



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 2018/19



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 2019.

This report records the operations and performance of the Office of the Public Advocate during 2018/19. 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 2018/19, the Office of the Public Advocate reported on financial and administrative matters to the Director General of the Department of Justice.

*Pauline Bagdonavicius*

Pauline Bagdonavicius

**PUBLIC ADVOCATE**

2 September 2019

David Malcolm Justice Centre  
28 Barrack Street  
PERTH WA 6000  
T: 1300 858 455  
E: opa@justice.wa.gov.au  
I: www.publicadvocate.wa.gov.au

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# Overview

## The Year in Review

As has been reported previously in the annual reports over a number of years now, the Office of the Public Advocate continues to experience increased demand for its statutory services of advocacy and investigation, and guardianship. Meeting this growth is both the Office's greatest challenge and greatest achievement with each passing year.

An ageing population and the resulting increase in the number of people with dementia continue to be factors contributing to the increasing demand. This is coupled with a rise in the number of people with a diagnosed intellectual disability who have come to the attention of the Office with the roll-out of the National Disability Insurance Scheme.

Historically, age-related dementia has been the primary reason for the appointment of the Public Advocate. However, for the second year a diagnosis of an intellectual disability accounted for the largest proportion of all adults for whom the Public Advocate was appointed guardian as at 30 June 2019. This was followed closely by 27 per cent of people who had a mental illness. These changing trends directly relate to the introduction of the National Disability Insurance Scheme in Western Australia.

The number of Western Australians with a decision-making disability for whom the Public Advocate has been appointed as guardian by the State Administrative Tribunal continues to increase. As at 30 June 2019, the Office of the Public Advocate had responsibility as guardian of last resort for a total of 2,140 adults, which is an increase of 11 per cent from the figure of 1,923 adults as at 30 June 2018.

Similarly, the total number of investigations conducted by the Office of the Public Advocate into whether a person may need a guardian or administrator, has increased by 10 per cent this financial year; from 1,567 total investigations in 2017/18 to 1,717 in 2018/19.

There were 1,350 new investigations received in this office following a referral from the State Administrative Tribunal during the year. These 1,350 new cases needed investigation services relating to applications for, or reviews of, guardianship or administration orders before the State Administrative Tribunal.

Important policy work continued, with the Public Advocate attending or represented on numerous working groups and committees, including participation on the Expert Panel on Advance Health Directives.

The Office continued to work to help prevent elder abuse by collaborating with other agencies tackling this issue. It did so through active membership of the Alliance for the Prevention of Elder Abuse (APEA), input into the Council of Attorney Generals' working groups on elder abuse, and the provision of information to community members and professionals working in this sector.

Work to identify and assist represented persons who could be eligible to access the National Redress Scheme for adults who as children were sexually abused in institutional care was commenced in 2018/19. The Office is following processes developed through its involvement with previous redress schemes to ensure that people who have the Public Advocate appointed as guardian will receive consideration under the current scheme.

As part of its statutory obligation to provide information and advice to people about the *Guardianship and Administration Act 1990* and its practical applications, the Office assisted 5,537 people via the Office's advisory service and held 24 community education sessions for community members and service providers in 2018/19.

All the above contributed to the Office being able to provide critical services to some of the community's most vulnerable adults in 2018/19.

## Acknowledgements

The work of this Office would not happen without the considerable contributions made by many people.

Within the Office of the Public Advocate, the managers, delegated guardians, investigator advocates, senior policy and community education officers, and the administration team work collaboratively for the benefit of the community. I would like to thank them for their outstanding efforts throughout the year in protecting and promoting the rights of adults with a decision-making disability.

Special mention must be made of the volunteers who participate in the Office's Community Guardianship Program. This small, but dedicated, group give tirelessly of their time and energy to work in the best interests of people with a decision-making disability, and their contribution is greatly appreciated.

I would also like to take this opportunity to thank the Director General, Dr Adam Tomison, and acknowledge the support this office receives from staff across the Department of Justice. The continued success of this ongoing relationship is vital to the provision of timely and efficient advocacy and investigation and guardianship services to the Western Australian community.

*Pauline Bagdonavicius*

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**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 2018/19 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 (WA)*, 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.

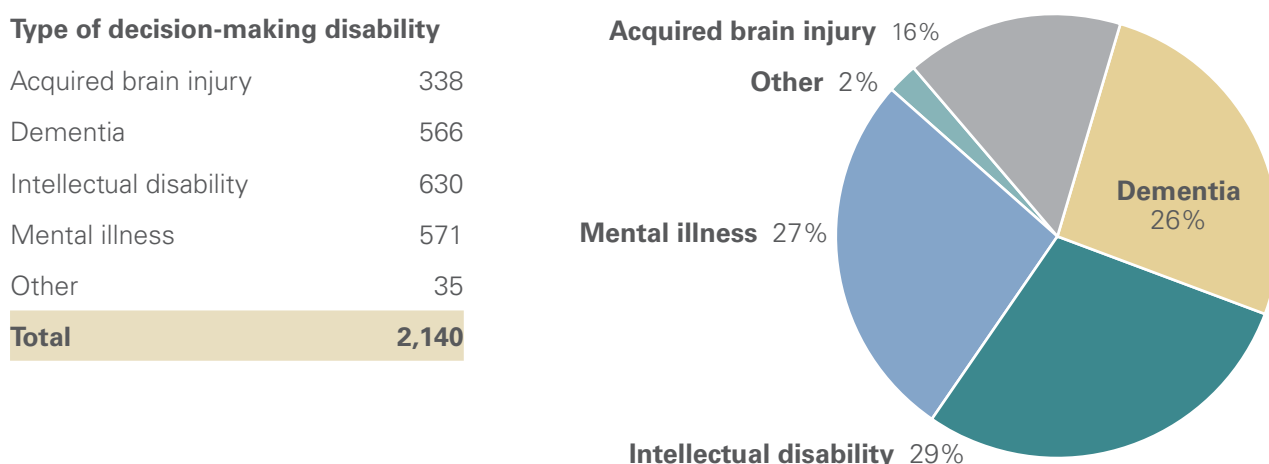
## Stakeholders

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 second year in a row, a decision-making disability other than dementia accounted for the largest proportion of the 2,140 adults the Public Advocate was appointed as guardian for at 30 June, with intellectual disability accounting for 29 per cent of all appointments. This was followed closely by 27 per cent who had a mental illness, 26 per cent who had dementia, 16 per cent an acquired brain injury and two per cent had some other form of decision-making disability. Of these 2,140 adults, 55 per cent were male and 45 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 2019**



The number of people for whom the Public Advocate is guardian has increased by 55 per cent over the past four years, from 1,383 in June 2015 to 2,140 in June 2019.

**Figure 2 People under guardianship orders appointing the Public Advocate by type of decision-making disability as at 30 June 2015 – 30 June 2019**

Type of decision-making disability	2015		2016		2017		2018		2019	
	Number	Percentage of total	Number	Percentage of total	Number	Percentage of total	Number	Percentage of total	Number	Percentage of total
Acquired brain injury	223	16%	263	17%	288	17%	299	16%	338	16%
Dementia	424	31%	462	30%	506	29%	531	28%	566	26%
Intellectual disability	385	28%	449	29%	505	29%	578	30%	630	29%
Mental illness	333	24%	364	23%	420	24%	499	26%	571	27%
Other	18	1%	17	1%	19	1%	16	1%	35	2%

**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 2018/19 the Department of Communities, Disability Services funded and provided services to 773 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 were 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 were 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 receive services from the Department of Communities, Disability Services, is intellectual disability. The Department of Communities, Disability Services, funded and provided services to 25,277 people, of which 8,157 were Western Australians with an intellectual disability as their primary condition in 2018/19.<sup>4</sup>

It is expected that these figures from the Department of Communities, Disability Services, will start to decline as people transfer and transition to the federally administered National Disability Insurance Scheme.

For the second year intellectual disability accounted for the largest proportion of all adults for whom the Public Advocate was appointed guardian at 30 June 2019. Up until 30 June 2017, dementia accounted for the largest proportion of people.

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2 Department of Communities, Disability Services. Annual Client and Service Data Collection, 2018/19.

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

4 Department of Communities, Disability Services. Annual Client and Service Data Collection, 2018/19.

It appears that the introduction of the National Disability Insurance Scheme (NDIS) has accounted for much of the growth in this area. 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, 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>

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 2018/19 were supported by:

- approved establishment of 60.5 ongoing and 1.5 positions funded for a finite period (full-time equivalent) staff
- expenditure of \$7.032 million<sup>6</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.

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<sup>5</sup> Slade, T., Johnston, A., Teesson, M., Whiteford, H., Burgess, P., Pirkis, J., Saw, S. 2009 *The Mental Health of Australians 2. Report on the 2007 National Survey of Mental Health and Wellbeing*. Department of Health and Ageing, Canberra. Pxii.

<sup>6</sup> 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 supports 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 jointly provide training for private administrators appointed by the State Administrative Tribunal, 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 referrals from the State Administrative Tribunal where an appointed guardian or administrator has passed away, engaging with family and service providers, and making applications for a review of the orders to ensure the person has ongoing decision-making support
- 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
- investigating referrals from Courts regarding the need for a person to have a guardian appointed in relation to legal proceedings – civil matters
- 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 which may include family, friends and service providers. The extent and nature of consultation will depend on the timeframe given by the State Administrative Tribunal, the complexity of the matter and other workload priorities.

Investigator advocates often prepare a report of their investigation which makes recommendations in the person's best interests, to assist the State Administrative Tribunal with its deliberations. Investigator advocates also provide oral advocacy at hearings, based on information gathered prior to the hearing and information that may arise within the hearing itself.

The investigator advocate might identify areas where decisions are required and find options for how these decisions could be made 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 (Section 110 ZD and Section 110 ZJ). 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 2018/19, the Public Advocate carried out a total of 1,717 investigations into the personal or financial welfare of adults with a decision-making disability. This was a 10 per cent increase from 2017/18, when there were 1,567 investigations carried out. These 1,717 investigations included new matters and matters carried over from 2017/18.

Of the 1,717 investigations carried out during the year, 1,542 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 eight per cent from 2017/18, when 1,431 investigations related to matters before the State Administrative Tribunal.

The remaining 174 investigations were referred directly to the Public Advocate by a member of the public, a community-based organisation, a Court or Tribunal, or another government agency.

An additional 106 preliminary investigations were referred under the liaison role, which assisted the Tribunal in gathering further information relevant to the hearing. All 106 of these were new matters, seeking preliminary information.

