



Government of **Western Australia**  
Department of **Justice**



Office of the  
**Public Advocate**

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

# The Public Advocate of Western Australia Annual Report 2019/20



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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 2020.

This report records the operations and performance of the Office of the Public Advocate during 2019/20. 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 2019/20, the Office of the Public Advocate reported on financial and administrative matters to the Director General of the Department of Justice.

*Pauline Bagdonavicius*

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**PUBLIC ADVOCATE**

21 September 2020

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# Overview

## The Year in Review

The Office of the Public Advocate protects a growing number of vulnerable people each year. This year, the challenges presented by growing demand for the Office's services, were compounded by the COVID-19 pandemic.

In order to reduce exposure and minimise the risk to staff, vulnerable adults and related agencies, from mid-March through to 30 June 2020 face-to-face contact with clients was only allowed in exceptional circumstances and part of the Office's workforce transitioned to alternative work arrangements.

Despite these added challenges, the Office's advocacy and investigation team looked into the lives of almost 2,000 adults who may have needed a substitute decision-maker appointed. This was a 15 per cent increase from the total number of investigations carried out in 2018/19.

The guardianship team played an important decision-making role in the lives of almost 2,500 adults who were unable to make decisions for themselves because of a decision-making disability. This was an increase of 15 per cent from the number of guardianship orders appointing the Public Advocate at 30 June 2019.

Dementia continued to account for the largest proportion of matters referred to the Office for investigation by the State Administrative Tribunal, with 43 per cent of new referrals in 2019/20 regarding a person with dementia.

Age-related dementia had accounted for the largest proportion of appointments of the Public Advocate as guardian for over a decade, until 2017/18 when intellectual disability took the number one spot. This new trend has continued, with mental illness now accounting for the largest proportion of guardianship appointments of the Public Advocate at 30 June 2020 (29 per cent), closely followed by intellectual disability (28 per cent) and dementia (26 per cent). The growth in appointments regarding people with mental illness and intellectual disability appears to be driven largely by the ongoing roll-out of the National Disability Insurance Scheme (NDIS).

Despite COVID-19 restrictions meaning community education sessions were rescheduled during the last quarter of the year, the Office delivered 20 sessions in the first three quarters of the year and the Office continued to educate community members and service providers via its website and publications. Staff also provided advice and information to those seeking it, via the Office's telephone advisory service, addressing more than 6,000 enquiries from almost 5,000 people who used the service in 2019/20.

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## Acknowledgements

The hard work and dedication of investigator advocates and guardians within this Office is undeniable. They delve into the lives of vulnerable adults, navigate often difficult circumstances and work tirelessly to deliver better outcomes for vulnerable adults with impaired capacity.

Providing these vital services would not be possible if it weren't for the incredible support of the Office's management team, as well as the administration, policy and community education officers.

The support of the Director General of the Department of Justice, Dr Adam Tomison, as well as colleagues from within the Department and colleagues from other agencies, is essential to the Office's success.

The guardianship function within the Office also benefits greatly from the 18 community guardianship program volunteers, who make an invaluable impact on the lives of some of the most isolated and vulnerable members of our community.

This year, the Office experienced a devastating personal loss, with the passing of John Hodges. For 17 years, John worked as a guardian and senior guardian in the Office, upholding the rights of people with decision-making disabilities. John's dedication to the people he represented was exemplary. His passion for helping those in need, particularly marginalised groups, could be seen in his work in regional and remote areas, working with Aboriginal families and communities for better outcomes for the people he represented. John's service to the community and his support and camaraderie within the office is deeply missed.



*Pauline Bagdonavicius*

Pauline Bagdonavicius

**PUBLIC ADVOCATE**

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# 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 2019/20 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.

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

For over a decade, dementia accounted for the largest proportion of appointments of the Public Advocate as guardian. This year however, marked the third year in a row that dementia did not account for the largest proportion of appointments.

Of the 2,463 adults the Public Advocate was appointed as guardian for at 30 June 2020, 29 per cent had a mental illness, 28 per cent had an intellectual disability, 26 per cent had dementia, 16 per cent had an acquired brain injury and two per cent had some other form of decision-making disability. Of these 2,463 adults, 54 per cent were male and 46 per cent were female.

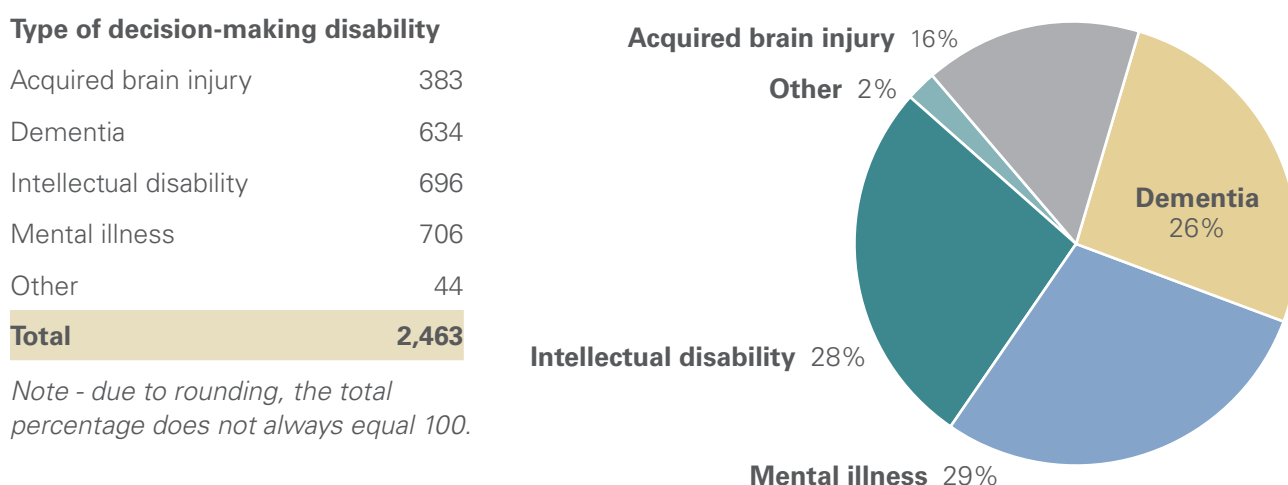
In 2019/20, 38 per cent of new appointments of the Public Advocate as guardian involved a person who was engaged with the National Disability Insurance Scheme (NDIS).

At 30 June 2020, 1,288 or 52 per cent of the 2,463 adults for whom the Public Advocate was appointed guardian had NDIS involvement. 1,531 of the 2,463 adults were 65 years or younger, and of these adults, 82 per cent had NDIS involvement.



It appears that the ongoing roll-out of the NDIS has resulted in further growth in the proportion of new appointments of the Public Advocate for people with an intellectual disability and people with a mental illness. It is anticipated this trend will continue at least until the scheme is fully rolled out in Western Australia, which the Department of Communities expects will be by 30 June 2023 (according to the Department of Communities' July 2020 Discussion Paper regarding the establishment of an Office of Disability).

**Figure 1 Profile of all guardianship orders appointing the Public Advocate by type of decision-making disability as at 30 June 2020**



The number of people for whom the Public Advocate is guardian has increased by 58 per cent over the past four years, from 1,555 in June 2016 to 2,463 in June 2020.

**Figure 2 People under guardianship orders appointing the Public Advocate by type of decision-making disability as at 30 June 2016 – 30 June 2020**

Type of decision-making disability	2016		2017		2018		2019		2020	
	Number	Percentage of total	Number	Percentage of total	Number	Percentage of total	Number	Percentage of total	Number	Percentage of total
Acquired brain injury	263	17%	288	17%	299	16%	338	16%	383	16%
Dementia	462	30%	506	29%	531	28%	566	26%	634	26%
Intellectual disability	449	29%	505	29%	578	30%	630	29%	696	28%
Mental illness	364	23%	420	24%	499	26%	571	27%	706	29%
Other	17	1%	19	1%	16	1%	35	2%	44	2%
<b>Total</b>	<b>1,555</b>		<b>1,738</b>		<b>1,923</b>		<b>2,140</b>		<b>2,463</b>	

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

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## ***Acquired brain injury***

An acquired brain injury can result in the deterioration of cognitive, physical, emotional or independent functions. This injury can occur as a result of events including trauma, hypoxia, infection, alcohol and substance abuse, degenerative neurological disease or stroke. In 2007, the Australian Institute of Health and Welfare estimated that people aged 65 years or over were more than twice as likely as those aged less than 65 years to have an acquired brain injury with activity limitations or participation restrictions.<sup>1</sup>

In 2019/20 there were 995 Western Australian participants engaged with the National Disability Insurance Scheme, with an acquired brain injury reported as their primary disabling condition.<sup>2</sup>

## ***Dementia***

According to research commissioned by Dementia Australia<sup>3</sup>, there were an estimated 459,000 people living with dementia in Australia in 2020, with 42,900 of these people in Western Australia. This research estimates that the national figure will increase to 1,076,000 people by 2058, with 108,000 of these people in WA.

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.

Of the 32,547 active Western Australian participants in the National Disability Insurance Scheme in 2019/20, 6,536 were reported as having an intellectual disability as their primary condition in 2019/20.<sup>4</sup>

In 2019/20 intellectual disability accounted for the second largest proportion of all adults for whom the Public Advocate was appointed guardian at 30 June 2020.

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

2 National Disability Insurance Scheme, published quarterly reports 2019-20 ([www.ndis.gov.au/about-us/publications/quarterly-reports](http://www.ndis.gov.au/about-us/publications/quarterly-reports)).

3 Dementia in Australia, Prevalence Estimates 2020 – 2058 ([www.dementia.org.au/sites/default/files/documents/2020-2058\\_dem\\_prev\\_S\\_T\\_update.pdf](http://www.dementia.org.au/sites/default/files/documents/2020-2058_dem_prev_S_T_update.pdf)).

