
2009/10	224	197	27	12
2010/11	330	282	48	15
2011/12	347	311	36	10
2012/13	371	335	36	10
2013/14	340	297	43	13

\*ATSI: Aboriginal and Torres Strait Islander

**Figure 17 Profile of all guardianship orders appointing the Public Advocate by Aboriginality and Torres Strait Islander descent from 2009/10 to 2013/14**

Year	Total	Non ATSI*	ATSI*	ATSI* as a percentage of total
2009/10	596	518	78	13
2010/11	759	649	110	14
2011/12	928	801	127	14
2012/13	1065	921	144	14
2013/14	1218	1044	174	14

\*ATSI: Aboriginal and Torres Strait Islander

## Systemic Advocacy

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

### The Year in Review

#### **Collaboration in preparing for changes in the disability sector**

In October 2013, the Disability Services Commission announced significant changes to the way in which they will provide accommodation services to some 60 per cent of 500 people living in their accommodation services. In the future, most of these services will be provided by non-government accommodation providers.

The Office identified more than 50 people on guardianship orders appointing the Public Advocate who may be impacted by this change. In response, the Public Advocate liaised with the Disability Services Commission and the Public Trustee to identify where applications will need to be made to the State Administrative Tribunal for new or amended guardianship and/or administration orders, to ensure suitable arrangements are in place to make decisions for the ongoing accommodation of these people.

As at 30 June 2014, the Public Advocate had made applications for nine residents to review their guardianship orders, with applications for administration orders for seven of those represented persons being made by either the Disability Services Commission or the Public Trustee. In addition two community guardians had made applications for a review to expand their authorities as guardian. A further three routine reviews of guardianship orders have been listed by the State Administrative Tribunal for July 2014, with applications for administration having also been made to formalise the management of their finances. It is a gradual transition process which will continue throughout 2014/15.

The National Disability Insurance Scheme will also bring significant change to the disability sector. In August 2013, the Western Australian State Government signed an agreement to join the National Disability Insurance Scheme.

The scheme is set to be introduced in July 2014 in Western Australia, through two pilots. One pilot will be delivered directly through the National Disability Insurance Scheme and will run in the Perth Hills area. The other pilot will be delivered through the Disability Services Commission's 'My Way' model and will run in the lower south-west of the State.

A number of the Office's clients, who receive disability support including accommodation and services, and are under 65 years of age will be impacted by this reform.

## **People with exceptionally complex needs**

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

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

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

Senior officers from the Disability Services Commission, Mental Health Commission, Mental Health Services 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, work together to operate the project.

As at 30 June 2014, 20 people were participating in the people with exceptionally complex needs project. Of these, 17 had a guardian and/or administrator appointed by the State Administrative Tribunal.

Sixteen participants had both a guardianship order appointing the Public Advocate and an administration order appointing the Public Trustee. In addition, one participant had a family member appointed as their guardian and administrator.

## **Young people with exceptionally complex needs**

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

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

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

As at 30 June 2014, there were 11 young people participating in the program, three of whom were under guardianship orders appointing the Public Advocate as their guardian, with the Public Trustee also appointed as administrator for two of these three young people.

The level of support provided by this project has been invaluable to three highly vulnerable young people who have required intensive support with their transition from State care during the last year. One young man with high needs exited the program in 2014 after turning 19 years of age, after greater stability was achieved for him through the provision of funding by the Disability Services Commission which enabled new services to be put in place. Another young person who recently transitioned from State care was accepted into this program in late June because of his complex needs and vulnerability.

## Elder abuse

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

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

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

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

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

In April 2014, the Alliance launched an Elder Abuse Protocol, designed to help government and non-government agencies educate and prepare staff who need to respond to elder abuse.

The Office of the Public Advocate holds an annual forum on elder abuse, during World Elder Abuse Awareness Week. In June 2014, two seminars were held – one for community members and one for service providers. The focus of these seminars was the protection offered by the *Guardianship and Administration Act 1990* for an adult should they lose capacity.

These seminars provided an opportunity for community members and service providers to consider how adults prepare for the future by completing an enduring power of attorney and an enduring power of guardianship.

These powers can operate when a person has lost capacity with the person appointed having a responsibility to make decisions in the person's best interests.