## **Investigations referred by the State Administrative Tribunal**

There were 1,350 new investigations referred by the State Administrative Tribunal in 2018/19, which was an 11 per cent increase from the previous year, when there were 1,219 new investigations.

These 1,350 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 151 urgent hearings in 2018/19; in some cases the hearing occurred on the day the matter was referred to the Office of the Public Advocate.

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.

## **Liaison officer role**

The Office of the Public Advocate continues to provide a liaison role to respond to requests from the State Administrative Tribunal seeking advice and recommendations about specific aspects of applications, prior to listing a matter for hearing or making a formal referral to the Public Advocate to investigate.

In 2018/19, the advocacy and investigation team – through the liaison role – conducted preliminary investigations into 106 new applications before the Tribunal. This included new applications for guardianship and/or administration, review applications and applications for intervention in enduring powers of attorney and enduring powers of guardianship.

This represents a significant increase from 2017/18, when 31 referrals were made through the liaison officer role. These matters require immediate attention as they often relate to an assessment of urgency or measures needed to protect a proposed represented person. There is a 3-5 day timeframe to respond to the Tribunal in relation to these referrals.



The responding officer will contact selected parties, in line with the specific request from the Tribunal, and provide a short report to the Tribunal responding to the referral.

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, the recommendation to the State Administrative Tribunal was that the Public Advocate be given notice of possible appointment and the investigator advocate attended 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 2018/19, this included referrals from community-based organisations, as well as family members, friends and neighbours of adults with impaired or suspected impaired decision-making capacity.

Referrals from Courts are included as community referred investigations, and these present a particular challenge to obtain information on the person's capacity as it relates to the specific Court matter, and needing to keep the referring Court informed about the progress of the investigation to assist in Court listing dates.

In total, 174 such referrals were reviewed by the Office in 2018/19. Of the 174 cases, 109 were closed during the financial year and 65 remained open at 30 June 2019.

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 advise the Tribunal 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 community referred 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, and medical professionals who are involved with the person may be reluctant to share information due to patient confidentiality.

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. The friend or neighbour may not be in a position to make an application to the State Administrative Tribunal due to concerns it will impact on the friendship with the person.
- A person has concerns that a vulnerable adult with a decision-making disability 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 an adult with a decision-making disability does not have capacity and may be in need of some form of support.
- Referrals from a court where there are concerns that an adult 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 question of capacity

The Office of the Public Advocate was contacted by the WA Police having attended an incident at a family home. The incident involved a potentially violent altercation between an adult daughter and her parents.

The attending officers were concerned that the daughter may have a decision-making disability and the family may be in need of support. A community referred investigation was opened to gather more information and consider the needs of the daughter.

Subsequently the daughter was admitted to hospital with a range of health concerns following a fall in her room, and the social worker also raised concerns with the investigator advocate that Ms C might have an intellectual disability and need a guardian to make treatment decisions on her behalf. At this time the family members had advised they were not in a position to make decisions or provide ongoing support.

As part of the investigation the investigator advocate spoke with Ms C's parents who advised that while they were supportive of their daughter, they did not think that Ms C's behaviour would change if she returned to the family home. They worried that Ms C's physical and emotional health would continue to decline if she did.

Ms C's mother also admitted that she was scared of her daughter as they had heated arguments which could lead to violent outbursts every time she suggested that Ms C clean her room. She was also worried about Ms C's reclusive and sedentary lifestyle having long-term effects on Ms C's health.

Ms C's mother had confided to the hospital social worker that Ms C's bedroom was piled high with rubbish, including leftover food, faeces and urine, and that Ms C spent most of her time in her room on her computer using the internet.

Information provided by the family and health professionals stated that Ms C was diagnosed with Autism, however she had completed her schooling and commenced some tertiary education.

While in hospital receiving treatment, Ms C was seen by several different allied healthcare specialists. The investigator advocate from the Office of the Public Advocate was provided with reports from the social worker, physiotherapist and occupational therapist who assessed Ms C while she was in hospital. Ms C's regular GP also provided a report in relation to Ms C's capacity to make her own personal and lifestyle decisions.

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*(Case study continued from previous page)*

All the health professionals reported that Ms C was co-operative when taking part in one-to-one assessments, and none of the reports suggested that Ms C lacked capacity to make decisions about her own treatment and healthcare. One of the reports also showed that Ms C understood money handling, banking and bill paying, and that she could plan meals and cook for herself.

The information provided indicated that although Ms C was diagnosed with Autism she had capacity to make her own decisions.

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

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

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

Medical evidence of a person's capacity is critical to inform the investigation process of the Office of the Public Advocate, in determining if applications need to be made for the appointment of a guardian or administrator.

Ms C had a support plan and funding through engagement with the National Disability Insurance Scheme. The admission to hospital provided an opportunity to engage support services for Ms C and source alternative accommodation.

On being discharged from hospital, Ms C entered a program which aimed to assist her to become more independent. With guidance from the program coordinators, Ms C agreed to a support plan which would enable her to live in accommodation outside of the family home, with some additional support services engaged.

Ms C's family were supportive of the new plans as they felt Ms C needed an opportunity to live more independently, and felt they were able to offer more support once she was not living at home.

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*(Case study continued from previous page)*

As part of the community referred investigation the investigator advocate visited Ms C in her new home, and spoke to her about her new living arrangements. Ms C advised that she had settled in well. She also mentioned that she saw her mother regularly, and that their relationship had improved now that she was much happier living more independently in her new home, she was able to explain how she was paying her bills and the activities she was doing to maintain her home. Ms C was also working with the service provider to find suitable employment.

Through her admission to hospital, and engagement with service providers, Ms C's situation had improved and the initial concerns about her well-being were resolved.

*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.

There have also been occasions during the year where investigator advocates have needed to liaise with interstate counterparts where a person has been moved interstate during the course of an investigation, and where concerns have been held for their well-being. The information gathered has been relevant to guiding the investigation process, and providing information to the State Administrative Tribunal to assist in determining how to proceed in the matter.

## Administrator of last resort

As at 30 June 2019, the Public Advocate was appointed by the State Administrative Tribunal as limited administrator of last resort for four 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.

This is a significant function for the Public Advocate, and there has been a small increase in these appointments. When appointed administrator of last resort the Public Advocate will usually have a limited function with regard to legal proceedings, with the Public Trustee often appointed with the remaining functions. The role involves extensive liaison with legal professionals and the Public Trustee in regard to progressing the proceedings.

The principal investigator advocate will review the application and supporting documents, and attend the State Administrative Tribunal hearing to advocate for orders which will enable the Public Advocate to conduct the role.

A key role for the principal investigator advocate following the appointment is to conduct a file review and briefing for the Public Advocate to enable decisions to be made about progressing the specific case.

# 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.

Additionally, there is an increased awareness of the role of the Office of the Public Advocate, particularly in relation to investigating concerns about elder abuse.

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 1,350 new investigations carried out during the year, allegations of abuse were made regarding 260 people. 137 of these people were 65 years of age or older. Of these alleged elder abuse cases, 85 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.

## **Transition to the National Disability Insurance Scheme**

The transition to the National Disability Insurance Scheme (NDIS) has seen a number of applications where it has been identified that informal supports will no longer be sufficient to engage services. This may be because through accessing the NDIS the person has more opportunity to engage support services, and it is identified that someone needs to be appointed to make the decision about which service to engage.

In some cases applications have been made because the existing support arrangements will not be able to continue. There is an identified need for a person with a decision-making disability to have a guardian and/or administrator appointed to oversee the change in support arrangements, and also to take over management of the person's finances where this may have been managed by the support agency.

## Increasing regional referral

Referrals for investigation are made for matters across the State, and referrals for regional matters present a particular challenge, as it is usually not possible to visit the person at their home location.

In 2018/19 there were 347 matters referred relating to people in regional areas, compared to 296 in 2017/18, an increase of 51 matters referred or 17 per cent.

Interviewing the proposed represented person by phone or video-link can present a challenge, and often requires the investigator to negotiate with an independent party to assist in supporting the proposed represented person during the interview.

To respond to this challenge, where possible, regional matters will be grouped and allocated to the same investigator advocate. Some matters will have the same applicant, for example a WA Country Health Service or the Director of Nursing at a particular facility. This approach enables consideration to be given to investigator advocates visiting the location during the investigation process. It also allows the investigator advocate to develop professional relationships with applicants in regional areas which assists in the gathering of information.

During the past year investigator advocates have travelled to south-west Western Australia for extended periods to interview proposed represented persons, applicants and interested parties during the course of their investigation.

## Case Study

### **Elder abuse, or carer stress?**

At the end of an Office of the Public Advocate community education session, a member of the public approached the presenter to discuss her concerns for a neighbour, Mr H.

The neighbour reported that she had spoken to Mr H's daughter who was concerned that her mother was not providing adequate care for her elderly father, who had been diagnosed with dementia some years before. It was suggested that Mr H may be a victim of elder abuse.

A community referred investigation was opened as evidence was provided that Mr H had a cognitive impairment – due to dementia – and may be in need of a guardian.

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The investigator advocate was able to contact Mr H's GP and also found out Mr H had had a number of admissions to hospital. The GP and hospital social workers confirmed that Mr H had a diagnosis of dementia. Mr H was deemed not able to make his own decisions, and also had high support needs, including requiring assistance with personal care.

Discussions with Mrs H, and her son, identified that there was some conflict in the family and the daughter who had raised the concerns had limited contact with her father as a result of an argument some time ago. Mrs H, however, said that she would welcome her daughter visiting, to see her father and assist in his care.

Mrs H advised that her husband's admission to hospital was delayed due to conflicting advice given by locum GP's, and when he was admitted his situation needed urgent attention.

For Mr H's daughter the urgent hospital admission was further evidence of her mother's neglectful behaviour towards Mr H, and she also suggested that her mother was perpetrating financial abuse as she was not spending her father's money on medical care for him.

Mr H's son advised the investigator advocate that Mr H had made an enduring power of attorney appointing his wife as his attorney. Mr H's son did not believe his father was being denied funds for medical care or other purposes. Mr H's son was unclear on how his sister could make these allegations, due to not having visited Mr H for some time.

The investigator advocate visited Mr H in the hospital and while he was aware he needed some help he explained that he was very close to his wife and that he wanted to return home with her.

Mr H's wife also talked to the investigator advocate about how close the couple were, and that they both wanted to remain living together at home.