4 National Disability Insurance Scheme, published quarterly reports 2019-20 ([www.ndis.gov.au/about-us/publications/quarterly-reports](http://www.ndis.gov.au/about-us/publications/quarterly-reports)).

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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.

Mental illness accounted for the largest proportion of guardianship appointments of the Public Advocate as at 30 June 2020. The growing prevalence of mental illness within the community, coupled with the need for represented persons with mental illness to engage support through the NDIS for better outcomes, particularly those with chronic mental health issues, would seem to indicate the growth in the number of Public Advocate appointments for people with mental illness will continue.

### ***Resources***

The role and functions of the Public Advocate in 2019/20 were supported by:

- approved establishment of 62 ongoing full-time equivalent (FTE) positions and 1.5 FTE positions funded for a finite period
- expenditure of \$8.958 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. P.xii.

<sup>6</sup> Expenditure includes shared Department of Justice corporate support.

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# 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.

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# 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.

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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 2019/20, the Public Advocate carried out a total of 1,983 investigations into the personal or financial welfare of adults with a decision-making disability. This was a 15 per cent increase from 2018/19, when there were 1,717 investigations carried out. These 1,983 investigations included new matters and matters carried over from 2018/19.

Of the 1,983 investigations carried out during the year, 1,817 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 18 per cent from 2018/19, when 1,542 investigations related to matters before the State Administrative Tribunal.

The remaining 166 investigations were referred directly to the Public Advocate from sources including members of the public, Courts and Tribunals.

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An additional 131 preliminary investigations were referred under the liaison role, which assisted the Tribunal in gathering further information relevant to the hearing, as compared to 106 investigations of this type in 2018/19. All 131 of these were new matters, seeking preliminary information including consideration of whether the matter was urgent, or if safeguards should be put in place ahead of the Tribunal hearing.

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

There were 1,542 new investigations referred by the State Administrative Tribunal in 2019/20, which was a 14 per cent increase from the previous year, when there were 1,350 new investigations.

These 1,542 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. There were also some investigations under section 17A of the *Guardianship and Administration Act 1990*, where a Full Tribunal reviewed the decision of a single member. Investigator advocates attended these matters to provide further advocacy in relation to the applications.

The State Administrative Tribunal requested the attendance of an investigator advocate at 217 urgent hearings in 2019/20. In some cases the hearing occurred on the day the matter was referred to the Office of the Public Advocate. This was an increase of 44 per cent on the 151 urgent hearings in 2018/19.

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.

Where the Public Advocate is appointed at an urgent hearing, the investigator advocate is required to urgently provide information to the Public Advocate about the represented person and the key decisions needed, to enable a timely consideration of issues and a decision to be made.

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.



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## Liaison 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 2019/20, the advocacy and investigation team – through the liaison role – conducted preliminary investigations into 131 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 (24 per cent) from 2018/19, when 106 referrals were made through the liaison 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 three day timeframe to respond to the Tribunal in relation to these referrals.

The investigator advocate 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.

Referrals to the liaison role tend to seek information on specific issues raised within the application on which the Tribunal seeks clarity before proceeding with a listing.

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 due to the complexities identified from speaking to interested parties.

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.

As with other investigations, the focus for the investigator advocate is to consider what is in the best interests of the proposed represented person.



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## Community-referred investigations

Section 97 (1)(c) of the *Guardianship and Administration Act 1990* gives the Public Advocate the power to investigate any complaint or allegation that a person is in need of a guardian or administrator or is under an inappropriate guardianship or administration order.

These types of matters are called ‘community-referred investigations’ as they generally come from issues raised by a concerned community member who does not have the kind of relationship with the person they are concerned about that would lead them to make an application to the State Administrative Tribunal.

Referrals for investigation also come from other sources including community-based organisations, for example, churches and social groups, other agencies such as the Police, 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. These investigations present a particular challenge to investigator advocates as the purpose is to get 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, 166 such referrals were reviewed by the Office in 2019/20. Of the 166 cases, 122 were closed during the financial year and 44 remained open at 30 June 2020. This compared to 174 such referrals being reviewed in 2018/19.

While the number of community referrals has decreased, as indicated in the following case study, these matters present a challenge for investigator advocates with an initial need to confirm the person is not at risk, and then gather information when parties may be unwilling to engage with the investigation process.

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 who is willing and able to make the application to the State Administrative Tribunal.

The investigator advocate will then provide the family member or friend with the relevant information and support to make the application. Once the application has been submitted, the investigator advocate 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.

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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 their 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.
- Referrals from the Mentally Impaired Accused Review Board under section 98 of the *Guardianship and Administration Act 1990*, when a person is placed on a custody order under the *Criminal Law (Mentally Impaired Accused) Act 1996*.

The outcome of community-referred 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

### Community-referred investigation

Mr and Mrs B are an elderly couple who immigrated to Australia in the 1970's and who had no family living in Western Australia.

The Office of the Public Advocate's telephone advisory service officer received a call from a community member who was concerned about Mr and Mrs B.

The couple had previously lived next door to the caller's family member, Mr L. The caller was concerned that Mr L (his family member) was taking advantage of Mr and Mrs B.

The caller reported that Mr L had bought a car from Mr and Mrs B, for what he thought was below market value.

The caller was unable to provide much information about Mr and Mrs B, but indicated that he thought they had dementia. He did not know the couple's address, as they had recently moved from living next door to his family member, Mr L. He was also unable to provide the details of any service providers or Mr and Mrs B's doctor.

### ***Obtaining personal information***

Collecting information from callers about the details of the person they are concerned about is often the first challenge in a community-referred investigation.

Sometimes, investigator advocates need to access Landgate records and the electoral role to locate people.

When the investigator advocate contacted the complainant to gather more information he advised that he believed his relative (Mr L) had benefitted from gifts of money and a car and that he was trying to make the couple change their Will.

He said he had a difficult relationship with Mr L and that there was a history of family conflict. The caller said he had not spoken to Mr L about the car or its purchase, but he knew that Mr L now owned Mr and Mrs B's car.

The investigator advocate was able to speak with Mrs B who advised that although she was elderly, she was well aware of her finances, and managed her and her husband's money, including paying all of their bills. She also advised that she had appointed two friends as her attorneys under an enduring power of attorney, who were able to assist if necessary.

*(continued next page)*

(Case study continued from previous page)

### ***Family conflict***

It is not unusual during an investigation to identify conflict and at times estrangement between parties. While pursuing complaints with an open mind, it is important to be aware of this and how it may impact on the complainant's perception of events.

Likewise, it is important to be aware that the person for whom there are concerns surrounding their potentially inappropriate actions, may try to defend their actions by saying the complainant is vexatious and simply trying to cause problems for them.

Stepping around family conflict to gather accurate information to assess a situation is a challenge often faced by investigator advocates in these referrals.

Mrs B was willing to provide contact details for her attorneys and her doctor, to enable the investigator to gather more information.

When the investigator advocate spoke to the attorneys, they confirmed the sale of the car to the previous neighbour, Mr L. They explained that Mr B had stopped driving, and as Mrs B didn't drive, they no longer needed the car and decided to sell it.

The attorneys said Mr L had offered to buy the car. Although Mr and Mrs B retained capacity, the attorneys explained that they felt they had a duty in their role as attorneys and therefore researched the price of similar cars, to ensure the price was reasonable and that Mr and Mrs B were not being taken advantage of.

Mr and Mrs B's General Practitioner and a local service provider who the couple had engaged, confirmed that the two friends who were attorneys were supportive and involved in Mr and Mrs B's life, although Mrs B had full capacity and managed the couple's finances.

The investigator advocate also spoke to the former neighbour, Mr L. He acknowledged that he had bought the car from Mrs B, but said the attorneys had overseen the sale, which was market value.

In this case it was positive that the attorneys understood their duty to Mr and Mrs B and were supportive in overseeing the sale of a major asset.

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(Case study continued from previous page)

### ***Choosing when an EPA comes into effect***

When a person makes an enduring power of attorney, they can choose for their attorney's authority to start immediately, or only if they lose capacity.

If they choose for it to start immediately, this doesn't mean they can no longer make decisions about their property and finances. But it means if they want their attorney to be able to start doing certain financial tasks, the attorney will have the legal authority to do so, under the person's guidance. Then if the person loses capacity in the future, their attorney will be able to step in and start making these decisions for them.

Having someone with oversight in this way can be an important role for an attorney in protecting people from financial exploitation, which in the case of someone aged 65 or older, is referred to as financial elder abuse.

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

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## Administrator of last resort

As at 30 June 2020, the Public Advocate was appointed by the State Administrative Tribunal as limited administrator of last resort for ten 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. 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 on behalf of the represented person. The principal investigator advocate will consider if there are other parties who could be appointed, consider the conflict of interest raised in the application and ultimately, if the appointment of the Public Advocate is to occur, advocate for orders which will enable the Public Advocate to conduct the role as administrator of last resort.

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.

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## 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 1,542 new investigations carried out during the year, allegations of abuse were made regarding 339 people. 210 of these people were 65 years of age or older. Of these alleged elder abuse cases, 86 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.

As applications for access to the National Disability Insurance Scheme need to be made before a person turns 65, investigator advocates have needed to highlight where there may be an urgent need for access applications to be made, where the person will soon reach this age.



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## Increasing regional referrals

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 2019/20 there were 374 matters referred which related to people in regional areas, compared to 347 in 2018/19, an increase of 27 matters referred or eight 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 are grouped and allocated to the same investigator advocate. Some matters 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 travelled to South West Western Australia for extended periods to interview proposed represented persons, applicants and interested parties during the course of their investigations.

However, with restrictions due to COVID-19, this travel was suspended in March 2020. Therefore for the last quarter of the financial year investigator advocates had to rely on support services to assist with interviewing proposed represented persons and other parties in regional areas.

## COVID-19 impact

The suspension of in-person interviews due to COVID-19 during the period had an impact on the ability of investigator advocates in gaining proposed represented persons' views about applications, especially where the person was not able to communicate easily by phone.

