



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



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

# The Public Advocate of Western Australia Annual Report 2016/17

Hon. John Quigley MLA  
ATTORNEY GENERAL

In accordance with Section 101(1) of the *Guardianship and Administration Act 1990* of Western Australia, I am pleased to submit the Annual Report of the Public Advocate for the year ending 30 June 2017.

This report records the operations and performance of the Office of the Public Advocate during 2016/17. 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.

In 2016/17, the Office of the Public Advocate reported on financial and administrative matters to the Director General of the Department of the Attorney General (part of the Department of Justice from 1 July 2017).

*Pauline Bagdonavicius*

Pauline Bagdonavicius

**PUBLIC ADVOCATE**

8 September 2017

David Malcolm Justice Centre

28 Barrack Street

PERTH WA 6000

T: 1300 858 455

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

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

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# Overview

## The Year in Review

The Office of the Public Advocate (the Office) has a mandate to protect some of the most vulnerable members of society.

Each year the Office looks into the lives of people who are potentially at risk to determine if they are unable to make decisions for themselves and to see if they need someone to step into a decision-making role for them.

Inevitably, the Public Advocate is appointed as guardian of last resort for hundreds of people in this situation each year, as they either don't have anyone in their life who is able to become their substitute decision-maker, or there is too much conflict between the people who would like to take on the role.

As has been the case for a number of years now, the demand for the services of advocacy and investigation as well as guardianship increased this year. Meeting this ongoing increase in demand remains the biggest challenge faced by the Office.

In 2016/17 the Office carried out five per cent more new investigations than the previous year. Of the 1,180 new investigations carried out in 2016/17, 44 per cent involved a person with dementia, 21 per cent a mental illness, 16 per cent an intellectual disability and 15 per cent an acquired brain injury.

At 30 June 2017, the Public Advocate was guardian of last resort for 12 per cent more people than at 30 June 2016. Of the 1,738 adults with a decision-making disability who had the Public Advocate appointed as their guardian at 30 June 2017, 29 per cent had dementia, 29 per cent an intellectual disability, 24 per cent a mental illness and 17 per cent an acquired brain injury.

A significant number of people under the Public Advocate's guardianship became eligible to participate in the National Disability Insurance Scheme as it continued to expand into new geographical areas during the year. This added substantially to the work of the Office, as staff were involved in planning and review processes for these represented persons.

The ageing of our population, together with an increasing prevalence of dementia, mental health and intellectual disabilities, seem set to continue driving demand for the Office's services.

The Office continued to deliver community education through 17 seminars, participation in community exhibitions, its advisory service, informative website content and its suite of publications. These strategies aim to educate community members about planning for their future with enduring powers of attorney, enduring powers of guardianship and advance health directives; educate service providers on the proper completion and operation of these documents; and better inform both groups on how to navigate the guardianship and administration system.

The Office continued to contribute to a range of policy and legislative work in addition to its ongoing systemic advocacy efforts during the year. This year this included working with the Public Trustee in identifying represented persons who were eligible to be registered for the Business Services Wage Assessment Tool Payment Scheme.

## Acknowledgements

The Office has a dedicated and professional team of investigator advocates, guardians, administration and support staff who work with tenacity and care to protect vulnerable Western Australian adults with impaired capacity.

The team draws on its wide-ranging experience to work in situations which are often difficult, may involve conflict and trauma, and at times require urgent responses.

Once again this year, the Office successfully managed the challenging and confronting work it was faced with and delivered real benefits to the Western Australian community. I would like to thank staff and management for their hard work and commitment.

The work of the Office was also supported by the small but hard-working group of Community Guardian Volunteers, who have a positive impact in the lives of the people they volunteer to build a friendship with and eventually take over the role of guardian.

In December 2016, Dr Adam Tomison was appointed to the position of Director General for the Department of the Attorney General. Since his appointment Dr Tomison has taken the time to meet with staff and has quickly become familiar with the work of the Office and the issues faced by staff.

The support of the Director General, along with our colleagues within the Department and those from external agencies, is appreciated and integral to our work.

*Pauline Bagdonavicius*

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 2016/17 the Office of the Public Advocate reported on financial and administrative matters to the Director General of the Department of the Attorney General (part of the Department of Justice from 1 July 2017). In accordance with this arrangement, the financial statements of the Office are published in the Department’s final report.

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

### Mission

To protect and promote 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:

- 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
- information, advice and training on how to protect the human rights of adults with a decision-making disability.

## 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 decision-making support.

- **Current wishes and previous actions**

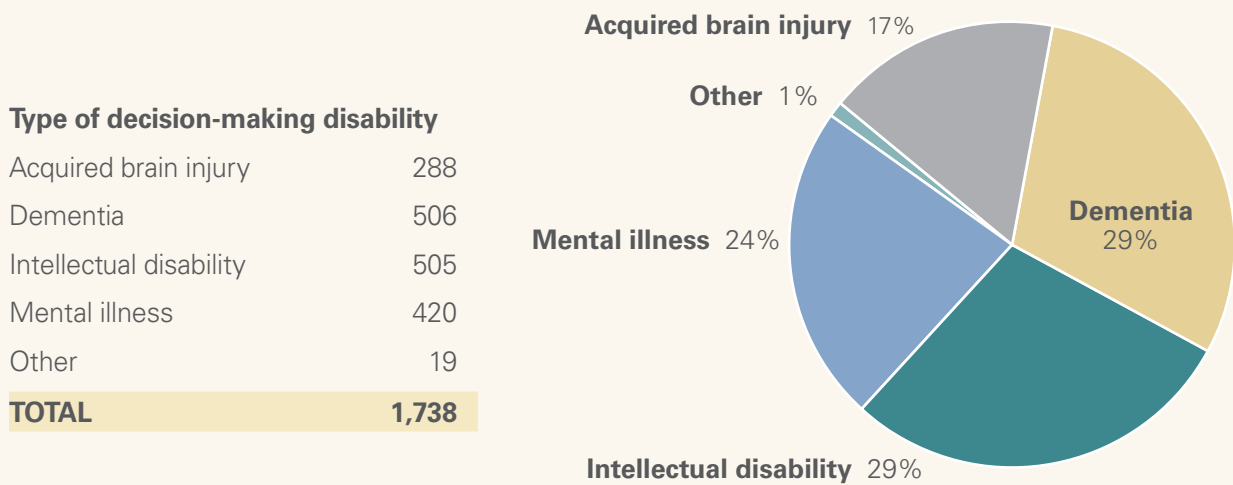
The views and wishes of the person concerned are sought to the extent possible and expressed in whatever manner, either at the time or gathered from the person's previous actions.

## 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, a mental illness or an acquired brain injury.

At 30 June 2017, 1,738 adults with a decision-making disability had the Public Advocate appointed as their guardian. Of these 1,738 adults, 29 per cent had dementia, 29 per cent an intellectual disability, 24 per cent a mental illness, 17 per cent an acquired brain injury and one per cent had some other form of decision-making disability. Of these 1,738 adults, 54 per cent were male and 46 per cent were female.

**Figure 1 Profile of all guardianship orders appointing the Public Advocate by type of decision-making disability as at 30 June 2017**



The number of people for whom the Public Advocate is guardian has increased by more than 60 per cent over the past four years, from 1,065 in June 2013 to 1,738 in June 2017.

**Figure 2 People under guardianship orders appointing the Public Advocate by type of decision-making disability as at 30 June 2013 – 30 June 2017**

Type of decision-making disability	2013		2014		2015		2016		2017	
	Number	Percentage of total	Number	Percentage of total	Number	Percentage of total	Number	Percentage of total	Number	Percentage of total
Acquired brain injury	146	14%	181	15%	223	16%	263	17%	288	17%
Dementia	348	33%	394	32%	424	31%	462	30%	506	29%
Intellectual disability	283	27%	319	26%	385	28%	449	29%	505	29%
Mental illness	251	24%	284	23%	333	24%	364	23%	420	24%
Other	37	3%	40	3%	18	1%	17	1%	19	1%
<b>Total</b>	<b>1,065</b>		<b>1,218</b>		<b>1,383</b>		<b>1,555</b>		<b>1,738</b>	

**Note:** Due to rounding, the total percentage does not always equal 100.



### **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>1</sup>

In 2016/17 the Disability Services Commission funded and provided services to 770 Western Australians with an acquired brain injury reported as their primary disabling condition.<sup>2</sup>

### **Dementia**

According to research commissioned by Alzheimer's Australia<sup>3</sup>, there are more than 400,000 Australians living with dementia in 2017. This number is expected to grow to more than 750,000 by 2036 and be just over 1,100,000 by 2056.

The same research estimates that in 2017 there are 39,600 people with dementia in Western Australia. This number is expected to reach 84,161 by 2036 and 143,957 by 2056.

The projected rates of prevalence in this report suggest that the Office of the Public Advocate can expect continued and significant growth in the number of represented persons with dementia.

### **Intellectual disability**

The Disability Services Commission of Western Australia funded and provided services to 29,090 people, of which 8,755 were Western Australians with an intellectual disability as their primary condition in 2016/17.<sup>4</sup>

The Australian Bureau of Statistics' 2012 Survey of Disability, Ageing and Carers looked at the prevalence of 'intellectual disability', which it defined as "difficulty learning or understanding things". In 2012 the survey estimated that there were approximately 668,100 Australians with an intellectual disability. This was an 18 per cent increase from 2009, when the survey estimated that there were approximately 565,000 people in Australia with an intellectual disability.

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

2 Disability Services Commission. Annual Client and Service Data Collection, 2016/17.

3 Economic Cost of Dementia in Australia 2016 – 2056, report prepared for Alzheimer's Australia by Professor Laurie Brown, Erick Hansnata and Hai Anh La, NATSEM at the Institute for Governance and Policy Analysis, University of Canberra, February 2017.

4 Disability Services Commission. Annual Client and Service Data Collection, 2016/17.

## **Mental illness**

In the 2007 National Survey of Mental Health and Wellbeing, it was estimated that approximately 20 per cent of all Australians aged 16-85 years had experienced mental disorders in the previous 12 months. The prevalence of mental disorders declines with age from more than one in four (26 per cent) in the youngest age group (16-24 years) and to around one in 20 (six per cent) in the oldest age group (75-85 years).<sup>5</sup>

This remains consistent with earlier reports such as the 1997 National Mental Health and Wellbeing Survey<sup>6</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 nine per cent in 2004.<sup>7</sup>

The Australian Bureau of Statistics' 2012 Survey of Disability, Ageing and Carers looked at the prevalence of 'psychological disability', which it defined as people who reported, "a nervous or emotional condition which causes restrictions in everyday activities that has lasted, or is expected to last for six months or more; or a mental illness for which help or supervision is required that has lasted, or is expected to last for six months or more; or a brain injury, including stroke, which results in a mental illness or nervous and emotional condition which causes restrictions in everyday activities". In 2009 when this survey was conducted, 606,000 people in Australia reported having a psychological disability. In 2012, 770,500 people reported having a psychological disability, indicating a 27 per cent increase.

## **Resources**

The role and functions of the Public Advocate in 2016/17 were supported by:

- approved establishment of 50 (full-time equivalent) staff
- expenditure of \$7.134 million<sup>8</sup>

The Office of the Public Advocate's core services are delivered through two distinct branches: advocacy and investigation, and guardianship. These staff members are accountable to the Public Advocate through their managers and are supported by administration and community education positions.

<sup>5</sup> 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.

<sup>6</sup> This survey was repeated in 2007 but no state or territory data was obtained.