The community member seminar explored the factors people might want to consider before making these powers and how to make them. The potential benefits and pitfalls were highlighted to enable people to make an informed decision about whether to complete either power. The seminar also provided information on the guardianship and administration system, and how this operated as a safeguard if a person chose not to complete these powers and later lost capacity.

The focus of the service provider seminar was on the overarching guardianship and administration system, looking particularly at service providers' duty of care. The session explored what service providers should do when they have concerns that someone may be vulnerable to, or experiencing, abuse.

### Policy and legislative work

The Public Advocate and senior staff members were involved in policy development and reviews with other government and non-government agencies during 2013/14, including:

- Submission to consultation on the statutory review of the *Guardianship and Administration Act 1990*
- Submission to the targeted consultation on the *Prohibited Behaviour Orders Act 2010*
- Submission to the WA Police on the draft *Mandatory Testing for Diseases Bill 2013*
- Alliance for the Prevention of Elder Abuse – participation in the project group responsible for the development of the Elder Abuse Protocol: Guidelines for Action
- Continuing work with the Mental Health Commission and Department of Health and other agencies, regarding the *Mental Health Bill 2013*, its implementation and its intersection with the *Guardianship and Administration Act 1990*
- Contribution to the review of the Disability Services Commission – *Voluntary Code of Practice for the Elimination of Restrictive Practices* (April 2014)
- Contribution to the Disability Services Commission – National Standards document for individual safeguarding (April 2014).



## Community Education

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

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

## The Year in Review

In 2013/14, the Office delivered a total of 32 community education sessions across the State, regarding the guardianship and administration system, the legislation, and the planning documents available to people under the legislation.

Of these, 15 were tailored to the needs of community members, 13 specifically targeted service providers and four catered to the needs of both groups.

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

All of the sessions were held at accessible venues, with the majority of sessions in the metropolitan area, alongside regional sessions which were held in Busselton, Eaton and Esperance, as well as being delivered by videoconferencing facilities.

The Office also participated in community events such as 'Homeless Community Connect' in Victoria Park, and the 'Elder Abuse Protocols Launch' by staffing a stand there. These events exposed the work of the Office to over 500 community members and service providers in attendance.

In addition, other community education activities which occurred during 2013/14 included staff members speaking to stakeholders on specific topics of interest. For example, the Public Advocate presented to the Central Government Agency Mental Health Forum regarding the role of the Office.

## Customer contact/enquiries

A total of 5,116 people used the Office of the Public Advocate’s advisory service in 2013/14, compared to 4,945 in 2012/13. Contact was made via telephone, email, mail and in person (see Figure 18).

In some instances, enquirers sought advice on multiple topics. Guardianship matters produced the most enquiries, accounting for 38 per cent of all enquiries received this year. Enquiries regarding enduring powers of attorney accounted for 32 per cent, and administration, enduring powers of guardianship and general enquiries accounted for 10, 9 and 9 per cent respectively (see Figure 19).

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

**Figure 18 Enquiries to the advisory service by mode of handling 2013/14**

Mode of handling	Jul 2013	Aug 2013	Sep 2013	Oct 2013	Nov 2013	Dec 2013	Jan 2014	Feb 2014	Mar 2014	Apr 2014	May 2014	Jun 2014	Total
<b>Telephone</b>	521	440	372	417	410	280	443	413	355	349	537	410	4947
<b>Interview</b>	6	10	3	10	5	1	9	4	9	5	7	4	73
<b>Email/letter</b>	10	4	3	4	11	6	6	6	9	14	12	11	96
<b>TOTAL</b>	<b>537</b>	<b>454</b>	<b>378</b>	<b>431</b>	<b>426</b>	<b>287</b>	<b>458</b>	<b>423</b>	<b>373</b>	<b>368</b>	<b>556</b>	<b>425</b>	<b>5116</b>

