

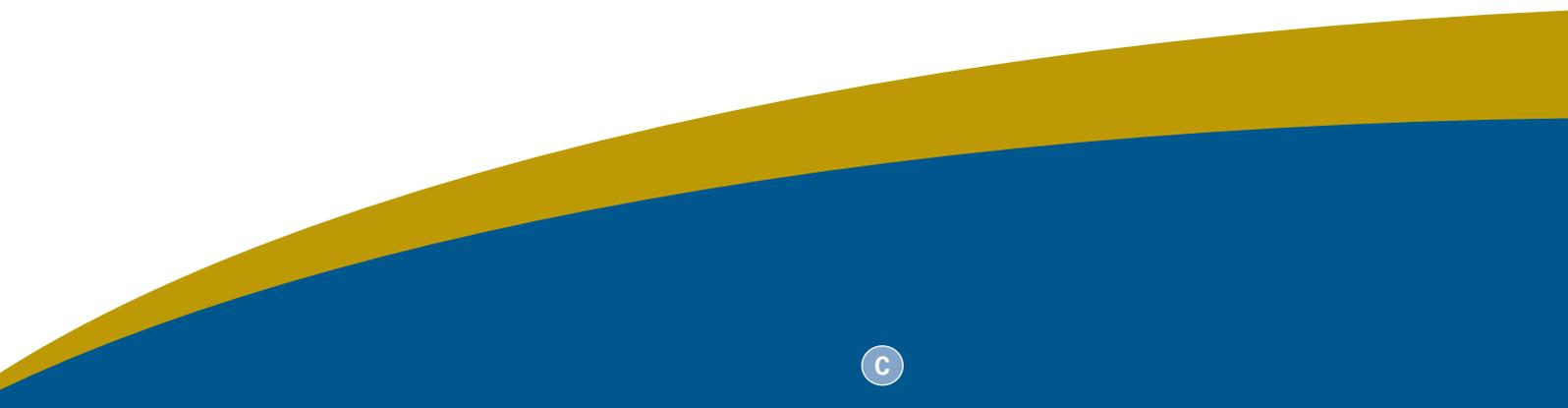


Government of Western Australia  
Department of Justice



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

# The Public Advocate of Western Australia Annual Report 2017/18



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 2018.

This report records the operations and performance of the Office of the Public Advocate during 2017/18. 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 2017/18, the Office of the Public Advocate reported on financial and administrative matters to the Director General of the Department of Justice.

*Pauline Bagdonavicius*

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**PUBLIC ADVOCATE**  
7 September 2018

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# Contents

## Overview

The Year in Review .....3  
Acknowledgements .....4

## Overview of the Agency

Operational Structure .....5  
Performance Management Framework ..... 10

## Agency Performance

Advocacy and Investigation ..... 11  
Guardianship .....34  
Interagency Collaboration and Policy Development .....53  
Community Education .....57  
Corporate Services .....61

## Significant Issues Impacting the Agency

Meeting Demand for Services .....62  
State and National Disability Sector Reform .....63  
Elder Abuse .....64

## Disclosures and Legal Compliance

Financial Statements .....65  
Key Performance Indicators .....65  
Ministerial Directives .....66  
Other Financial Disclosures .....66  
Public Interest Disclosures .....66  
Other Governance Disclosures .....66  
Other Legal Requirements .....67  
Government Policy Requirements .....67

## Appendices

Legislation .....68  
Publications .....69  
Glossary .....70  
Easy Read Annual Report 2017/18 .....72

# Overview

## The Year in Review

The Office of the Public Advocate continued to meet growing demand for its statutory services of advocacy and investigation, and guardianship, amid an environment of change, including national reform within the disability and aged-care sectors, along with a heightened awareness of elder abuse.

The challenge of meeting this growing demand was met again this year, by a group of dedicated and resourceful staff, committed to protecting vulnerable adults with a decision-making disability and promoting their best interests.

The Office's advocacy and investigation team carried out a total of 1,567 investigations in 2017/18, a five per cent increase from the previous year. These investigations involved investigator advocates looking into the lives of vulnerable people to determine if they were at risk, unable to make their own decisions and in need of someone stepping into a decision-making role for them.

The majority of investigation referrals to the Office came from the State Administrative Tribunal. In 2017/18 there was a 42 per cent increase in the number of urgently listed matters referred to the Office by the Tribunal. This significant increase translates to investigator advocates having been requested to attend 195 urgent hearings in 2017/18 compared to 137 in 2016/17.

The Office's guardianship team carried out the day-to-day decision-making role for adults for whom the Public Advocate was appointed guardian of last resort. In 2017/18 the team took on 526 new guardianship appointments. This represented an eight per cent increase from the previous year, when there were 487 new appointments.

The Office of the Public Advocate had responsibility as guardian of last resort for a total of 1,923 adults at 30 June 2018, an increase of 11 percent from the same time the previous year, when the Office had responsibility for 1,738 adults.

Sometimes labelled a silent epidemic, elder abuse has gained increased attention at a state and national level over the last few years. The planning for reform in this area was progressed further this year, following the release of the Australian Law Reform Commission's report on elder abuse in June 2017.

The Office of the Public Advocate continued to target elder abuse with a range of activities including its advocacy, investigation and guardianship services; membership of the Alliance for the Prevention of Elder Abuse; policy development; collaboration with other agencies; and provision of information and guidance to community members and professionals through the Office's advisory service, website, publications and targeted community education sessions.

In 2017/18 the Office assisted 5,226 people who used the Office's advisory service and held 22 community education sessions for community members and service providers.

## Acknowledgements

I greatly appreciate the tireless efforts of investigator advocates, guardians, administration, policy and community education officers and managers who together, enabled the Office to deliver tangible benefits to vulnerable adults with impaired capacity in Western Australia.

In 2017/18 the Office was supported by the Director General of the Department of Justice, Dr Adam Tomison, along with colleagues within the Department and colleagues from other agencies.

The work of the guardianship team was also supported by 18 community guardianship program volunteers, who improve the lives of a small group of vulnerable adults.

I would like to extend my thanks to these dedicated and professional staff and volunteers and the Department and external agencies who provided support.

*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 2017/18 the Office of the Public Advocate reported on financial and administrative matters to the Director General of the Department of Justice. In accordance with this arrangement, the financial statements of the Office are published in the Department’s annual report.

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

### Mission

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

### 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 to be appointed
- 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**

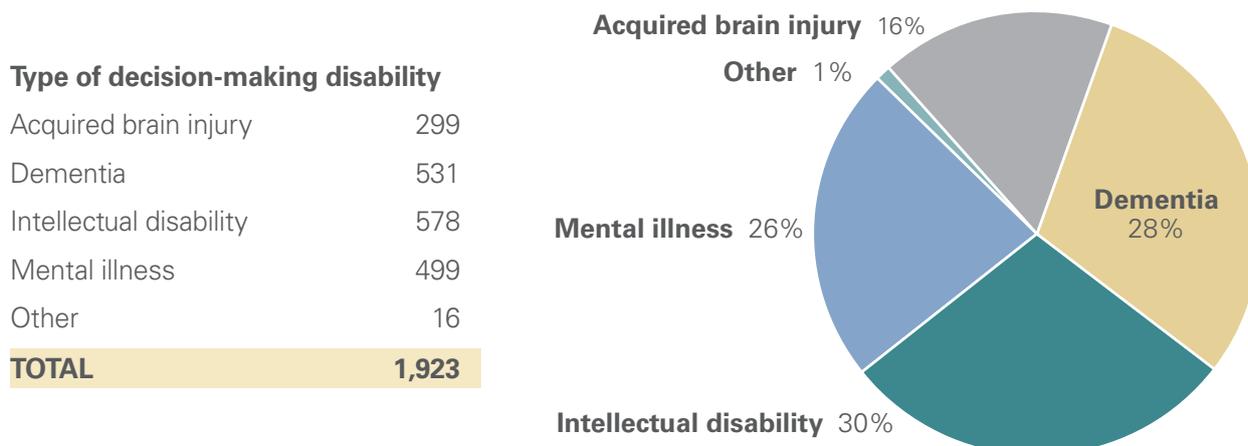
The views and wishes of the person concerned are sought to the extent possible and expressed in whatever manner, either at the time or gathered from the person's previous actions.

## Stakeholders

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

For the first time in 11 years, a decision-making disability other than dementia accounted for the largest proportion of the 1,923 adults the Public Advocate was appointed as guardian for at 30 June, with intellectual disability accounting for 30 per cent of all appointments. This was followed closely by 28 per cent who had dementia, 26 per cent a mental illness, 16 per cent an acquired brain injury and one per cent had some other form of decision-making disability. Of these 1,923 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 2018**



The number of people for whom the Public Advocate is guardian has increased by 58 per cent over the past four years, from 1,218 in June 2014 to 1,923 in June 2018.

**Figure 2 People under guardianship orders appointing the Public Advocate by type of decision-making disability as at 30 June 2014 – 30 June 2018**

Type of decision-making disability	2014		2015		2016		2017		2018	
	Number	Percentage of total								
Acquired brain injury	181	15%	223	16%	263	17%	288	17%	299	16%
Dementia	394	32%	424	31%	462	30%	506	29%	531	28%
Intellectual disability	319	26%	385	28%	449	29%	505	29%	578	30%
Mental illness	284	23%	333	24%	364	23%	420	24%	499	26%
Other	40	3%	18	1%	17	1%	19	1%	16	1%
<b>Total</b>	<b>1,218</b>		<b>1,383</b>		<b>1,555</b>		<b>1,738</b>		<b>1,923</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>

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

In 2017/18 the Department of Communities, Disability Services funded and provided services to 833 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 2018. 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 estimated 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 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.

The most commonly reported disability in Western Australia for people who received services under the National Disability Agreement in 2017/18 was intellectual disability. The Department of Communities, Disability Services funded and provided services to 27,390 people, of which 8,559 were Western Australians with an intellectual disability as their primary condition in 2017/18.<sup>4</sup>

Intellectual disability accounted for the largest proportion of all adults for whom the Public Advocate was appointed guardian at 30 June 2018, overtaking the number one position which dementia had held for 11 consecutive years.

It appears that the introduction of the National Disability Insurance Scheme (NDIS) has accounted for much of the growth in this area. It is not a requirement for anyone with an intellectual disability (or any other form of decision-making disability) to have a guardian appointed in order to access the NDIS. However, the process involved for a person with a decision-making disability to apply to access the NDIS, has at times, highlighted other decision-making areas within a person's life for which they need a substitute decision-maker but no one is taking on the role, therefore an application is made for the appointment of a guardian.

<sup>2</sup> Department of Communities, Disability Services. Annual Client and Service Data Collection, 2017/18.

<sup>3</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.

<sup>4</sup> Department of Communities, Disability Services. Annual Client and Service Data Collection, 2017/18.

Given the Public Advocate often remains guardian for people with an intellectual disability for a long period of time, or even for life, coupled with the growing prevalence within the population, it appears the Office can expect continued growth in the number of represented persons with an intellectual disability.

### **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 2017/18 were supported by:

- approved establishment of 54 (full-time equivalent) staff
- expenditure of \$7.882 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 administrative, policy and community education positions.

5 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.

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

7 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.

8 Expenditure includes shared Department of Justice corporate support.

# Performance Management Framework

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

## Government goal

The work of the Office of the Public Advocate reflects the State Government goal of: ***Strong Communities: safe communities and supported families.***

## Department of Justice purpose

The Department of Justice supported the community, Western Australian Government, judiciary and Parliament through the provision of access to high quality justice, legal and corrective services, information and products.

In particular, the Department directly contributed to the Government's strategic goal of strong communities: safe communities and supported families.

## 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 'interagency collaboration and policy development' 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, it is a priority for investigator advocates to seek the views of the person who is the subject of an application, where possible. They also interview a range of interested parties who 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 of their investigation which makes recommendations in the person's best interests, to assist the State Administrative Tribunal with its deliberations. Investigator advocates provide oral advocacy at hearings, based on information gathered and information that may arise within the hearing itself.

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.

- 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.
- 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 process to the service provider, the investigator advocate assists the service provider to find the appropriate decision-maker within this order (hierarchy), meaning there is no need for the appointment of a guardian.