<sup>7</sup> 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.

<sup>8</sup> Expenditure includes shared Department of the Attorney General corporate support.

# 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 provided high quality and accessible justice, legal, registry, guardianship and trustee services which met the needs of the community and government.

This supported justice outcomes and opportunities for current and future generations. In particular, the Department directly contributed 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 through the appointment of the Public Advocate by the State Administrative Tribunal
- community education services regarding the guardianship and administration system.

## Cross-agency initiatives

The Office of the Public Advocate works together with the Public Trustee with regard to guardianship and administration matters. This occurs when both the Public Advocate and Public Trustee have been appointed as guardian and administrator respectively, by the State Administrative Tribunal. The two offices also provide joint training for private administrators, to enable them 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 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 or the operation of enduring powers of attorney or enduring powers of guardianship, 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
- making recommendations about who could be appointed and what functions might be needed in an order
- investigating complaints or allegations 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 who is placed in custody under the *Criminal Law (Mentally Impaired Accused) Act 1996* is in need of a guardian or administrator
- providing assistance to the State Administrative Tribunal through the liaison officer function, by conducting brief investigations and providing advice to the Tribunal on specific aspects of an application
- 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, the priority for investigator advocates is to seek the views of the person who is the subject of an application, where possible. They also try to interview a range of interested parties which may include family, friends and service providers.

The extent and nature of consultation will depend on the timeframe given by the State Administrative Tribunal, the complexity of the matter and other workload priorities.

Investigator advocates often prepare a report about what is in the person's best interests, to assist the State Administrative Tribunal with its deliberations. Investigator advocates provide oral advocacy at hearings in relation to the person's best interests.

Throughout the investigation, investigator advocates advance the best interests of the person with the decision-making disability. This includes exploring whether there are less restrictive ways of resolving the concerns outlined in an application for the appointment of a guardian or administrator.

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.

The investigator advocate might identify areas where decisions are required and find potential options for how these decisions could be addressed without a formal guardianship or administration order. The following examples show scenarios where this might occur.

- Example 1: A person makes an application for the appointment of a guardian, as they believe a vulnerable adult does not have appropriate support services in place. In the course of the investigation, the investigator advocate advises the applicant of community services which could assist the vulnerable adult. The applicant engages these services and the situation is resolved without the need for the appointment of a guardian.
- Example 2: A health professional makes an application for the appointment of a guardian, as they believe their patient has a decision-making disability and needs a substitute decision-maker to make treatment decisions. The *Guardianship and Administration Act 1990* sets out a formal order of treatment decision-makers. In explaining this hierarchy to the service provider, the investigator advocate assists the service provider to find the appropriate decision-maker, without the need for the appointment of a guardian.

## The Year in Review

In 2016/17, the Public Advocate carried out a total of 1,496 investigations into the personal or financial welfare of adults with a decision-making disability. This included new matters and matters carried over from 2015/16.

The total number of investigations remained fairly stable from the previous year with 1,516 investigations carried out in 2015/16.

Of the 1,496 investigations carried out during the year, 1,343 needed investigation and advocacy relating to applications for, or reviews of, administration or guardianship orders before the State Administrative Tribunal.

The remaining 153 investigations were referred directly to the Public Advocate by a member of the public, a community-based organisation, or another government agency.

An additional 37 preliminary investigations were carried out under the liaison role, which assisted the Tribunal in gathering further information relevant to the hearing. 36 of these were new matters, and one was carried over from 2015/16.

### Investigations referred by the State Administrative Tribunal

There were 1,180 new investigations referred by the State Administrative Tribunal in 2016/17, which is a five per cent increase from the previous year. These consisted of applications regarding guardianship, administration, enduring powers of attorney, enduring powers of guardianship, advance health directives and reviews of administration or private guardianship orders.

The State Administrative Tribunal requested the attendance of an investigator advocate at 137 urgent hearings in 2016/17. An urgent hearing requires an investigator advocate to attend a hearing at short notice to represent the best interests of the proposed represented person. In many of these cases there were urgent medical treatment decisions required, or a need to protect a person's finances.

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 Office of the Public Advocate also provided a liaison role to respond to requests from the State Administrative Tribunal seeking advice and recommendations about applications, prior to a formal referral to the Public Advocate to investigate.

In 2016/17, in this liaison role the investigator advocate team conducted preliminary investigations into 36 new applications for guardianship, administration and intervention in enduring powers of attorney and enduring powers of guardianship. Recommendations to the State Administrative Tribunal included the need for referral to the Office of the Public Advocate for full investigation.

### **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 2016/17, 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, 153 such referrals were reviewed by the Office in 2016/17. Of the 153 cases, 101 were closed during the financial year and 52 remained open at 30 June 2017.

In a small number of instances, when an investigator advocate starts making enquiries, they may make contact with a family member or friend of the person who is willing and able to make the application to the State Administrative Tribunal. The investigator advocate will then provide the family member or friend with the relevant information and support to make the application and will let the Tribunal know about the Public Advocate's involvement in the matter. The investigator advocate will usually then provide a report to the Tribunal to assist in the hearing process.

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

Some investigations take considerable time to obtain important information such as medical records, to enable the Public Advocate to establish whether a person has a decision-making disability.

Accurate medical information is critical, as without information that a person has a decision-making disability, it is not possible to make an application to the State Administrative Tribunal.

The *Guardianship and Administration Act 1990* 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.

Types of community referred investigations undertaken by the Office of the Public Advocate include:

- A friend or neighbour sees a person is no longer making good decisions and suspects this might be due to dementia or some other decision-making disability.
- A person has concerns that a vulnerable adult is being abused or exploited.
- A family member has concerns about a relative with a decision-making disability, but the family members are unable to resolve the issues due to longstanding disputes.

The outcome of investigations might include:

- The Public Advocate making applications to the State Administrative Tribunal for guardianship and/or administration orders.
- The Public Advocate referring the concerned party to other agencies to provide assistance or support.
- The Public Advocate being provided information to confirm that the person does not have a decision-making disability and the matter being closed. In such cases where concerns exist, the identified person will be given information about how they may access community-based supports.

## Case Study

### **Where a community referral leads to the Public Advocate making an application to the State Administrative Tribunal**

The Public Advocate received correspondence from a lawyer who was concerned that his client was taking action against a woman who may have a mental illness. The lawyer was also worried that the legal action would put the woman's financial security at risk.

The Public Advocate opened an investigation under section 97(1)(c) of the *Guardianship and Administration Act 1990* "to investigate any complaint or allegation that a person is in need of a guardian or administrator". This type of investigation is called a 'community referred investigation'.

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The investigation revealed that the woman, Miss A, was involved in a range of complex legal matters. Legal action was being taken against her, and she had also initiated a number of civil legal actions. In pursuing these, she was at risk of losing her home.

As the matter was referred to the Office based on only a concern about Miss A's mental capacity, the key focus for the investigator advocate was to gather medical information. Miss A was known to mental health services, but there was limited information about a specific diagnosis.

While there was a clear need in relation to her situation, and the anecdotal information was that she was not making informed decisions in her best interests, evidence of a mental disability was needed in order to submit an application to the State Administrative Tribunal for the appointment of an administrator.

The investigator advocate was able to gather some limited historical medical information but not a current assessment. In pursuing this medical information, the investigator advocate liaised with the mental health team about the person's current situation, including the legal action being undertaken and the associated risks for Miss A, such as losing her home, being imprisoned and excessive legal costs.

During the course of the investigation Miss A's behaviour deteriorated to the point that the police became involved and she was admitted to hospital as an involuntary patient under the *Mental Health Act 2014*. The investigator advocate was then able to liaise with the treating team about the investigation and the need for an assessment of her capacity specifically in relation to whether she had the capacity to manage her ongoing complex legal matters.

The assessment by the treating psychiatrist diagnosed Miss A with a mental illness, and also stated clearly that she was not able to make informed decisions in her own best interests in relation to financial and legal matters, and was in need of an administrator. The assessment also determined that she was not able to make personal and treatment decisions and was also in need of a guardian.

This assessment enabled the Public Advocate to submit applications for guardianship and administration to the State Administrative Tribunal. The Tribunal subsequently appointed both a guardian and administrator for Miss A.

The administrator was able to take steps in relation to the civil legal matters Miss A had started, to determine which (if any) should be pursued. In doing so, they were able to protect Miss A's estate to prevent her from losing her home.

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### ***Importance of capacity information when conducting a community referred investigation***

When the Public Advocate opens a community referred investigation there is usually a sense the person may have a cognitive impairment. This may come from anecdotal reports, assessment of the actions of the person, or evidence that the person is at risk.

However, anecdotal information and clear evidence of risk to the person is not sufficient for the State Administrative Tribunal to appoint a guardian and/or administrator. The person may be making what others consider to be bad decisions, but this in itself is not evidence that the person does not have capacity to make informed decisions. Medical evidence that a person has some form of condition which impacts on their cognition is critical.

In this case it was the evidence of the mental health diagnosis, and the professional assessment that this diagnosis made the person unable to make decisions, that enabled the applications to proceed and the subsequent appointment of a guardian and administrator.

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

## **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 and also advocate during the course of an investigation to assist in resolving issues before 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.

Where possible, staff assisted their counterparts to ensure the safety and protection of these vulnerable adults.

## Administrator of last resort

As at 30 June 2017, the Public Advocate was appointed by the State Administrative Tribunal as limited administrator of last resort for three people where it was not appropriate for the Public Trustee to have those specific authorities.

### ***What does administrator of last resort mean?***

If a person is unable to make reasonable decisions about their finances, they did not appoint an attorney while they had capacity, and informal arrangements are not working in their best interests, the State Administrative Tribunal may appoint an administrator.

An **administrator** has the authority to make financial and legal decisions on behalf of the person they represent.

If a person needing an administrator does not have a family member or friend who is available, suitable and willing to take on the role, the State Administrative Tribunal may appoint the Public Trustee.

If there is a conflict of interest for some reason, meaning the Public Trustee cannot be appointed as administrator, the *Guardianship and Administration Act 1990* enables the Public Advocate to be appointed as **administrator of last resort**.

The Public Advocate is only appointed as administrator, if all of the other options are exhausted, and the appointment is the only option available. While this does not occur often, such appointments are usually complex.

## Issues for Advocacy and Investigation

### **Allegations of abuse**

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.

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.

Of the 1,180 new investigations carried out during the year, allegations of abuse were made regarding 211 people. 102 of these people were 65 years of age or older. Of these alleged elder abuse cases, 80 per cent involved alleged financial abuse.

This alleged abuse often occurred in the absence of a substitute decision-maker, and by a person who saw the opportunity to exploit a vulnerable individual. Often this occurs where the victim is socially isolated or dependent on their family for support.

In some instances however, it was alleged that this abuse was perpetrated by a person with authority, including an enduring guardian appointed under an enduring power of guardianship or an attorney appointed under an enduring power of attorney.

The focus of the investigation is whether the person is in need of a substitute decision-maker. This Office looks at the importance of balancing the person's right to autonomy, with the possibility of abuse and the need for the protection afforded by appointing someone to oversee the individual's decision-making.

## Case Study

### **Suspected Elder Abuse**

Mr B was an elderly man with dementia, living in regional Western Australia. He received regular out-patient treatment at his local hospital for an on-going medical condition.

Mr B's family arranged for him to travel to Perth for a holiday. During his time in Perth, Mr B missed his regular treatment.

The hospital tried to contact Mr B and his family and discovered that he had been taken to Perth and was not receiving treatment. Concerned for Mr B's health, a social worker from the hospital made an urgent application to the State Administrative Tribunal for the appointment of a guardian.