**Figure 19 Enquiries to the advisory service by subject 2013/14**

Subject of Enquiry	Jul 2013	Aug 2013	Sep 2013	Oct 2013	Nov 2013	Dec 2013	Jan 2014	Feb 2014	Mar 2014	Apr 2014	May 2014	Jun 2014	Total	Total as percentage of all enquiries
<b>Guardianship</b>	231	175	172	172	179	151	238	202	157	204	263	167	2311	38
<b>Administration</b>	67	57	57	48	65	32	41	61	62	46	47	52	635	10
<b>EPA</b>	217	204	160	174	166	96	174	146	153	125	194	177	1986	32
<b>EPG</b>	76	43	56	48	36	27	36	34	32	42	57	56	543	9
<b>AHD</b>	10	13	4	9	9	4	8	9	8	6	8	16	104	2
<b>General</b>	49	46	42	55	65	19	33	43	37	30	62	45	526	9
<b>Total</b>	<b>650</b>	<b>538</b>	<b>491</b>	<b>506</b>	<b>520</b>	<b>329</b>	<b>530</b>	<b>495</b>	<b>449</b>	<b>453</b>	<b>631</b>	<b>513</b>	<b>6105</b>	

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

## Services to Aboriginal people

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

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

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

All of the Office's publications are available in alternative formats<sup>13</sup>, including other languages, upon request. The Office has translated three of its most commonly used information sheets – regarding enduring powers of attorney, enduring powers of guardianship and general planning for the future information – into Chinese, Italian, Polish and Vietnamese. These are available on the Office's website, and in hard copy on request.

<sup>13</sup> Other than the enduring power of attorney form and enduring power of guardianship form, which are not able to be translated into other languages, as they must be in English.

## **Update of enduring power of attorney guide**

Work to update the Office's enduring power of attorney guide, which provides comprehensive information regarding enduring powers of attorney, was completed in 2013/14.

The publication has been made available online and recorded in audio format.

## **Catering to the needs of clients with vision impairments**

The Office has utilised the services of the Association for the Blind of Western Australia to record four of its publications into audio, so that clients with vision impairments could easily access the information.

In 2012/13, the following publications were recorded:

- A Guide to Enduring Power of Guardianship in Western Australia
- The brochure: New laws offering you choices to make an Advance Health Directive and appoint an Enduring Guardian
- Enduring Power of Attorney Information Kit.

In 2013/14, the updated Guide to Enduring Power of Attorney in Western Australia was recorded.

The four audio files were uploaded to the Office's website during the financial year, so that information is now more easily accessible for clients with vision impairments and/or print disabilities.

The Office's website also has a 'Listen' function on each page, with speech enabled by ReadSpeaker for the benefit of clients with vision impairments or print disabilities.

## **Catering to the needs of clients with hearing impairments**

All staff received training and information on understanding how to use the National Relay Service, to communicate better with clients who are deaf, or who have a hearing impairment or speech impairment. The variety of contact methods offered by the National Relay Service are promoted on the Office's website.

## Corporate Services

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

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

These services are supported by the Department of the Attorney General and costs are proportionally allocated to the Office of the Public Advocate and reflected in the Treasury Budget statements. The budget allocation and subsequent expenditure for 2013/14 are as follows:

**Figure 20 Budget allocation and expenditure 2013/14**

	Total Cost of Output
\$'000 Actuals 2013-14	5984
\$'000 Budget 2013-14	5964 (revised budget)
\$'000 Variations from Budget	(20)

## The Year in Review

### Office Accommodation

The Office of the Public Advocate has representatives on the Department of the Attorney General's project teams working on the planning for the new Justice Tower.

### Office technology

As part of the overall upgrade to software within the Department of the Attorney General, the Office of the Public Advocate migrated to current versions of MS Office and Internet explorer during the financial year.

Enhancements to the Public Advocate Case Management system (PACMAN) also continued in 2013/14, with a change in platform to SharePoint 2010 along with the upgrade in MS Office.

Video conferencing continued to be used for client interviews and providing service provider information sessions in regional areas on request.

## Interpreter services

To help ensure that language is not a barrier to guardianship and investigation services for customers for whom English is a second language, the Office uses translation and interpreter services. During 2013/14 interpreter services were provided in Arabic, Italian, Japanese, Serbian, Thai, Ukrainian and Vietnamese.

## Freedom of information

Six valid applications were received during 2013/14 for the release of information. All six requests were dealt with in full during the year.

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

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

## Customer feedback

In 2013/14, the Office of the Public Advocate received 23 formal compliments and three suggestions. The Office also received 21 formal complaints during the year, which were all considered by the Public Advocate or a senior manager.