In a small number of complex matters, where the proposed represented person had challenges with phone/video interviews or where the matters raised in the application were significant, investigator advocates were able to present a case to interview the person in-person.

The Public Advocate reviewed and approved such requests, with investigator advocates ensuring measures were in place to protect both themselves and the proposed represented person. These measures included interviews being conducted outside, but in a private area, through the window of a facility or in an office with social-distancing measures in place. In all of these instances the in-person interview was critical to gathering information to present to the Tribunal.



## Case Study

### Same diagnosis – different needs

When an application is referred to the Public Advocate to investigate, the starting point is to understand the individual circumstances and needs of the proposed represented person.

It is important for investigator advocates to appreciate that even though people may have the same diagnosed condition, this does not mean they will have the same needs with regard to substitute decision-making.

#### *Tips for applicants*

It is important for anyone making an application for the appointment of a guardian and/or administrator to focus on how their family member, friend or client is impacted by their diagnosis.

The applicant should make it clear in the application what the person's diagnosis is and how it is impacting on their decision-making capacity, including if the person is placing themselves at risk.

In the past year there have been a number of applications referred to the Office where the person had a diagnosis of Huntington's disease. This progressive neurological condition can impact on a person's decision-making capacity as well as impacting on their mobility.

Following are two examples of applications where the person had a diagnosis of Huntington's but their situations were not the same and therefore the issues that needed to be considered were different.

#### *Ms Z's story*

An application for the appointment of a guardian and administrator for Ms Z was made by a service provider who was concerned that Ms Z was not accessing the support and services she needed. The service provider believed she was at risk living at home. A concern was also raised about Ms Z's volatile temper and that Ms Z and her partner were planning to separate because of this.

The service provider applicant was seeking independent appointments for both guardianship and administration – meaning they felt the appointment of the Public Advocate as guardian and the Public Trustee as administrator was preferable to appointing a family member to the role/s.

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Ms Z and her husband lived at home with their young daughter. Ms Z's mother also lived with them and helped with caring for Ms Z and her daughter while Mr Z was at work. Ms Z had a National Disability Insurance Scheme (NDIS) plan in place, but services were not being used and it was felt by the service provider that the family were blocking service provision.

One of the service provider's concerns was that the home was not set up to meet Ms Z's mobility needs as the family had not followed professional advice about adaptations which could have been made to the home to facilitate access and enable service providers to work in a safe environment.

In talking to the family, the investigator advocate found that they were working hard to follow Ms Z's wishes to remain at home, in the family unit. They had not been using services as they had felt it was better to support Ms Z themselves, however they advised the investigator advocate that they could see they had reached a point that they needed some help and that this would enable them to support Ms Z for longer at home.

The family advised that although an NDIS plan was in place, because they lacked legal authority, it had been difficult to liaise with NDIS and engage service providers, especially in instances where Ms Z advised she did not want support.

The family advised that along with understanding they needed support to maintain Ms Z's wish to remain at home, they also needed to adapt the home to meet her changing needs. They had started working with an occupational therapist and were following the recommendations for aids and adaptations for their home, with work having started with a ramp being installed to the entrance of the home and rails installed in the shower.

In discussing the need for an administrator, Mr Z advised the investigator advocate that prior to her recent deterioration Ms Z had made him a nominee with Centrelink and Medicare and he was not having any problems accessing those systems. All other financial affairs including bank accounts were in joint names, so again he was not facing any difficulties in regards to financial management.

As matters had progressed since the application was made, it was determined that Mr Z could be appointed as guardian to make decisions about accommodation and support services. There was no need for an administrator as the informal arrangements in place were working in Ms Z's best interests.

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### ***Ms A's story***

Ms A was admitted to hospital after falling at home.

The treating team at the hospital had worked with Ms A for a number of years since her Huntington's diagnosis. During her most recent admission the treating team had become concerned about a number of outstanding debts Ms A had accrued and her lack of income.

Ms A had retired five years ago and had used all of her superannuation and an inheritance from her parents. The team were concerned that with debt collectors calling and Ms A not having a source of income, she was at risk of losing her home due to defaulting on the mortgage. The team felt this would put her in a vulnerable situation and may impact negatively on her health.

A member of the treating team made an application to the State Administrative Tribunal for the appointment of a guardian and administrator. The Tribunal referred the matter to the Office for investigation ahead of the hearing.

The applicant from the treating team had been able to provide clear information in the application regarding Ms A's capacity. Ms A now lacked capacity to make informed decisions regarding her finances, and due to her lack of insight could not make decisions about her support services.

Ms A lived alone and had become socially isolated since her retirement and as her condition progressed. The investigator advocate was only able to find two people that Ms A was connected to. The first was her brother, who was also diagnosed with Huntington's disease and had recently had a guardian and administrator appointed. Due to his own capacity he was unable to assist Ms A.

The second contact was a cousin, who reported he had previously been close to Ms A and they had a shared network of friends who socialised together. However, in recent times Ms A had started to withdraw from social events. The cousin advised the investigator advocate that he wanted to remain as an informal support rather than as a legal decision-maker.

Besides the social isolation, the applicant was concerned that Ms A was a victim of an internet financial scam. Ms A had been befriended online and given a lot of money to the 'friend' to assist in their medical expenses. Despite evidence being provided to Ms A by the applicant that this was a scam, Ms A insisted that the friend was telling the truth, and refused to stop the money transfers.

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When Ms A began to withdraw from social events her cousin became concerned and reported he went to see her. At this visit he found out about the internet friend and the transfers of money to her. He tried to explain to Ms A that this was a scam, but she refused to accept this. This was consistent with the view Ms A had when she spoke to the investigator advocate. She believed the online friend was genuine, and was in desperate need of money.

The treating team advised that over the years Ms A had refused to accept her diagnosis and as time progressed, had not wanted to engage with support services as she lacked insight into her changing care and support needs. For example, the treating team had recommended that Ms A apply for access to the National Disability Insurance Scheme (NDIS) for support services, but she had not wanted to progress this. She was now at a stage in her illness where she needed support with activities of daily living if she were to remain living at home.

During the investigation, Ms A became aware that her brother had recently had a guardian and administrator appointed. Ms A was able to see that this had led to him having more support and access to the community. While Ms A still refused to accept that she was a victim of a scam or take steps to protect her finances, she became more willing to look at services and support agencies. She began to talk to the treating team about this and also discussed it with the investigator advocate. However, she was unable to work out how to assess her support options or negotiate with service providers, so was unable to progress getting services in place.

It was the recommendation of the investigator advocate that Ms A have a guardian and administrator appointed, and that the Public Advocate and Public Trustee be appointed as there was no one else suitable, willing and available to be appointed.

At the hearing, Ms A said that she now wanted a guardian and administrator and could see that this would be beneficial for her. She would be able to have support services put in place so that she could go out on activities that she previously enjoyed with her cousin and friends, as well as support to manage her finances.

The Public Advocate and Public Trustee were appointed, which was in line with the recommendations, but also in line with the wishes of Ms A at the hearing.

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

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## Transition of young people leaving State care

The Office of the Public Advocate continues to work closely with the Department of Communities in the early identification of the needs of young people with a decision-making disability, to enable a smoother transition out of the Department's care.

A key role for the Office's principal investigator advocate is to work collaboratively with the Department of Communities (Child Protection) staff and other related service providers, to assist in the planning for young people with a decision-making disability who are transitioning from State care at 18 years of age. Many of these young people have complex needs and will need ongoing care and support and possibly a substitute decision-maker on an ongoing basis.

Wherever possible, the principal investigator advocate attends leaving care planning meetings for young people aged 16 years and over, to provide information on guardianship and administration and assist in 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 or another member of the advocacy and investigation team provide 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 17 and over. This involvement is consistent with the memorandum of understanding between the two agencies.

A total of 39 applications from the Department of Communities, Child Protection and Family Support were determined by the State Administrative Tribunal during the year. In one matter the guardianship and administration applications were dismissed.

Following the determination by the State Administrative Tribunal of these applications, the Public Advocate's appointment as guardian came into effect for 33 young people leaving State care when they turned 18 years of age. In addition, the guardianship orders made in 2018/19 for another two young people came into effect during this financial year and a guardianship order appointing the Public Advocate for another young person will come into effect when she turns 18 years of age in the 2020/21 financial year.

The Public Trustee was appointed as administrator for all 33 of these young people as well as for another two where a guardianship order was not made. The Public Trustee was also appointed for another young person, where a private guardian was appointed. In addition, the administration orders made in 2018/19 for another two young people came into effect during this financial year and an administration order appointing the Public Trustee for another young person will come into effect when she turns 18 years of age in the 2020/21 financial year. In one matter a private administrator and private guardian were appointed.

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## 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

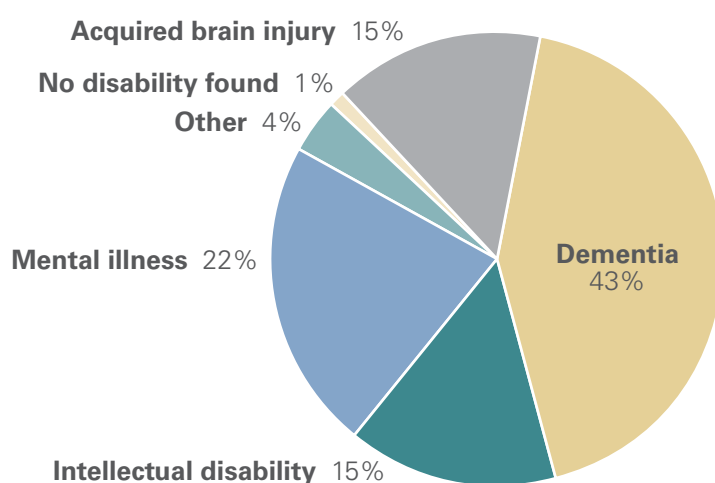
Of the 1,542 new matters referred to the Public Advocate for investigation by the State Administrative Tribunal in 2019/20, 43 per cent involved a person with dementia. The remaining matters involved a person with either a mental illness, an intellectual disability or an acquired brain injury, and in some instances, no decision-making disability was found. Half of the 1,542 new matters related to males and the other half to females.