Mr H's wife explained that while Mr H was in hospital she was able to talk to the social workers about the stress she was feeling caring for her husband and fear that he would have to go into care. She advised that this had enabled plans to be made for Mr H to have his care needs assessed, and for some support services to be put in place. The couple had enough money to pay for extra care services, if Mr H's needs increased beyond the care package he was entitled to.

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### **Advocacy role of investigator advocate**

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

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

Investigators can provide relevant information and links to services, as part of the investigation process.

The investigator advocate visited Mr H and his wife at home a few weeks after he left hospital. The investigator advocate noticed that Mr H was looking much better in comparison to the time of the hospital visit. Mr H stated he was glad to be home and that he was happy with the level of care and support he received from his wife.

Mr H's wife said that the advice she received from the treating team at the hospital prior to Mr H being discharged, was very helpful.

As a result of the care assessment and information provided by the treating team, Mrs H had engaged support services and a service provider now attended two hours per day, seven days a week, to assist with Mr H's personal care requirements. A physiotherapist also visits the home regularly to ensure Mr H receives appropriate and safe exercise.

Mr H's son also reported that his parents were more relaxed now that they had some extra assistance. He said his mother also understood that she needed to keep services in place to avoid future carer stress which could impact on her ability to provide proper care and support for her husband.

The investigator advocate was satisfied that while there were initial concerns about neglect, this situation arose because of carer stress. The admission to hospital had enabled this to be addressed, and with support services in place Mr H's situation had improved. Importantly Mrs H and her son understood the need to ensure services remained engaged.

All decisions were being made in Mr H's best interests; there was no need for an application for guardianship or administration to be made to the State Administrative Tribunal for Mr H.

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### **Elder abuse statistics**

It is important to remember when looking at the statistics captured by the Office of the Public Advocate regarding elder abuse, that these are instances of alleged or suspected abuse.

Some cases reveal that the alleged elder abuse is not in fact occurring, but that there are other issues at play, for example, a lack of communication, an interested party with another agenda, or carer burn-out. These investigations are captured as cases of alleged elder abuse.

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

## **Case Study**

### **Whose document is it?**

Applications to intervene into enduring powers of attorney (EPA) and enduring powers of guardianship (EPG) were made by the grand-daughter of Mr G, and these were then referred to the Office of the Public Advocate for investigation.

The grand-daughter provided copies of the EPA and EPG made by Mr G some time ago appointing her as substitute decision-maker. Although she did not live locally the grand-daughter had been liaising with service providers and assisting with bill payments for Mr G.

The grand-daughter made applications after some friends of Mr G had sent her new EPA and EPG forms which appointed them – and told her the documents that appointed her were revoked. She was concerned about the motives of the friends and also concerned about Mr G's capacity to make new documents.

In investigating this matter the investigator advocate spent a lot of time exploring the making of the new EPA and EPG. The investigator advocate interviewed Mr G a number of times to see if he was aware of making the documents, and to see if he was able to provide a view on who he would want to make decisions for him.

Mr G, in his conversations with the investigator advocate, did not recall making the powers and was inconsistent in his view about who he would want to assist him.

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The friends who were appointed also provided information to the investigator advocate about how the documents were made. This included some recordings of conversations in which it seemed that the friends were directing how the power would be made and who would be appointed. Mr G made very little comment in the recordings and was not able to have a say in these meetings about what he wanted to happen.

The investigator advocate talked with the friends about the involvement of Mr G. They reported that Mr G had initiated making the new powers and was fully aware of what he was doing. This view was contrary to the view of the GP who noted the language Mr G used in talking about concerns about his grand-daughter, which suggested he had been coached about what to say.

### ***Why is this important?***

An enduring power of guardianship and an enduring power of attorney are documents that an adult can choose to make when they have full mental capacity. The person making the document must choose to make the power, and then choose who they want to appoint and the authority they want that person to have. The person must not be forced or coerced into making the documents.

The medical information provided showed that Mr G was diagnosed with dementia, and had short term memory difficulties. One medical report dated prior to the making of the new EPA and EPG specifically stated Mr G did not have the capacity to execute these documents.

In his interviews with the investigator advocate Mr G was unable to recollect the involvement of his grand-daughter in providing support to make appointments and pay bills, and could not recall the earlier EPA and EPG he had made appointing her with authority to make decisions.

The friends of Mr G did not agree that he lacked capacity, but did also provide information about an event where Mr G and his friend had been in the shops at a café. Mr G had left to buy a paper, and when he did not return, his friend went to find him. Mr G was sitting in another café having a drink, seemingly unaware that he had already purchased a drink with his friend elsewhere.

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### ***Why is this capacity important?***

A person has to have full mental capacity to make the powers. At times, the Office of the Public Advocate is contacted by people who can see decisions need to be made about a person who lacks capacity and want to know how to make an EPA and/or EPG for that person.

Often people are unaware of the requirements to make the powers and are simply seeking to put them in place to protect the person and ensure their ongoing well-being.

In these situations the appropriate way to provide for a substitute decision-maker is to make an application to the State Administrative Tribunal for the appointment of a guardian and/or administrator.

More information about guardianship and administration – and when orders may be needed – can be found at [www.publicadvocate.wa.gov.au](http://www.publicadvocate.wa.gov.au)

A key part of the investigation looked at exploring Mr G's wishes about who should be his decision-maker – as one aspect of the investigation referred by the State Administrative Tribunal was to look at who would be suitable and willing to be appointed as guardian or administrator if orders were made.

The investigator advocate in speaking with family and friends found they all shared a common concern for Mr G's well-being. As such they all could be considered as suitable for appointment.

In a number of interviews with the investigator advocate Mr G was consistent in wanting his friends involved in his life, and on some occasions indicated one of them could be appointed as decision-maker. However, he also thought his grand-daughter could be appointed, describing her as a very trustworthy person. Over time he indicated his grand-daughter should be the person making decisions as she was family.

Ultimately the EPA and EPG were revoked by the Tribunal, and Mr G's grand-daughter was appointed as his guardian and administrator.

*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.

A total of 27 applications from the Department of Communities, Child Protection and Family Support were determined by the State Administrative Tribunal during the year. The Tribunal scheduled hearings for a further three applications for consideration in the second half of 2019.

Following the determination by the State Administrative Tribunal, the Public Advocate's appointment as guardian came into effect for 21 young people leaving State care when they turned 18 years of age. Guardianship orders appointing the Public Advocate for a further four young people come into effect when they turn 18 years of age in the 2019/20 financial year.

The Public Trustee was appointed as administrator for all 25 of these young people. The Public Trustee was also appointed for another young person, where a private guardian was appointed.

In one matter a private administrator and private guardian were appointed.

## Court referrals

The Children's, Family, Magistrates and Supreme Courts may seek the involvement 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.

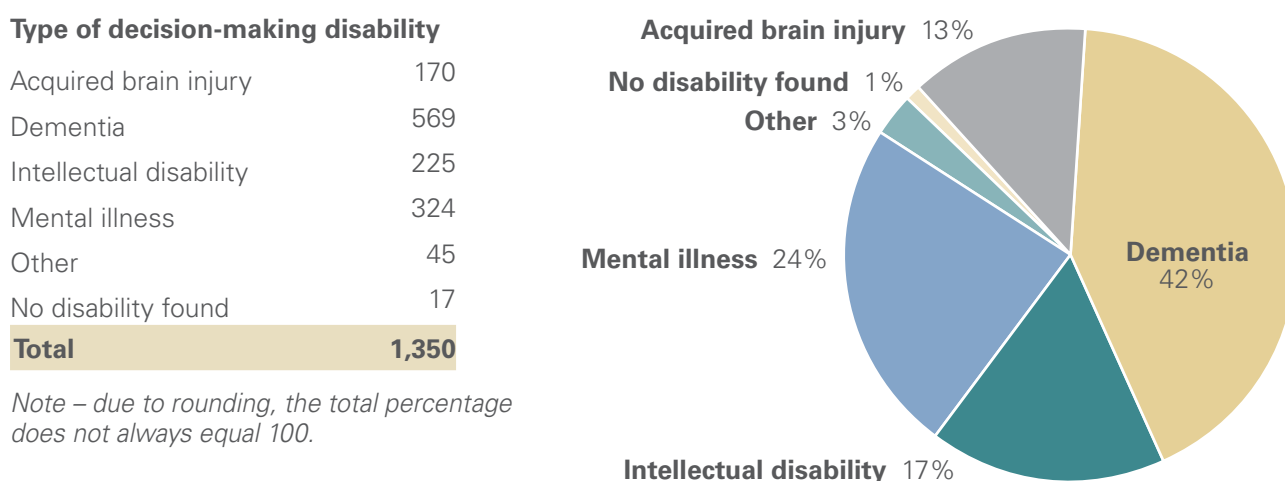
While the number of court referrals received by the Office are small compared to the referrals of matters by the State Administrative Tribunal, the investigation work involved requires considerable time and effort to seek evidence about the proposed represented person's background and their capacity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

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

## Our Customers

Of the 1,350 new matters referred to the Public Advocate for investigation by the State Administrative Tribunal in 2018/19, 42 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 1,350 new matters, 51 per cent related to males and 49 per cent to females.

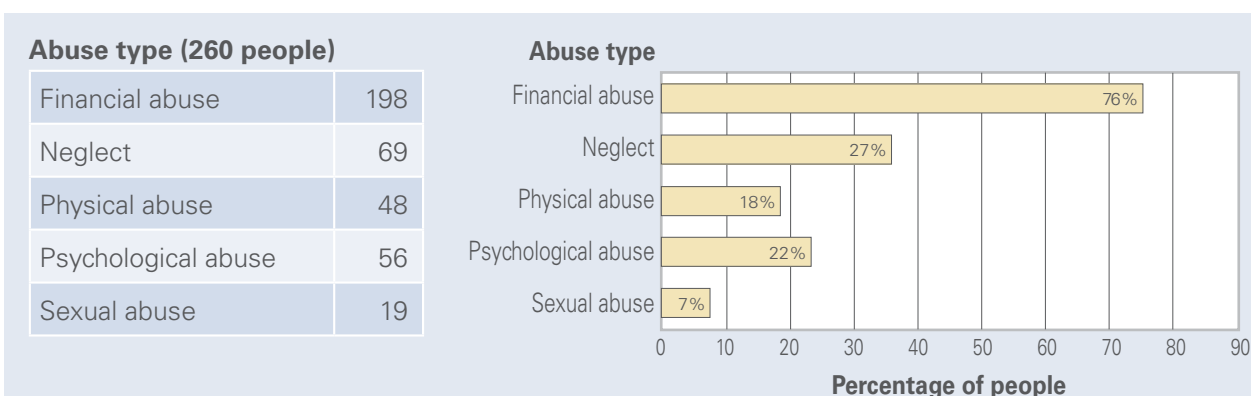
**Figure 3 Profile of new investigations by type of decision-making disability 2018/19**



Of the 1,350 new investigations carried out during the year, allegations of abuse were made regarding 260 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 76 per cent alleging financial abuse.