## The Year in Review

In 2017/18, the Public Advocate carried out a total of 1,567 investigations into the personal or financial welfare of adults with a decision-making disability. This was a five per cent increase from 2016/17, when there were 1,496 investigations carried out. These 1,567 investigations included new matters and matters carried over from 2016/17.

Of the 1,567 investigations carried out during the year, 1,431 needed investigation and advocacy relating to applications for, or reviews of, administration or guardianship orders before the State Administrative Tribunal. This represented an increase of seven per cent from 2016/17, when 1,343 investigations related to matters before the State Administrative Tribunal.

The remaining 136 investigations were referred directly to the Public Advocate by a member of the public, a community-based organisation, or another government agency.

An additional 31 preliminary investigations were carried out under the liaison role, which assisted the Tribunal in gathering further information relevant to the hearing. All 31 of these were new matters, seeking preliminary information.

## Investigations referred by the State Administrative Tribunal

There were 1,219 new investigations referred by the State Administrative Tribunal in 2017/18, which was a three per cent increase from the previous year, when there were 1,180 new investigations.

These 1,219 investigations 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 195 urgent hearings in 2017/18, representing a 42 per cent increase from the previous year when there were 137 urgent hearings.

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.

Attending urgent Tribunal hearings and advocating for proposed represented persons' best interests, presents a particular challenge for investigator advocates as they are required to assess the issues and particular risks regarding a person's safety or wellbeing within a limited timeframe. In some cases this timeframe may be a matter of hours, or a matter of days. Some of these hearings occur outside of normal working hours.

Investigator advocates face 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 2017/18, the investigation team – through the liaison role – conducted preliminary investigations into 31 new applications for guardianship, administration and intervention in enduring powers of attorney and enduring powers of guardianship.

In some cases, the investigator advocate recommended to the State Administrative Tribunal that the matter should be referred to the Office of the Public Advocate for full investigation. In other cases the investigator advocate was able to speak to key parties and gather information which would assist the Tribunal process. In these instances, they recommended to the State Administrative Tribunal that the investigator advocate attend the Tribunal hearing.

## 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 2017/18, 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, 136 such referrals were reviewed by the Office in 2017/18. Of the 136 cases, 84 were closed during the financial year and 52 remained open at 30 June 2018.

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 shares the concerns that have been raised and 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 once the application has been submitted, will let the Tribunal know about the Public Advocate's involvement in the matter. The investigator advocate will continue gathering information and 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.

A critical part of the investigation is obtaining medical records, to enable the Public Advocate to establish whether a person has a decision-making disability. Gathering this information can take considerable time, as the person may not have a current General Practitioner, or medical professionals who are involved with the person may be reluctant to share information.

Accurate medical information is critical, as without assessments that a person has a decision-making disability, it is unlikely that an application to the State Administrative Tribunal could be made by the Public Advocate.

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 police attend a home incident and have concerns that the person does not have capacity and may be in need of some form of support.
- Referrals from a court where there are concerns that a person who is party to proceedings is not able to understand the court process due to a mental disability.

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

### **A positive and less restrictive outcome**

Mr J was a young man who had an intellectual disability since birth. He had a large family who he lived with and who provided his on-going care and support. Two of his siblings were appointed as his joint guardians and administrators.

Mr J's joint guardians and administrators applied to the State Administrative Tribunal for a review of the orders which appointed them. In the application they asked that the orders be removed, so that the family could go back to making decisions for Mr J in an informal way, as they had done for a number of years before the orders were made.

The Tribunal referred the application to the Public Advocate, asking that an investigator advocate from the office attend the hearing and advance Mr J's best interests.

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### **Investigations vs 'attend only' matters**

The majority of referrals the Public Advocate receives from the State Administrative Tribunal, ask that the Public Advocate conduct an investigation, provide a report to the Tribunal prior to the hearing and attend the hearing.

In some cases, the Tribunal asks only that the investigator advocate attend the hearing to advocate for the person's best interests, as they did in this case study.

In order to do this however, the investigator advocate will make enquiries with interested parties before the hearing, so they can gather information which may not be in the application. If these enquiries lead to the investigator advocate gathering significant information which is relevant to the hearing process, they will submit a short report to the Tribunal to summarise this important information.

While these referrals are called 'attend only' matters, the investigator advocate is required to do more than simply attend and advocate on behalf of the person.

In reviewing the application, the investigator advocate could see that there was no dispute that Mr J lacked capacity to make his own decisions and that lifestyle and financial decisions had been made by others over the course of his life.

The wording of the application however, gave rise to concerns about why the current guardians and administrators wanted the orders removed and whether this would be in Mr J's best interests, as it was clear he could not make decisions or advocate for himself.

The investigator advocate organised to meet with Mr J and his family at their home to discuss the application and their request.

At this meeting the family explained that when they had applied for the guardianship and administration orders, Mr J's mother, who was his primary carer, was unwell. The family had therefore applied for the orders so they were in place to prepare for the future, in the event of her death.

The family did not understand that when the orders were made, it meant Mr J's mother was no longer his decision-maker, because his siblings' authority as joint guardians and administrators took away that authority. This was causing problems as Mr J's mother was his primary carer and had always been the main decision-maker and contact for service providers. This informal process had always worked well and in Mr J's best interests.

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An example the family gave of how the orders were causing problems was when Mr J's mother took him to the doctor, she could not make treatment decisions. Instead, the joint guardians had to be contacted. Even though they had less awareness of Mr J's medical situation, they had to make his treatment decisions.

The investigator advocate also discovered the reasons behind the family not understanding what the impact of the orders would be. Firstly, they were under a great deal of stress at the time because of their mother's health condition. Secondly, the family was of a non-English speaking background and this had meant they did not fully understand all the information presented, or how the legislation worked.

### ***Information in languages other than English***

The Office of the Public Advocate has had some of its information sheets translated into other languages, which are available to download from the Office's website. Requests to have information translated to other languages can be directed to the office for consideration.

After meeting with the family the investigator advocate formed a view that the family had misunderstood the impact of the orders and that the orders were not assisting with decision making.

The investigator advocate also spoke with the Public Trustee for information about the administration order and how the young man's money had been managed. The information gathered was consistent with the information from the family and indicated that his money was being well managed and used in his best interests.

The investigator advocate was also able to see that the previous concerns the family had about Mr J's mother's health and her ability to remain his primary carer and decision-maker had been resolved, as she was well again.

The investigator advocate concluded that in the current circumstances, the 'less restrictive alternative', being the informal arrangement where Mr J's mother made his decisions, without the need for any formal guardianship or administration orders, should apply. These informal arrangements were working well before Mr J's mother became unwell and now that she was in good health again, they could continue once more.

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The investigator advocate submitted a short report to the Tribunal, in which they summarised the information they had gathered and their recommendation that the orders should be revoked and the informal arrangements continue.

### ***The concept of 'less restrictive'***

Section 4 of the *Guardianship and Administration Act 1990* sets out the six principles which the State Administrative Tribunal must observe in making orders.

One of these principles prevents the Tribunal from making a guardianship or administration order for someone with a decision-making disability, if their needs can be met in a less restrictive way.

A family member or friend making decisions in the best interests of someone in an informal way, is less restrictive than appointing that person (or someone else) as guardian and/or administrator.

At the Tribunal hearing the orders were revoked on the basis that there was no need for them to continue.

Through the investigator advocate's work with the family, they were also better informed and understood they could make applications to the Tribunal in the future, if the circumstances changed and the informal arrangements were no longer working.

### ***More information about informal decision-making processes***

There is information on the Office of the Public Advocate's website for parents and families preparing for the future, which explores the issues of informal processes and when there may be a need for a formal appointment. For more information go to [www.publicadvocate.wa.gov.au](http://www.publicadvocate.wa.gov.au) then click on 'Making decisions about the future'.

**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 2018, 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 suitable, willing and available 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 for particular functions, 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.

Of the 1,219 new investigations carried out during the year, allegations of abuse were made regarding 232 people. 135 of these people were 65 years of age or older. Of these alleged elder abuse cases, 84 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 - neglect

Mrs K was an 84 year old woman in the late stages of Alzheimer's disease. She lived in a granny flat attached to the home she jointly owned with her daughter. She required assistance with all activities of daily life and was unable to communicate verbally.

Before losing capacity, Mrs K made an enduring power of attorney and an enduring power of guardianship, appointing her daughter as her attorney and enduring guardian.

The Public Advocate was contacted by the WA Police, who had serious concerns for the safety and care of Mrs K, after they had attended her daughter's home on another matter. The attending police officer believed Mrs K was being seriously neglected.

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The Office of the Public Advocate started a community referred investigation and also made an urgent application to the State Administrative Tribunal, based on the concerns about Mrs K, rather than waiting for the outcome of the investigation. This decision was based on the Office's duty of care, given there was sufficient evidence that Mrs K was an extremely vulnerable individual with no means of communicating or protecting her own interests.

The investigator advocate contacted Mrs K's daughter and visited her and Mrs K at their home. The investigator advocate discovered that on the day police attended Mrs K's daughter's home, it was to investigate a sexual assault matter concerning a child of Mrs K's daughter (Mrs K's grandchild). Having just been made aware of this assault, Mrs K's daughter had reported it to police and was in an incredibly stressed and emotional state when police attended.

Mrs K's daughter advised that the lack of care being provided to her mother on that day was not representative of the level of care she normally received. However she also opened up about her own difficulty in meeting her mother's care needs and lack of knowledge about how or where to get support.

The investigation revealed a picture of a normally caring environment provided for Mrs K, but pointed to the fact that her daughter was experiencing carer stress and had progressively been struggling to adequately meet her mum's care needs, as the level of care she required continued to increase, while Mrs K's daughter was not engaging any care assistance.

Although she was initially reluctant to have the Office of the Public Advocate involved, by the end of the investigation, Mrs K's daughter admitted to the investigator advocate that she hadn't realised how much she was struggling before she had help to care for her mum.

### ***Advocacy role of investigator advocates***

An investigator advocate is always looking at the best interests of the proposed represented person.

If an investigator advocate identifies that extra information and support is all a family or friend needs to be able to provide support to the proposed represented person and that support is available, there may be no need for a guardian or administrator to be appointed.

Investigator advocates can provide relevant information and links to services as part of the investigation process.

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With the assistance of the Office of the Public Advocate, Mrs K's daughter was able to engage on-going carer respite and a range of in-home supports.

The investigation also looked into Mrs K's financial affairs to determine whether her daughter was acting appropriately and in her best interests as her attorney. Mrs K was in a comfortable financial position which was being managed by her daughter, in her best interests.

At the hearing, the investigator advocate recommended that Mrs K's daughter's appointment as her attorney and enduring guardian remain in place, as these appointments now appeared to be working in Mrs K's best interests.

Further to this, now that services were engaged, if there were any issues in the future, the service providers had on-going oversight and could assist Mrs K and her daughter as required.

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

## Case Study

### Financial elder abuse

Mr L was an Aboriginal man who had been diagnosed with dementia a number of years ago. He was living in residential care.

The manager of the facility where Mr L was living, made an application to the State Administrative Tribunal for the appointment of a guardian and administrator because the manager had been unable to make contact with any of Mr L's family and no one was available to make treatment decisions for him.

The application was referred to the Public Advocate to investigate and provide a report to the State Administrative Tribunal. In particular, the Tribunal sought information on who should be appointed to make decisions, if it was determined that a guardian and/or administrator should be appointed for Mr L and if possible, to gather Mr L's views about his situation.

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The facility manager included some details in the application about Mr L's family, including a family member the manager had been attempting to contact and who had been appointed Mr L's enduring power of attorney. The application also included information about Mr L being a renowned Aboriginal artist who generated money from the sale of his artwork.

It was not possible to gather Mr L's wishes as he was no longer able to communicate. In exploring Mr L's situation however, it was clear that he was well supported in his residential facility, where he could continue to live, but he needed a guardian to make his medical treatment decisions.

The issues with regard to administration were more complex as it was apparent Mr L should have received substantial income from the on-going sale of his artwork, but there seemed to be no clear process for how he could access the income.

Two significant issues arose for the investigator advocate. The first was that when the investigator advocate was eventually successful in contacting Mr L's attorney, they had decided they no longer wanted the role and appeared to have signed paperwork transferring the role to another person.

An attorney does not have the power to pass on their authority to someone else and therefore this 'substitute attorney' was not authorised to act as Mr L's attorney.