At the Tribunal hearing it became evident that a number of Mr B's family members wanted to take responsibility as his substitute decision-maker. However, given the concerns raised about the management of his health issues, the Public Advocate was appointed as guardian for a short period of time. The Tribunal also asked that the Public Advocate investigate Mr B's situation.

As the appointed guardian, the Public Advocate was able to immediately arrange out-patient treatment for Mr B in Perth as a matter of urgency and work with the family to ensure he attended.

An investigator advocate was assigned to gather more information for the next Tribunal hearing.

In conducting the investigation, the investigator advocate was able to look further into Mr B's situation including his family support network. The investigator advocate formed the opinion that Mr B's family were trying their best to care for him and to make decisions in his best interests.

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There was however, some miscommunication between family members and hospital staff which had led to Mr B travelling to Perth without his treatment being organised.

The family explained that they had never intended for Mr B to live permanently in Perth, and had not appreciated that for even a short time away, alternative arrangements needed to be in place for his medical treatment. It also became apparent that the family needed some support in co-ordinating Mr B's care.

Throughout the investigation and the time the Public Advocate was appointed as Mr B's guardian, the family worked collaboratively with the investigator advocate and guardian, and they were open to engaging with services and health professionals.

At the second Tribunal hearing, the investigator advocate recommended Mr B's son be appointed as his guardian, with the authority to make decisions about Mr B's medical treatment, accommodation and support services. The Tribunal member appointed Mr B's son as his limited guardian.

The Tribunal hearing process, together with the short-term involvement of the Public Advocate as guardian and the investigation process, enabled Mr B's immediate health and support needs to be met, while also ensuring a better long-term outcome. Mr B's family realised the importance of communicating with the various professionals needed to support him and they were able to link in with other agencies to make supporting Mr B easier.

### ***Importance of communication***

When people are responsible for someone with a cognitive impairment, whether it is a formal appointment such as a guardianship order or an enduring power of guardianship, or it is an informal arrangement such as a family member who takes on that task, communicating with the service providers involved in supporting that person is vital.

Health professionals and other service providers have a duty of care to respond if there are concerns that a person is being placed at risk due to the actions of others.

In this situation, if the family had spoken to the hospital about their plans, arrangements could have been made for treatment, which would have prevented the need for the urgent application and the intervention of government agencies.

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

## 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 (part of the new Department of Communities) in the early identification of the needs of young people with a decision-making disability, 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 staff 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 and will need ongoing care and support, and possibly a substitute decision-maker on an ongoing basis.

Wherever possible, the principal investigator advocate attends leaving care planning meetings for young people aged 16 years and over, to provide information on guardianship and administration and assist in considering the need for an application to be made to the State Administrative Tribunal.

The principal investigator advocate provides advocacy at any State Administrative Tribunal hearing where applications have been made for the appointment of a guardian and/or an administrator for young people aged 16 and over. This involvement is consistent with the memorandum of understanding between the two agencies.

In 2016/17 there were eight cases where applications were not made to the State Administrative Tribunal as there was a less restrictive alternative to the appointment of a guardian or administrator, or the young person was not deemed to have a decision-making disability which impaired their ability to make their own decisions.

A total of 32 applications from the Department for Child Protection and Family Support were determined by the State Administrative Tribunal during the year, including two carried over from the previous year. Two applications were adjourned by the Tribunal for consideration later in 2017.

During the year the Public Advocate's appointment as guardian came into effect for 24 young people leaving State care, when they turned 18 years of age as a result of applications to the State Administrative Tribunal by the Department. The Public Advocate's appointment as guardian will commence for four young people in 2017/18 when the young person turns 18 years of age, where the Tribunal hearings occurred before the 30 June 2017.

The Public Trustee was appointed as administrator for all 28 of these young people. They were also appointed for two young people where only an administrator was required and in one case they were appointed along with a private guardian.

In one of the 32 applications, a family member was appointed as both the administrator and guardian.

In addition, there are another 25 cases in which the Office will continue to be involved in leaving care planning meetings over 2017/18. In these cases, staff from the Department for Child Protection and Family Support are still determining whether there is a need to make applications for the appointment of a guardian and/or administrator before the young person turns 18 years of age, or if there are less restrictive alternatives in place which are working in the young person's best interests.

## **Court referrals**

The Children's, Family, Magistrates and Supreme Courts may 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 court's timeframes. The Public Advocate's authority under the *Guardianship and Administration Act 1990* does not include the power to compel parties to provide information.

## Our Customers

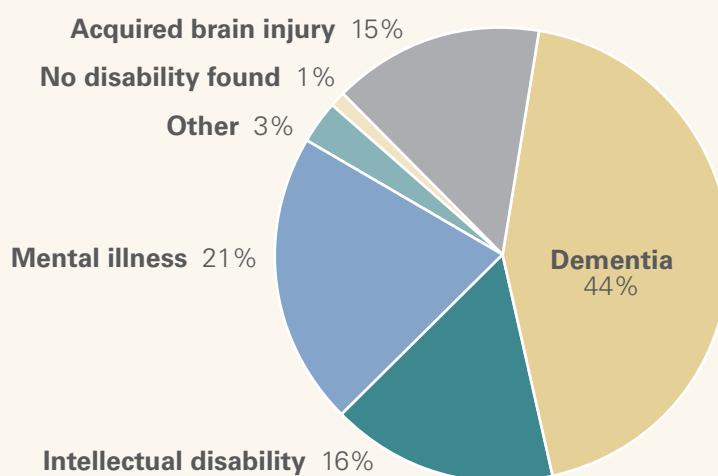
Of the 1,180 new matters referred to the Public Advocate for investigation by the State Administrative Tribunal in 2016/17, 44 per cent involved a person with dementia. The remaining matters involved a person with either a mental illness, an intellectual disability or an acquired brain injury. Of the 1,180 new matters, 51 per cent related to females and 49 per cent to males.

**Figure 3 Profile of new investigations by type of decision-making disability 2016/17**

### Type of decision-making disability

Acquired brain injury	176
Dementia	521
Intellectual disability	184
Mental illness	243
Other	41
No disability found	15

**TOTAL 1,180**



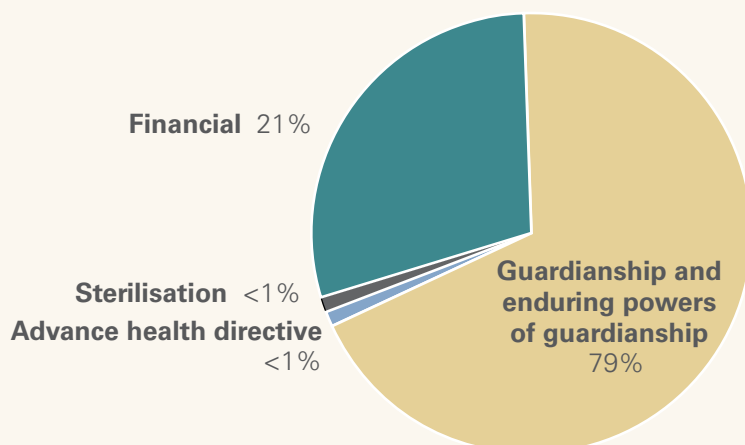
Guardianship matters were once again the main reason for investigations this year, with over two thirds of all applications raising matters such as accommodation, medical treatment and service provision, being required for the proposed represented person. One fifth of the applications involved investigations about financial matters.

**Figure 4 Profile of new investigations by issue 2016/17**

### Issue

Financial (administration and enduring powers of attorney)	242
Guardianship* and enduring powers of guardianship	934
Sterilisation	1
Advance health directive	3

**TOTAL 1,180**



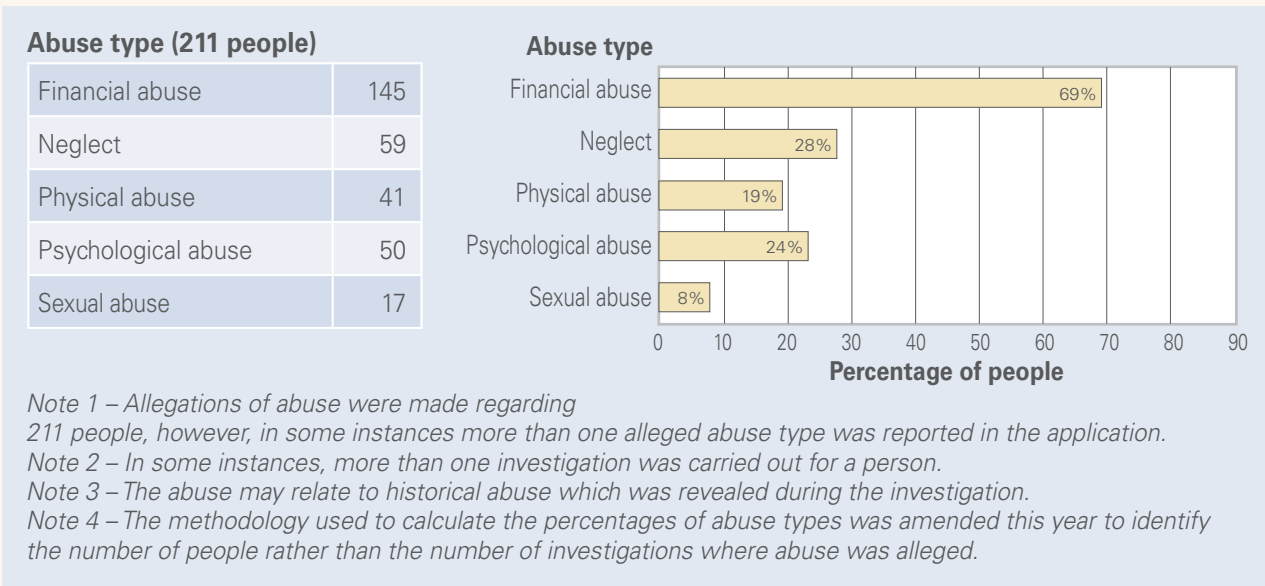
*\*This includes reviews of guardianship orders where someone other than the Public Advocate was appointed.*

*Note - due to rounding, the total percentage does not always equal 100.*

Of the 1,180 new investigations carried out during the year, allegations of abuse were made regarding 211 people.

In some cases, more than one type of alleged abuse was reported in the application. The most commonly reported form of alleged abuse was financial, with 69 per cent alleging financial abuse.