**Figure 4 Profile of new investigations alleging abuse by type of abuse 2018/19 (including statistics of alleged elder abuse)**



Note 1 – Allegations of abuse were made regarding 260 people, however, in some instances more than one alleged abuse type was reported in the application.

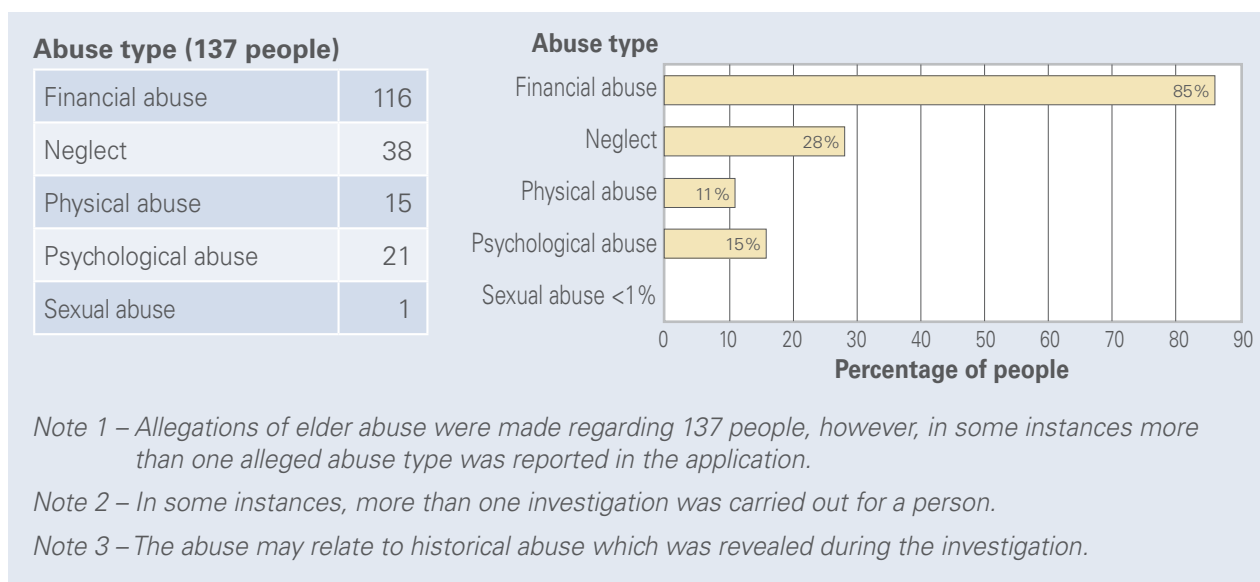
Note 2 – In some instances, more than one investigation was carried out for a person.

Note 3 – The abuse may relate to historical abuse which was revealed during the investigation.

Of the 260 people for whom abuse was alleged, 137 (53 per cent) were 65 years of age or older. These instances of alleged abuse are referred to as elder abuse.

Of these 137 cases of alleged elder abuse, financial abuse was the most common, having been reported in 85 per cent of these investigations.

**Figure 5 Profile of new investigations alleging elder abuse (aged 65 or older) by type of abuse 2018/19**



Of the 137 new investigations in 2018/19 where elder abuse was alleged, 15 involved a person of Aboriginal and Torres Strait Islander descent, representing 11 per cent. Financial abuse was the most common form of abuse, having been reported in 14 of the 15 cases (93 per cent).

**Figure 6 Profile of new investigations alleging elder abuse (aged 65 or older) by Aboriginality and Torres Strait Islander descent 2018/19**

Total new investigations alleging elder abuse 2018/19	Non Indigenous	Indigenous	Indigenous as percentage of total
137	122	15	11 %

**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 five 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>7</sup>.

**Figure 7 Profile of new investigations by Aboriginality and Torres Strait Islander descent as at 30 June 2015 – 30 June 2019**

Year	Total	Non Indigenous	Indigenous	Indigenous as a percentage of total
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%
2018/19	1,350	1,215	135	10%

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

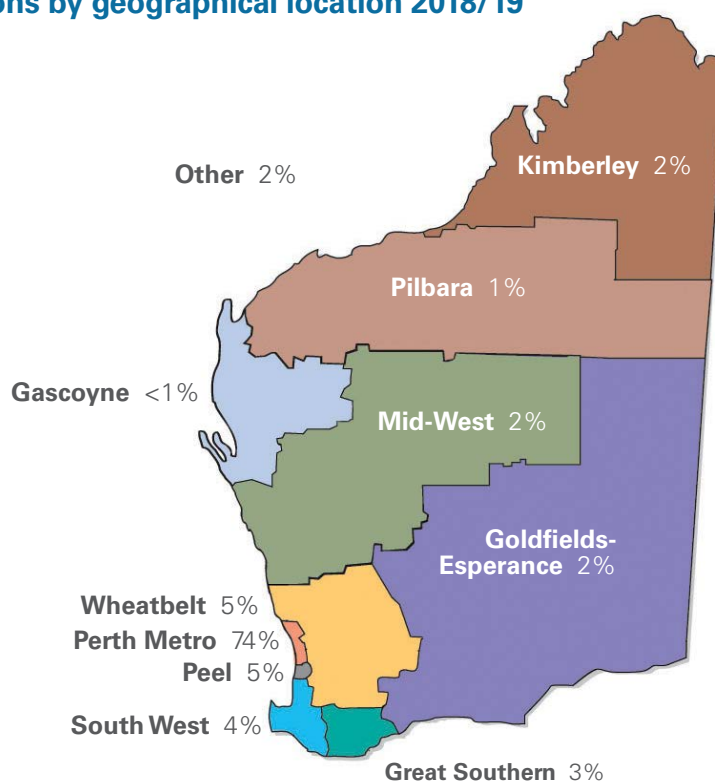
Of the 1,350 new investigations in 2018/19, 1,003 matters were investigated for people located in the Perth metropolitan area.

**Figure 8 Profile of new investigations by geographical location 2018/19**

#### Geographical locations

Gascoyne	3
Goldfields-Esperance	29
Great Southern	44
Kimberley	26
Mid-West	28
Peel	61
Perth Metro	1,003
Pilbara	10
South West	58
Wheatbelt	64
Other	24
<b>Total</b>	<b>1,350</b>

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



<sup>7</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 2018/19 there were 591 new appointments of the Public Advocate as guardian of last resort, compared to 526 in 2017/18, which is an increase of 12 per cent.

At 30 June 2019, the Public Advocate had responsibility as guardian of last resort for 2,140 adults with a decision-making disability, compared to 1,923 at 30 June 2018, which is an increase of 11 per cent.

The Public Advocate had responsibility as the sole guardian for 2,056 of the total 2,140 represented persons as at 30 June 2019. In relation to the remaining 84 appointments of the Public Advocate, there were 76 represented persons on a guardianship order which appointed the Public Advocate and private guardian(s) with different functions. Eight of the 84 had the Public Advocate and a private guardian (a family member) appointed with the same functions which therefore required them to jointly make decisions. Five of these eight had the Public Advocate appointed and a family member to make some decisions jointly, as well as the Public Advocate and/or the family member as the sole decision-maker for different functions.

During the year, the Public Advocate was involved with 3,038 guardianship activities which related to the opening and closing of existing appointments as at 30 June 2018, new appointments 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
- 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 368 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 2019 there were 18 volunteers engaged in the community guardianship program. Of these, 14 had been appointed by the State Administrative Tribunal as their represented person's guardian, replacing the Public Advocate and providing a more personal level of involvement in their life.

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 awaiting the State Administrative Tribunal process to conclude. The other is a former community guardian who may be matched in the future.

### **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 2018/19, the guardianship team attended 526 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. This compares to attendance at 540 review hearings in 2017/18, a decrease of three per cent.

## Case Study

### Inter-office collaboration

Ms J was a woman in her 30s who had significant cognitive impairment from a traumatic injury in her childhood, which resulted in her needing a high level of support to remain healthy and safe and reach her full capacity. She had traditionally had a high level of funding provided to meet her needs, and this had ensured she had the care she required and support to engage in activities which provided her with a full life.

The Public Advocate had been appointed by the State Administrative Tribunal to make decisions about Ms J's support services and medical treatment.

On her transition to the National Disability Insurance Scheme (NDIS), Ms J was assessed as needing much less support than she had previously been receiving and as a result her funding was significantly reduced.

The funding allocated was insufficient to purchase the services required to meet Ms J's needs, to the point she did not have adequate care at home and was unable to participate in community activities. The delegated guardian from the Office of the Public Advocate requested an internal review of the NDIS decision based on the reports that Ms J had insufficient funding to meet her needs. The NDIS internal review upheld the original decision.

The delegated guardian was concerned that Ms J was at risk without appropriate funding, and sought advice from a disability advocacy service to see if there were other avenues of appeal. This agency made the delegated guardian aware of the assistance available from the Legal Aid WA team which specialises in the *National Disability Insurance Scheme Act 2013*.

The Office of the Public Advocate approached Legal Aid WA's specialist team to brief them on Ms J's case and seek their advice on how to proceed. Ms J's case was accepted by this team.

The advice provided was for the delegated guardian to start the formal appeals process through the NDIS, which occurred with an application to the Commonwealth's Administrative Appeals Tribunal.

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Led by the delegated guardian and Legal Aid WA's specialist solicitor, Ms J's support teams worked collaboratively to provide evidence that Ms J's funding requests, at the level to which she was previously assessed, were reasonable and necessary.

The delegated guardian and Legal Aid solicitor attended conciliation with legal representatives from the National Disability Insurance Agency on three separate occasions.

This was the first instance of the Office of the Public Advocate working with a Legal Aid solicitor to appeal a decision made by the National Disability Insurance Scheme.

Legal Aid WA's support and advocacy were invaluable to the delegated guardian who was trying to navigate the process in the best interests of Ms J, due to their comprehensive understanding of the legislation.

The collaboration by the agencies brought about a positive outcome for Ms J, who was awarded sufficient additional funding to meet her daily needs.

### ***Substitute decision-makers and the NDIS***

It is not a requirement for a person with a decision-making disability to have a guardian appointed in order to access the NDIS.