**Figure 3 Profile of new investigations by type of decision-making disability 2019/20**

### Type of decision-making disability

Acquired brain injury	228
Dementia	664
Intellectual disability	228
Mental illness	342
Other	59
No disability found	21
<b>Total</b>	<b>1,542</b>

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



Of the 1,542 new investigations carried out during the year, allegations of abuse were made regarding 339 people.

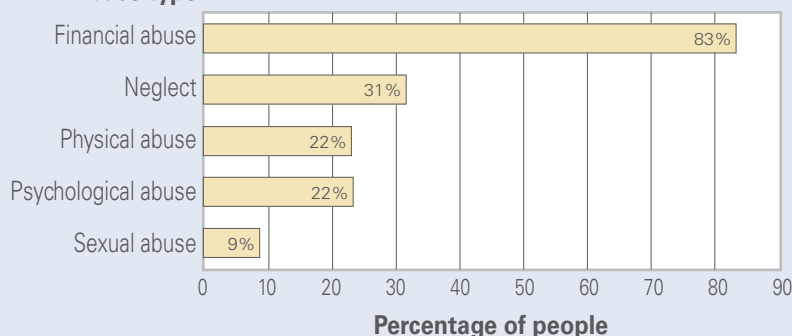
In some cases, more than one type of alleged abuse was reported in the application. The most commonly reported form of alleged abuse was financial, with 83 per cent alleging financial abuse.

**Figure 4 Profile of new investigations alleging abuse by type of abuse 2019/20 (including statistics of alleged elder abuse)**

### Abuse type (339 people)

Financial abuse	281
Neglect	105
Physical abuse	75
Psychological abuse	75
Sexual abuse	29

### Abuse type



*Note 1 – Allegations of abuse were made regarding 339 people, however, in some instances more than one alleged abuse type was reported in the application.*

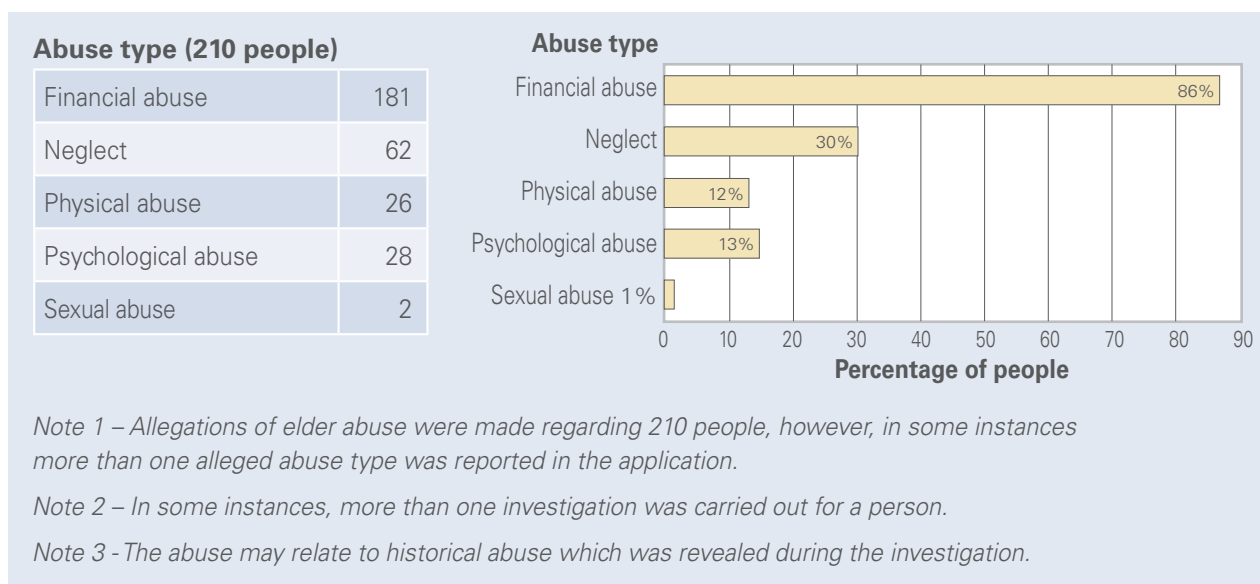
*Note 2 – In some instances, more than one investigation was carried out for a person.*

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

Of the 339 people for whom abuse was alleged, 210 (62 per cent) were 65 years of age or older. These instances of alleged abuse are referred to as elder abuse.

Of these 210 cases of alleged elder abuse, financial abuse was the most common, having been reported in 86 per cent of these investigations.

**Figure 5 Profile of new investigations alleging elder abuse (aged 65 or older) by type of abuse 2019/20**



Of the 210 new investigations in 2019/20 where elder abuse was alleged, 12 involved a person of Aboriginal and Torres Strait Islander descent, representing six per cent. Financial abuse was the most common form of abuse, having been reported in 10 of the 12 cases (83 per cent).

**Figure 6 Profile of new investigations alleging elder abuse (aged 65 or older) involving people of Aboriginal and Torres Strait Islander descent 2019/20**

Total new investigations alleging elder abuse 2019/20	Indigenous	Non Indigenous	Indigenous as percentage of total
210	12	198	6%

**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 nine and 11 per cent. This shows Indigenous adults are over-represented 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 involving people of Aboriginal and Torres Strait Islander descent as at 30 June 2016 – 30 June 2020**

Year	Total	Indigenous	Non Indigenous	Indigenous as a percentage of total
2015/16	1,123	99	1,024	9%
2016/17	1,180	130	1,050	11%
2017/18	1,219	130	1,089	11%
2018/19	1,350	135	1,215	10%
2019/20	1,542	165	1,377	11%

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

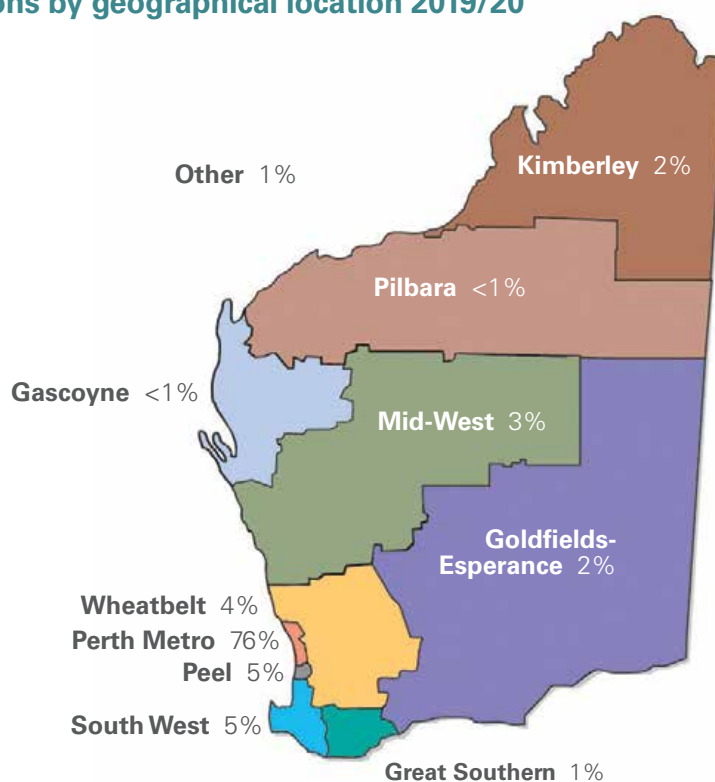
Of the 1,542 new investigations in 2019/20, 1,168 matters were investigated for people located in the Perth metropolitan area.

**Figure 8 Profile of new investigations by geographical location 2019/20**

#### Geographical locations

Gascoyne	3
Goldfields-Esperance	26
Great Southern	22
Kimberley	34
Mid-West	40
Peel	76
Perth Metro	1,168
Pilbara	13
South West	83
Wheatbelt	60
Other	17
<b>Total</b>	<b>1,542</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)

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## 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 2019/20 there were 717 new appointments of the Public Advocate as guardian of last resort, compared to 591 in 2018/19, which is an increase of 21 per cent.

At 30 June 2020, the Public Advocate had responsibility as guardian of last resort for 2,463 adults with a decision-making disability, compared to 2,140 at 30 June 2019, which is an increase of 15 per cent.

The Public Advocate had responsibility as the sole guardian for 2,357 of the total 2,463 represented persons as at 30 June 2020. In relation to the remaining 106 appointments of the Public Advocate, there were 100 represented persons on a guardianship order which appointed the Public Advocate and private guardian(s) with different functions. Six of the 106 had the Public Advocate and a private guardian (a family member) appointed with the same functions which therefore required them to jointly make decisions. One of these six had the Public Advocate appointed and a family member to make some decisions jointly, as well as the Public Advocate as the sole decision-maker for other functions.

During the year, the Public Advocate was involved with 3,633 guardianship activities which related to the opening and closing of existing appointments as at 30 June 2019, new appointments and periodic reviews of guardianship orders by the State Administrative Tribunal or reviews sought by the Public Advocate or other parties.

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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 416 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 the guardianship role.

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

At 30 June 2020 there were 18 volunteers engaged in the community guardianship program. Of these, 15 had been appointed by the State Administrative Tribunal as their represented person's guardian, replacing the Public Advocate and providing a more personal level of involvement in their life.

One of the 18 volunteers was formerly an appointed guardian as part of the program, but their represented person had passed away. They were considering being matched with another represented person. Another two volunteers had completed the induction training and were due to meet the represented person they had been matched with, however because of COVID-19 restrictions, this had to be delayed.

There was also a prospective volunteer working their way through the program's induction training.

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## **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 2019/20, the guardianship team attended 644 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 was a 22 per cent increase from the previous year, when guardians attended 526 review hearings.

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## 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.