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

- respond to all grievances within 10 working days of the complaint being lodged
- keep records of all relevant proceedings including details of the grievance, the investigation, methods of resolution and customer feedback
- advise the relevant people (in writing) of the outcome and any corrective action to be taken.

# Significant Issues Impacting the Agency

## Meeting demand for services

The Office of the Public Advocate continues to experience ongoing demand for its statutory services of advocacy and investigation, and guardianship. Meeting this ever-growing demand presents an ongoing challenge to the Office.

As at 30 June 2014 the total number of people for whom the Public Advocate was guardian had increased 14 per cent compared to the same time the previous year.

Demand for advocacy and investigations during 2013/14 remained steady, with a total of 1,202 investigations carried out, compared to 1,264 the previous year. There was also no significant increase in the number of new investigations referred to the Office by the State Administrative Tribunal.

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

In 2013/14, 41 per cent of the people for whom the Public Advocate was appointed guardian for the first time have dementia (see Figure 11) and 46 per cent of the 925 new matters referred for investigation involved a person with dementia (see Figure 3).

The effects of the baby boomer generation will continue to impact strongly on organisations such as the Office of the Public Advocate, in which elderly people are increasingly the users of the service.

In recognition of the growing demand for services, over \$5 million of additional funding over four years was allocated to the Office of the Public Advocate in the 2011/12 State Budget.

This funding started on 1 July 2011 to provide a permanent increase of 14 full-time employees over four years, to assist the Office in its provision of statutory services. During 2013/14, this funding was used to increase the number of permanent full-time positions at the Office of the Public Advocate by a further two positions.

As the early trend in 2013/14 showed an increase in workload exceeding the equivalent period in the previous financial year, the Department of the Attorney General internally funded an extra guardian position, which will be permanently provided in 2014/15 through the allocation of the final two positions from the 2011/12 budget. These additional positions will be reflected in the 2014/15 organisational chart.

## State and National disability sector reform

During the year, the Office of the Public Advocate worked closely with the Disability Services Commission in preparing for their planned accommodation transition process, which will impact a number of the Office's clients.

The Office is also anticipating change with the introduction of the National Disability Insurance Scheme, which is being introduced in Western Australia through two pilots in 2014/15.

The full impact of these changes, on both the Office and its clients, is not entirely known. The reforms are likely to pose ongoing challenges in 2014/15, when it may become necessary for the Public Advocate to be appointed with additional functions in relation to guardianship for those affected clients.

The Office will continue to work closely with relevant stakeholders, to prepare for and respond to, the changes ahead.



# 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 a decision-making disability, both at hearings for the appointment of a guardian and in the community.

Key effectiveness indicator	Actual 2010-11	Actual 2011-12	Actual 2012-13	Target 2013-14	Actual 2013-14	Comment on significant variation
<p><b>Percentage of Guardians 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>	90%	95%	96%	95%	94%	N/A

Key efficiency indicator	Actual 2010-11	Actual 2011-12	Actual 2012-13	Target 2013-14	Actual 2013-14	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>	\$1,610	\$1,744	\$1,776	\$1,720	\$1,820	N/A

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

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

## Ministerial Directives

Nil.

## Other Financial Disclosures

See the Department of the Attorney General annual report.

## Public Interest Disclosures

Nil.

## Other Governance Disclosures

See the Department of the Attorney General annual report.

## Other Legal Requirements

### Advertising

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

#### Figure 21 Advertising

Adcorp and Whitepages: Government Gazette, community guardianship program, community education and recruitment advertising	\$8,243
<b>TOTAL EXPENDITURE</b>	<b>\$8,243</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 Department's code of conduct. The code of conduct outlines the ethical principles, obligations and standards that apply when working for the Department. This code aims to encompass the values of excellent service, integrity and accountability, equity and fairness, collaboration and learning and professional autonomy that are expected of all staff.

In adhering to these policies, 26 staff from the Office of the Public Advocate made conflict of interest declarations and four offers of gifts, hospitality or other benefits which exceeded a value of \$25 were recorded on the register.

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

## Recordkeeping Plans

Records are maintained in accordance with the Department of the Attorney General's records keeping plans, and those of the State Records Office. A new Retention and Disposal Schedule was approved by the State Records Office, effective December 2013. In line with the Department's ongoing commitment to improve staff awareness in records management, 96 per cent of Office of the Public Advocate staff had completed records awareness training as at 30 June 2014.