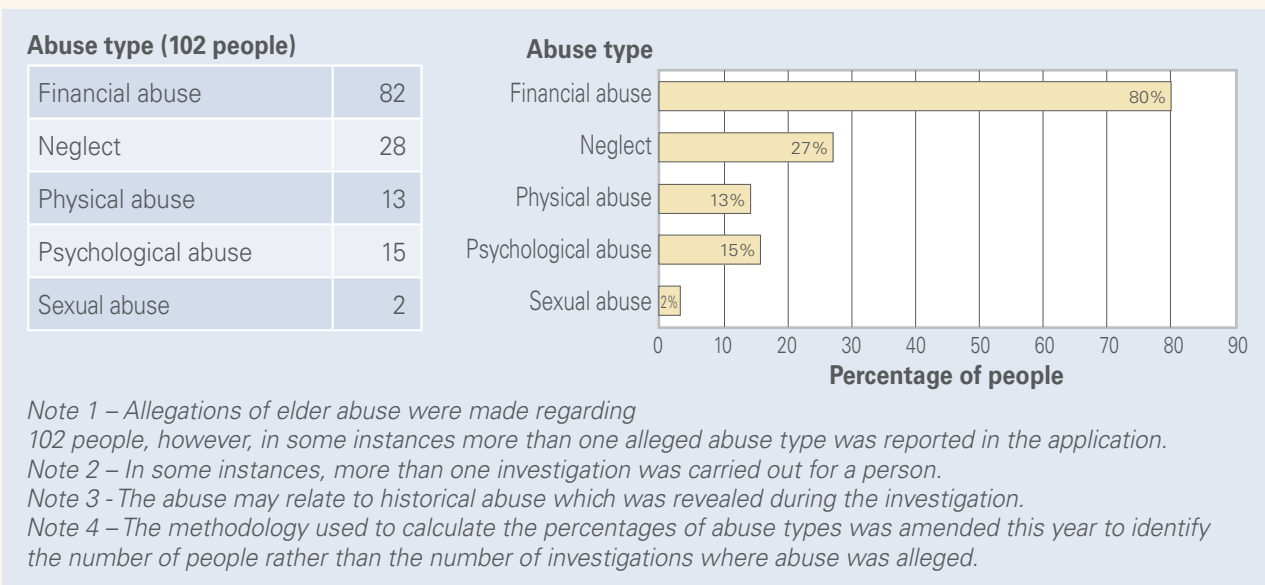
**Figure 5 Profile of new investigations alleging abuse by type of abuse 2016/17 (including statistics of elder abuse)**



Of the 211 people for whom abuse was alleged, 102 (48 per cent) were 65 years of age or older. These instances of alleged abuse are referred to as elder abuse.

Of these 102 cases of alleged elder abuse, financial abuse was the most common, having been reported in 80 per cent of these investigations.

**Figure 6 Profile of new investigations alleging elder abuse (aged 65 or older) by type of abuse 2016/17**





The number of new investigations regarding a person of Aboriginal and Torres Strait Islander descent has remained fairly constant over the past four years, between 7 and 11 per cent. This shows Indigenous adults are overrepresented in this client group, given only three per cent of the Western Australian population are Indigenous.<sup>9</sup>

**Figure 7 Profile of new investigations by Aboriginality and Torres Strait Islander descent from 2012/13 to 2016/17**

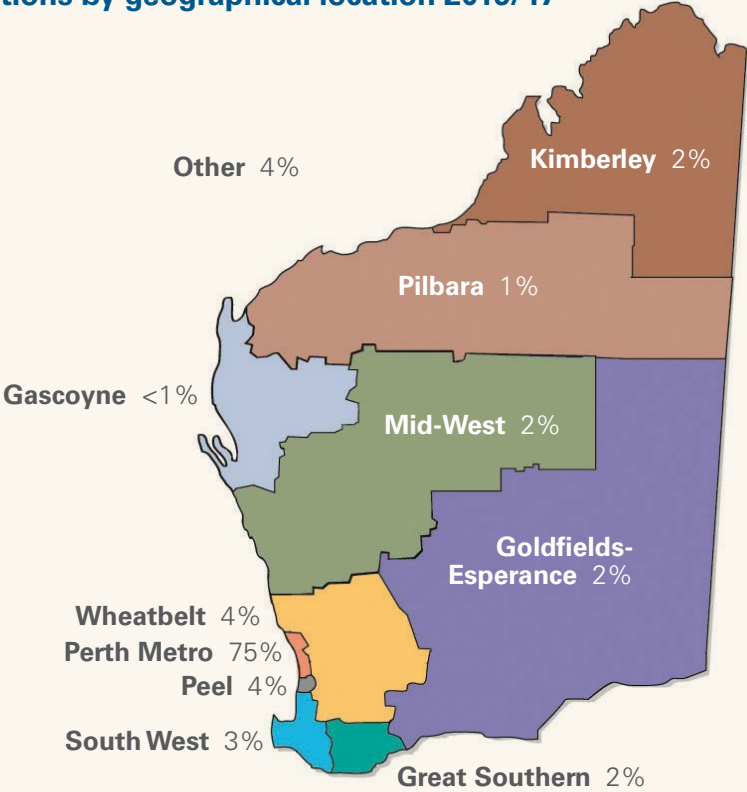
Year	Total	Non Indigenous	Indigenous	Indigenous as a percentage of total
2012/13	923	854	69	7%
2013/14	925	833	92	10%
2014/15	1,069	989	80	7%
2015/16	1,123	1,024	99	9%
2016/17	1,180	1,050	130	11%

Note - Indigenous refers to clients of Aboriginal and Torres Strait Islander descent.

887 of new investigations in 2016/17 were carried out for people located in the Perth metropolitan area.

**Figure 8 Profile of new investigations by geographical location 2016/17**

Geographical location	
Gascoyne	2
Goldfields-Esperance	22
Great Southern	29
Kimberley	26
Mid-West	29
Peel	43
Perth Metro	887
Pilbara	13
South West	41
Wheatbelt	44
Other	44
<b>Total</b>	<b>1,180</b>



Note – Due to rounding, the total percentage does not always equal 100.

<sup>9</sup> Australian Bureau of Statistics 2016 Census: Aboriginal and/or Torres Strait Islander Peoples QuickStats, [http://www.censusdata.abs.gov.au/census\\_services/getproduct/census/2016/quickstat/IQS5](http://www.censusdata.abs.gov.au/census_services/getproduct/census/2016/quickstat/IQS5).

## Guardianship

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

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

## The Year in Review

In 2016/17 there were 487 new appointments of the Public Advocate as guardian of last resort, compared to 468 in 2015/16, which is an increase of four per cent.

At 30 June 2017, the Public Advocate had responsibility as guardian of last resort for 1,738 adults with a decision-making disability, compared to 1,555 at 30 June 2016, which is an increase of 12 per cent.

The Public Advocate had responsibility as the sole guardian for 1,664 of the total 1,738 represented persons as at 30 June 2017. In relation to the remaining 74 appointments of the Public Advocate, there were 67 represented persons on a guardianship order which appointed the Public Advocate and private guardian(s) with different functions. Five of the 74 had the Public Advocate and a private guardian (a family member) appointed with the same functions and therefore must jointly make decisions. Two of the 74 had the Public Advocate appointed and a family member to make some decisions jointly, as well as both the Public Advocate and the family member as the sole decision-maker for different functions.

During the year, the Public Advocate was involved with 2,572 guardianship orders and reviews of orders, including existing appointments as at 30 June 2016, 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.

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
- consenting to National Disability Insurance Scheme (NDIS) plans
- the need for chemical or physical restraint
- acting as 'next friend' in relation to child protection matters on behalf of represented persons.

The Public Advocate allocated a guardian to a represented person within one working day of notification of appointment in 95 per cent of cases. This meets the 95 per cent target set for this measure of timeliness.

To meet the needs of the Office's 278 represented persons of Aboriginal and Torres Strait Islander descent, guardians liaised with their families, Aboriginal community members, Aboriginal agencies and service providers, to enable culturally appropriate practices to be adopted wherever possible.

### **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 ongoing training and support to volunteers.

At 30 June 2017, there were 19 volunteers engaged in the community guardianship program. Of these, 13 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.

Four of the 19 volunteers had been matched with a represented person, who they were taking time to get to know, while still receiving induction training from the Office.

Two of the volunteers were taking some time before considering whether they want to be matched with another represented person in the program, after the person for whom they were appointed guardian had died.

During the year, another volunteer who had taken some time out from the program after their represented person died, re-entered the program and they were matched with another represented person. This was the first time in the program's history that a community guardian volunteer had been matched to a second represented person.

### **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 the Public Advocate is appointed as their guardian. All guardianship orders are reviewed by the State Administrative Tribunal on a regular basis.

In 2016/17, the guardianship team attended 450 review hearings conducted by the State Administrative Tribunal, in which they advocated in the best interests of the represented person, including reporting on guardianship decisions since the previous hearing.

### **Issues for Guardianship**

The growth in demand for guardianship services is 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. 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 2016/17 guardians and investigator advocates made 11 trips to regional areas.
- The issues surrounding decisions which guardians are required to make may be multifaceted, as a number of represented persons have multiple and complex needs. They may have more than one diagnosed condition combined with a drug or alcohol addiction and challenging behaviour. Sometimes as a result of their behaviour they come into contact with the criminal justice system. Making decisions in these circumstances 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 a range of 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 residential 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 if the Public Advocate does not have restraint authority. In some cases, the Public Advocate has consented to psychological programs for behavioural management for represented persons with disruptive or self-injurious behaviour.
- 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 or mental health issues.

- People with a decision-making disability may be extremely vulnerable to sexual assault and sexual exploitation. If there is an assault, 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, 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, the former Disability Services Commission (now part of the new Department of Communities), the former Department of Corrective Services (now part of the new Department of Justice), Legal Aid, Mental Health Commission and the Department of Health's Mental Health Services.
- At 30 June 2017, the Public Advocate was appointed as guardian for seven mentally impaired accused people, two of whom were residents at the Disability Justice Centre. On 9 June 2017, the Office welcomed the unconditional release of a mentally impaired accused man for whom the delegated guardian, his lawyer and service providers had advocated to the Mentally Impaired Accused Review Board for his release.
- 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 former Department for Child Protection and Family Support (now part of the new Department of Communities) on behalf of the children of a represented person. This function is undertaken by the Public Advocate where the State Administrative Tribunal determines that the parent/s is/are unable to conduct their own legal affairs due to a lack of decision-making capacity.

## Case Study

### **An ageing parent and a positive outcome**

Mrs C is a 42 year old woman with a mild intellectual disability and a long history of alcohol abuse. She was married and lived with her husband in Housing Authority accommodation.

Mrs C's elderly mother was in regular contact with her daughter and managed her finances under an Enduring Power of Attorney, which Mrs C had been assessed as having capacity to make several years ago.

Over a period of time Mrs C's drinking deteriorated to the point that she could no longer live with her husband and she was evicted from the property they shared.

Following multiple hospital admissions with alcohol related injuries, Mrs C's mother applied to the State Administrative Tribunal for the appointment of a guardian. At the time of the application, Mrs C was once again in hospital and would be homeless when she was discharged.

The Tribunal referred the matter to the Office of the Public Advocate to investigate.

Mrs C's mother felt strongly that a number of her daughter's problems could be resolved if she stopped drinking. However, she was not proposing that she be appointed as guardian.

She felt that an independent guardian could have more influence on Mrs C to seek the right support to stop drinking. Mrs C's mother had been trying to assist her daughter for years, but had not been successful. Being elderly, Mrs C's mother was also concerned about what would happen to her daughter in the future if she passed away or became unwell herself.

The investigator advocate was unsure that the appointment of the Public Advocate as Mrs C's guardian would make any difference, as her mother and family members were already trying to help her make decisions regarding her health care, drinking, support services and housing, but Mrs C refused to co-operate with her family or accept any help they offered. Given the Public Advocate does not have any powers to compel people to seek treatment or accept support services, the investigator advocate feared the appointment of the Public Advocate may make no difference.

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At the Tribunal hearing however, a number of significant factors came to light. One particular issue was raised by a service provider who had been involved with Mrs C over a period of time because of her frequent hospital admissions.

The service provider believed that because of the alcohol withdrawal symptoms Mrs C experienced when she was in hospital, as she was unable to drink alcohol, her behaviour became extremely difficult and therefore the hospital discharged her as soon as possible, before she had received all required treatment. The service provider's view was that if a legally appointed guardian were to advocate that she remain in hospital for a longer period, she could undergo alcohol detoxification in a supervised environment.