- In relation to the National Disability Insurance Scheme (NDIS), for adults who are under a guardianship order where the Public Advocate is appointed with authority to make decisions about services, delegated guardians may make applications for access to the NDIS or liaise with other parties who may make such applications. For those represented people involved in the NDIS, delegated guardians participate in the NDIS planning process, including releasing information, attending teleconferences or meetings, advocating on behalf of the represented person about what is accepted as reasonable and necessary supports, seeking reviews of plans and negotiating with support coordinators about the selection of the most appropriate service provider/s.
- 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 2019/20 delegated guardians and investigator advocates made 19 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.

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- 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 2020, the Public Advocate was appointed as guardian for 16 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 2019/20, delegated guardians from the Office of the Public Advocate were involved in 644 reviews of guardianship orders where the Public Advocate was appointed.

Of the 644 reviews, 162 orders were revoked by the State Administrative Tribunal because there was no longer a need for the Public Advocate to be the substitute decision-maker as a result of:

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

A total of 399 guardianship orders ceased during 2019/20, through revocation by the State Administrative Tribunal, or due to the death of the represented person.

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## Goals of Care

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 diagnosis. 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 decisions 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

Under the *Guardianship and Administration Act 1990*, palliative care' is defined as a medical, surgical or nursing procedure directed at relieving a person's pain, discomfort or distress, but does not include a life sustaining measure.

The Public Advocate will only consider consenting to palliative care if the guardianship order includes the authority to make treatment decisions, palliative care is being recommended by the person's treating health professional, it 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. All palliative care decisions require the delegated guardian to seek the Public Advocate's specific approval. In 2019/20 the Public Advocate consented to palliative care for 164 represented persons. This figure does not include those represented persons for whom the Public Advocate had given consent to palliative care in previous years.



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## Case Study

### **Interagency collaboration leading to success**

Mr C is a 44 year old man with significant mental health issues including paranoid schizophrenia. He lives independently in a community housing complex and has the Public Trustee appointed to manage his finances.

Mr C was engaged with a local mental health case manager, who had concerns for Mr C's welfare. The case manager had been unsuccessful in their attempts to engage Mr C in support services aimed primarily at improving the cleanliness of his apartment which had resulted in him receiving numerous breach notices from the community housing agency.

The state of the apartment continued to decline, until Mr C was facing eviction, prompting the mental health worker to apply to the State Administrative Tribunal for the appointment of a guardian.

Given the fact that Mr C was at substantial risk of becoming homeless, the Tribunal listed the matter urgently and made a referral to the Public Advocate to investigate Mr C's situation and attend a Tribunal hearing within days, to provide their view on whether a guardian should be appointed for Mr C.

The investigator advocate formed the opinion that it was in Mr C's best interests for the Public Advocate to be appointed as his limited guardian. Mr C's mother was supportive of the Public Advocate being appointed as her relationship with her son was strained and she was not able to support Mr C effectively. The Tribunal agreed and appointed the Public Advocate as Mr C's limited guardian with the authority to make decisions about his accommodation, services and medical treatment.

The Public Advocate's delegated guardian attempted to meet with Mr C following the Tribunal hearing, but he refused. The delegated guardian then met with a representative from the housing complex, Mr C's mother, the mental health case worker and Mr C's trust manager from the Public Trustee.

The housing complex agency agreed to Mr C remaining in his apartment, if the delegated guardian was able to put some supports in place and address the tenancy issues.

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*(Case study continued from previous page)*

The delegated guardian established that Mr C was not receiving funding from the National Disability Insurance Scheme (NDIS), which would enable him to access a range of disability services. The delegated guardian started the NDIS application process and approached a local disability agency to see what assistance they could provide while Mr C was waiting for NDIS funding.

Fortunately, the local provider had some flexible, short-term funding available, which meant the delegated guardian was able to engage some local support services for Mr C.

Although Mr C initially refused to let the support workers inside his apartment, he agreed to meeting at their office and allowed them to go on outings with him, to do food shopping and go out for coffee. Once the support worker had established some trust with Mr C, he started agreeing to them going inside his apartment.

The support worker was then able to help Mr C with cooking, cleaning and laundry, and help facilitate maintenance workers having access to the apartment to do repair work. Mr C also started engaging with his mental health support worker more regularly, meaning he was able to work through issues as they arose.

A few months later, Mr C received NDIS funding. The delegated guardian was able to use his flexible funding package to maintain his current support services and engage some additional services.

Mr C's mother told the delegated guardian that the improvement in her son's life since the guardianship order was made was incredible and had enabled her to rebuild her relationship with him.

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

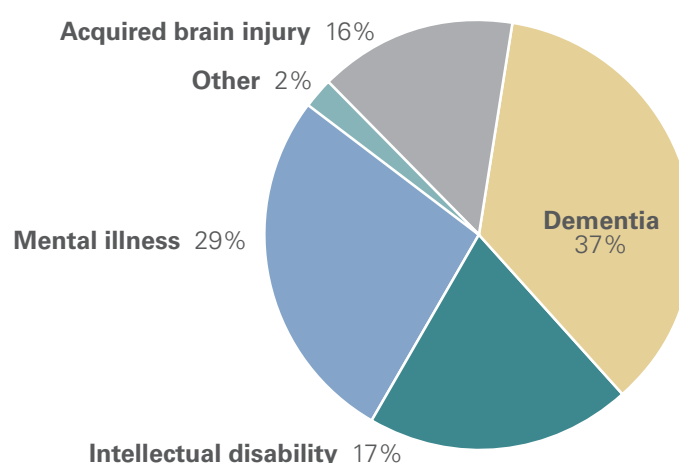
## Our Customers

People with dementia continued to account for the largest proportion of new appointments of the Public Advocate as guardian of last resort. Of the 717 new appointments in 2019/20, 37 per cent had dementia, 29 per cent a mental illness, 17 per cent an intellectual disability and 16 per cent had an acquired brain injury. Of the 717 new appointments, 52 per cent were male and 48 per cent were female.

**Figure 9 Profile of new guardianship orders appointing the Public Advocate by type of decision-making disability 2019/20**

Type of decision-making disability	
Acquired brain injury	114
Dementia	262
Intellectual disability	120
Mental illness	209
Other	12
<b>Total</b>	<b>717</b>

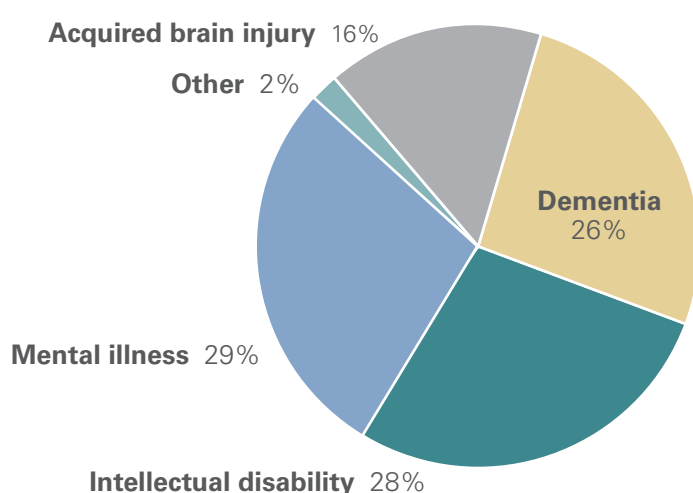
*Note – due to rounding, the total percentage does not always equal 100.*



Of the total 2,463 appointments at 30 June 2020, 29 per cent of the people had a mental illness, 28 per cent an intellectual disability, 26 per cent dementia and 16 per cent an acquired brain injury. 54 per cent of the people were male and 46 per cent were female.

**Figure 10 Profile of all guardianship orders appointing the Public Advocate by type of decision-making disability as at 30 June 2020**

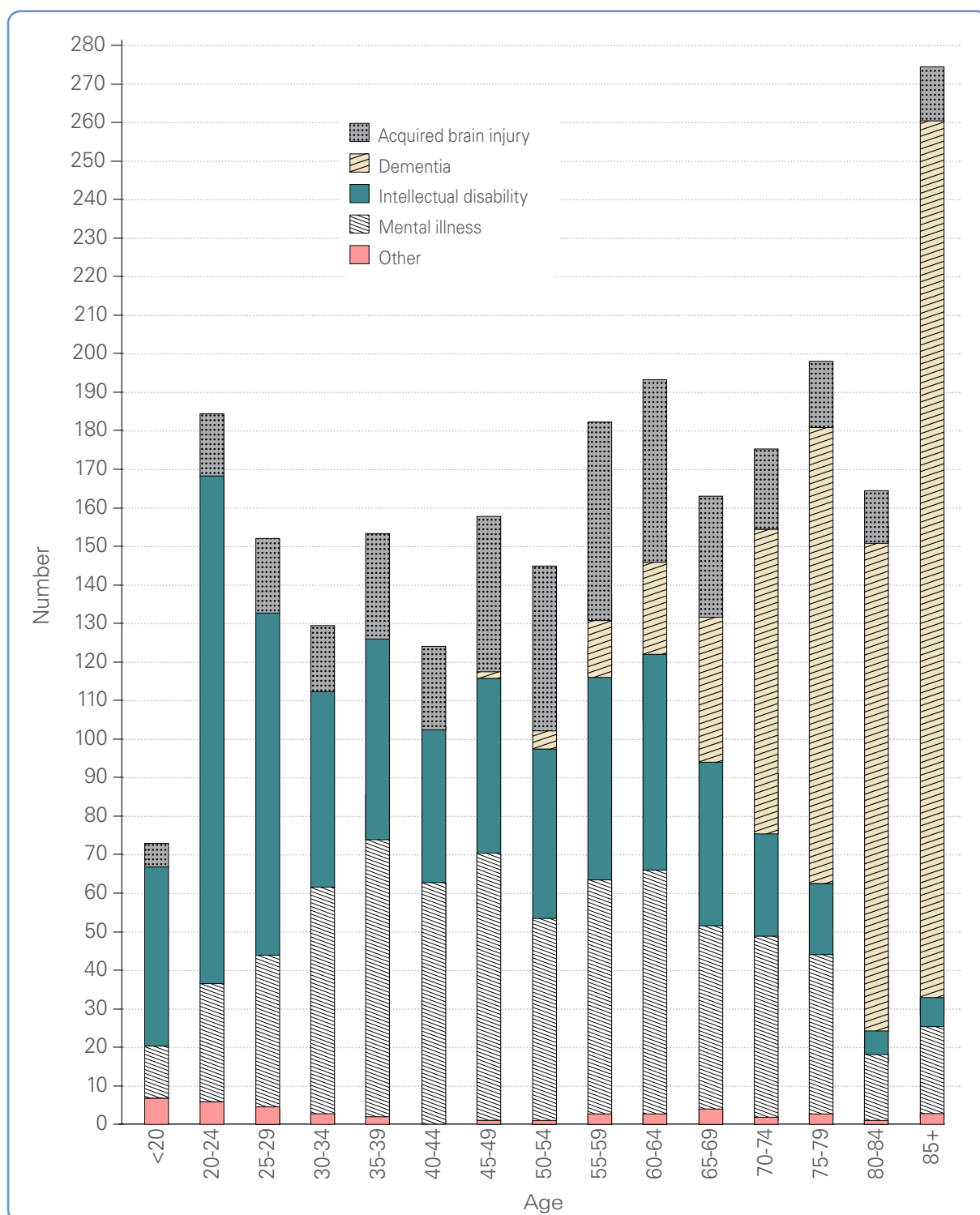
Type of decision-making disability	
Acquired brain injury	383
Dementia	634
Intellectual disability	696
Mental illness	706
Other	44
<b>Total</b>	<b>2,463</b>