### ***Obligations and restrictions of an attorney***

Section 107 of the *Guardianship and Administration Act 1990*, sets out a list of things an attorney is expected to do. Within this list of obligations is the restriction that if the donor (person who appointed the attorney to act on their behalf) has lost capacity, the attorney cannot abandon the position. Nor does the attorney have the authority to choose someone to take over the role.

This is because the attorney has an obligation to protect the person's financial estate. Once the person has lost capacity they are not able to appoint someone else as their attorney.

The attorney must therefore apply to the State Administrative Tribunal for an order revoking the enduring power of attorney and an order appointing an administrator. The administrator would then take on the role of managing the person's financial affairs.

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The second issue the investigator advocate uncovered was that Mr L had an art agent who arranged the sale of his artwork and collected the funds. A process had been established for his attorney (previously the original attorney appointed by Mr L and at the time of the investigation, the unauthorised substitute attorney) to access funds from the agent for Mr L.

There seemed to have been limited oversight of this process and the investigator advocate identified concerns that the attorney was distributing this money to Mr L's extended family for their needs, rather than the money going to Mr L for his needs.

The applicant (the facility manager) was not able to find any other sources of income that Mr L was receiving. Although Mr L was receiving 24 hour residential care, he did not have the funds for any extra services such as a support worker who could take him on outings or help him to do art activities which he could no longer do alone.

As a result of the concerns raised about Mr L's finances, a section 65 order was made by the State Administrative Tribunal, appointing the Public Trustee to secure Mr L's estate, while the investigation continued and then a decision could be made at the final hearing.

### ***What is a section 65 order?***

Section 65 of the *Guardianship and Administration Act 1990*, is an emergency provision which enables the State Administrative Tribunal to appoint the Public Trustee as someone's administrator immediately, so that the administrator can work to secure their estate without the need for waiting for the entire Tribunal process to be finalised.

The reason for this provision is that in some circumstances, a person's financial security may be significantly at risk if measures aren't taken immediately. The investigator advocate may still be gathering sufficient evidence about the person's situation and capacity for example, which can be a timely process.

The on-going investigation revealed that Mr L's artwork sold for significant amounts, yet Mr L had little to show for this.

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As noted earlier, there appeared to be a long standing arrangement with Mr L's art agent for his attorney to access money on his behalf. This arrangement had been established by Mr L's original attorney and continued with his unauthorised attorney. The art agent did not consider this substitution of attorneys as a concern, or seek to clarify whether or not the authority was still valid.

The investigator advocate gathered information which indicated the 'attorney' accessed Mr L's finances and purchased items for themselves.

A further issue arose in relation to the commercial contract with the art agent for the sale of works. It was unclear whether this contract was operating in Mr L's best interests, given the contract was made between Mr L and the agent, but Mr L was no longer able to oversee the arrangement given his advanced dementia and inability to communicate.

The investigator advocate sought to discuss both the distribution of funds and contract with the art agent but they were not willing to discuss the financial situation.

The agent asked for the hearing to be adjourned to enable discussion with Mr L's family, as they said the family had been involved in Mr L's life in the past. The Tribunal agreed to the adjournment as Mr L's situation was stable and the section 65 order was protecting his estate.

At the final hearing there was no further information provided by the art agent or Mr L's family.

The Public Trustee attended the hearing in their role as administrator under the emergency provision of section 65 of the Act. They provided a report to the Tribunal recommending the on-going appointment of the Public Trustee as Mr L's administrator.

The investigator advocate recommended that the Public Advocate be appointed as Mr L's guardian with authority to make treatment decisions and consent to services. They also supported the on-going appointment of the Public Trustee as Mr L's administrator.

The Tribunal appointed the Public Trustee as Mr L's plenary administrator and the Public Advocate as his limited guardian.

**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 of Communities, Child Protection and Family Support 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 of Communities, 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 on-going care and support and possibly a substitute decision-maker on an on-going 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 the planning process to determine if there is a 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 2017/18 there were three 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 23 applications from the Department of Communities, Child Protection and Family Support were determined by the State Administrative Tribunal during the year, including one carried over from the previous year. The Tribunal scheduled hearings for a further three applications for consideration in the second half of 2018.

During the year the Public Advocate's appointment as guardian came into effect for 20 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 Trustee was appointed as administrator for all 20 of these young people. The Public Trustee was also appointed for two young people, where only an administrator was required.

One application for the appointment of a guardian and administrator by the Department was dismissed by the State Administrative Tribunal as there was insufficient evidence to overturn the presumption of the young person's capacity to make decisions. The principal investigator advocate's advice to the Department was consistent with the Tribunal's view.

In addition, there were another 15 cases where the Office will continue to be involved in leaving care planning meetings over 2018/19. In these cases, at 30 June 2018, staff from the Department of Communities, Child Protection and Family Support were still determining whether there was 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 were less restrictive alternatives in place which were 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.

## Case Study

### Leaving the care of child protection

The Public Advocate has a role in working with Department of Communities, Child Protection and Family Support. This work is in relation to young people in the Department's care, who have a decision-making disability and who are turning 18 and therefore leaving the care of the Chief Executive Officer (CEO) of the Department.

While a child is in the care of the CEO, there is a process for how decisions are made on their behalf, whether or not they have a decision-making disability, as decisions need to be made.

When a child turns 18, they are no longer in the care of the CEO.

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If such a young adult has a decision-making disability, there may be the need for a guardian and/or administrator to be appointed, to act as their substitute decision-maker. The Office of the Public Advocate and the Department of Communities, Child Protection and Family Support work together in these cases.

This collaborative work between the two agencies ensures that where guardianship and/or administration applications are required, this work is done prior to the young adult turning 18, so that the State Administrative Tribunal can make orders ahead of time, which come into effect on their 18<sup>th</sup> birthday.

This preparation is crucial as many young people in care who have a decision-making disability, have limited family support to assist with informal decision-making. Some of these young people may also be vulnerable to the influence of others as they turn 18, which might place them at risk of personal or financial abuse.

As these young adults leave care, they are also entitled to some on-going support from the Department. Having this in place as part of their future planning will assist in their long-term security.

### **B's story**

In the case of B, he came into care in his late teens, after a long-term placement with a relative. As B got older his disability caused some challenging behaviour and eventually the family member was unable to provide the care and support he needed. B was also engaging in some high-risk behaviour and coming into contact with the youth justice system.

It was important to preserve the family relationship, while ensuring B had appropriate care as he moved into his late teens.

When B went into care it was believed that he had a decision-making disability, however there was limited information about his formal diagnosis and he had not been linked with Disability Services, which is how B would access funding and support once he turned 18.

The Office of the Public Advocate's principal investigator advocate attended a number of the Department of Communities, Child Protection and Family Support's leaving care meetings regarding B. The principal investigator advocate explained the guardianship and administration process and discussed with staff from the Department and other parties, how orders may be of assistance in future decision-making.

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Some of the issues which were discussed regarding B included:

- legal matters – B had been charged with a number of offences for which he would need to appear in court
- future education and training – B was leaving school but wanted to go to TAFE (technical and further education)
- employment and services – B had identified an interest in volunteer work but would need support to be able to enter the workplace as a volunteer, with a view that this may lead to future employment
- support funding – it was necessary to have long-term supports for B as he had the goal of independent living, but would need support services to assist in learning the skills to achieve this goal. Planning with the National Disability Insurance Agency would be required to determine how these support needs could be met.

A fundamental principle of the *Guardianship and Administration Act 1990* is that the views and wishes of the represented person are taken into consideration where possible. Therefore the State Administrative Tribunal prefers that the person for whom guardianship and/or administration orders are being considered, attend the Tribunal hearing so their views and wishes can be heard.

In B's case however, he found legal processes and meetings incredibly stressful and did not want to attend the hearing. However, through the principal investigator advocate's involvement in the leaving care process, it was possible to guide the Department's case manager about what information the Tribunal would want, with regard to B's views and wishes. This enabled the case worker to gather information about B's views and present these to the Tribunal in B's absence.

The Tribunal was of the opinion that because of the complexity of issues confronting B, it was in his best interests to appoint the Public Advocate as his plenary guardian and the Public Trustee as his plenary administrator.

The orders were only made for two years, with the aim being to review the orders when B had had some time to develop and mature. The Tribunal suggested it may be possible to refine the orders in the future to give B more control over certain areas of his decision making, depending on his capacity and maturity.

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## **M's story**

M was a young woman with a diagnosis of Autism, who had been in the care of the CEO of the Department of Communities, Child Protection and Family Support since she was a young child.

When the Office of the Public Advocate's principal investigator advocate attended some leaving care planning meetings regarding M, it appeared that M's ability to make decisions and weigh up different options was improving.

M also had a supportive environment where she would be staying when she turned 18, with a range of support services engaged to assist her.

Of particular note, was the fact that M had managed to save a small sum of money over the years. There was some discussion about whether she needed an administrator or whether there was a less restrictive alternative.

In determining whether M needed a guardian and/or administrator appointed there were a number of factors to consider:

- M herself had demonstrated that she could save money and did not feel she needed an administrator
- M was supported by a family member who was willing to be a co-signatory to assist M in managing her money
- if the Public Trustee was appointed as M's administrator, she would have to pay fees
- M's ability to make her own decisions was improving as she matured.

The principal investigator advocate's submission to the State Administrative Tribunal noted that the road to independence and maturity is rarely travelled without making mistakes and this is a normal part of growing up.

It was the principal investigator advocate's view that M's wishes and desire for autonomy should be respected, as there was a less restrictive alternative to the appointment of a guardian and administrator, with her being able to make her own decisions with some family support.

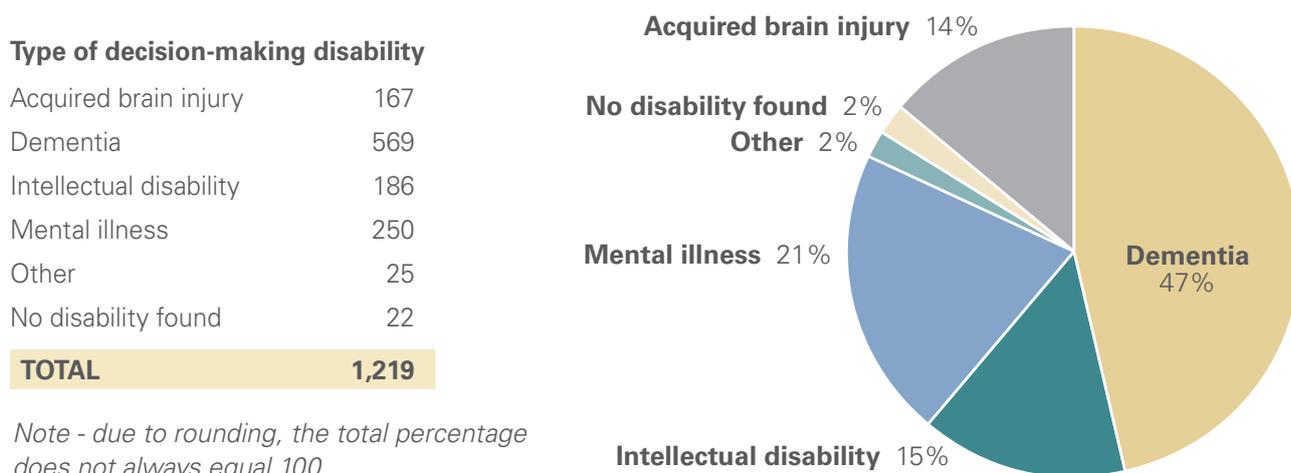
The Tribunal agreed with this view and did not appoint a guardian or administrator for M.

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

## Our Customers

Of the 1,219 new matters referred to the Public Advocate for investigation by the State Administrative Tribunal in 2017/18, 47 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 1,219 new matters, 52 per cent related to females and 48 per cent to males.