The Tribunal appointed the Public Advocate as Mrs C's guardian with the authority to make treatment decisions, decide where and with whom she lived, and what support services she received.

When Mrs C was next admitted to hospital, the delegated guardian from the Office of the Public Advocate was able to work with hospital and related support staff in ensuring Mrs C remained in hospital and received treatment and support.

Over time, the guardian was able to work with a range of other service providers in securing suitable accommodation for Mrs C, ongoing support services and Mrs C eventually linked in with some training and education. She was also able to resume contact with her husband.

The independent appointment of the Public Advocate as guardian, enabled decisions to be made in Mrs C's best interests, while preserving the relationship between her and her mother. Mrs C's mother was also comforted that if anything happened to her, someone was there to make decisions on her daughter's behalf.

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### ***The importance of preserving relationships***

Section 51(2)(g) of the *Guardianship and Administration Act 1990* refers to a guardian maintaining any supportive relationships the person may have.

In many cases, family members can be the appointed decision-maker without any impact on their relationship with the represented person.

However, in complex cases such as with Mrs C, the relationship with her mother was likely to be damaged by her mother making a decision with which she did not agree.

Mrs C had already lost some friendships so it was important to maintain the relationship with her mother who provided significant support in her life.

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

## **Revocations**

Guardianship orders are reviewed when either an application for review is made to the State Administrative Tribunal, or at a date specified when the order was made.

In 2016/17, guardians from the Office of the Public Advocate were involved in 450 reviews of guardianship orders, where the Public Advocate was appointed.

The purpose of reviewing an order is to determine whether the represented person still requires a guardian, and if so, who that should be, or whether changes to the authorities given in the order are required.

Of the 450 reviews, 134 orders were revoked by the State Administrative Tribunal because there was no longer a need for the Public Advocate to be the substitute decision-maker as a result of:

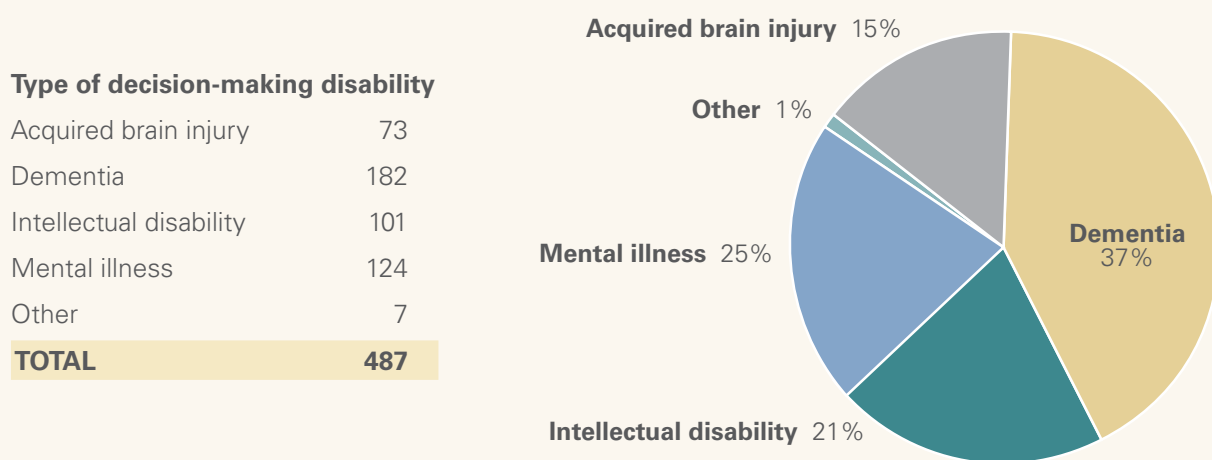
- a less restrictive alternative being found
- another suitable, willing and available decision-maker having been identified, such as a family member or friend
- the person regaining capacity
- the issues leading to the Public Advocate's appointment having been resolved
- the guardianship order having 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 314 guardianship orders ceased during 2016/17, through revocation by the State Administrative Tribunal, or due to the death of the represented person.

## Our Customers

People with dementia continued to account for the largest proportion of new appointments of the Public Advocate as guardian of last resort. Of the 487 new appointments in 2016/17, 37 per cent had dementia, 25 per cent a mental illness, 21 per cent an intellectual disability, and 15 per cent had an acquired brain injury. Of the 487 new appointments, 56 per cent were male and 44 per cent were female.

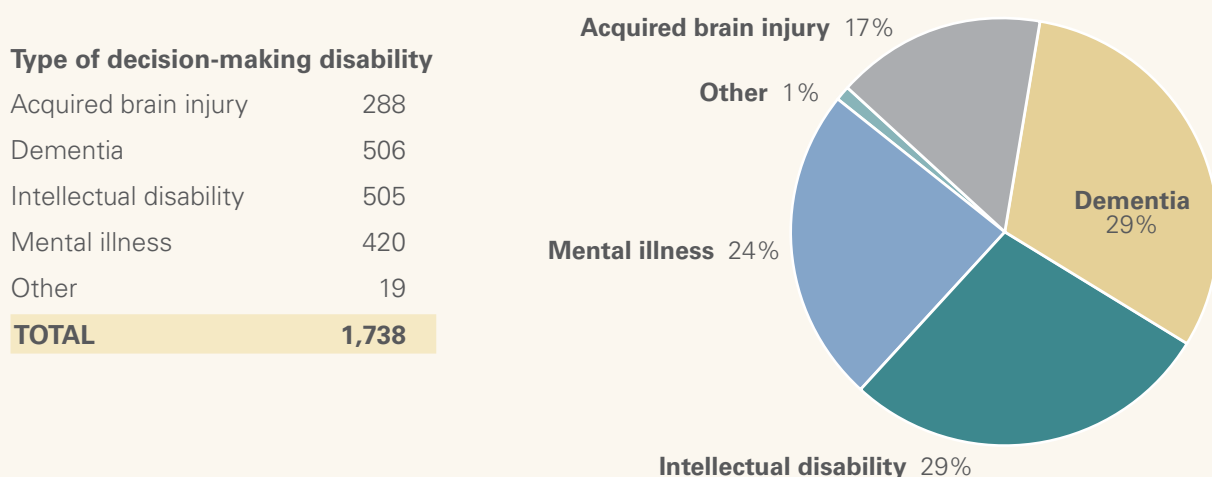
**Figure 9 Profile of new guardianship orders appointing the Public Advocate by type of decision-making disability 2016/17**



*Note - due to rounding, the total percentage does not always equal 100.*

Similarly, of the total 1,738 appointments at 30 June 2017, 29 per cent of the people had dementia, 29 per cent an intellectual disability, 24 per cent a mental illness and 17 per cent an acquired brain injury. Of the 1,738 appointments, 54 per cent were male and 46 per cent were female.

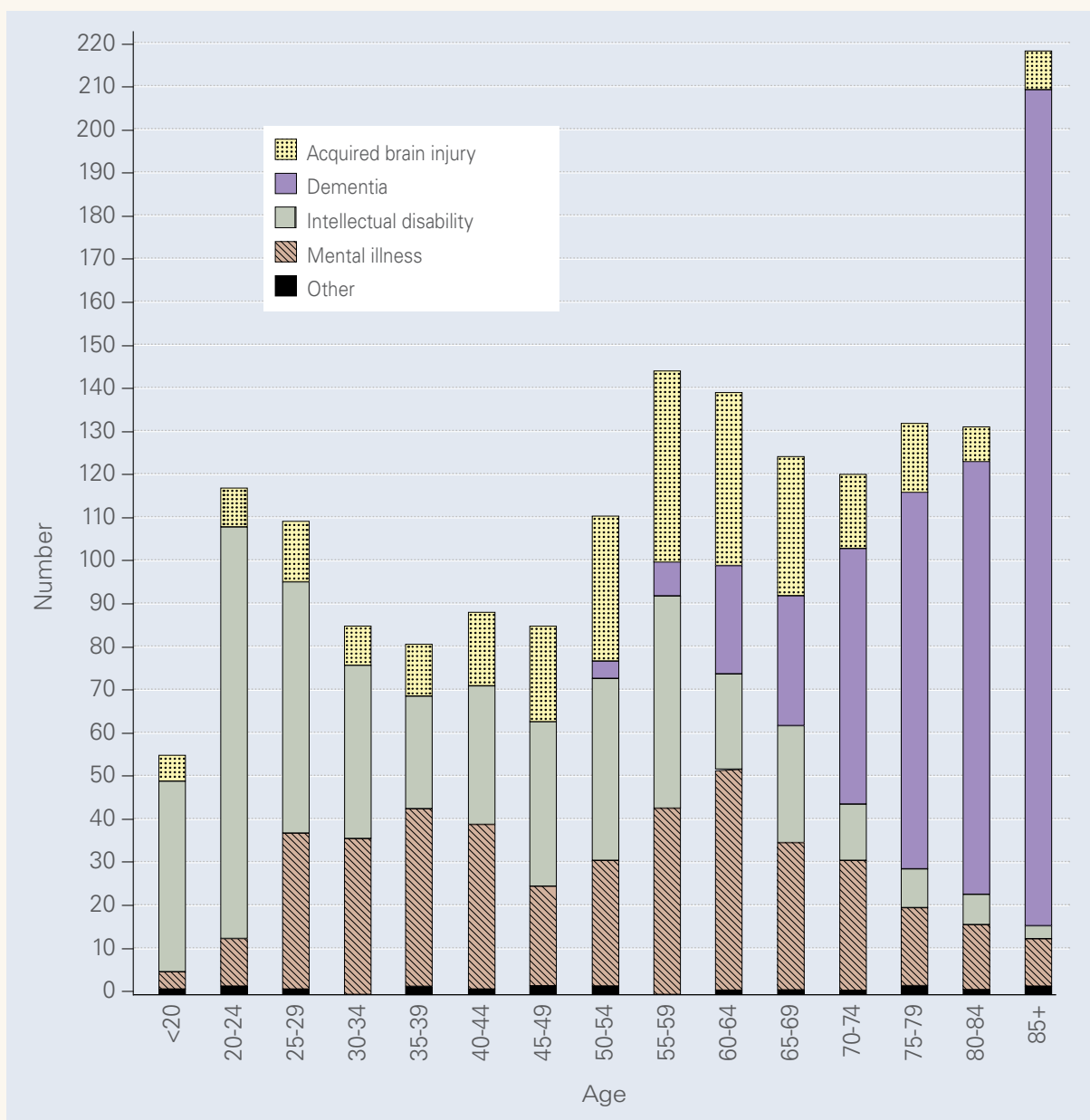
**Figure 10 Profile of all guardianship orders appointing the Public Advocate by type of decision-making disability as at 30 June 2017**



At 30 June 2017, the Public Advocate was guardian of last resort for 349 adults aged 80 years and over, who account for one fifth of all guardianship appointments. The majority of these people (84 per cent) had dementia. The majority of this group were female (63 per cent).

This is a reflection of the ageing population, the subsequent increasing prevalence of dementia in the community and the growing number of people without family or friends who are suitable, willing and available to take on the role of decision-maker.

**Figure 11 Profile by age and disability type of all people on guardianship orders appointing the Public Advocate as at 30 June 2017**



The most common single issue leading to the appointment of the Public Advocate as guardian of last resort continued to be treatment decisions. At 30 June 2017, 83 per cent of all orders appointing the Public Advocate as guardian included the authority to make treatment decisions.

The high number of orders appointing the Public Advocate to make treatment decisions could be attributed to represented persons 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.