At 30 June 2020, the Public Advocate was guardian of last resort for 439 adults aged 80 years and over, who accounted for 18 per cent of all guardianship appointments. Of these 439 adults, 60 per cent were female and 40 per cent were male. 81 per cent of the 439 adults had dementia.

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 2020**



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The most common single issue leading to the appointment of the Public Advocate as guardian of last resort this year was services, with 2,074 (84 per cent) of the 2,463 guardianship orders appointing the Public Advocate as at 30 June 2020, including the authority to make decisions about what services the represented person should receive.

The high number of orders appointing the Public Advocate with authority to make decisions about services is a direct reflection of the impact of the continued roll-out of the National Disability Insurance Scheme in Western Australia.

Historically, the most common single issue leading to the appointment of the Public Advocate has been the authority to make treatment decisions. At 30 June 2020, 2,071 (84 per cent) of the 2,463 orders appointing the Public Advocate as guardian included this function. 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 2020, 2,018 (82 per cent) of the 2,463 guardianship orders appointing the Public Advocate, included the authority to make decisions regarding where the represented person was to live. Similarly, 1,909 (78 per cent) of the 2,463 orders included the authority to make decisions regarding with whom they were to live.

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

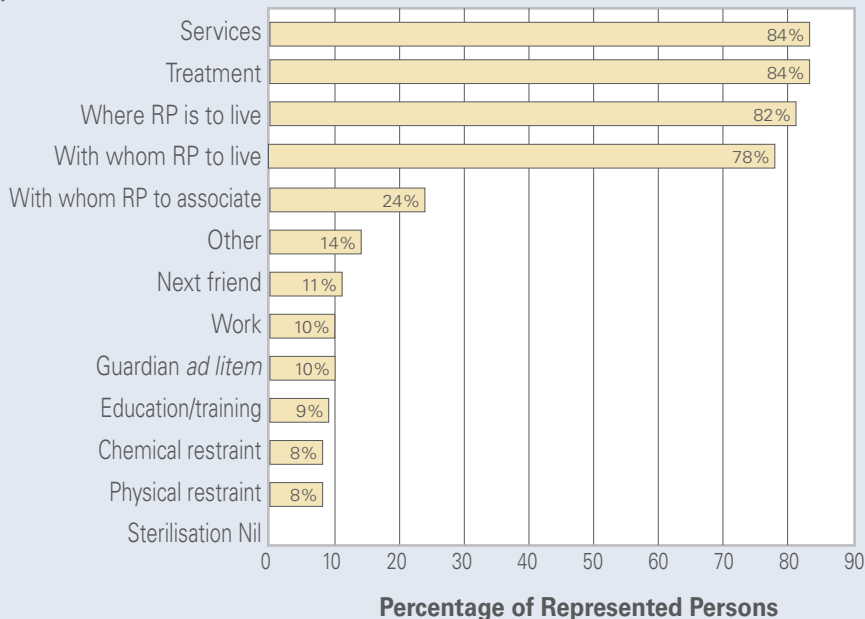
In a number of instances, the function given in the order has been labelled as 'other' (see Figure 12). Some examples of these might include to advocate on the person's behalf in relation to Police investigations; to determine if a person is to travel within Australia or overseas and to take possession 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 2020**

**Function (2,463 Represented Persons)**

Services	2,074
Treatment	2,071
Where RP is to live	2,018
With whom RP to live	1,909
With whom RP to associate	599
Other	339
Next friend	268
Work	248
Guardian ad litem	241
Education/training	227
Physical restraint	203
Chemical restraint	203
Sterilisation	Nil

**Function**



Note 1 – RP = represented person.

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

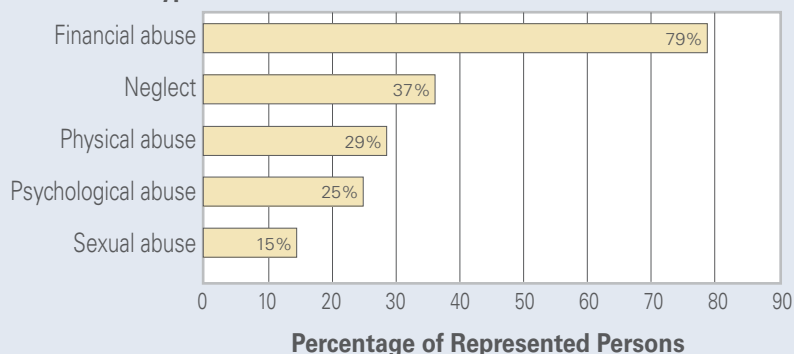
Allegations of abuse were a factor for 163 represented persons or 23 per cent of the 717 new guardianship orders appointing the Public Advocate in 2019/20. In some cases, more than one type of alleged abuse was reported. The most commonly reported form of abuse was financial, having been reported in 79 per cent of cases alleging abuse.

**Figure 13 Profile of new guardianship orders appointing the Public Advocate by type of alleged abuse 2019/20 (including alleged elder abuse)**

**Abuse type (163 Represented Persons)**

Financial abuse	129
Neglect	60
Physical abuse	48
Psychological abuse	41
Sexual abuse	24

**Abuse type**



Note 1 - Alleged abuse was reported for 163 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.

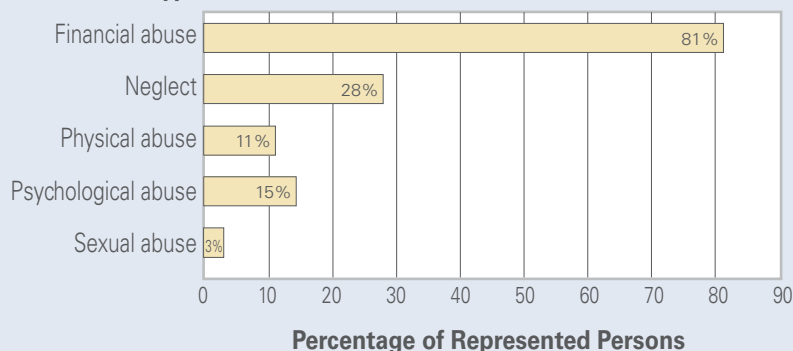
Of the 163 represented persons for whom abuse was alleged, 75 people were 65 years of age or older. Of these, financial abuse was also the most commonly reported form of abuse, having been reported in 61 (81 per cent) of the 75 cases.

**Figure 14 Profile of new guardianship orders appointing the Public Advocate by type of alleged elder abuse (aged 65 or older) 2019/20**

**Abuse type (75 Represented Persons)**

Financial abuse	61
Neglect	21
Physical abuse	8
Psychological abuse	11
Sexual abuse	2

**Abuse type**



*Note 1 – Alleged elder abuse was reported for 75 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 75 new appointments of the Public Advocate as guardian in 2019/20 where elder abuse was alleged, five were for a person of Aboriginal and Torres Strait Islander descent, representing seven per cent. Neglect was the most common form of abuse, having been reported in four of the five cases (80 per cent).

**Figure 15 Profile of new guardianship orders appointing the Public Advocate where elder abuse (aged 65 or older) was alleged, for people of Aboriginal and Torres Strait Islander descent 2019/20**

Total new orders alleging elder abuse 2019/20	Indigenous	Non Indigenous	Indigenous as percentage of total
75	5	70	7%

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

Of the 717 new appointments of the Public Advocate as guardian in 2019/20, 99 were for a person of Aboriginal and Torres Strait Islander descent, representing 14 per cent of new appointments. 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 for people of Aboriginal and Torres Strait Islander descent as at 30 June 2016 – 30 June 2020**

Year	Total	Indigenous	Non Indigenous	Indigenous as a percentage of total
2015/16	468	59	409	13%
2016/17	487	81	406	17%
2017/18	526	77	449	15%
2018/19	591	89	502	15%
2019/20	717	99	618	14%

*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, have averaged 16 per cent of all orders.