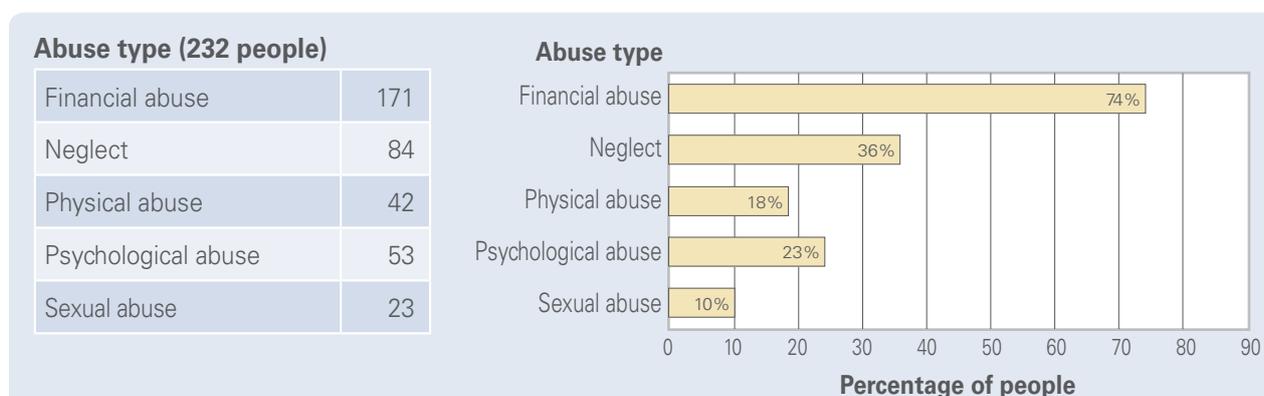
**Figure 3 Profile of new investigations by type of decision-making disability 2017/18**



Of the 1,219 new investigations carried out during the year, allegations of abuse were made regarding 232 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 74 per cent alleging financial abuse.

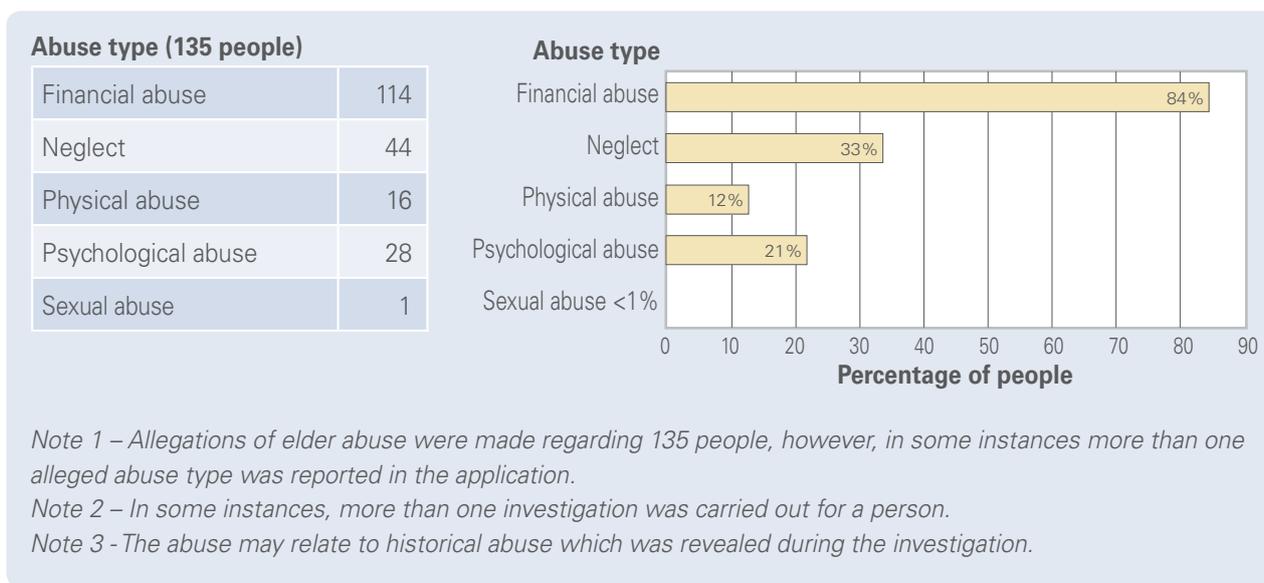
**Figure 4 Profile of new investigations alleging abuse by type of abuse 2017/18 (including statistics of elder abuse)**



Of the 232 people for whom abuse was alleged, 135 (58 per cent) were 65 years of age or older. These instances of alleged abuse are referred to as elder abuse.

Of these 135 cases of alleged elder abuse, financial abuse was the most common, having been reported in 84 per cent of these investigations.

**Figure 5 Profile of new investigations alleging elder abuse (aged 65 or older) by type of abuse 2017/18**



Of the 135 new investigations in 2017/18 where elder abuse was alleged, 23 involved a person of Aboriginal and Torres Strait Islander descent, representing 17 per cent. Financial abuse was the most common form of abuse, having been reported in 20 of the 23 cases (87 per cent).

**Figure 6 Profile of new investigations alleging elder abuse (aged 65 or older) by Aboriginality and Torres Strait Islander descent 2017/18**

Total new investigations alleging elder abuse 2017/18	Non Indigenous	Indigenous	Indigenous as percentage of total
135	112	23	17%

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

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 seven 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 2013/14 to 2017/18**

Year	Total	Non Indigenous	Indigenous	Indigenous as a percentage of total
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%
2017/18	1,219	1,089	130	11%

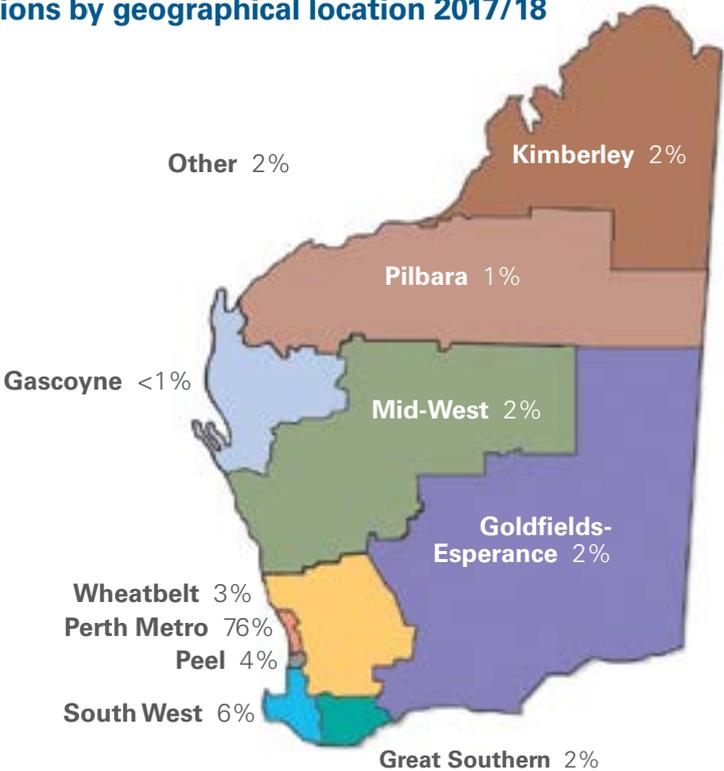
Note - Indigenous refers to clients of Aboriginal and Torres Strait Islander descent.

Of the 1,219 new investigations in 2017/18, 923 were carried out for people located in the Perth metropolitan area.

**Figure 8 Profile of new investigations by geographical location 2017/18**

**Geographical location**

Gascoyne	4
Goldfields-Esperance	22
Great Southern	31
Kimberley	20
Mid-West	28
Peel	53
Perth Metro	923
Pilbara	8
South West	68
Wheatbelt	41
Other	21
<b>Total</b>	<b>1,219</b>



<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 2017/18 there were 526 new appointments of the Public Advocate as guardian of last resort, compared to 487 in 2016/17, which is an increase of eight per cent.

At 30 June 2018, the Public Advocate had responsibility as guardian of last resort for 1,923 adults with a decision-making disability, compared to 1,738 at 30 June 2017, which is an increase of 11 per cent.

The Public Advocate had responsibility as the sole guardian for 1,843 of the total 1,923 represented persons as at 30 June 2018. In relation to the remaining 80 appointments of the Public Advocate, there were 73 represented persons on a guardianship order which appointed the Public Advocate and private guardian(s) with different functions. Five of the 80 had the Public Advocate and a private guardian (a family member) appointed with the same functions which therefore required them to jointly make decisions. Two of the 80 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 2,805 guardianship activities which related to the opening and closing of existing appointments as at 30 June 2017, 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 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.

To meet the needs of the Office's 325 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 on-going training and support to volunteers.

At 30 June 2018 there were 18 volunteers engaged in the community guardianship program. Of these, 15 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.

One of the 18 volunteers was taking the time to get to know a represented person they had been matched with, one was considering whether they wanted to be matched with another represented person in the program, after the person for whom they were appointed guardian had died and another volunteer was taking part in the initial induction training, before being matched with a represented person.

## Advocacy at review hearings for guardianship orders appointing the Public Advocate

Delegated 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 2017/18, the guardianship team attended 540 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 2017/18 delegated guardians and investigator advocates made 29 trips to regional areas.
- In some cases, the Public Advocate had to determine the suitability of accommodation options for represented persons living outside of Western Australia.
- The issues surrounding decisions which delegated 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 delegated 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.

- Delegated guardians may experience pressure to locate services, seek funding and coordinate 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 delegated guardians and represented persons and/or their relatives. Delegated guardians must balance the rights of a represented person to remain at home and their need for increased support which may necessitate a move to residential care.
- In some cases the Public Advocate has been required to consent to 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, delegated guardians have 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, delegated 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 seeks Police involvement (usually via the Sex Crime Division), referral to the Sexual Assault Resource Centre (as per the memorandum of understanding which has been developed between the Office and 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. These groups 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 Department of Communities, Disability Services; the Corrective Services division of the Department of Justice; Legal Aid; the Mental Health Commission and the Department of Health's Mental Health Services.

At 30 June 2018, the Public Advocate was appointed as guardian for ten mentally impaired accused people, two of whom were residents at the Disability Justice Centre.

- The Public Advocate continues to undertake the legal functions of 'next friend' and 'guardian *ad litem*' in relation to civil legal proceedings. This often involves a delegated guardian providing instructions to a lawyer during protection proceedings taken by the Department of Communities, Child Protection and Family Support 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

### End of life decision-making

At 78 years old, Mrs C lived in an aged-care facility where she enjoyed listening to her favourite music and sitting in the courtyard garden. She was very settled at the facility and enjoyed the attention of staff.

Mrs C's dementia had progressed to a stage where she was unable to provide consent for her medical treatment decisions. Unfortunately, due to the estrangement of her husband and son she didn't have anyone in her life who could take on the role of making her treatment decisions. As a result, the State Administrative Tribunal had appointed the Public Advocate as Mrs C's limited guardian with the authority to make medical treatment decisions.

Soon after the guardianship order was made, Mrs C's delegated guardian met her at the aged-care facility to introduce herself and find out whether or not Mrs C was able to talk about her health care issues and the type of medical treatment she would and would not want.

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### ***What is a delegated guardian?***

When a person with a decision-making disability is in need of a guardian, but the State Administrative Tribunal is unable to appoint a family member or friend of the person, who is suitable, willing and available, the Public Advocate is appointed as a last resort.

The Public Advocate then delegates her authority as guardian to a team of people who work for the Office of the Public Advocate. These people are known as **delegated guardians**. They do the day-to-day decision making under the Public Advocate's delegated authority.

Some decisions however, such as palliative care decisions, require the Public Advocate's specific approval.

It quickly became clear to the delegated guardian that Mrs C could not understand the delegated guardian's role as her decision-maker, but she was very happy to have a visitor. While she was unable to express her wishes in relation to her future medical care, it was clear to the delegated guardian that Mrs C felt comfortable in her care facility and trusted her care staff.

The delegated guardian was able to meet with Mrs C's treating doctor and the Director of Nursing to get an understanding of her current medical treatment and provide consent to on-going medications, health check-ups and a care plan.

About three months later, the facility contacted Mrs C's delegated guardian because the doctor had detected two fast growing, aggressive skin cancers on Mrs C's neck. The delegated guardian provided consent for Mrs C to be admitted to hospital so they could investigate the lesions further. Biopsies revealed that the skin cancers needed to be surgically removed.

Mrs C tolerated the surgery reasonably well, but she was agitated while she was in hospital because of the change in environment.

While Mrs C was in hospital, the delegated guardian contacted her husband and son to let them know about Mrs C's current medical situation. As a result, both her husband and son visited her in hospital, which Mrs C enjoyed.

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Both her husband and son were happy to leave the delegated guardian making decisions, knowing they would be contacted if there was any change in her medical condition.