At 30 June 2017, 81 per cent of all guardianship orders appointing the Public Advocate, included the authority to make decisions regarding where the represented person was to live. Similarly, 77 per cent included the authority to make decisions regarding with whom they were to live.

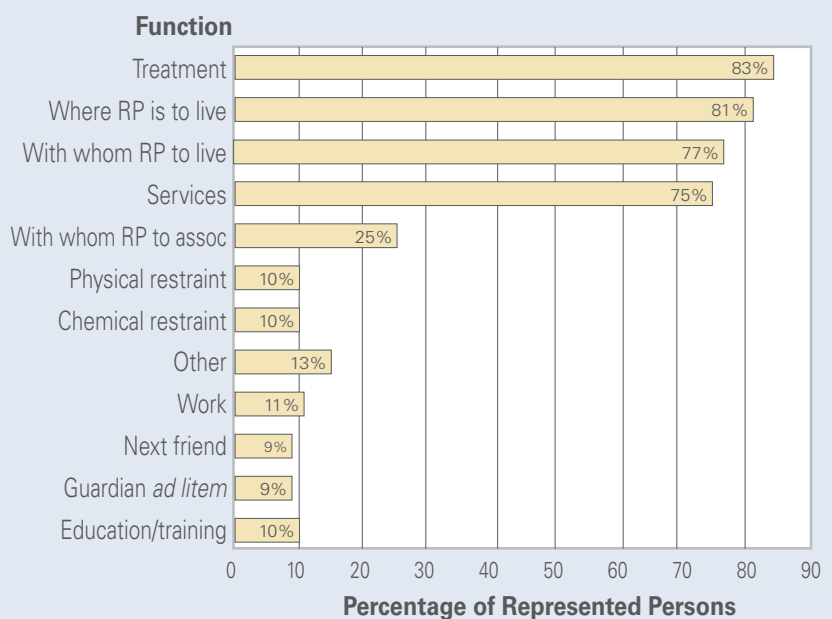
The high number of appointments regarding decisions about where and with whom a represented person lives reflects issues regarding appropriate supported accommodation for people with a decision-making disability. In many cases there is a need to consent to residential care on behalf of people with dementia, particularly for seniors who are neglecting themselves, refusing support services and opposed to entering residential care.

In a number of instances, the function given in the order has been labelled as 'other' (in Figure 12 below). Some examples of these might include to advocate on the person's behalf in relation to Police investigations; to determine if a person is to travel within Australia or overseas and to take possession of the person's passport; to seek further capacity assessments; to act on behalf of the person with respect to applications to the Legal Aid Commission; and to advocate on the person's behalf in connection with matters concerning the Mentally Impaired Accused Review Board, the Prisoners Review Board or the Disability Services Commission.

**Figure 12 Functions for which Public Advocate has been appointed for all guardianship orders as at 30 June 2017**

**Function (1,738 Represented Persons)**

Treatment	1,449
Where RP is to live	1,403
With whom RP to live	1,341
Services	1,301
With whom RP to associate	439
Physical restraint	172
Chemical restraint	173
Other	230
Work	193
Next friend	163
Guardian <i>ad litem</i>	154
Education/training	169

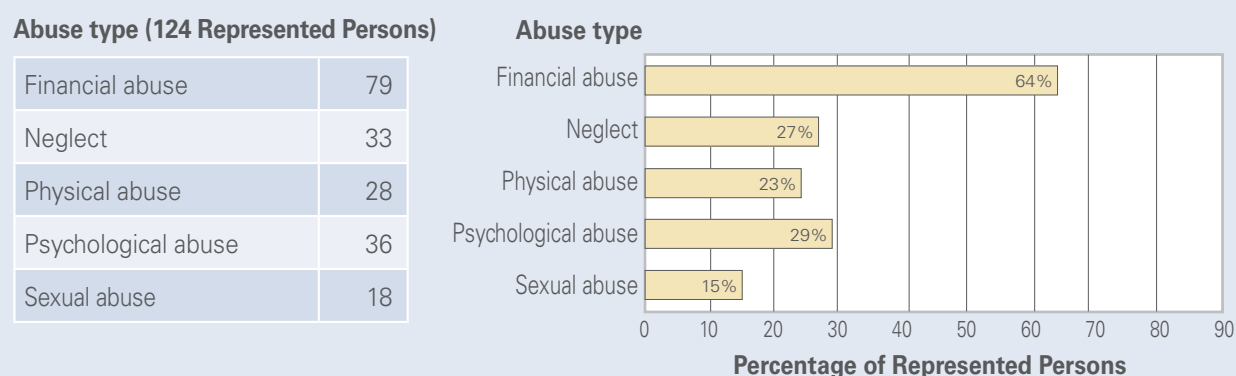


Note 1 - RP = represented person.

Note 2 - An order can be made for multiple functions.

Allegations of abuse were a factor for 124 represented persons or 25 per cent of the 487 new guardianship orders appointing the Public Advocate in 2016/17. In some cases, more than one type of abuse was reported. The most commonly reported form of abuse was financial, having been reported in 64 per cent of cases alleging abuse.

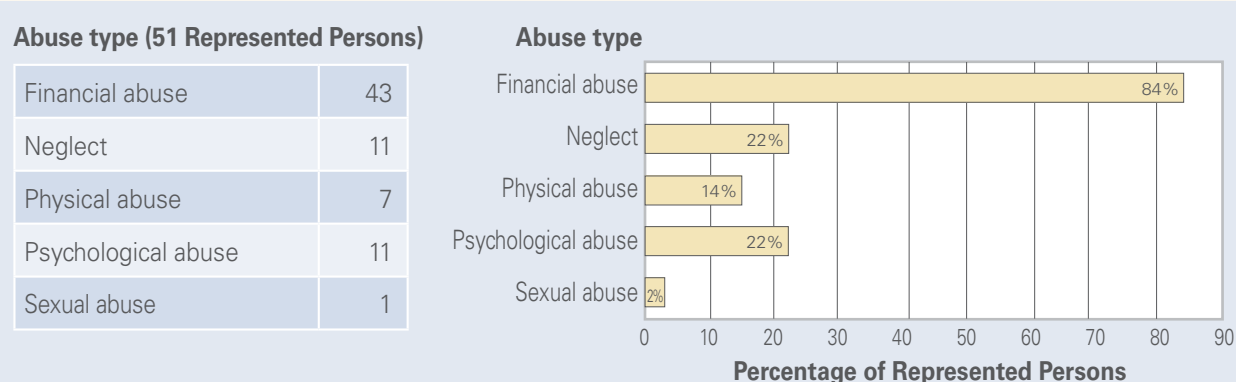
**Figure 13 Profile of new guardianship orders appointing the Public Advocate by type of alleged abuse 2016/17 (including elder abuse)**



Note 1 - Alleged abuse was reported for 124 people, however, in some instances more than one alleged abuse type was reported.  
 Note 2 - Abuse may relate to historical abuse prior to the appointment of the Public Advocate.  
 Note 3 - The methodology used to calculate the percentages of abuse types was amended this year to enable a more accurate representation of the data.

Of the 124 represented persons for whom abuse was alleged, 51 people were 65 years of age or older. Of these, financial abuse was also the most commonly reported form of abuse, having been reported in 84 per cent of the 51 cases.

**Figure 14 Profile of new guardianship orders appointing the Public Advocate by type of alleged elder abuse (aged 65 or older) 2016/17**



Note 1 - Alleged elder abuse was reported for 51 people, however, in some instances more than one alleged abuse type was reported.  
 Note 2 - Abuse may relate to historical abuse prior to the appointment of the Public Advocate.  
 Note 3 - The methodology used to calculate the percentages of abuse types was amended this year to enable a more accurate representation of the data.

Of the 487 new appointments of the Public Advocate as guardian in 2016/17, 81 were for a person of Aboriginal and Torres Strait Islander descent, representing 17 per cent. This shows an overrepresentation of Indigenous adults, given the State's Indigenous population is only three per cent.<sup>10</sup>

**Figure 15 Profile of new guardianship orders appointing the Public Advocate by Aboriginality and Torres Strait Islander descent from 2012/13 to 2016/17**

Year	Total	Non Indigenous	Indigenous	Indigenous as a percentage of total
2012/13	371	335	36	10%
2013/14	340	297	43	13%
2014/15	423	379	44	10%
2015/16	468	409	59	13%
2016/17	487	406	81	17%

*Note - Indigenous refers to clients of Aboriginal and Torres Strait Islander descent.*

For the past four years, orders where the Public Advocate has been appointed as guardian of last resort for a person of Aboriginal and Torres Strait Islander descent, has averaged 15 per cent of all orders.

**Figure 16 Profile of all guardianship orders as at 30 June, appointing the Public Advocate by Aboriginality and Torres Strait Islander descent from 2012/13 to 2016/17**

Year	Total	Non Indigenous	Indigenous	Indigenous as a percentage of total
2012/13	1,065	921	144	14%
2013/14	1,218	1,044	174	14%
2014/15	1,383	1,190	193	14%
2015/16	1,555	1,327	228	15%
2016/17	1,738	1,460	278	16%

*Note - Indigenous refers to clients of Aboriginal and Torres Strait Islander descent.*

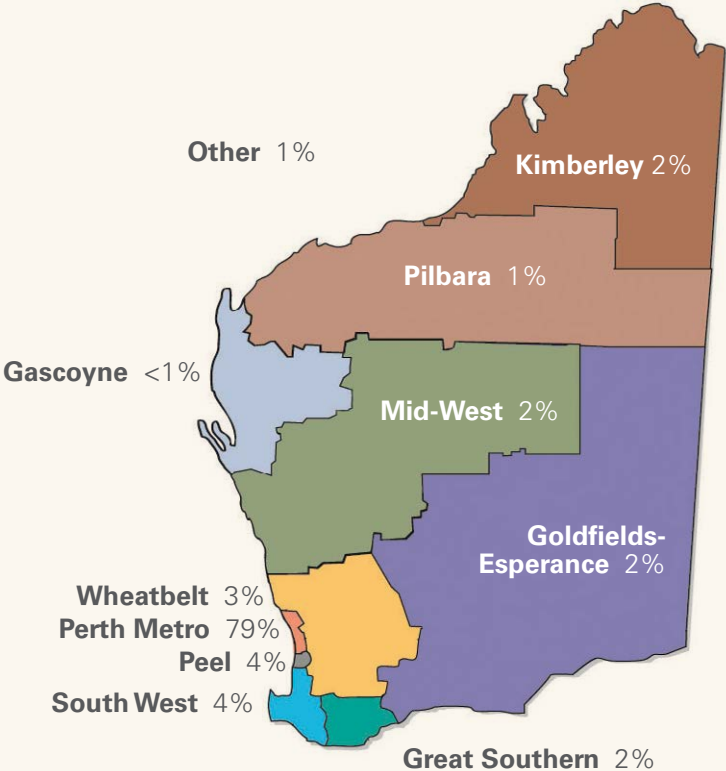
<sup>10</sup> Australian Bureau of Statistics 2016 Census: Aboriginal and/or Torres Strait Islander Peoples QuickStats, [http://www.censusdata.abs.gov.au/census\\_services/getproduct/census/2016/quickstat/IQS5](http://www.censusdata.abs.gov.au/census_services/getproduct/census/2016/quickstat/IQS5).

At 30 June 2017, 79 per cent of all appointments of the Public Advocate were for people living in the Perth metropolitan area.