The process involved for a person with a decision-making disability to apply to access the NDIS has, at times, highlighted other areas in a person's life for which they need a substitute decision-maker, for example, to make treatment decisions, and this has led to some new applications being made for the appointment of a guardian.

The introduction of the NDIS has also affected some people's accommodation and support arrangements, so informal processes that were enabling decisions to be made have ceased to exist, for example, where a service provider decides not to register as an NDIS provider.

This has resulted in an increase in guardianship orders appointing the Public Advocate, particularly with respect to adults with an intellectual disability, many of whom live in group homes and have limited family support.

In carrying out their role making decisions on behalf of people with a cognitive impairment, delegated guardians are having to rapidly increase their knowledge and put in additional work with colleagues across the sector to ensure that represented persons have their support and developmental needs fully captured in their NDIS plans.

## 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 2018/19 delegated guardians and investigator advocates made 17 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 dependency 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 government and non-government agencies, which together, provide an intensive level of support to the represented person.
- Due to the increasing number of seniors 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 go outside their decision-maker role 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 a more appropriate 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 people often lack adequate self-protective behaviours and/or family and agency support services.
- 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 2019, the Public Advocate was appointed as guardian for 11 mentally impaired accused people under the *Criminal Law (Mentally Impaired Accused) Act 1996*.



- 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 commenced 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.

## Revocations

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

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.

In 2018/19, delegated guardians from the Office of the Public Advocate were involved in 526 reviews of guardianship orders where the Public Advocate was appointed.

Of the 526 reviews, 142 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 371 guardianship orders ceased during 2018/19, through revocation by the State Administrative Tribunal, or due to the death of the represented person.

## Goals of Care

In 2018/19 the Office of the Public Advocate introduced practice improvements to consider medical goals of care at an earlier stage in a represented person's end-of-life trajectory.

Good end-of-life planning can avoid unnecessary interventions, hospital admissions and emergency department presentations, which can be distressing for individuals and their families.



The Public Advocate supports a represented person's right to appropriate care and treatment at the end of their life, including palliative care.

The goals of care approach, based on the Department of Health's framework, recognises that better end-of-life care planning can start early in a person's disease. A goals of care plan sets out what can be offered across the stages of a represented person's end-of-life trajectory.

Delegated guardians may consider goals of care planning for represented persons with a chronic or life-limiting illness and/or when continuing decline is expected.

With a represented person's increasing decline, the goals may include reducing, withdrawing or withholding certain medical options; for example, a medical clinician may discuss with a delegated guardian that providing cardiopulmonary resuscitation would be futile and not in the best interests of a represented person.

The delegated guardian makes a recommendation to the Public Advocate for end-of-life treatment decisions based on the recommendation of medical and allied health professionals such as the treating doctor and facility manager, while also considering the views of the represented person and their family.

## **Palliative Care**

All palliative care decisions require the delegated guardian to seek the Public Advocate's specific approval.

In 2018/19 the Public Advocate consented to palliative care for 158 represented persons 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.

## **Case Study**

### **Making community connections**

In early 2017 Mrs R volunteered to join the community guardianship program. Mrs R was a retired professional who had no previous experience of working with people with a decision-making disability.

Mrs R wanted to give something back to the community and was willing to make the long-term commitment of becoming a volunteer community guardian.

*continued*

(Case study continued from previous page)

### ***What is the Community Guardianship Program?***

A number of people who have the Public Advocate appointed as guardian have no family or friends who could become their guardian, and they have an ongoing need for someone to make decisions on their behalf.

The community guardianship program was developed to match these people, for whom the Public Advocate has been appointed guardian, with volunteers from the community, with the ultimate aim that a lasting connection can be made. If suitable, the volunteer can be appointed as guardian by the State Administrative Tribunal in place of the Public Advocate.

The community guardianship program coordinator provides guidance, training and support to the volunteer to ensure they understand their role before introducing them to the represented person.

The coordinator facilitates meetings between the represented person and the volunteer community guardian to enable them to get to know each other and to see if they are a good 'match'. This can be a lengthy process which can take time, as a relationship of trust has to develop between the represented person and the volunteer, before the match can be confirmed.

Ms B lived in an aged care facility having developed dementia, as well as physical impairments which meant she could no longer live independently. Her memory fluctuated, although she could clearly recall many stories from her childhood and life as a younger woman.

Mrs R and Ms B were seen as a possible match by the community guardianship program coordinator, as they had similar interests, and they were introduced to each other. They immediately formed a connection, even though they came from different cultural backgrounds.

Mrs R visited Ms B regularly, but due to her memory fluctuating Ms B often did not remember or recognise Mrs R from one visit to the next. Each time they met, however, they got along very well and talked about things they both enjoyed.

A connection was built over many months, and eventually Ms B started to recognise Mrs R as a friend. Ms B and Mrs R would go out on day trips and they both enjoyed these outings and the time they spent together.

The staff at the aged care facility also spoke to the community guardianship program coordinator about the positive impact Mrs R was having on Ms B's life.

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### ***The benefits a Community Guardianship volunteer can provide***

The relationship which can develop between the represented person and their community guardian is of a much closer and personal nature than can be developed with a delegated guardian from the Office of the Public Advocate.

The volunteer can become a friend as well as a decision-maker, and provide a relationship that many represented people do not have in their lives.

Mrs R, together with the community guardianship program coordinator, applied to the State Administrative Tribunal for Mrs R to be appointed as Ms B's guardian, in place of the Public Advocate.

The State Administrative Tribunal appointed Mrs R as Ms B's guardian, and Mrs R has since made medical treatment and healthcare decisions in the best interests of Ms B, as well as ensuring that her cultural needs are met.

The staff at the aged care facility have commented that Mrs R has become a welcome visitor as she has got to know the staff and other residents well, alongside developing a positive, personal bond with Ms B.

### ***Guardian of last resort and less restrictive alternatives***

The Public Advocate is only appointed as guardian of last resort if all other options are exhausted, and the appointment is the only option available.

If someone else, for example a family member, friend or a volunteer community guardian, is suitable, willing and available to make personal, lifestyle and treatment decisions on behalf of someone with a decision-making disability, then the State Administrative Tribunal will appoint that person as a plenary or limited private guardian instead of the Public Advocate.

The community guardianship program provides a less restrictive alternative to the appointment of the Public Advocate.

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

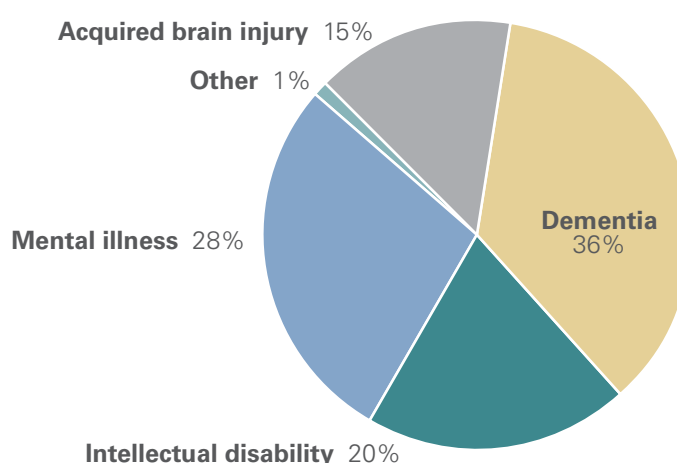
## Our Customers

People with dementia continued to account for the largest proportion of new appointments of the Public Advocate as guardian of last resort. Of the 591 new appointments in 2018/19, 36 per cent had dementia, 28 per cent a mental illness, 20 per cent an intellectual disability and 15 per cent had an acquired brain injury. Of the 591 new appointments, 57 per cent were male and 43 per cent were female.

**Figure 9 Profile of new guardianship orders appointing the Public Advocate by type of decision-making disability 2018/19**

Type of decision-making disability	
Acquired brain injury	86
Dementia	213
Intellectual disability	120
Mental illness	166
Other	6
<b>Total</b>	<b>591</b>

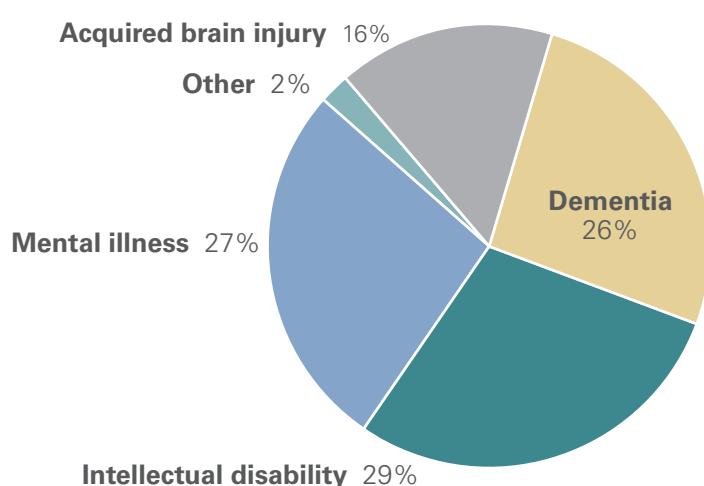
*Note – due to rounding, the total percentage does not always equal 100.*



Of the total 2,140 appointments at 30 June 2019, 29 per cent of the people had an intellectual disability, 27 per cent a mental illness, 26 per cent dementia and 16 per cent an acquired brain injury. 55 per cent of the people were male and 45 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 2019**