It appeared that Mrs C had recovered from her hospital procedures, however, within six months more cancerous skin lesions were detected and on further exploration she was diagnosed with secondary cancer sites in some of her internal organs. The delegated guardian liaised with the treating doctor and it was agreed that Mrs C would be referred for a palliative care assessment.

The specialist palliative assessment established that Mrs C's condition was far advanced, there was no hope of recovery and further surgery was not recommended as it would be futile. The team was of the opinion that Mrs C should be treated palliatively and that it was possible to do so in her facility.

### ***Palliative care decisions***

In 2017/18 the Public Advocate consented to palliative care for 120 people for whom she was appointed guardian with the authority to make treatment decisions.

The Public Advocate consents to palliative care when it is recommended by the person's treating health professional, is in the person's best interests and to the extent possible, the views of the person and their family have been taken into account.

The delegated guardian discussed the palliative assessment with Mrs C's family, who agreed that Mrs C should be kept comfortable and pain-free and that no further surgeries should be contemplated if they would have no real benefit for her.

The delegated guardian then discussed the palliative care team's recommendations with the Public Advocate, who consented to the palliative approach, which included that her care and treatment be provided at her aged-care facility. The focus of her treatment was to keep Mrs C comfortable and to avoid transferring her to hospital unnecessarily as it was distressing for her.

**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 2017/18, delegated guardians from the Office of the Public Advocate were involved in 540 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 540 reviews, 146 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:

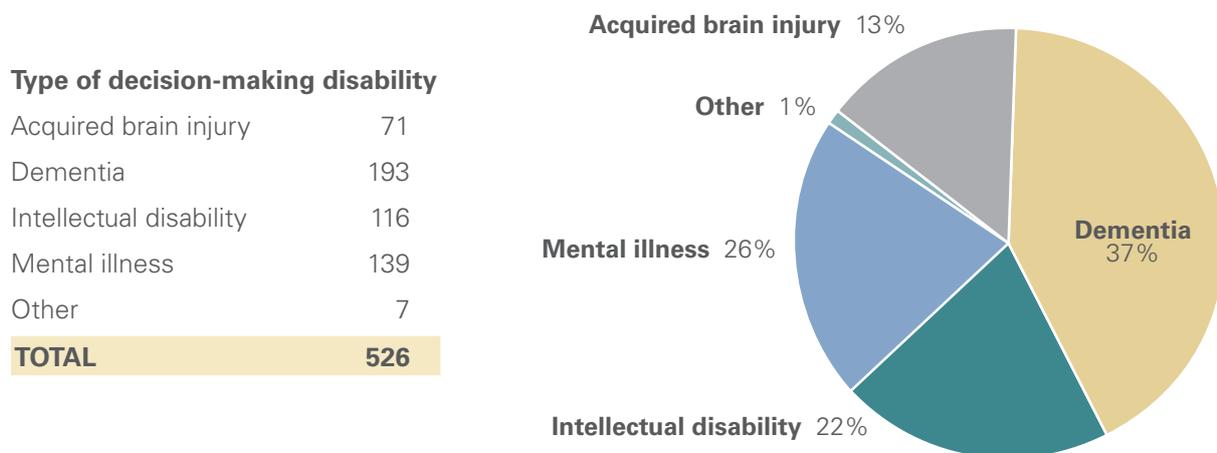
- a less restrictive alternative being found
- another suitable, willing and available decision-maker having been identified, such as a family member or friend
- the person regaining capacity
- the issues leading to the Public Advocate's appointment having been resolved
- the guardianship order having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

A total of 340 guardianship orders ceased during 2017/18, 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 526 new appointments in 2017/18, 37 per cent had dementia, 26 per cent a mental illness, 22 per cent an intellectual disability and 13 per cent had an acquired brain injury. Of the 526 new appointments, 51 per cent were male and 49 per cent were female.

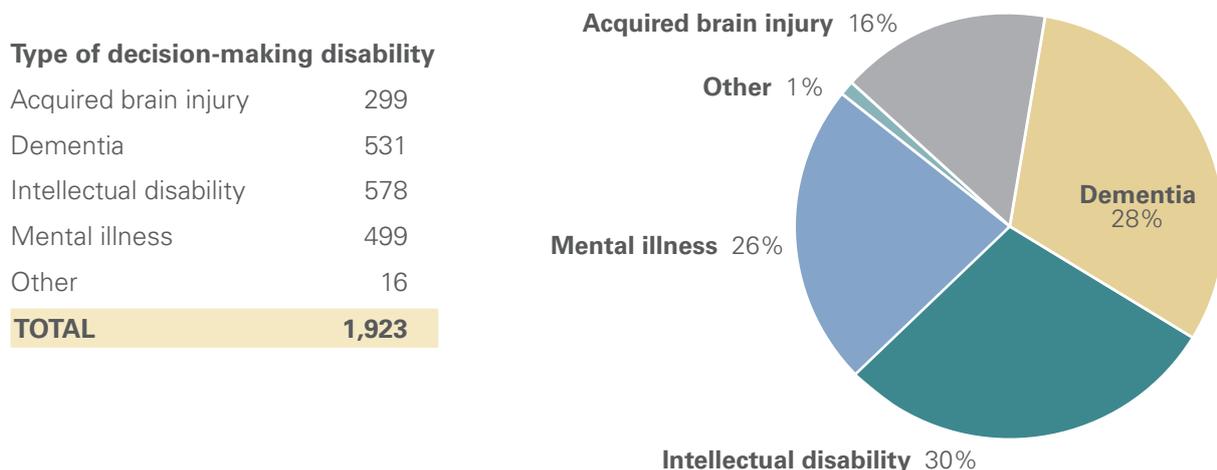
**Figure 9 Profile of new guardianship orders appointing the Public Advocate by type of decision-making disability 2017/18**



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

Of the total 1,923 appointments at 30 June 2018, 30 per cent of the people had an intellectual disability, 28 per cent dementia, 26 per cent a mental illness and 16 per cent an acquired brain injury. Fifty four per cent of the people were male and 46 per cent were female.

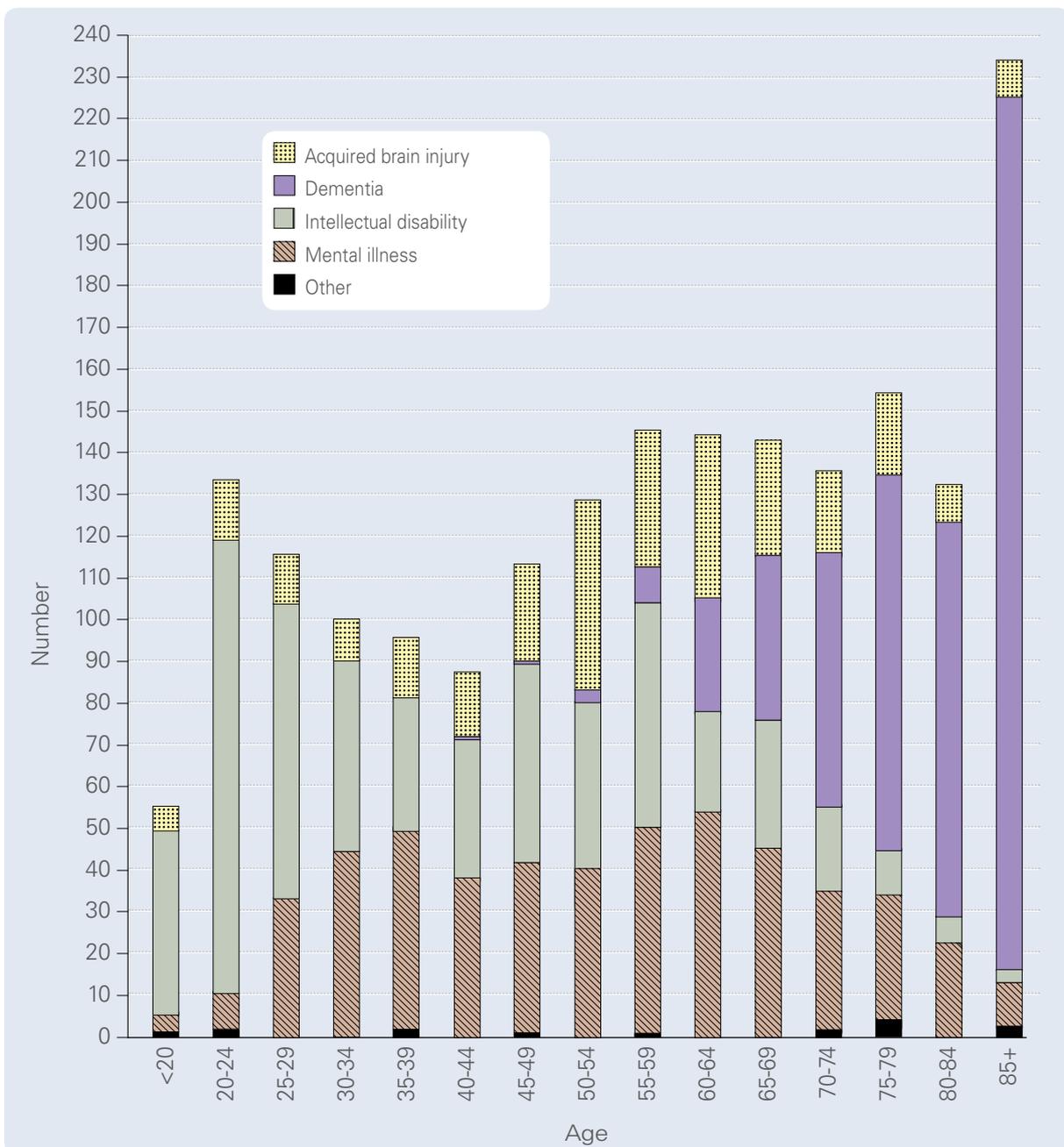
**Figure 10 Profile of all guardianship orders appointing the Public Advocate by type of decision-making disability as at 30 June 2018**



At 30 June 2018, the Public Advocate was guardian of last resort for 366 adults aged 80 years and over, who accounted for 19 per cent of all guardianship appointments. Of these 366 adults, 83 per cent had dementia and 65 per cent were female.

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 2018**



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 2018, 84 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 2018, 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, 75 per cent included the authority to make decisions regarding with whom they were to live.

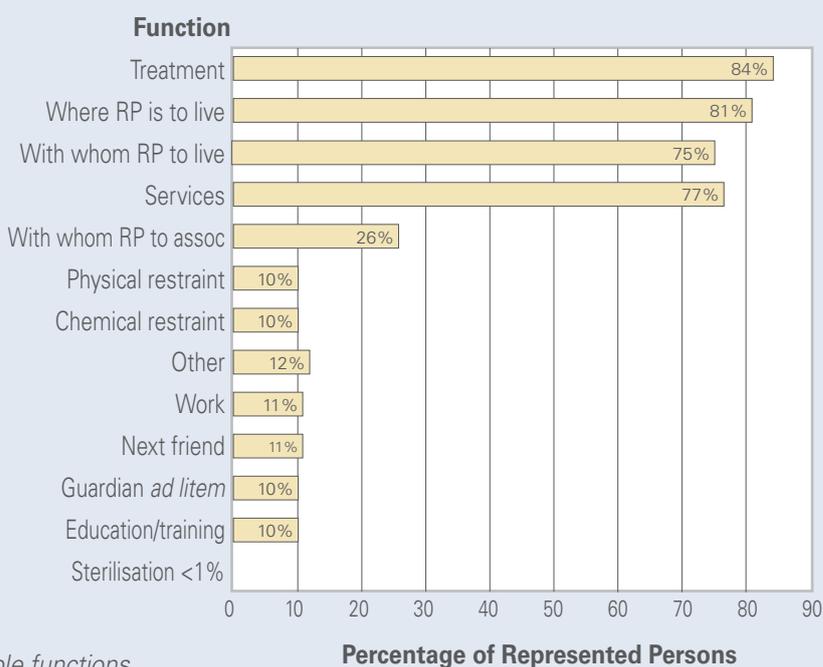
The high number of appointments regarding decisions about where and with whom a represented person lives reflects issues regarding appropriate supported accommodation for people with a decision-making disability. In many cases there is a need to consent to residential care on behalf of people with dementia, 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 Legal Aid WA; and to advocate on the person's behalf in connection with matters concerning the Mentally Impaired Accused Review Board, the Prisoners Review Board, the Department of Communities, Disability Services or the National Disability Insurance Scheme.