**Figure 17 Profile of all guardianship orders as at 30 June 2017, appointing the Public Advocate by geographical location**

**Geographical location**

Gascoyne	6
Goldfields-Esperance	27
Great Southern	40
Kimberley	41
Mid-West	41
Peel	63
Perth Metropolitan	1,374
Pilbara	22
South West	69
Wheatbelt	44
Other	11
<b>Total</b>	<b>1,738</b>



*Note - due to rounding, the total percentage does not always equal 100.*

**The Public Advocate’s after hours service**

The Public Advocate maintains a 24 hour contact service so that urgent matters can be dealt with after hours. The majority of enquiries that are responded to are in relation to making an urgent decision for a represented person where the Public Advocate is the appointed guardian. At times, enquiries involve concerns 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 2016/17 guardians took approximately 1,054 after hour calls which took approximately 295 hours.

## 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**

A number of the Office's represented persons have and will continue to be impacted by recent reforms to the disability sector.

The introduction of the National Disability Insurance Scheme and the transition of accommodation services provided by the Disability Services Commission to non-government service providers, has seen the Office of the Public Advocate work in collaboration with a number of other agencies.

The impact of these changes on the Office and the people the Public Advocate represents is detailed in the Significant Issues section of this report.

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

In 2006, the Public Advocate raised serious concerns about a small but challenging 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 implemented with an initial pilot in 2007/08.

The project's aims were to significantly improve interagency collaboration and co-ordination of services and encourage 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 including the former Drug and Alcohol Office of the Department of Health, Department of Corrective Services, Housing Authority, and the Office of the Public Advocate, worked together to operate the project.

A program evaluation was completed by the North Metropolitan Mental Health Service in March 2016 which demonstrated that overall the People with Exceptionally Complex Needs Project produces measurable benefits for its participants, and the longer a participant was in the program, the more likely they were to receive measurable benefits from it.

At 1 July 2016, 22 people were participating in the People with Exceptionally Complex Needs Project. Of these, 21 had a guardian and/or administrator appointed by the State Administrative Tribunal. Of these, 20 participants had both a guardianship order appointing the Public Advocate and an administration order appointing the Public Trustee.



By November 2016, 19 people were participating in the project. All 19 participants had a guardian and/or administrator appointed by the State Administrative Tribunal. Of these, 18 participants had both a guardianship order appointing the Public Advocate and an administration order appointing the Public Trustee.

With the roll-out of the National Disability Insurance Scheme through WA NDIS, the People with Exceptionally Complex Needs Project is transitioning to a new service model known as the Adults with Exceptionally Complex Needs Program from 1 July 2017. While the membership of the Interagency Executive Committee will be similar, new terms of reference, policies and operational procedures will apply.

Exit plans were finalised by June 2017 for all participants in the project, in preparation for the new model and the formal closure of the People with Exceptionally Complex Needs Project.

### **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 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 was therefore a member of the interagency executive committee for the Young People with Exceptionally Complex Needs Project.

Other senior representatives on the interagency committee were from the Department of Health's Child and Adolescent Mental Health Service, Department of Corrective Services – Youth Justice, the Department of Education and the Housing Authority.

In July 2016, there were three young adults for whom the Public Advocate and Public Trustee had been appointed when they turned 18 years of age. Two exited the program during the year, and another remained supported through the program. In this case, the Public Advocate's appointment was revoked in 2016 by the State Administrative Tribunal following an application by a service provider. It is likely however that a new application for the appointment of a guardian will be made as this young woman's circumstances have been unstable since that time.

At 30 June 2017, there were 13 young people participating in the Young People with Exceptionally Complex Needs Project. Applications to the State Administrative Tribunal for the appointment of a guardian and an administrator were being progressed by the Department for Child Protection and Family Support for two young people with highly complex needs who will be turning 18 years of age by the end of 2017. The Office of the Public Advocate has been involved in leaving care discussions for these young people.

Over the year, the level of support provided by this project was invaluable to highly vulnerable young people who required intensive support with their transition from State care.

## 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 Office’s 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. This is an interagency alliance established to find ways to raise awareness of and prevent elder abuse.

This year, the Office worked in collaboration with Fiona Stanley Hospital and the Fremantle Association of Justices (Inc) to provide an education session for World Elder Abuse Awareness Day.

Service providers in the health, disability, aged-care and other related sectors, along with seniors and other community members, participated in the three-hour session at Fiona Stanley Hospital which focussed on the protection offered by the *Guardianship and Administration Act 1990* for adults, should they lose capacity.

More information about this session and other education seminars held throughout the year are detailed in the community education section of this report.

## Business Services Wage Assessment Tool (BSWAT) Payment Scheme

On 16 December 2016, the Federal Court of Australia approved the settlement of the case *Duval-Comrie v Commonwealth of Australia* [2016] FCA 1523. This was a result of a class action by people who had been employed in an Australian Disability Enterprise (ADE) and it was found that the way in which the wages were determined were not lawful. This applies to ADE employment since 1 January 2001 up until 28 May 2014. Applicants to the BSWAT Payment Scheme were required to register by 30 April 2017 and to apply by 30 November 2017.

After consultation with the Public Trustee to identify those represented persons for whom the Public Trustee would make applications as their administrator, there remained a number of people (for whom the Public Advocate is appointed as the guardian) who were eligible to be registered for the BSWAT Payment Scheme by 30 April 2017. The Public Advocate wrote to the Department of Social Security (DSS) on behalf of 36 represented persons, of whom DSS advised a number of people who may be eligible.

At 30 June 2017, the Office of the Public Advocate was continuing to work with private administrators and one attorney, who were appointed for five represented persons, to finalise applications by 30 November 2017.

## 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 2016/17, including:

- Further input to previous submissions, for the statutory review of the *Guardianship and Administration Act 1990* and the implementation of the recommendations in the report tabled in Parliament in December 2015. This included progressing discussions with the St John's Ambulance Western Australia Ltd and the WA Police about the recommendation relating to the transport of a represented person to another location such as a hospital, supported accommodation or other location for those infrequent occasions where a represented person is uncooperative and at risk.
- Continued work between the Office of the Public Advocate and the Disability Services Commission, particularly with regard to how the *National Disability Insurance Scheme Act 2013* (NDIS Act) is applied in the Western Australia NDIS trial sites.
- Continued work with the National Disability Insurance Agency, the Commonwealth's scheme in the Hills trial site and surrounding local government areas, with regard to the implementation of the National Disability Insurance Scheme.
- Alliance for the Prevention of Elder Abuse: Continued participation including support for World Elder Abuse Awareness Day events as reported earlier.
- Assisted the Director General, Department of the Attorney General with the Law, Crime and Community Safety Council working group which is considering the recommendations of the Australian Law Reform Commission's inquiry *Elder Abuse - A National Legal Response*.
- Regular meetings were also held between the Office and the Chief Psychiatrist with regard to issues arising under the *Mental Health Act 2014*.
- Contributed to the review of the National Standards for Public Guardianship undertaken through the Australian Guardianship and Administration Council and which was led by the Victorian Office of the Public Advocate.
- Progressed the recognition of Guardianship Orders made in the Northern Territory for the *Guardianship of Adults Act 2016* (NT). This is expected to be finalised in the latter half of 2017 and will mean that Western Australia automatically recognises all guardianship orders made in other States and Territories in accordance with section 44A of the *Guardianship and Administration Act 1990*.

## 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 2016/17, the Office delivered a total of 17 community education sessions regarding the guardianship and administration system, the legislation and the planning documents available to people under the legislation.

Of these, three were tailored to the needs of community members, eight specifically targeted service providers and two catered to the needs of both groups.

Four of the 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.

One of the sessions which catered to the needs of community members and service providers was held as part of World Elder Abuse Awareness Day. This three-hour session at Fiona Stanley Hospital was organised in collaboration with the Fremantle Association of Justices (Inc) and Fiona Stanley Hospital. It aimed to raise people's awareness of elder abuse and offer potential strategies to minimise their risk and that of their friends, families and clients.

All of the Office's education sessions were held at accessible venues in the metropolitan area. One of the large sessions for service providers was available to attend in-person or via video conference link. This enabled service providers to participate from Armadale, Broome, Bunbury, Busselton, Geraldton, Karratha, Katanning, Leonora, Mandurah, Northam and Pinjarra. A number of metropolitan based service providers also attended via video conference as it was more convenient.

Once again this year, the Office shared an exhibition stand with colleagues from the Department of Health, at the Seniors Week 'Have A Go Day' event, organised by the Seniors Recreation Council of WA. Members of the public and service providers were able to talk to a staff member about the work the Office does, and take away information and publications for colleagues, clients, family and friends. This event exposed the work of the Office to more than 250 community members and service providers who were in attendance.

The Office also participated in the City of Rockingham's Seniors and Carers Exhibition, which exposed the work of the Office to more than 200 community members and service providers. A number of people had queries about planning for the future and were provided with information about enduring powers of attorney and enduring powers of guardianship.

### Customer contact/enquiries

The Office of the Public Advocate provides an advisory service for people who have a personal or professional interest in the rights and needs of adults with a decision-making disability.

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

A total of 4,719 people used the advisory service in 2016/17.

**Figure 18 Enquiries to the advisory service by mode of handling 2016/17**

Mode of handling	Jul 2016	Aug 2016	Sep 2016	Oct 2016	Nov 2016	Dec 2016	Jan 2017	Feb 2017	Mar 2017	Apr 2017	May 2017	Jun 2017	Total
<b>Telephone</b>	329	388	356	359	479	286	398	338	376	288	471	379	4,437
<b>Interview</b>	8	10	17	15	14	3	17	12	20	6	18	15	155
<b>Email/letter</b>	5	8	7	15	16	10	10	10	15	13	8	10	127
<b>TOTAL</b>	<b>342</b>	<b>406</b>	<b>370</b>	<b>389</b>	<b>509</b>	<b>299</b>	<b>425</b>	<b>360</b>	<b>411</b>	<b>307</b>	<b>497</b>	<b>404</b>	<b>4,719</b>

In some instances, enquirers sought advice on multiple topics. Guardianship matters accounted for 33 per cent of all enquiries received during the year, enduring powers of attorney accounted for another 33 per cent and the remaining enquiries were spread across administration, enduring powers of guardianship, advance health directives and general enquiries.

**Figure 19 Enquiries to the advisory service by subject 2016/17**

Subject of enquiry	Jul 2016	Aug 2016	Sep 2016	Oct 2016	Nov 2016	Dec 2016	Jan 2017	Feb 2017	Mar 2017	Apr 2017	May 2017	Jun 2017	Total	Total as percentage of all enquiries
<b>Guardianship</b>	133	167	159	160	182	176	182	120	124	127	227	180	1,937	33%
<b>Administration</b>	25	54	52	48	55	16	44	27	47	33	48	47	496	8%
<b>Enduring powers of attorney</b>	167	160	156	156	237	79	156	166	210	123	198	148	1,956	33%
<b>Enduring powers of guardianship</b>	56	70	63	69	76	30	63	63	91	58	89	68	796	13%
<b>Advance health directives</b>	4	14	9	13	16	2	9	10	13	11	16	13	130	2%
<b>General</b>	31	51	32	52	51	26	66	54	56	51	105	62	637	11%
<b>Total</b>	<b>416</b>	<b>516</b>	<b>471</b>	<b>498</b>	<b>617</b>	<b>329</b>	<b>520</b>	<b>440</b>	<b>541</b>	<b>403</b>	<b>683</b>	<b>518</b>	<b>5,952</b>	

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

## Services to Aboriginal people

The publications produced by 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.

## Plain English brochure

The Office has developed a plain English brochure, titled 'If you can't make your own decisions, who will make them for you?'