**Figure 17 Profile of all guardianship orders as at 30 June, appointing the Public Advocate for people of Aboriginal and Torres Strait Islander descent as at 30 June 2016 – 30 June 2020**

Year	Total	Indigenous	Non Indigenous	Indigenous as a percentage of total
2015/16	1,555	228	1,327	15%
2016/17	1,738	278	1,460	16%
2017/18	1,923	325	1,598	17%
2018/19	2,140	368	1,772	17%
2019/20	2,463	416	2,047	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)



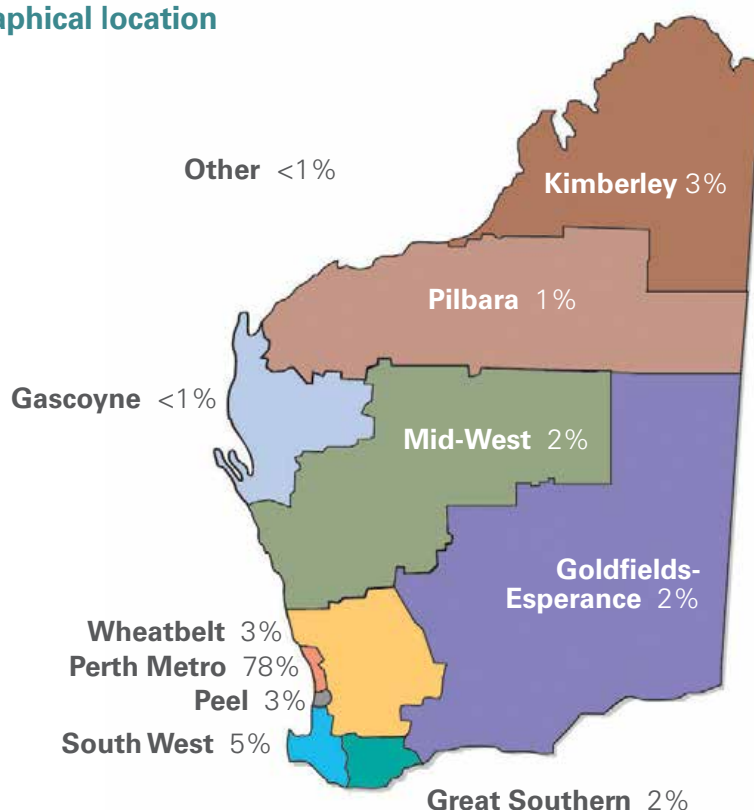
At 30 June 2020, 78 per cent of all appointments of the Public Advocate were for people living in the Perth metropolitan area.

**Figure 18 Profile of all guardianship orders as at 30 June 2020 appointing the Public Advocate by geographical location**

**Geographical locations**

Gascoyne	4
Goldfields-Esperance	39
Great Southern	53
Kimberley	62
Perth Metropolitan	1,929
Mid-West	53
Peel	85
Pilbara	31
South West	117
Wheatbelt	76
Other	14
<b>Total</b>	<b>2,463</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.

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## Case Study

### **Keeping people on country**

Ms N is an Aboriginal woman with an intellectual disability who is also non-verbal and exhibits impulsive behaviours.

The Public Advocate was appointed guardian for Ms N with authority to make decisions about accommodation, treatment and services. Due to a range of complex health conditions which could not be treated in the regional area where Ms N lived, she was transferred to Perth for medical treatment.

The treatment took many months, meaning Ms N was away from her family and her hometown. Ms N's family missed her and were keen for her to return home. The delegated guardian established that this was also what Ms N wanted.

The time Ms N had spent receiving treatment and services in Perth was beneficial as it allowed support agencies to assess the level of care and support she needed. Staff in Perth had also developed expertise in communicating with Ms N and understanding her needs.

The delegated guardian liaised closely with the treating team and support services to see how this level of support could be maintained in Ms N's local area. With input from the support services available in Ms N's hometown, a comprehensive plan for treatment, accommodation and services was devised for Ms N. The expertise in communicating with Ms N was also able to be relayed to the local team who would be working closely with her when she transitioned back to the area.

At the same time that Ms N was receiving treatment in Perth, another Aboriginal woman, Ms D, from the same regional town, was being assessed for service and support needs in the town.

Ms D had a cognitive impairment and a history of neglect. She had been living on the streets, was malnourished and was making risky lifestyle choices. These choices led to Ms D being in frequent contact with the Police, having caused disturbances in the community through her anti-social behaviours.

Following an application to the State Administrative Tribunal concerning Ms D, the Public Advocate was appointed (plenary) guardian for Ms D.

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Having tried to learn about Ms D's preferences for where she wanted to live, the delegated guardian then worked closely with Ms D's family, the local Aboriginal Corporation, Disability Services Commission and community-based organisations to find practical solutions which would benefit Ms D.

Following extensive consultation and negotiation, the guardian was able to consent to a framework of supports and services for Ms D. These limited interventions saw dramatic improvements in Ms D's social behaviours, as well as her overall health and wellbeing.

The delegated guardians for Ms D and Ms N worked together in the 'best interests' of their clients over a period of many months. They listened to the views of many different parties about where Ms D and Ms N should live and what support they might need to stay in their local community.

The delegated guardians had a particular focus on finding suitable accommodation so that Ms D and Ms N could live in their local area and maintain their cultural connection to country. In consultation with family members and service providers it was agreed that Ms D and Ms N could house-share together.

Ms D and Ms N now share supported accommodation which has additional assistive technology to help them manage as much as possible for themselves. They are also visited regularly by support workers who help them with the tasks of everyday living.

They have settled into the local community and both have family members who they see regularly. Ms D and Ms N also participate in recreational activities at a nearby day centre, where they meet up with extended family members who speak language to them.

This outcome is beneficial for Ms D and Ms N, who are now able to maintain their connections to family, country and culture.

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### ***Acting in 'best interests'***

Section 51 of the *Guardianship and Administration Act 1990* sets out ways in which a guardian must act in the best interests of a represented person.

Two ways in which a guardian can act in the best interests of the represented person are by: (1) encouraging the represented person to live in the general community and participate as much as possible in the life of the community; and (2) maintaining the represented person's familiar cultural, linguistic and religious environment.

The Office of the Public Advocate acknowledges the traditional custodians of the land as being the first peoples of this country. We recognise their continuing connection to country and community and take this into consideration where possible. The Office is committed to fostering respectful partnerships with our Aboriginal colleagues, clients and those in our care.

Sometimes this can result in a more lengthy process which involves careful planning and extensive negotiations with family members, service providers and the wider community to deliver positive outcomes for represented persons.

*A special acknowledgement goes to the late John Hodges, Senior Guardian, who was one of the two guardians involved in this case. This is just one of many cases in which John's persistence and his dedication to delivering culturally appropriate and mutually beneficial outcomes for Aboriginal clients, produced a positive result for the represented person.*

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

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# 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. Since 1 July 2018, the Commonwealth agency, the National Disability Insurance Agency (NDIA) has delivered the National Disability Insurance Scheme (NDIS) in Western Australia and the transition to the full scheme is ongoing.

The introduction of the NDIS through the NDIA, 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.

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

With the establishment of the NDIA's Complex Support Needs Pathway in Western Australia starting with the City of Canning local government area on 1 July 2019 and expanding to a State-wide service since early 2020, the Office and the Complex Support Needs Branch have set up regular teleconference meetings. This has enabled a collaborative approach to be taken on specific matters to achieve positive outcomes for participants who have the Public Advocate appointed as guardian. Where represented persons are on the Complex Support Needs Pathway, guardians have the advantage of being able to deal with the same NDIA officer and direct contact details are made available which facilitates communication which is not the case with other NDIS planners.

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.

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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.

### **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 from its commencement 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 now includes senior representatives from the Department of Communities (Child Protection, 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.

Over the year, the level of support provided by this project was invaluable to five highly vulnerable young people, who needed intensive support with their transition from State care and where the Public Advocate is appointed guardian.

At 30 June 2020, 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 young adult had guardianship and administration orders appointing the Public Advocate and the Public Trustee, for which the Public Advocate's authority will come into effect when she turns 18 years of age in July.

### **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.

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The Office of 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 Office of 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 determine if there is a record of sexual abuse while in care.

In evaluating a represented person's eligibility for National Redress, the Office of 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 2020, 30 represented persons had been identified as having a possible National Redress claim since the start of the scheme.

## 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.



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## 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 2019/20, 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.
- Contribution to the development of the WA Strategy to Respond to the Abuse of Older People (Elder Abuse) 2019-2029 which was 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 and the Department of Communities.
- Continued work with the Commonwealth National Disability Insurance Agency (NDIA) with regard to the implementation of the National Disability Insurance Scheme. This has included establishing a positive relationship with the NDIA's Complex Support Needs Branch with this program having been rolled out state-wide during the financial year.
- Member of the Department of Communities led Steering Group, responsible for cross-government consideration relating to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability.
- Following the tabling in the Parliament of the report by the Ministerial Expert Panel on Advance Health Directives by the Attorney General on 28 August 2019, the Office of the Public Advocate has worked with the Department of Health as requested, in relation to the development of a revised Advance Health Directive. This work will continue in 2020/21.
- Member of the Project Control Group, which consisted of senior officers from the Department of Health and the Department of Justice, to support the development of Voluntary Assisted Dying legislation. The laws were passed by the Parliament in December 2019.
- Contributing to the drafting and implementation of the *Guardianship and Administration Amendment (Medical Research) Bill 2020* which was progressed quickly in the Parliament in March 2020 in response to the COVID-19 pandemic.



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## 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 2019/20, the Office delivered a total of 20 education sessions to community members and professionals from the health, mental health, disability, aged-care and legal sectors. This was a slight decrease on the 24 education sessions held in the previous financial year as some sessions were postponed due to COVID-19 restrictions.

Of the 20 sessions, eight addressed the needs of community members, 10 were specifically tailored for service providers and two catered to the needs of both groups.

The majority of the education sessions were delivered in the Perth metropolitan area, with two sessions delivered in regional areas, and one session also made available to healthcare staff in regional areas via video conference. All of the sessions were held in accessible venues.

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

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The Office delivered one session for members of Culturally and Linguistically Diverse (CALD) communities, working with the Chung Wah society to educate their staff members on aspects of the guardianship and administration system in Western Australia.

The 10 service provider sessions included a seminar 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.