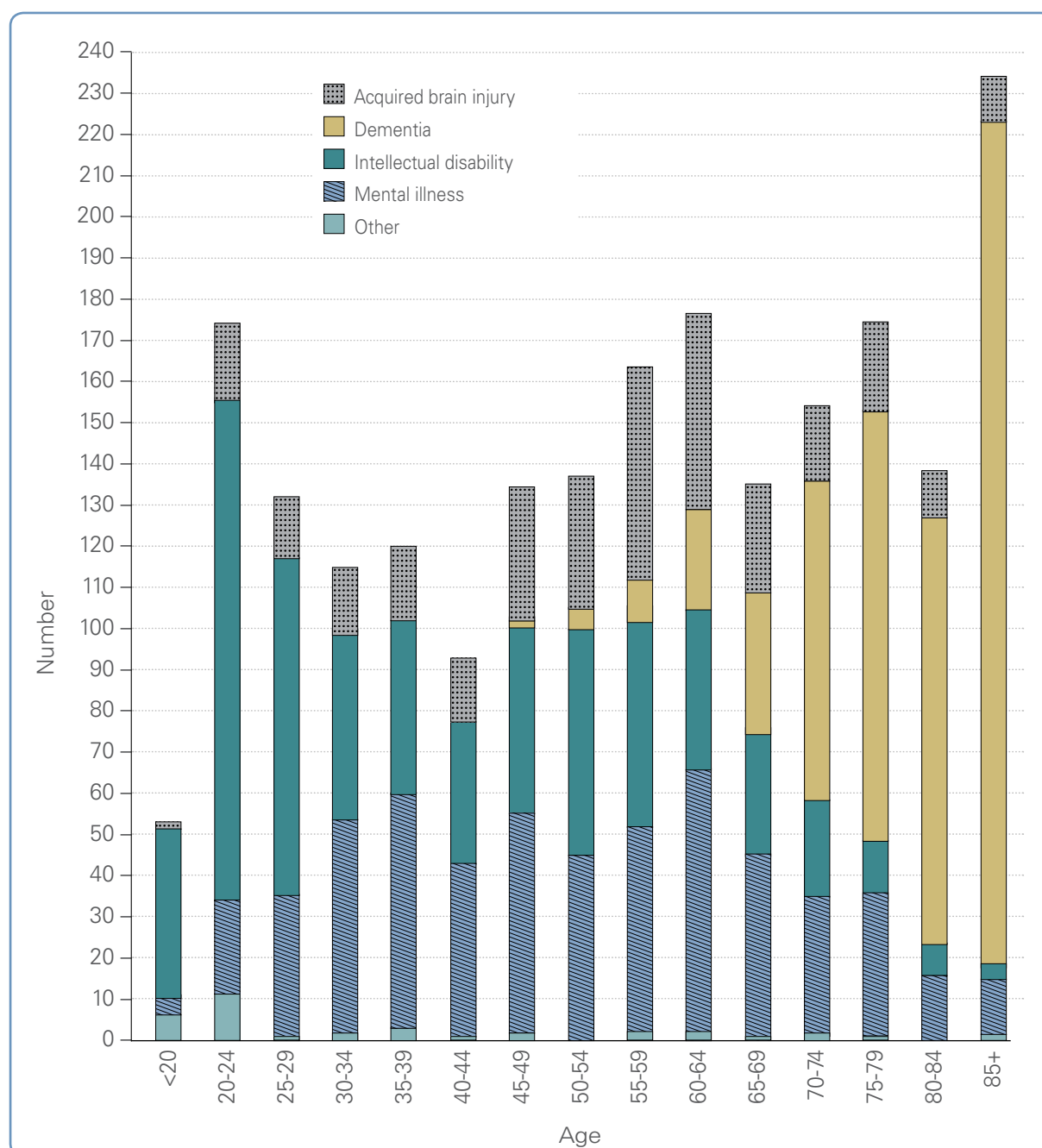
Type of decision-making disability	
Acquired brain injury	338
Dementia	566
Intellectual disability	630
Mental illness	571
Other	35
<b>Total</b>	<b>2,140</b>



At 30 June 2019, the Public Advocate was guardian of last resort for 372 adults aged 80 years and over, who accounted for 17 per cent of all guardianship appointments. Of these 372 adults, 83 per cent had dementia; 63 per cent were female and 37 per cent were male.

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 2019**



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 2019, 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 2019, 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, 76 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.

The authority to make decisions regarding what services the represented person should receive was given by the State Administrative Tribunal in 79 per cent of all guardianship orders appointing the Public Advocate as at 30 June 2019.

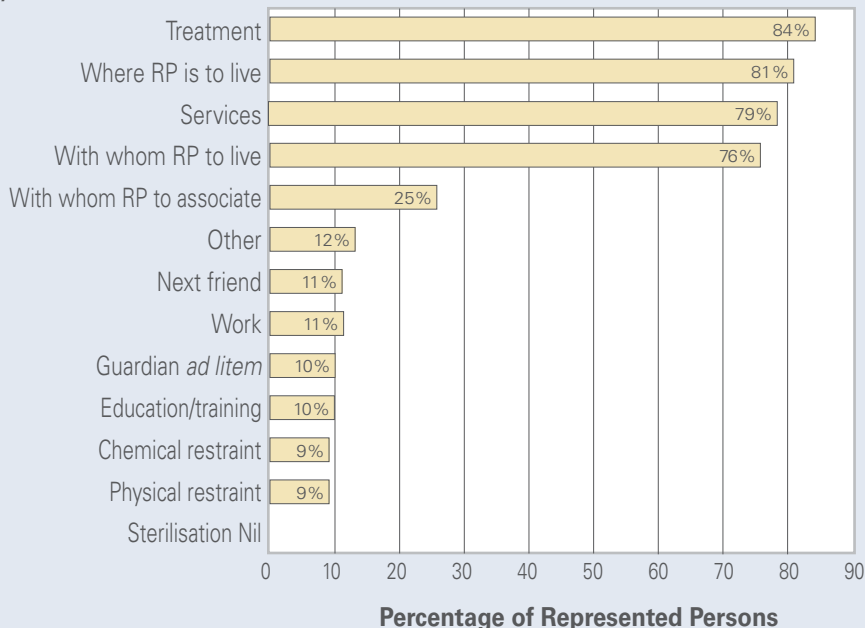
In a number of instances, the function given in the order has been labelled as 'other' (in Figure 12 below). Some examples of these might include to advocate on the person's behalf in relation to Police investigations; to determine if a person is to travel within Australia or overseas and to take possession 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 2019**

**Function (2,140 Represented Persons)**

Treatment	1807
Where RP is to live	1724
Services	1699
With whom RP to live	1619
With whom RP to associate	544
Other	255
Next friend	236
Work	230
Guardian <i>ad litem</i>	214
Education/training	207
Chemical restraint	198
Physical restraint	195
Sterilisation	Nil

**Function**



Note 1 – RP = represented person.

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

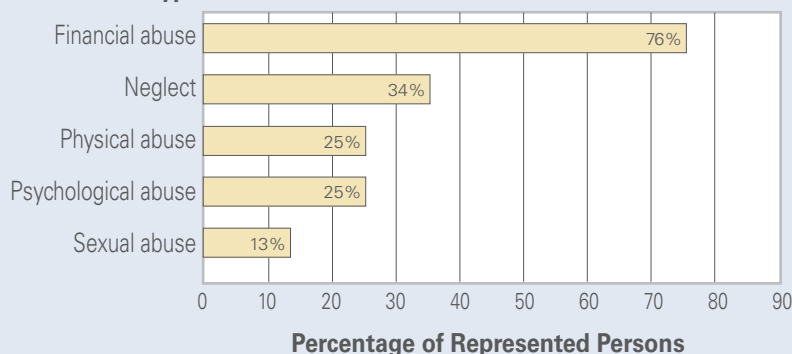
Allegations of abuse were a factor for 161 represented persons or 27 per cent of the 591 new guardianship orders appointing the Public Advocate in 2018/19. In some cases, more than one type of alleged abuse was reported. The most commonly reported form of abuse was financial, having been reported in 76 per cent of cases alleging abuse.

**Figure 13 Profile of new guardianship orders appointing the Public Advocate by type of alleged abuse 2018/19 (including elder abuse)**

**Abuse type (161 Represented Persons)**

Financial abuse	123
Neglect	54
Physical abuse	41
Psychological abuse	41
Sexual abuse	21

**Abuse type**



Note 1 - Alleged abuse was reported for 161 people, however, in some instances more than one alleged abuse type was reported.

Note 2 - Abuse may relate to historical abuse prior to the appointment of the Public Advocate.

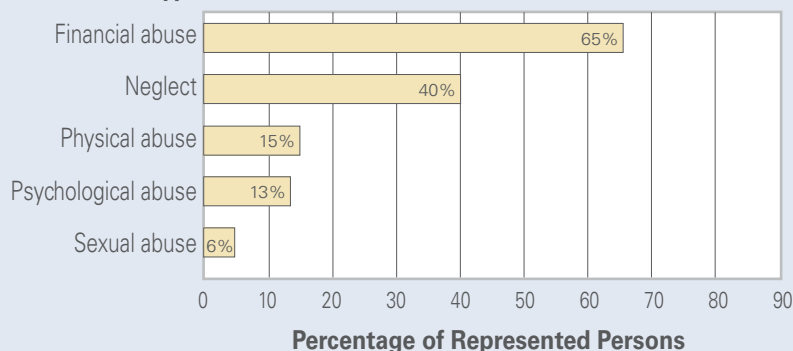
Of the 161 represented persons for whom abuse was alleged, 80 people were 65 years of age or older. Of these, financial abuse was also the most commonly reported form of abuse, having been reported in 52 (65 per cent) of the 80 cases.

**Figure 14 Profile of new guardianship orders appointing the Public Advocate by type of alleged elder abuse (aged 65 or older) 2018/19**

**Abuse type (80 Represented Persons)**

Financial abuse	52
Neglect	32
Physical abuse	12
Psychological abuse	10
Sexual abuse	5

**Abuse type**



*Note 1 – Alleged elder abuse was reported for 80 people, however, in some instances more than one alleged abuse type was reported.*

*Note 2 – Abuse may relate to historical abuse prior to the appointment of the Public Advocate.*

Of the 80 new appointments of the Public Advocate as guardian in 2018/19 where elder abuse was alleged, 12 were for a person of Aboriginal and Torres Strait Islander descent, representing 15 per cent. Neglect was the most common form of abuse, having been reported in eight of the 12 cases (67 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 2018/19**

Total new orders alleging elder abuse 2018/19	Non Indigenous	Indigenous	Indigenous as percentage of total
80	68	12	15

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



Of the 591 new appointments of the Public Advocate as guardian in 2018/19, 89 were for a person of Aboriginal and Torres Strait Islander descent, representing 15 per cent. This shows an over-representation of Indigenous adults, given the State's Indigenous population is only three per cent<sup>8</sup>.