## Government Policy Requirements

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

## Occupational Safety, Health and Injury Management

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

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

The Department of the Attorney General introduced a formal policy regarding the appointment of first aid officers in 2011/12. In keeping with that policy, the Office appointed one first aid officer and one deputy first aid officer.

The Office's Occupational Safety and Health Committee comprises two management representatives and two elected staff representatives. Meetings are held quarterly, although issues can be raised at any time by staff with the elected representatives, and at every staff meeting where staff members have an opportunity to provide feedback. During 2013/14 there were no fatalities, no lost time injuries and no claims.

All new employees in 2013/14 were required to undertake the Department of the Attorney General's Occupational Safety and Health training. Furthermore, staff members were also presented with an opportunity to attend security information sessions which raised awareness on security within the workplace.

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

# Appendix 1 Legislation

## Legislative Authority

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

## Related legislation

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

*State Administrative Tribunal Act 2004*  
*Carers Recognition Act 2004*  
*Community Protection (Offender Reporting) Act 2004*  
*Criminal Investigation (Identifying People) Act 2002*  
*Criminal Investigation Act 2006*  
*Criminal Law (Mentally Impaired Accused) Act 1996*  
*Dangerous Sexual Offenders Act 2006*  
*Disability Services Act 1993*  
*Health Act 1911*  
*Magistrates Court (Civil Proceedings) Act 2004*  
*Mental Health Act 1996*  
*Prisons Act 1981*  
*Prohibited Behaviour Orders Act 2010*  
*Public Trustee Act 1941*  
*Supreme Court Act 1935*

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

*Corruption and Crime Commission Act 2003*  
*Electoral Act 1907*  
*Equal Opportunity Act 1984*  
*Financial Management Act 2006*  
*Freedom of Information Act 1992*  
*Occupational Safety and Health Act 1984*  
*Public Interest Disclosure Act 2003*  
*Public Sector Management Act 1994*  
*State Records Act 2000*  
*State Supply Commission Act 1991*  
*Workers' Compensation and Injury Management Act 1981*

## Appendix 2 Publications

All Public Advocate publications are available online at [www.publicadvocate.wa.gov.au](http://www.publicadvocate.wa.gov.au)

### Annual Report

#### Information sheets

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

#### Position statements

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

#### Brochures

- Office of the Public Advocate
- Your choices to make an advance health directive and appoint an enduring guardian (also available in audio format)
- Community Guardianship Program
- Are you worried about a vulnerable adult who needs help making decisions? (a brochure for Aboriginal people).

#### Enduring power of attorney and enduring power of guardianship information kits and guides

The kits and guides 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)

The publications, Enduring Power of Attorney Information Kit, Guide to Enduring Power of Guardianship in Western Australia, and the Enduring Power of Guardianship Information Kit, can be purchased from the State Law Publisher via their website ([sales@dpc.wa.gov.au](mailto:sales@dpc.wa.gov.au)) or over the telephone (6552 6000).

Audio formats of the Guide to Enduring Power of Attorney in Western Australia, the Enduring Power of Attorney Information Kit, and the Guide to Enduring Power of Guardianship in Western Australia, can be accessed from the Office of the Public Advocate's website, [www.publicadvocate.wa.gov.au](http://www.publicadvocate.wa.gov.au)

## Appendix Glossary

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

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

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

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

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

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

**Individual advocacy:** 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:** 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.



## Easy Read Annual Report 2013/14

### This document is about

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

### The Office of the Public Advocate

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



## This year we

- investigated 1,202 matters about adults with a decision-making disability who might have had someone trying to harm them or take advantage of them or their money
- were appointed as guardian for 340 adults with a decision-making disability for the first time
- made decisions as guardian, and on 30 June 2014 there were 1,218 people for whom we made these decisions
- held 32 information sessions about what the Office does and how to help protect people with a decision-making disability
- helped 5,116 people who called the Office's telephone advisory service for information
- had 45 staff positions
- spent \$6 million to protect people with a decision-making disability.

## What will happen in future years

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

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

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

## How to contact us

If you:

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

call the Office on **1300 858 455** between 8:30am to 4:30pm, Monday to Friday.







The Public Advocate of Western Australia  
**Annual Report 2013/14**

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