The concepts and information contained in many of the Office's publications can be complicated and difficult to understand. This brochure aims to explain some of the key concepts in simple terms, in order to improve accessibility to the Office's information.

The brochure explains the concept of capacity, why people might lose capacity, the three planning documents a person can use in case they do lose capacity (an enduring power of attorney, enduring power of guardianship and advance health directive) and more detailed information about medical treatment decisions.

## **Catering to the needs of clients from a culturally and linguistically diverse background**

All of the Office's publications are available in alternative formats<sup>11</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.

## **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 2016/17 interpreter services were provided in Acholi, German, Greek, Italian, Mandarin, Maltese, Myanmar, Polish, Portuguese, Romanian, Spanish, Tagalog and Vietnamese.

## **Catering to the needs of clients with vision impairments or print disabilities**

Every webpage and publication on the Office's website has a 'listen' function. This function enables people to click on any page or document that they are interested in, and the text will be read aloud.

The website also features 'focus colours', meaning when a visitor to the website hovers over links contained in the website text, the links are highlighted, enhancing readability and navigation. A 'skip to main content' link also improves navigation.

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

Staff use the National Relay Service as required, 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.

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<sup>11</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.



## 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.

In 2016/17, these services were supported by the Department of the Attorney General and costs were proportionally allocated to the Office of the Public Advocate and reflected in the Treasury Budget statements. The budget allocation and subsequent expenditure for 2016/17 was as follows:

**Figure 20 Budget allocation and expenditure 2016/17**

	Total Cost of Output
\$'000 Actuals 2016/17	7,134
\$'000 Budget 2016/17	7,181
\$'000 Variations from Budget	47

## The Year in Review

### Freedom of information

Four valid applications were received during 2016/17 for the release of information. All four 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 not satisfied with the decision of the Public Advocate, they may lodge an appeal with the Information Commissioner.

### Customer feedback

In 2016/17, the Office of the Public Advocate received 42 formal compliments and one suggestion. The Office also received 20 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 and 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

Persistent and increasing demand for its statutory services of advocacy, investigation and guardianship, was once again the main issue impacting on the Office of the Public Advocate in 2016/17.

While the total number of investigations carried out during the year levelled out at 1,496 (one per cent less than the previous year), the number of new matters referred to the Office totalled 1,180, representing a five per cent increase from the previous year. A number of investigations were complex, requiring more time and exploration.

In 2016/17, the Office of the Public Advocate experienced a four per cent increase in new appointments as guardian of last resort, having been appointed as guardian for 487 adults during the year. This compounded the growing number of people under the Public Advocate's guardianship and resulted in a 12 per cent increase in total guardianship orders at 30 June 2017, with 1,738 people compared to 1,555 at 30 June 2016.

Western Australia's ageing population and the resulting increase in the number of people with dementia, as well as a persistent rise in the number of people with mental illness and intellectual disability, continue to be significant factors contributing to this ongoing demand for the Office's services.

In 2016/17, 37 per cent of the people for whom the Public Advocate was appointed guardian for the first time had dementia and 44 per cent of the 1,180 new matters referred for investigation by the State Administrative Tribunal involved a person with dementia.

According to research commissioned by Alzheimer's Australia<sup>12</sup>, there are 39,600 people with dementia in Western Australia in 2017. The projected rates of prevalence in this report estimate there will be more than 84,000 people with dementia in WA by 2036 and more than 143,000 by 2056.

Statistics such as these, together with the fact that there are a number of people for whom the Public Advocate remains guardian for a number of years, will continue to drive demand for the Office's services.

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<sup>12</sup> Economic Cost of Dementia in Australia 2016 – 2056, report prepared for Alzheimer's Australia by Professor Laurie Brown, Erick Hansnata and Hai Anh La, NATSEM at the Institute for Governance and Policy Analysis, University of Canberra, February 2017.

# State and National disability sector reform

## Disability Services Commission changes

As noted in previous annual reports, the Disability Services Commission made an announcement in October 2013, regarding planned changes to the way in which they provide accommodation services to some 60 per cent of approximately 500 people living in their accommodation services. The changes would see the majority of these services provided by non-government accommodation providers.

Around that time the Office of the Public Advocate identified almost 50 people on guardianship orders appointing the Public Advocate who may be impacted by this change. As a result, the Public Advocate liaised with the Disability Services Commission and the Public Trustee to identify where applications would need to be made to the State Administrative Tribunal. Together, they considered where applications were necessary for new or amended guardianship and/or administration orders, to ensure suitable arrangements were in place to make decisions for the ongoing accommodation of these people.

Over the course of the transition project, the Office advocated for more than 25 applications to be made by the Disability Services Commission for the appointment of an administrator and/or guardian. In addition, guardians from the Office of the Public Advocate made numerous applications in order to vary the guardianship authority of residents (for whom the Public Advocate was already appointed) by initiating review applications or making recommendations at routine review hearings scheduled by the State Administrative Tribunal. Investigator advocates were also involved in regard to applications which were referred by the State Administrative Tribunal, where a non-government provider or family members made applications for the appointment of a guardian and/or administrator.

Since the start of the transition project, a total of 84 people for whom the Public Advocate was appointed guardian, were identified as potentially being impacted at some stage. Nine of the 84 people ceased their involvement in the transition planning as they died or moved into aged care. A further nine people moved into different accommodation with a non-government provider or into independent living with support services.

At 30 June 2017, the outcome of the transition process for the Office of the Public Advocate was that of the remaining 66 people, 38 were living in group homes which had either transitioned to the non-government sector or were in the transition process, 21 people were living in accommodation which remained with the Disability Services Commission and seven people were living in accommodation where the decision as to whether or not the house transitioned was pending. Throughout the staged transition process, extensive consultation was facilitated by the Commission's transition team with the residents, their families and guardians (where appointed), about new service providers.

## National Disability Insurance Scheme (NDIS) changes

Changes to the disability sector, brought about by the State Government's 2013 agreement to join the National Disability Insurance Scheme (NDIS), continued to impact the Office in 2016/17.

A number of the Office's clients who receive disability support including accommodation and services and are under 65 years of age, were affected by the scheme. Delegated guardians from the Office worked with NDIS staff throughout the year in the development and approval of NDIS support plans in both the State and Commonwealth pilots.

Any expansion to the scheme involves the Office carrying out work to identify clients who may be impacted and liaising with relevant agencies in preparation for the scheme becoming 'live' in the new areas. This includes providing the names and key details of represented persons under 65 years of age to the WA National Disability Insurance Scheme (WA NDIS), or under section 55 of the *National Disability Insurance Scheme Act 2013* for the provision of names to the Commonwealth scheme.

For the State scheme, the WA NDIS, the initial trial sites for 2015/16 covered the Cockburn and Kwinana local government areas and the Lower South West regional area (from 1 July 2014). Expansion occurred into the Armadale, Murray and Serpentine-Jarrahdale local government areas from October 2016. The Office identified 34 represented persons who may be eligible for the scheme in the new areas.

For the Commonwealth scheme, the National Disability Insurance Agency, expansion occurred beyond the local government areas of Mundaring, Swan and Kalamunda into the local government areas of Toodyay, York, Northam, Chittering, Bayswater and Bassendean from January 2017. The Office identified 85 represented persons who may be eligible for the scheme in the new areas.

On 1 February 2017, the Commonwealth and Western Australian Governments signed a bilateral agreement to roll-out a nationally-consistent but state-delivered National Disability Insurance Scheme in Western Australia. The Office subsequently undertook work in preparation for the roll-out from 1 July 2017 in relation to new areas. At 30 June 2017, the State Government was considering the model of delivery and possible modifications to the agreement.

As such, in June 2017 the Office once again provided the names and key details of represented persons under 65 years of age to WA NDIS for its expansion into the Pilbara and Kimberley regions, and the Rockingham and Mandurah local government areas from 1 July 2017. The Office identified 41 represented persons who may be eligible in the Pilbara and Kimberley regions, and 65 represented persons in the Rockingham and Mandurah catchment.

# Disclosures and Legal Compliance

## Financial Statements

See the final report of the Department of the Attorney General as at 30 June 2017.

## Key Performance Indicators

### Notes to the Key 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

Key effectiveness indicator	Actual 2013/14	Actual 2014/15	Actual 2015/16	Target 2016/17	Actual 2016/17	Comment on significant variation
<b>Percentage of guardians of last resort allocated in one day</b>  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.	94%	96%	98%	95%	95%	N/A

Key efficiency indicator	Actual 2013/14	Actual 2014/15	Actual 2015/16	Target 2016/17	Actual 2016/17	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>	\$1,820	\$1,800	\$1,744	\$1,550	\$1,735	Variance is mainly due to increased costs following the relocation of the Office of the Public Advocate to the David Malcolm Justice Centre.

Key effectiveness indicator	Description
<b>Guardian of last resort allocated in one day</b>	<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
<b>Average cost per case of providing advocacy and guardianship services</b>	<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 final report of the Department of the Attorney General as at 30 June 2017.

## Public Interest Disclosures

Nil.

## Other Governance Disclosures

See the final report of the Department of the Attorney General as at 30 June 2017.

## Other Legal Requirements

### Advertising

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

#### Figure 21 Advertising

Adcorp and Whitepages: Government Gazette, community guardianship program, community education and recruitment advertising	\$9,524
<b>TOTAL EXPENDITURE</b>	<b>\$9,524</b>

### Disability Access and Inclusion Plan Outcomes

See the final report of the Department of the Attorney General as at 30 June 2017.

### Compliance with Public Sector Standards and Ethical codes

See the final report of the Department of the Attorney General as at 30 June 2017.

### 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. An updated 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, all Office of the Public Advocate staff had completed records awareness training as at 30 June 2017.

## Government Policy Requirements

For information on substantive equality see the final report of the Department of the Attorney General as at 30 June 2017.

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

See the final report of the Department of the Attorney General as at 30 June 2017.

# 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*
- *Declared Places (Mentally Impaired Accused) Act 2015*
- *Disability Services Act 1993*
- *Health Act 1911*
- *Magistrates Court (Civil Proceedings) Act 2004*
- *Mental Health Act 2014*
- *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*
- *Working with Children (Criminal Record Checking) Act 2004*



# Appendix 2 Publications

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

## Annual reports

### 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
- Community Guardianship Program
- Are you worried about a vulnerable adult who needs help making decisions? (a brochure for Aboriginal people)
- If you can't make your own decisions, who will make them for you? (a plain English brochure).

### Guides and kits

- A Guide to Enduring Power of Attorney in Western Australia
- Enduring Power of Attorney Information Kit
- A Guide to Enduring Power of Guardianship in Western Australia
- Enduring Power of Guardianship Information Kit

## Appendix 3 Glossary

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

**Advance health directive:** 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:** 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.

**Investigation:** Seeking further information in relation to a person's circumstances which can assist in assessing the need for the appointment of a guardian and/or administrator; and what authority any appointed person would require.

**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.

# Appendix 4

## Easy Read Annual Report 2016/17

### 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 (some people are born with a decision-making disability and other people may get a disability later, from an accident or illness)
- 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 1,496 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 the first time, for 487 adults with a decision-making disability
- made decisions for the people we were guardian for, which was 1,738 people on 30 June 2017
- held 17 information sessions about what the Office does and how to help protect people with a decision-making disability
- helped 4,719 people who contacted the Office's advisory service for information
- had 50 staff positions
- spent \$7.134 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 to manage more work 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 9am and 4.30pm, Monday to Friday.



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