**Figure 16 Profile of new guardianship orders appointing the Public Advocate by Aboriginality and Torres Strait Islander descent as at 30 June 2015 – 30 June 2019**

Year	Total	Non Indigenous	Indigenous	Indigenous as a percentage of total
2014/15	423	379	44	10%
2015/16	468	409	59	13%
2016/17	487	406	81	17%
2017/18	526	449	77	15%
2018/19	591	502	89	15%

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

For the past five 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 16 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 as at 30 June 2015 – 30 June 2019**

Year	Total	Non Indigenous	Indigenous	Indigenous as a percentage of total
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%
2018/19	2,140	1,772	368	17%

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

<sup>8</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)

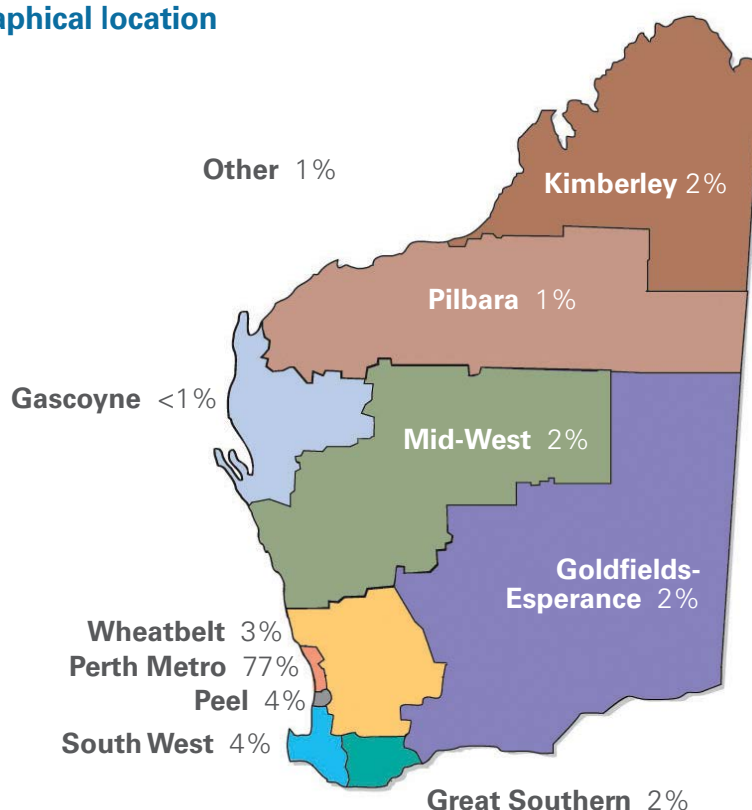
At 30 June 2019, 77 per cent of all appointments of the Public Advocate were for people living in the Perth metropolitan area.

**Figure 18 Profile of all guardianship orders as at 30 June 2019, appointing the Public Advocate by geographical location**

#### Geographical locations

Gascoyne	5
Goldfields-Esperance	40
Great Southern	52
Kimberley	50
Mid-West	44
Peel	75
Perth Metropolitan	1,653
Pilbara	32
South West	92
Wheatbelt	65
Other	32
<b>Total</b>	<b>2,140</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.

## Case Study

### Working together

Mr F was an elderly gentleman with dementia who had been living with his partner in regional WA for a number of years. His partner was his main carer and when she died he was involved in organising her funeral.

The funeral director noticed that Mr F was very confused; during the process of organising the funeral and at the funeral he seemed unclear about where he was going to live now his partner had passed away.

The funeral director contacted the State Administrative Tribunal due to their concerns and ultimately made an application for the appointment of a guardian and administrator.

The Tribunal referred the application to the Office of the Public Advocate, to investigate and provide a report to the Tribunal on Mr F's situation.

The investigator advocate met with Mr F and found out he wasn't born in Western Australia.

Mr F said that now his partner had died he had no family or friends in Western Australia, but he had a daughter who lived interstate. He had lost touch with his daughter and not spoken to her in many years. He was able to provide her name and address to the investigator advocate prior to the hearing at the State Administrative Tribunal and the investigator advocate was able to speak to Mr F's daughter about her father's situation.

Mr F's daughter was able to provide invaluable information about her father's previous wishes, including that he had always talked about returning to his home state when he was older. She also indicated that she was sad she no longer had a good relationship with her father.

Mr F's daughter was not able to attend the hearing but the information she provided was relevant in advocating for Mr F's best interests.

At the State Administrative Tribunal hearing, the Public Advocate was appointed as limited guardian for Mr F, with the functions to make decisions about where he was to live and in relation to travel.

The Public Trustee was appointed plenary administrator for Mr F, to manage his finances.

The delegated guardian made contact with Mr F's daughter after the hearing who advised that she wanted to rebuild her relationship with her father. She thought this could happen if Mr F lived nearer her, and again it was noted that Mr F had spoken about returning to live in his home state.

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*(Case study continued from previous page)*

The delegated guardian visited Mr F and asked him his views about where he wanted to live. He spoke fondly of the place where he grew up; he had many childhood memories of there and indicated he would be happy to move back to be nearer his daughter. He also said that he was lonely sometimes now that his partner had died and wanted the company of 'people his own age'.

Mr F had been assessed as needing to live in residential care, as he had high support needs, and had been struggling to care for himself at home.

The delegated guardian considered that one option for Mr F may be to move back to his home town where he would be close to his daughter and other family.

### ***Delegated authority***

A decision for a person to move interstate is a decision which must be approved by the Public Advocate as it is considered a significant decision.

Before such a move can be approved a plan needs to be presented by the delegated guardian to the Public Advocate about the benefits of the move and also how the person's move will be funded and supported.

The delegated guardian liaised with Mr F's trust manager at the Public Trustee, to find out if Mr F had available funds to travel interstate and move into a residential care home near his daughter.

The trust manager confirmed that Mr F had funds for the plane flight, and that he had sufficient money to pay for a companion for the journey. Due to Mr F's care and support needs this was important, as it was assessed that he needed to be accompanied by a health professional on the journey interstate.

The daughter had provided the trust manager with information about some local aged care facilities. The trust manager looked into the fees for these facilities and was able to advise that Mr F could afford to move into any of these homes, and had sufficient funds to pay the deposit.

The delegated guardian worked with Mr F's daughter, to provide her with the information she needed to make applications to the care homes she had identified and the Public Trustee completed the financial assessment forms.

The Public Advocate was advised that Mr F was offered a vacancy in one of the facilities and, with the endorsement of the Public Advocate, this was accepted by the delegated guardian.

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*(Case study continued from previous page)*

Prior to Mr F moving the delegated guardian submitted an application to have the Western Australian Guardianship order recognised in the State to which Mr F was moving. This enabled the delegated guardian to continue to be Mr F's decision-maker despite him being in another State.

As a result of the collaborative work done by the staff of the Office of the Public Advocate and the Public Trustee, all the other plans for Mr F to move fell into place very quickly.

Mr F was able to fly interstate accompanied by a health professional. He was met at the airport by his daughter, and she took him to his new home where he has settled in.

*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 NDIS) 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.

From 1 July 2018, the NDIA delivered the NDIS in Western Australia. The NDIA will continue to deliver the NDIS in a staged approach in different areas across the State. This means that the NDIS will become available in different areas of the State at different times. The NDIS is anticipated to finish rolling out in WA in 2020.

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

The Adults with Exceptionally Complex Needs interagency executive committee was established 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 Coordination program.

## **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 (Child Protection and Family Support; Disability Services and Housing), the Department of Health's Child and Adolescent Mental Health Service and Youth Mental Health Outreach Service, the Department of Justice (Youth Justice and the Office of the Public Advocate) and the Department of Education.

A review of the YPECN program was undertaken in 2018 as it had been in operation for five years and a number of changes had occurred, including funding being withdrawn by a partner agency, an amalgamation of departments into the Department of Communities, the impact of the National Disability Insurance Scheme and the cessation in 2017 of the adult People with Exceptionally Complex Needs program.

At 30 June 2019, two 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. Another two young adults have had guardianship and administration orders appointing the Public Advocate and the Public Trustee, for which the Public Advocate's authorities will come into effect when they turn 18 years of age in July and August.

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.

## **National Redress Scheme for People Sexually Abused as Children in Institutional Care**

In January 2019 the WA government enacted legislation enabling participation in the National Redress Scheme for adults who as children were sexually abused in institutional care. The National Redress Scheme is a response to the findings and recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse. The National Redress Scheme is administered by the Commonwealth Government.

The Public Advocate is collaborating with the Public Trustee to ensure that the interests of represented persons for whom the Public Advocate has been appointed as guardian are protected and advanced.

The Public Advocate is also collaborating with the Department of Communities under an instrument of Ministerial Consent for the sharing of information to identify represented persons who have been in care and if there is a record of sexual abuse while in care.

In evaluating a represented person's eligibility for National Redress, the Public Advocate considers with the Public Trustee whether or not there may also be grounds for a Common Law claim and which path is in the best interests of the represented person. As at 30 June 2019, 12 represented persons had been identified as having a possible National Redress claim.

## **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.

Australia's first national plan to respond to the Abuse of Older Australians (Elder Abuse) was launched on 19 March 2019, following endorsement by all the members of the Council of Attorneys-General. The national plan was a key recommendation of the 2017 Australian Law Reform Commission's (ALRC) Report: *Elder Abuse – a National Legal Response*, which highlighted examples of serious physical abuse, financial abuse, neglect and exploitation of older people.

The Office also participated in an interagency community education session facilitated by the Public Trustee to mark World Elder Abuse Awareness Day on 14 June 2019.



## 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 2018/19, including:

- Assisting 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 Public Trustee, the Department of Communities and other jurisdictions. This includes involvement in the National Register for enduring powers of attorney sub-working group.
- 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. This has included providing feedback on the consultation paper on options to reform enduring powers of attorney for financial matters.
- Ongoing contribution to the development the draft state strategy for elder abuse which is being led by the Department of Communities.
- Member of the National Disability Insurance Scheme (NDIS) Interface Steering Committee, convened by the Department of the Premier and Cabinet.
- On-going work between the Office of the Public Advocate and the Department of Communities, Disability Services, for represented persons for whom the Public Advocate is appointed guardian, who transitioned 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.
- Member of the Advance Health Directives Expert Panel reviewing Advance Health Directives as part of the Government's response to the Joint Select Committee end of life choices report *My Life, My Choice*.
- Member of the Project Control Group, which consists of senior officers from the Department of Health and the Department of Justice, to support the development of the Voluntary Assisted Dying legislation.
- Member of the Advance Care Planning Consortium 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.

- Response to Notice from the Royal Commission into Aged Care Quality and Safety submitted in April 2019, including the provision of the data requested where available.
- Continued 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.
- Regular meetings were held between the Office and the Chief Psychiatrist with regard to issues arising under the *Mental Health Act 2014* and the *Guardianship and Administration Act 1990*.
- Submission to the Law Reform Commission of Western Australia in response to its discussion paper Review of Western Australian legislation in relation to the recognition of a person's sex, change of sex or intersex (Discussion Paper).
- In conjunction with the State Administrative Tribunal, the development of a training package for allied health professionals to better inform them about the guardianship and administration system, the role of the agencies involved and to provide points of reference when they are assisting families and other professionals 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 2018/19, the Office delivered a total of 24 education sessions to community members and professionals from the health, mental health, disability, aged-care and legal sectors.