**Figure 12 Functions for which Public Advocate has been appointed for all guardianship orders as at 30 June 2018**

**Function (1,923 Represented Persons)**

Treatment	1,623
Where RP is to live	1,549
With whom RP to live	1,447
Services	1,485
With whom RP to associate	495
Physical restraint	193
Chemical restraint	192
Other	232
Work	218
Next friend	203
Guardian <i>ad litem</i>	193
Education/training	193
Sterilisation	1

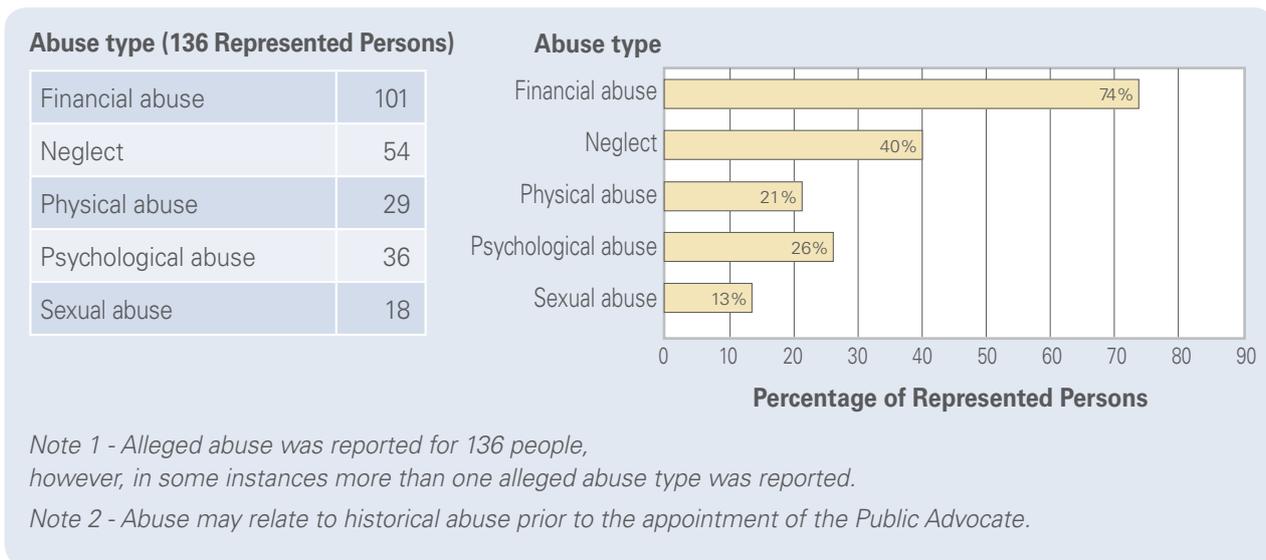


Note 1 - RP = represented person.

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

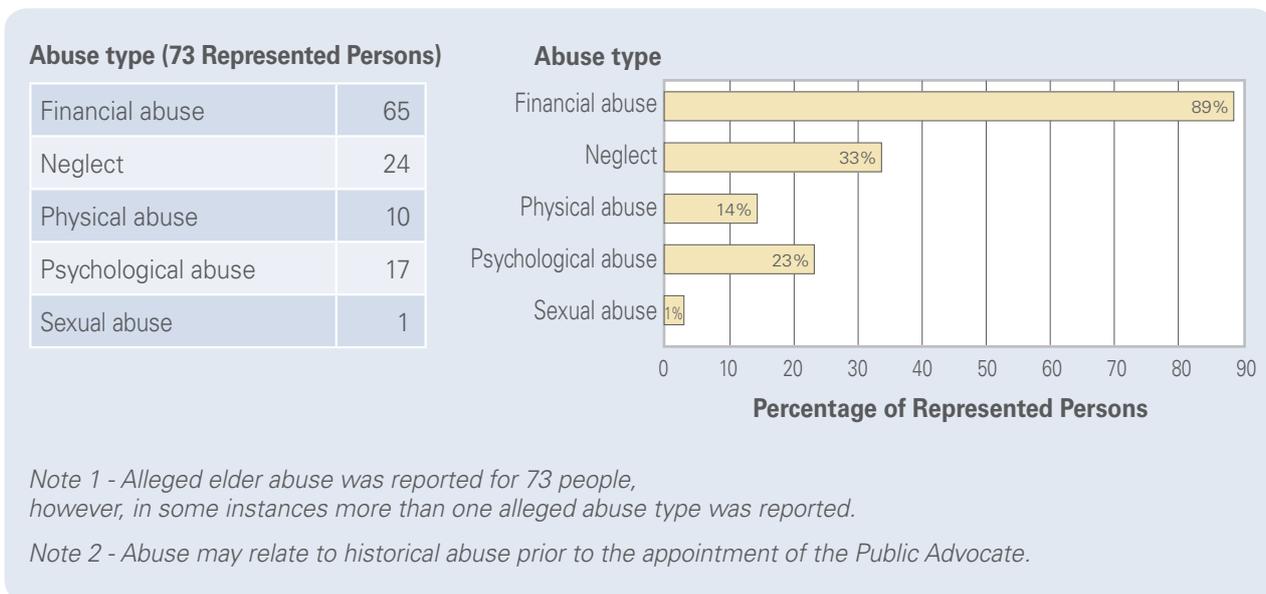
Allegations of abuse were a factor for 136 represented persons or 26 per cent of the 526 new guardianship orders appointing the Public Advocate in 2017/18. In some cases, more than one type of abuse was reported. The most commonly reported form of abuse was financial, having been reported in 74 per cent of cases alleging abuse.

**Figure 13 Profile of new guardianship orders appointing the Public Advocate by type of alleged abuse 2017/18 (including elder abuse)**



Of the 136 represented persons for whom abuse was alleged, 73 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 89 per cent of the 73 cases.

**Figure 14 Profile of new guardianship orders appointing the Public Advocate by type of alleged elder abuse (aged 65 or older) 2017/18**



Of the 73 new appointments of the Public Advocate as guardian in 2017/18 where elder abuse was alleged, 14 were for a person of Aboriginal and Torres Strait Islander descent, representing 19 per cent. Financial abuse was the most common form of abuse, having been reported in 13 of the 14 cases (93 per cent).

**Figure 15 Profile of new guardianship orders appointing the Public Advocate where elder abuse (aged 65 or older) was alleged, by Aboriginality and Torres Strait Islander descent 2017/18**

Total new orders alleging elder abuse 2017/18	Non Indigenous	Indigenous	Indigenous as percentage of total
73	59	14	19%

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

## Case Study

### Elder abuse

Mr D was a 65 year old man, living alone in his long-term family home. He was experiencing short-term memory problems, as a result of early dementia and his cognitive capacity had worsened after a debilitating stroke that had left him with a left-sided weakness to his body.

While Mr D was in hospital following his stroke, the hospital social worker made an application to the State Administrative Tribunal for the appointment of a guardian. At the time of the Tribunal hearing, Mr D’s daughter did not want to be appointed as her father’s guardian as she felt overwhelmed by his current health and rehabilitation issues.

As a result, the Public Advocate was appointed as Mr D’s limited guardian to make decisions on his behalf regarding his medical treatment, accommodation and service needs.

A while later, Mr D’s delegated guardian discovered that Mr D’s daughter and her partner had moved into Mr D’s home to help with household management and to provide him with some support.

Mr D seemed happy with the arrangement and at first, it appeared to be a good outcome as he would get more help and support at home. However, Mr D’s daughter and her partner quickly became unreceptive to the delegated guardian’s involvement and they cancelled Mr D’s services that had provided him with showering and medication support.

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The delegated guardian was advised by Mr D's daughter that everything was fine and that she would be in touch if she needed any help with Mr D.

As a precaution, the delegated guardian arranged to do a home visit to check how things were being managed without the extra support services.

Before the visit however, Mr D's General Practitioner phoned the delegated guardian because she had just met with Mr D and his daughter in her surgery.

The GP had asked Mr D and his daughter to wait in the reception area outside her office after their appointment, so that she could make a call. She explained to the delegated guardian that Mr D was in a lot of pain and appeared to have sustained a broken arm at least a week ago and that it had been left untreated and therefore required medical attention.

The GP was concerned as Mr D's daughter could not adequately explain what had happened and why medical help hadn't been sought sooner for her father.

The delegated guardian gave immediate consent for an ambulance to be called to take Mr D to hospital. The hospital admitted Mr D and the delegated guardian consented to x-rays and subsequent treatment for his broken arm.

After further assessments of Mr D's health and his family circumstances, the Aged Care Assessment Team recommended that Mr D's care needs could be best met in an aged-care facility, especially as there was evidence of neglect at home.

The delegated guardian spoke to Mr D and he agreed that he would like to try living in an aged-care facility to get more support and to be away from his daughter who he admitted had a significant drinking problem and was often unpleasant to him.

Against the wishes of Mr D's daughter, the delegated guardian consented to Mr D being transferred from hospital to a care awaiting placement bed and then a permanent placement in an aged-care facility.

Throughout this, the delegated guardian liaised with the Public Trustee, who was Mr D's administrator, regarding the changes to his accommodation, to ensure his financial affairs were in order. The trust officer eventually had to take steps to have Mr D's daughter and her partner removed from Mr D's property when they refused to pay for rent or utilities, as Mr D's estate had to be protected and his money used for his care and support needs.

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

Of the 526 new appointments of the Public Advocate as guardian in 2017/18, 77 were for a person of Aboriginal and Torres Strait Islander descent, representing 15 per cent. This shows an overrepresentation of Indigenous adults, given the State's Indigenous population is only three per cent<sup>10</sup>.

**Figure 16 Profile of new guardianship orders appointing the Public Advocate by Aboriginality and Torres Strait Islander descent from 2013/14 to 2017/18**

Year	Total	Non Indigenous	Indigenous	Indigenous as a percentage of total
2013/14	340	297	43	13%
2014/15	423	379	44	10%
2015/16	468	409	59	13%
2016/17	487	406	81	17%
2017/18	526	449	77	15%

*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 17 Profile of all guardianship orders as at 30 June, appointing the Public Advocate by Aboriginality and Torres Strait Islander descent from 2013/14 to 2017/18**

Year	Total	Non Indigenous	Indigenous	Indigenous as a percentage of total
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%
2017/18	1,923	1,598	325	17%

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

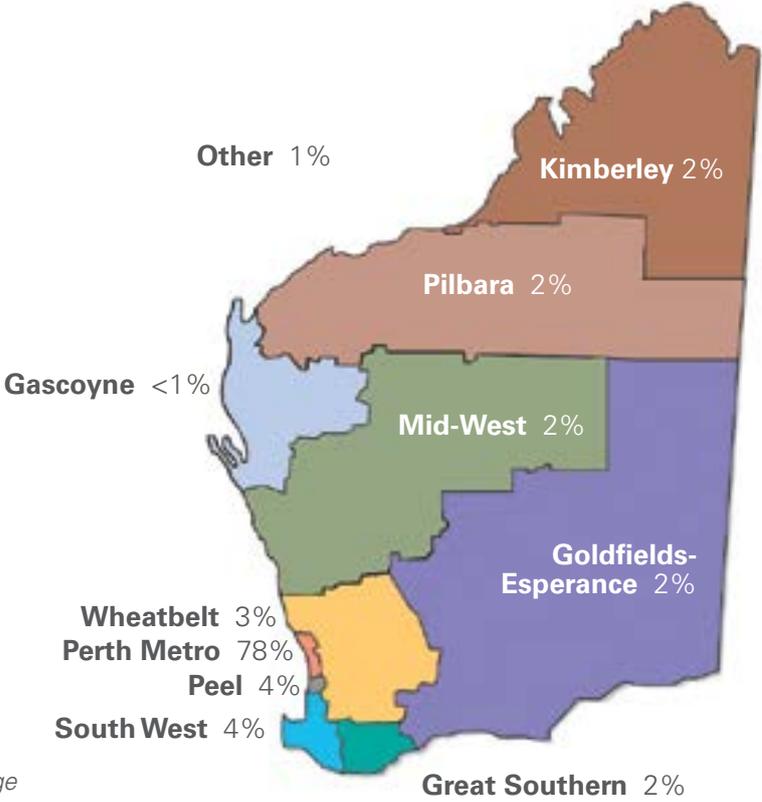
<sup>10</sup> Australian Bureau of Statistics 2016 Census: Aboriginal and/or Torres Strait Islander Peoples QuickStats, [http://www.censusdata.abs.gov.au/census\\_services/getproduct/census/2016/quickstat/IQS5](http://www.censusdata.abs.gov.au/census_services/getproduct/census/2016/quickstat/IQS5)

At 30 June 2018, 78 per cent of all appointments of the Public Advocate were for people living in the Perth metropolitan area.

**Figure 18 Profile of all guardianship orders as at 30 June 2018, appointing the Public Advocate by geographical location**

**Geographical location**

Gascoyne	3
Goldfields-Esperance	35
Great Southern	47
Kimberley	48
Mid-West	46
Peel	70
Perth Metropolitan	1,492
Pilbara	30
South West	78
Wheatbelt	56
Other	18
<b>Total</b>	<b>1,923</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 after office hours, 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 2017/18 delegated guardians took approximately 1,075 after hour calls which took approximately 360 hours.

## Case Study

### **Making complex decisions**

Ms E was an 81 year old woman living in her own home, with a range of support services in place. She had been diagnosed with dementia but was managing at home until she had a fall and was admitted to hospital.

The hospital social worker attempted to find family who could consent to Ms E's on-going medical treatment, but was unable to make contact with anyone.

As well as the need for someone to make on-going treatment decisions, the treating health professionals didn't feel they could discharge Ms E to return to her home once she was well enough, as her care needs were assessed as being higher than what in-home support services could provide to her living alone.

The social worker made an application to the State Administrative Tribunal for the appointment of a guardian. The Tribunal then requested that an investigator advocate from the Office of the Public Advocate attend an urgent hearing.

The investigator advocate and social worker were the only interested parties to attend the Tribunal hearing, as they had not been able to locate any of Ms E's family or friends.

The Tribunal appointed the Public Advocate as Ms E's guardian, with the authority to make decisions about her medical treatment, where and with whom she lived, who she had contact with and what services she received. The Public Trustee was also appointed as Ms E's administrator to manage her finances.

Shortly after the Public Advocate was appointed, Ms R who was a friend of Ms E's contacted the delegated guardian to enquire about Ms E. Ms R was in Europe, having left Perth before Ms E was admitted to hospital. She had been trying to make contact with Ms E, but didn't know she was in hospital or that there had been a Tribunal hearing scheduled. From that point on, Ms R made regular contact (from Europe) with the delegated guardian, regarding Ms E's welfare.

The delegated guardian worked with Ms E, the hospital social worker and an aged-care facility. Ms E was soon discharged from hospital and moved in to the facility.

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A few weeks later, the delegated guardian was contacted by the facility manager who was concerned about Ms E's apparent plans to move to Europe with Ms R. Ms R had flown to Perth to visit Ms E, after Ms E had apparently phoned her and asked her to come and visit.

The delegated guardian spoke with Ms R who explained her plans to move Ms E to Europe so they could live together. Ms R explained to the delegated guardian that they had been in a relationship for over 30 years, but that due to family commitments, she had gone back to Europe for a few months. Now that her family commitments had been settled, she planned to move Ms E to Europe with her.

The delegated guardian had to establish whether a relationship existed between Ms E and Ms R, which was difficult given Ms E's dementia. The fact that Ms E and Ms R's same-sex relationship had been concealed from family for a number of years, added to this already difficult task.

The delegated guardian received an email from a mutual friend of Ms E and Ms R's. The friend confirmed Ms R's story that the two women were in a long-term relationship. She had been friends with the two women for almost 15 years, in which time she said they had lived together and been in a relationship.

The delegated guardian also visited Ms E at the facility. The delegated guardian showed Ms E some photographs that Ms R had sent. Ms E immediately recognised Ms R and explained that she was her partner and she was moving to Europe with her. From the photos, she also recognised herself and their mutual friend who had emailed the delegated guardian.

The delegated guardian also received a phone call from Ms E's brother who lived overseas. He confirmed the women had been in a relationship for some 30 years and that the relationship had been concealed from family, particularly from Ms E's mother. Ms E's brother also gave the delegated guardian the contact details for another long-term, mutual friend of Ms E and Ms R's.

When the delegated guardian tried to make contact with the mutual friend, the friend's daughter explained that her mother was in her nineties and in the advance stages of dementia and therefore unable to help. However, she confirmed that Ms E and Ms R were in a relationship, having spent time with the women and her mother throughout her childhood. She also confirmed details about Ms E and Ms R's shared history of living in different cities around Australia and overseas, which matched Ms R's account of their life together.

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Having established that a relationship did exist between Ms E and Ms R and that Ms E wanted to move to Europe with Ms R, the delegated guardian needed to determine whether Ms E was physically fit to fly to Europe and whether she would be adequately supported if she moved from the aged-care facility and from Australia.

The delegated guardian liaised with Ms E's trust manager from the Public Trustee, who confirmed Ms E would still receive her pension living overseas, however this was only for a certain period of time. The Trust Manager would continue to work with Centrelink to secure her pension.

Ms R provided the delegated guardian with documents to show the property she owned in Europe where Ms E would live, the vehicle which was suitable for her transportation, the medical and support services that would be in place for her as well as Ms E's financial situation, given she would be responsible for Ms E, other than her small pension.

The delegated guardian then put all of this information together and presented the Public Advocate with a proposal for Ms E to move to Europe to live with Ms R. The Public Advocate approved the proposal and the delegated guardian was able to oversee the move.

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

# Interagency Collaboration and Policy Development

The Office of the Public Advocate works with the government, community and private sectors in contributing to the development of 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 regarding 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 through the Commonwealth agency, the National Disability Insurance Agency (NDIA) and the transition from the State-delivered scheme (the Western Australian National Disability Insurance Scheme (WA NDIS)) to the National scheme (the NDIA) and the impact of this transition on the Office of the Public Advocate and the people the Public Advocate represents, is detailed in the 'Significant Issues' section of this report.

### People with exceptionally complex needs

With the roll-out of the National Disability Insurance Scheme through the WA NDIS, the People with Exceptionally Complex Needs (PECN) project formally ended on 30 June 2017.

Previous annual reports of the Public Advocate have documented the effectiveness of the PECN model which significantly improved interagency collaboration and coordination of services and encouraged agencies to use existing resources in innovative and creative ways to respond to the needs of a small and challenging group of adults with exceptionally complex needs.

The Public Advocate was appointed guardian for almost all of the participants of PECN, who had 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.

The PECN interagency executive committee was utilised in a new collaborative approach known as the Adults with Exceptionally Complex Needs interagency executive committee. The new committee started on 1 July 2017 and includes senior officers from the Department of Communities, Disability Services and Housing divisions, the Mental Health Commission, the Department of Health's Mental Health Services and the Department of Justice's Corrective Services and Office of the Public Advocate.

These agencies continued to work together to identify and resolve barriers for adults with exceptionally complex and multi-layered needs, for whom the existing service systems were not working.

One of the committee tasks is to provide advice and observations to the Department of Communities, Disability Services' Intensive Support Practice Leader regarding complex cases which may be brought to the committee's attention through the Risk Intensive Support Coordinators' enquiries to that position. In addition, the committee receives a quarterly update regarding participation in the Risk Intensive Support (RIS) Coordination program.

As at 30 June 2018, 54 adults in total were being assisted through the RIS Coordination program. The Public Advocate was appointed guardian for 23 of the 54 adults and in relation to another four participants, the Public Advocate's advocacy and investigation team were involved in applications to the State Administrative Tribunal, for the appointment of a guardian and administrator.

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

The Young People with Exceptionally Complex Needs (YPECN) project was established in April 2012, by the then Department for Child Protection, the Disability Services Commission and the Mental Health Commission. The Public Advocate was included as a member of the interagency executive committee for YPECN when it started in 2012 because of the Office's involvement and collaboration with the Department of Communities, Child Protection and Family Support, to assist the transition of young people out of State care, who may need a guardian and/or an administrator appointed when they turn 18.

The YPECN project also includes senior representatives from the Department of Communities, Housing, the Department of Health's Child and Adolescent Mental Health Service and Youth Mental Health Outreach Service, the Department of Justice and the Department of Education.

There are generally between 11 and 13 participants involved with the YPECN program at any one time.

At 30 June 2018, two of the young adults involved in the program had orders from the State Administrative Tribunal which appointed the Public Advocate as guardian and the Public Trustee as administrator, which came into effect when they turned 18 years old. Another young person in the program for whom the Public Advocate was appointed, left the program during the year because their situation became more stable following their transition from State care.

The Public Advocate was also involved in an application by a service provider, for the appointment of a guardian and an administrator for one young person with highly complex needs, who turned 18 years of age at the end of 2017. This young person however, left the YPECN program before they turned 18 years old.

Over the year, the level of support provided by this project was invaluable to a number of highly vulnerable young people, who needed 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 within the community consists of a large and growing number of people who are 65 years of age 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 and 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 an investigation, through enquiries 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 (APEA WA). This interagency alliance was established to find ways to raise awareness of and prevent elder abuse. The Alliance’s *Elder Abuse Protocol: Guidelines for Action* was revised in late 2017 by Advocare and Dr Barbara Blundell of Curtin University, with funding from the Department of Communities and contributions from member agencies.

The Office also held two education sessions to mark World Elder Abuse Awareness Day on 14 June 2018, alongside other events promoted by APEA WA.

## 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 2017/18, including:

- Submission to the Parliamentary Joint Select Committee on End of Life Choices and appearance before the committee by the Public Advocate on 27 February 2018.
- Submission to the Legislative Council’s Select Committee into Elder Abuse on 10 November 2017 and appearance before the committee by the Public Advocate and Manager Advocacy Investigation and Legal on 26 March 2018, as well as responding to further enquiries from the committee.
- Assisted the Director General, Department of Justice with the Council of Attorneys-General working group which is considering the recommendations of the Australian Law Reform Commission’s inquiry ‘*Elder Abuse - A National Legal Response*’ in conjunction with the Strategic Policy branch of the Department of Justice, the Department of Communities and other agencies.

- On-going contribution to the Australian Guardianship and Administration Council's project work on elder abuse which was funded by the Commonwealth Attorney-General's Department and in which the New South Wales Civil and Administrative Tribunal and the Office of the Public Advocate (Victoria) have the lead roles in project management.
- Further input regarding the implementation of the statutory review of the *Guardianship and Administration Act 1990* tabled in Parliament in December 2015, including assistance to the drafting instructor from the Department of Justice as required.
- Continued work between the Office of the Public Advocate and the Department of Communities, Disability Services, particularly with regard to providing consent for 149 represented persons for whom the Public Advocate is appointed guardian, who are transitioning from the WA NDIS to the national NDIS from 1 July 2018.
- Continued work with the Commonwealth National Disability Insurance Agency with regard to the implementation of the National Disability Insurance Scheme.
- Regular meetings were held between the Office and the Chief Psychiatrist with regard to issues arising under the *Mental Health Act 2014*.
- Alliance for the Prevention of Elder Abuse: continued participation including input into the revision of the '*Elder Abuse Protocol: Guidelines for Action*' document.
- Collaboration with colleagues from the Department of Health in order to utilise goals of care planning documents and adapt them for use in the Office, in order to continue to adopt emerging and better practices in palliative care decision-making.
- Advance Care Planning Consortium: continued membership in this group which consists of representatives from government and non-government agencies who want to raise the awareness and understanding of advance care planning in Western Australia.
- In conjunction with the State Administrative Tribunal and the Public Trustee, the development of an electronic education package for electoral officers, to better inform them about the guardianship and administration system, the role of the three agencies and to provide points of reference when electoral officers are assisting constituents with guardianship and administration related enquiries.

## Community Education

The Office of the Public Advocate 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 written and other material accessible to the community and service providers in a variety of formats and languages
- providing an advisory service which service providers and community members can access over the phone, in-person or in writing
- 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 2017/18, the Office delivered a total of 22 education sessions to community members and professionals from the health, mental health, disability, aged-care and legal sectors. The Office also participated in one large exhibition during the year, targeted at seniors and relevant service providers.

Eleven of the education sessions were tailored to the needs of community members and the other 11 were specifically tailored for service providers.