Of these, 12 addressed the needs of community members, 11 were specifically tailored for service providers and one catered to the needs of both groups.

The majority of the 24 education sessions were delivered in the Perth metropolitan area, with two of these sessions also being available for people in regional areas to attend via video conference. All of the sessions were held in accessible venues.

The community member sessions included four joint sessions with the Public Trustee for newly appointed private administrators, who were interested in information and advice about their role and responsibilities.

The Office delivered two sessions for members of Culturally and Linguistically Diverse (CaLD) communities. The Office worked with the Metro Migrant Resource Centre to deliver presentations with an interpreter for refugees with Karen, Chin or Burmese backgrounds. Similarly, the Office collaborated with the Ethnic Disability Advocacy Centre to deliver a presentation to their client group. An Auslan interpreter was made available for the presentation.

To mark World Elder Abuse Awareness Day (WEAAD) in 2019, the Office participated in a half-day of public talks for community members who wanted to find out how they could protect themselves and others from elder abuse. Useful resources and publications were also available for people to collect on the day.

The 11 service provider sessions included 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.

Two of the service provider sessions were held for colleagues within the Department of Justice; one with staff from the State Administrative Tribunal, and the other for Courts staff and Community Corrections Officers. These sessions assisted colleagues in gaining a greater understanding of the work of the Office and the role of delegated guardians, and promoted intra-agency collaboration.

One of the service provider sessions was held during Advance Care Planning Week and was targeted to GPs and allied health professionals. This was an experiential workshop and featured speakers from multiple agencies working in the sector. It aimed to increase health professionals' understanding of the legislation and had a focus on decision-making capacity. This all-day session included talks, case studies and a panel discussion.

In 2018/19, the State Administrative Tribunal (SAT) and the Office of the Public Advocate commenced a series of joint education sessions explaining the *Guardianship and Administration Act 1990* and SAT processes, strategically targeted to allied health professionals from the Department of Health. This key stakeholder group, who often make applications to SAT, gained a greater understanding of the processes and the seminars received a very positive response, particularly from regional hospital staff who were keen to join in the session via phone or video link.

The Office also provided publications and resources for the Seniors Recreation Council of WA's 'Have a Go Day' exhibition, for display and distribution on the stand staffed by members of the Department of Health and the Public Trustee. These resources were well received by members of the public looking for a one-stop-shop providing information on all aspects of getting their affairs in order; from enduring powers of attorney and enduring powers of guardianship to advance care planning and writing a will.

## 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.

The Office addressed 7,062 enquiries from 5,537 people who used the advisory service in 2018/19.

**Figure 19 Enquiries to the advisory service by mode of handling 2018/19**

Mode of handling	Jul 2018	Aug 2018	Sep 2018	Oct 2018	Nov 2018	Dec 2018	Jan 2019	Feb 2019	Mar 2019	Apr 2019	May 2019	Jun 2019	Total
Telephone	435	492	457	533	457	359	503	347	382	439	434	337	5175
Interview	19	7	8	11	17	9	11	7	8	11	10	14	132
Email/letter	40	12	17	35	11	13	25	21	5	9	26	16	230
<b>TOTAL</b>	<b>494</b>	<b>511</b>	<b>482</b>	<b>579</b>	<b>485</b>	<b>381</b>	<b>539</b>	<b>375</b>	<b>395</b>	<b>459</b>	<b>470</b>	<b>367</b>	<b>5537</b>

In some instances, enquirers sought advice on multiple topics. Guardianship matters accounted for 38 per cent of all enquiries received during the year, enduring powers of attorney accounted for another 27 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 2018/19**

Subject of enquiry	Jul 18	Aug 18	Sep 18	Oct 18	Nov 18	Dec 18	Jan 19	Feb 19	Mar 19	Apr 19	May 19	Jun 19	Total	Total as percentage of all enquiries
Guardianship	202	277	288	307	224	229	239	160	218	192	217	154	2707	38%
Administration	68	65	58	68	55	65	38	46	37	38	66	65	669	9%
Enduring powers of attorney	163	166	145	160	159	154	162	145	165	133	168	167	1887	27%
Enduring powers of guardianship	97	75	94	81	113	96	85	83	108	82	105	101	1120	16%
Advance health directives	23	11	14	9	16	8	10	15	17	13	10	12	158	2%
General	47	31	43	22	53	46	48	28	43	50	50	60	521	7%
<b>Total</b>	<b>600</b>	<b>625</b>	<b>642</b>	<b>647</b>	<b>620</b>	<b>598</b>	<b>582</b>	<b>477</b>	<b>588</b>	<b>508</b>	<b>616</b>	<b>559</b>	<b>7062</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>9</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 languages other than English. These three information sheets have been previously been available in simplified Chinese, Italian, Polish and Vietnamese, and in 2018/19 they were translated into the additional languages of Arabic, Dari and Malay. These are available on the Office's website and in hard copy on request.

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<sup>9</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.

## **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 2018/19 interpreter services were provided in Farsi, German, Hungarian, Italian, Macedonian, Spanish and Vietnamese.

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

The Office's website 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.

## 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 2018/19, 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 2018/19 was as follows:

**Figure 21 Budget allocation and expenditure 2018/19**

	Total Cost of Output
\$'000 Actuals 2018/19	7,032
\$'000 Budget 2018/19	7,733
\$'000 Variations from Budget	701

## The Year in Review

### Freedom of information

Four valid applications were received during 2018/19 for the release of information. All of the requests were dealt with in full during the year and one application received in 2017/18 was completed in 2018/19.

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 2018/19, the Office of the Public Advocate received 42 formal complaints during the year, which were all considered by the Public Advocate or a senior manager. The Office also received 29 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 2018/19.

There was a 10 per cent increase in the total number of investigations carried out in 2018/19 compared to 2017/18 and an 11 per cent increase in the number of new matters for investigation referred to the Office by the State Administrative Tribunal.

In 2018/19, the Office experienced a 12 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 2019, compared to 30 June 2018.

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 2,140 people for whom the Public Advocate was guardian at 30 June 2019, 839 (39 per cent) were 65 years of age or older. Of these 839 people, 62 per cent had dementia.

In 2018/19, 42 per cent of the 1,350 new matters referred for investigation by the State Administrative Tribunal involved a person with dementia.

According to research commissioned by Alzheimer's Australia<sup>10</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.

For the second year in a row, intellectual disability accounted for the largest proportion of all adults for whom the Public Advocate was appointed guardian at 30 June 2019.

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<sup>10</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) has impacted 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 may need a guardian.

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 continued to affect the Office in 2018/19. In December 2017, the Commonwealth and Western Australian (WA) Governments announced that the nationally-delivered NDIS (delivered by the National Disability Insurance Agency) was being adopted as the model in WA.

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.

The Australian Law Reform Commission's report on elder abuse was released in 2017 and made 43 recommendations regarding elder abuse. One of the key recommendations in the report was the development of a national plan to address elder abuse.

In September 2018, the Legislative Council Select Committee into Elder Abuse handed down its final report *'I never thought it would happen to me': When trust is broken*.

The launch of Australia's first national plan to respond to the Abuse of Older Australians (Elder Abuse) occurred in March 2019, following endorsement by all the members of the Council of Attorneys-General.

The Department of Communities had the lead role in this in Western Australia, as the Minister for Seniors and Ageing has the portfolio responsible for elder abuse prevention and the development of a State strategy.

# Disclosures and Legal Compliance

## Financial Statements

See the Department of Justice 2018/19 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 effectiveness indicators	Actual 2015/16	Actual 2016/17	Actual 2017/18	Target 2018/19	Actual 2018/19
<b>Percentage of guardians of last resort allocated in one day</b> This indicator measures the timeliness of the Public Advocate in allocating a guardian to a represented person in order to make decisions on their behalf and protect them from neglect, abuse or exploitation. A guardian is appointed only when considered necessary and when there is no one else suitable or available to take on the role.	98%	95%	94%	95%	82%

### Comment on significant variation

The actual outcome for 2018/19 is 13% lower than actual outcome of 94% for 2017/18 and 14% lower than the 2018/19 target. These variances are due to the ongoing demand for the appointment of the Public Advocate as Guardian of Last Resort exceeding resources available to meet the increase in demand.

Key efficiency indicators	Actual 2015/16	Actual 2016/17	Actual 2017/18	Target 2018/19	Actual 2018/19
<b>Average cost of providing advocacy and guardianship services</b> This indicator measures the average cost per case of providing advocacy and guardianship services on behalf of people with decision-making disabilities.	\$1,744	\$1,735	\$1,789	\$1,392	\$1,445

### Comment on significant variation

There is no significant variance between the 2018/19 actual and 2018/19 target. The 2018/19 actual decreased by 19% from the 2017/18 actual due to changes in the allocation of accommodation costs and continuing demand for the services of the Office of the Public Advocate.

## Notes to the Key Performance Indicators

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

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

## Ministerial Directives

Nil.

## Public Interest Disclosures

Nil. From 1 July 2019 any disclosures will be reported in the Department of Justice 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, and community education	\$4,882
<b>TOTAL EXPENDITURE</b>	<b>\$4,882</b>

### 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.

See the Department of Justice 2018/19 annual report for any further information on:

- Other financial disclosures
- Other governance disclosures
- Disability Access and Inclusion Plan outcomes
- Compliance with Public Sector Standards and Ethical codes
- Substantive equality
- Occupational Safety, Health and Injury Management

# 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*

*Civil Liability Legislation Amendment (Child Sexual Abuse Actions) Act 2018 (WA)*

*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*

*National Redress Scheme for Institutional Child Sexual Abuse (Commonwealth Powers) Act 2018*

*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 seven languages other than English)
- Enduring Power of Guardianship (also available in seven languages other than English)
- Planning for the Future (also available in seven languages other than English)

### 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 2018/19

### 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 1,717 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 591 adults with a decision-making disability
- made decisions for the people we were guardian for, which was 2,140 people on 30 June 2019
- held 24 information sessions about what the Office does and how to help protect people with a decision-making disability
- helped 5,537 people who contacted the Office's advisory service for information
- had 62 staff positions
- spent \$7.032 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)  
W: [www.publicadvocate.wa.gov.au](http://www.publicadvocate.wa.gov.au)