Nineteen of the sessions were delivered in the Perth metropolitan area, with four of these sessions also being available for people to attend via video conference link, enabling people in regional areas to participate. One session was delivered in Bunbury, one in Geraldton and another in the Peel region. All of the sessions were held in accessible venues.

The 11 community member sessions comprised:

- four joint sessions with the Public Trustee for newly appointed private administrators, who were interested in information and advice about their role and responsibilities
- two sessions with the Palliative Care Network, as part of two larger advance care planning information seminars for seniors wanting to prepare for their future
- one talk to a group of carers who were interested in what planning they were able to do for the person they care for, as well as information on planning for their own future
- two seminars for residents at retirement villages who were interested in making enduring powers of attorney and enduring powers of guardianship

- one seminar for community members who wanted to find out how they could protect themselves and others from elder abuse, including through the making of enduring powers of attorney and enduring powers of guardianship, as part of World Elder Abuse Awareness Day 2018.

The 11 service provider sessions comprised:

- two seminars to educate Justices of the Peace about the proper completion, witnessing and operation of enduring powers of attorney, enduring powers of guardianship and advance health directives, to assist in their role when witnessing these documents and also for their own personal information
- four talks for staff at disability agencies, one talk for staff at a community legal service and one session for mental health staff, who were all interested in improving their knowledge of the guardianship and administration system, the role of the Office of the Public Advocate, the process of applying for guardianship and administration orders and the proper completion and operation of enduring powers of attorney, enduring powers of guardianship and advance health directives (two of these talks were available to staff located in regional areas and other metropolitan sites, who linked in via video conference)
- two half-day seminars for health professionals, presented in conjunction with the Department of Health and the Public Trustee as part of Advance Care Planning Day 2018 (both of these seminars were available to health professionals located in regional areas and other metropolitan sites, who linked in via video conference)
- one seminar for service providers who wanted to find out how they could protect clients from elder abuse, as part of World Elder Abuse Awareness Day 2018.

The Office was involved in the Seniors Recreation Council of WA's 'Have a Go Day' exhibition, with a shared stand with the Department of Health and the Public Trustee.

This shared exhibition stand gave almost 700 community members and service providers in attendance, the opportunity to talk to staff from the Office of the Public Advocate about enduring powers of attorney, enduring powers of guardianship, applications for guardianship and administration and they were able to take away information and publications for colleagues, clients, family and friends.

Attendees were also able to talk to staff from the Department of Health about advance health directives and advance care planning and to Public Trustee staff about wills.

### **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 5,226 people used the advisory service in 2017/18.

**Figure 19 Enquiries to the advisory service by mode of handling 2017/18**

Mode of handling	Jul 2017	Aug 2017	Sep 2017	Oct 2017	Nov 2017	Dec 2017	Jan 2018	Feb 2018	Mar 2018	Apr 2018	May 2018	Jun 2018	Total
<b>Telephone</b>	479	313	404	439	439	346	411	468	430	383	432	356	4,900
<b>Interview</b>	22	15	12	11	11	8	14	12	12	9	14	13	153
<b>Email/letter</b>	24	16	14	20	10	13	9	17	10	15	8	17	173
<b>TOTAL</b>	<b>525</b>	<b>344</b>	<b>430</b>	<b>470</b>	<b>460</b>	<b>367</b>	<b>434</b>	<b>497</b>	<b>452</b>	<b>407</b>	<b>454</b>	<b>386</b>	<b>5,226</b>

In some instances, enquirers sought advice on multiple topics. Enduring powers of attorney accounted for 33 per cent of all enquiries received during the year, guardianship matters accounted for another 32.5 per cent and the remaining enquiries were spread across enduring powers of guardianship, administration, advance health directives and general enquiries.

**Figure 20 Enquiries to the advisory service by subject 2017/18**

Subject of enquiry	Jul 2017	Aug 2017	Sep 2017	Oct 2017	Nov 2017	Dec 2017	Jan 2018	Feb 2018	Mar 2018	Apr 2018	May 2018	Jun 2018	Total	Total as percentage of all enquiries
<b>Guardianship</b>	218	138	206	194	174	180	162	217	160	144	163	148	2,104	32.5%
<b>Administration</b>	61	37	28	37	50	42	49	69	34	66	52	40	565	9%
<b>Enduring powers of attorney</b>	198	164	157	152	198	139	195	210	184	171	208	161	2,137	33%
<b>Enduring powers of guardianship</b>	84	81	72	78	86	79	77	99	100	84	102	65	1007	15.5%
<b>Advance health directives</b>	14	7	10	14	11	8	12	10	11	12	12	14	135	2%
<b>General</b>	60	20	32	64	52	29	39	39	59	37	44	40	515	8%
<b>Total</b>	<b>633</b>	<b>445</b>	<b>503</b>	<b>537</b>	<b>569</b>	<b>475</b>	<b>532</b>	<b>642</b>	<b>546</b>	<b>512</b>	<b>579</b>	<b>466</b>	<b>6,463</b>	<b>100%</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 four different languages. 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 2017/18 interpreter services were provided in Acholi, Croatian, Indonesian, Italian, Macedonian, Maltese, Mandarin, Portuguese, Serbian and Tagalog.

## **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.

<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 2017/18, these services were supported by the Department of Justice 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 2017/18 was as follows:

**Figure 21 Budget allocation and expenditure 2017/18**

	Total Cost of Output
\$'000 Actuals 2017/18	7,882
\$'000 Budget 2017/18	7,724
\$'000 Variations from Budget	158

## The Year in Review

### Freedom of information

Six valid applications were received during 2017/18 for the release of information. Five of the requests were dealt with in full during the year and one was being considered at 30 June 2018.

Anyone who wishes to access information held by the Office of the Public Advocate can contact the Freedom of Information Coordinator 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 2017/18, the Office of the Public Advocate received 35 formal complaints during the year, which were all considered by the Public Advocate or a senior manager. The Office also received 28 formal compliments.

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 2017/18.

There was a five per cent increase in the total number of investigations carried out in 2017/18 compared to 2016/17 and a three per cent increase in the number of new matters for investigation referred to the Office by the State Administrative Tribunal. Urgent referrals for investigation from the Tribunal increased by 42 per cent from the previous year.

In 2017/18, the Office experienced an eight per cent increase in new appointments as guardian of last resort, compounding the total number of people under the Public Advocate's guardianship and resulting in an 11 per cent increase in total guardianship orders at 30 June 2018, compared to 30 June 2017.

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

Of the 1,923 people for whom the Public Advocate was guardian at 30 June 2018, 800 (42 per cent) were 65 years of age or older. Of these 800 people, 61 per cent had dementia.

In 2017/18, 47 per cent of the 1,219 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 were 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.

Intellectual disability accounted for the largest proportion of all adults for whom the Public Advocate was appointed guardian at 30 June 2018, overtaking the number one position which dementia had held for 11 consecutive years.

<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.

The introduction of the National Disability Insurance Scheme (NDIS) appears to be impacting on the demand for the Office's guardianship services. Although it is not a requirement for anyone with an intellectual disability (or any other form of decision-making disability) to have a guardian appointed in order to access the NDIS, the process of applying sometimes highlights other decision-making areas within a person's life for which they need a guardian, but no one is taking on the role.

Factors 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.

## State and National Disability Sector Reform

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 2017/18.

The major change this year came about because of the Commonwealth and Western Australian (WA) Governments' announcement in December 2017 that the nationally-delivered NDIS (delivered by the National Disability Insurance Agency) was being adopted as the model in WA.

Prior to this, the Commonwealth and Western Australian Governments had signed a bilateral agreement to roll-out a nationally-consistent but state-delivered National Disability Insurance Scheme in Western Australia in February 2017.

More than 300 of the Office's clients who receive disability support including accommodation and services and are under 65 years of age, now have NDIS plans. 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 schemes.

The Public Advocate has given consent for some 149 represented persons to transfer from WA NDIS to the national NDIS with this transition anticipated to be completed by December 2018.

From 1 July 2018, the NDIA assumed responsibility for the delivery of NDIS in WA. The NDIS will continue to roll out on a geographical basis and is anticipated to be operational across all of WA by 30 June 2020.

## Elder Abuse

A heightened awareness within the community and gathering momentum across State and National Government has seen elder abuse become a higher priority agenda item.

With elder abuse an ever present element in the work done by the Office of the Public Advocate, the core services of the Office remain unchanged.

Investigator advocates become involved in people's lives when there is a concern about the person's welfare – in some cases this involves abuse or allegations of abuse. Some of these cases involve elder abuse.

Similarly, the Public Advocate is appointed guardian of last resort when a person is in need of a guardian but they do not have anyone in their life who is suitable, willing and available. At times, there may be allegations or concerns that this person experienced elder abuse.

The Public Advocate's membership with the Alliance for Prevention of Elder Abuse WA continued this year, along with the Office's targeted community education sessions and provision of advice and guidance to community members and service providers who are concerned about the wellbeing of a vulnerable elderly person.

Where this heightened awareness and government policy reform has and will continue to impact the Office, is in its increased ability to contribute to meaningful ways to combat elder abuse.

The Australian Law Reform Commission's report on elder abuse was released in 2017 and made 43 recommendations regarding elder abuse. The Public Advocate and a senior policy officer from the Department of Justice supported the Director General and worked closely with officers from the Department of Communities and the Commonwealth and other jurisdictions in progressing the considerations regarding the recommendations.

One of the key recommendations in the report was the development of a national plan to address elder abuse. In February 2018 the Federal Attorney General announced that the Council of Attorneys General had agreed to develop the national plan to safeguard the rights of older Australians.

The Department of Communities has the lead role in the development of the national plan as the Minister for Seniors and Ageing has the portfolio responsible for elder abuse prevention.

# Disclosures and Legal Compliance

## Financial Statements

See the Department of Justice 2017/18 annual report.

## 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 efficiency indicator	Actual 2014/15	Actual 2015/16	Actual 2016/17	Target 2017/18	Actual 2017/18	Comment on significant variation
<p><b>Percentage of guardians of last resort allocated in one day</b></p> <p>This indicator measures the timeliness of the Public Advocate in allocating a guardian to a represented person in order to make decisions on their behalf and protect them from neglect, abuse or exploitation. A guardian is appointed only when considered necessary and when there is no one else suitable or available to take on the role.</p>	96%	98%	95%	95%	94%	N/A

Key efficiency indicator	Actual 2014/15	Actual 2015/16	Actual 2016/17	Target 2017/18	Actual 2017/18	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>	\$1,800	\$1,744	\$1,550	\$1,670	\$1,789	N/A

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.</p> <p>The information for this indicator was extracted from the Department’s activity based cost management system (Business Objectives) and the Public Advocate Case Management System (PACMAN).</p>

## Ministerial Directives

Nil.

## Other Financial Disclosures

See the Department of Justice 2017/18 annual report.

## Public Interest Disclosures

Nil.

## Other Governance Disclosures

See the Department of Justice 2017/18 annual report.

## Other Legal Requirements

### Advertising

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

#### Figure 22 Advertising

Adcorp and Whitepages: Government Gazette, community guardianship program, community education and recruitment advertising	\$824
<b>TOTAL EXPENDITURE</b>	<b>\$824</b>

### Disability Access and Inclusion Plan Outcomes

See the Department of Justice 2017/18 annual report.

### Compliance with Public Sector Standards and Ethical codes

See the Department of Justice 2017/18 annual report.

### Recordkeeping Plans

Records are maintained in accordance with the Department of Justice'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 on-going commitment to improve staff awareness in records management, all Office of the Public Advocate staff had completed records awareness training as at 30 June 2018.

## Government Policy Requirements

For information on substantive equality see the Department of Justice 2017/18 annual report.

### Occupational Safety, Health and Injury Management

See the Department of Justice 2017/18 annual report.

# 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 2017/18

### 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 a guardianship order is made by the State Administrative Tribunal that makes the Public Advocate the guardian (a guardian can make decisions about things like where the person lives, who they live with, what activities they do and what medical care they have)
- the guardianship order says what kind of decisions the guardian can make
- 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

## This year we

- investigated 1,567 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 526 adults with a decision-making disability
- made decisions for the people we were guardian for, which was 1,923 people on 30 June 2018
- held 22 information sessions about what the Office does and how to help protect people with a decision-making disability
- helped 5,226 people who contacted the Office's advisory service for information
- had 54 staff positions
- spent \$7.882 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 Justice

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)