One of the service provider sessions was held for staff within the Department of Justice, with representatives from Offender Management Services in the Corrective Services division. This session assisted these staff to gain a greater understanding of the work of the Office and the role of delegated guardians. The session also promoted intra-agency collaboration.

For the second year running, the State Administrative Tribunal and the Office of the Public Advocate ran joint education sessions explaining the *Guardianship and Administration Act 1990* and Tribunal processes, strategically targeted to allied health professionals and hospital social workers from the Department of Health. This key stakeholder group, who often make applications to the Tribunal, gained a greater understanding of the processes relating to the appointments of guardians and administrators.

The Office also participated in the Seniors Recreation Council of WA's 'Have a Go Day', sharing a marquee with colleagues from the Department of Health and the Public Trustee. This provided a one-stop-shop with information on many aspects of planning for the future and enabled people to consider putting their affairs in order; from enduring powers of attorney and enduring powers of guardianship to advance care planning and writing a Will.

In response to the amendments to the *Guardianship and Administration Act 1990*, which introduced provisions relating to medical research in April 2020, the Office produced a new position statement regarding medical research, along with a new website page. Amendments were also made to the Office's Enduring Power of Guardianship Guide, Private Guardian's Guide and two position statements regarding treatment.

## 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 6,324 enquiries from 4,884 people who used the advisory service in 2019/20.

**Figure 19 Enquiries to the advisory service by mode of handling 2019/20**

Mode of handling	Jul 2019	Aug 2019	Sep 2019	Oct 2019	Nov 2019	Dec 2019	Jan 2020	Feb 2020	Mar 2020	Apr 2020	May 2020	Jun 2020	Total
<b>Telephone</b>	502	570	357	360	380	325	446	384	363	201	381	388	4,657
<b>Interview</b>	6	5	5	6	4	7	9	8	7	0	1	0	58
<b>Email/letter</b>	16	17	7	21	10	8	9	17	11	15	12	26	169
<b>TOTAL</b>	<b>524</b>	<b>592</b>	<b>369</b>	<b>387</b>	<b>394</b>	<b>340</b>	<b>464</b>	<b>409</b>	<b>381</b>	<b>216</b>	<b>394</b>	<b>414</b>	<b>4,884</b>

In some instances, enquirers sought advice on multiple topics. Guardianship matters, including both general guardianship queries and enquiries regarding persons for whom the Public Advocate was appointed as guardian, accounted for 36 per cent of all enquiries received during the year. Enduring powers of attorney accounted for another 29 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 2019/20**

Subject of enquiry	Jul 2019	Aug 2019	Sep 2019	Oct 2019	Nov 2019	Dec 2019	Jan 2020	Feb 2020	Mar 2020	Apr 2020	May 2020	Jun 2020	Total	Total as percentage of all enquiries
<b>Guardianship</b>	226	258	196	197	191	181	219	197	181	80	152	181	2,259	36%
<b>Administration</b>	62	71	41	55	32	32	57	56	29	26	68	69	598	10%
<b>Enduring powers of attorney</b>	214	222	116	142	155	109	170	139	154	103	169	172	1,865	29%
<b>Enduring powers of guardianship</b>	116	126	60	81	95	56	100	79	61	51	103	101	1,029	16%
<b>Advance health directives</b>	17	14	8	11	10	5	8	19	6	6	12	4	120	2%
<b>General</b>	38	55	28	34	39	35	36	34	30	19	38	67	453	7%

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

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## **Services to people of Aboriginal and Torres Strait Islander descent**

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 people of Aboriginal and Torres Strait Islander descent. 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 people of Aboriginal and Torres Strait Islander descent 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 seven languages other than English. These three information sheets are available in Arabic, simplified Chinese, Dari, Italian, Malay, Polish and Vietnamese. 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.

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## **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 2019/20 interpreter services were provided in Burmese, Cantonese, Farsi, Italian, Japanese, Mandarin, Persian, S'Gaw Karen, Turkish 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 2019/20, 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 2019/20 was as follows:

**Figure 21 Budget allocation and expenditure 2019/20**

	Total Cost of Output
\$'000 Actuals 2019/20	8,958 <sup>10</sup>
\$'000 Budget 2019/20	7,845 <sup>11</sup>

## The Year in Review

### Freedom of information

Eight valid applications were received during 2019/20 for the release of information. All of the requests were dealt with in full during the year.

Anyone who wishes to access information held by the Office of the Public Advocate can contact the Freedom of Information 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 2019/20, the Office of the Public Advocate received 53 formal complaints during the year, which were all considered by the Public Advocate or a senior manager. The Office also received 37 formal compliments, three suggestions for service improvement and general information was sought regarding one matter.

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.

<sup>10</sup> Includes shared Department of Justice corporate support.

<sup>11</sup> Includes shared Department of Justice corporate support.

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# Significant Issues Impacting the Agency

## Maintaining the Delivery of Statutory Services During COVID-19

The Office of the Public Advocate was not spared from the effects of COVID-19, with the global pandemic impacting the way core services were delivered in order to continue service provision, while protecting the health and safety of staff and clients.

In order to reduce exposure and minimise the risk to staff, vulnerable adults and related agencies and service providers, from transmitting and/or contracting COVID-19, face-to-face contact with clients ceased and community education activities were deferred, as of 22 March 2020.

From 22 March to 30 June 2020, face-to-face contact with clients was only allowed in exceptional circumstances where the contact was approved by the Public Advocate. This contact was then conducted using appropriate hygiene and social distancing measures.

This meant that for the three month period, routine contact between staff and other parties was conducted via telephone, email, or where available, videoconference.

Added to this challenge, was the transition of part of the Office's workforce to working from home arrangements.

While face-to-face contact with represented persons and proposed represented persons is preferable, staff worked diligently to maintain contact with clients via alternative methods. Similarly, staff used other means to communicate with service providers and other relevant parties. Participation in State Administrative Tribunal hearings occurred in-person as well as remotely, via telephone conference.

Although a number of community education sessions which had been planned during the three month period were deferred, information and publications remained available on the Office's website and staff continued to answer queries on the Office's telephone advisory service.

While COVID-19 presented a number of challenges, it also presented opportunities for legislative reform and reform within the Office in terms of service delivery.

Amendments to the *Guardianship and Administration Act 1990* to enable substitute decision-makers to consent to treatment available through medical research, had been under consideration for some time. The Office assisted the Department of Justice Strategic Policy team with their lead role in providing instructions for the drafting of the Amending Act, in collaboration with the Department of Health. The Public Advocate had advocated for medical research amendments to be considered in the 2015 statutory review of the Act.

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This legislative reform was prioritised by Government at the height of the COVID-19 pandemic to ensure people with a decision-making disability were not restricted from accessing emerging and novel treatments when it is in their best interests.

Following an expedited passage through Parliament, the *Guardianship and Administration Amendment (Medical Research) Act 2020* came into effect on 7 April 2020, amending the *Guardianship and Administration Act 1990*, and enabling consent to medical research for people who lack decision-making capacity.

The Office produced a range of new and updated publications regarding the legislative changes, to provide community members and service providers with up-to-date information about the changes.

The transition of part of the Office's workforce to work from home arrangements added pressure to an already busy office, but it also presented an opportunity to trial a change to the model used for the Office's telephone advisory service.

Historically the service operated during work hours, with guardians and investigator advocates rostered on for half-day or full-day shifts to answer calls from community members and professionals seeking information on the guardianship and administration system.

This involved staff answering general questions about enduring powers of attorney and enduring powers of guardianship; giving people advice about when it might be necessary to make an application to the State Administrative Tribunal; how to make an application to the Tribunal; other options they could consider and advice about relevant agencies they could contact for related information. The advisory service was also the contact point for urgent matters relating to decisions when the Public Advocate was appointed as guardian.

With the growing number of guardianship cases, the service was increasingly being used by community members and professionals seeking information about specific people for whom the Public Advocate had been appointed as guardian.

The advisory service calls were split for a trial period, with general guardianship and administration system queries going to an investigator advocate, and calls regarding represented persons going to a duty guardian. The trial was successful and subsequently a decision was made to implement the split model permanently as of July 2020.



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## State and National Disability Sector Reform

Changes to the disability sector continued to affect the Office in 2019/20. 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 has continued to roll-out on a geographical basis.

## Meeting Demand for Services

Persistent and increasing demand for its statutory services of advocacy and investigation, and guardianship, once again had a substantial impact on the Office of the Public Advocate in 2019/20.

There was a 15 per cent increase in the total number of investigations carried out in 2019/20 compared to 2018/19 and a 14 per cent increase in the number of new matters for investigation referred to the Office by the State Administrative Tribunal.

In 2019/20, the Office experienced a 21 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 a 15 per cent increase in total guardianship orders at 30 June 2020, compared to 30 June 2019.

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

Of the 2,463 people for whom the Public Advocate was guardian at 30 June 2020, 975 (40 per cent) were 65 years of age or older. Of these 975 people, 60 per cent had dementia.

In 2019/20, 43 per cent of the 1,542 new matters referred for investigation by the State Administrative Tribunal involved a person with dementia.

According to research commissioned by Dementia Australia,<sup>12</sup> there were an estimated 42,900 people with dementia in Western Australia in 2020. The projected rates of prevalence in this report estimate there will be 108,000 people with dementia in WA by 2058.

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<sup>12</sup> Dementia in Australia, Prevalence Estimates 2020 – 2058 ([www.dementia.org.au/sites/default/files/documents/2020-2058\\_dem\\_prev\\_S\\_T\\_update.pdf](http://www.dementia.org.au/sites/default/files/documents/2020-2058_dem_prev_S_T_update.pdf)).

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Mental illness accounted for the largest proportion (29 per cent) of all adults for whom the Public Advocate was appointed guardian at 30 June 2020, closely followed by intellectual disability, which accounted for 28 per cent of the appointments.

The introduction of the National Disability Insurance Scheme (NDIS) continued to have a significant impact on demand for the Office's guardianship services. Although it is not a requirement for anyone with an intellectual disability, a mental illness, an acquired brain injury, 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. This has led to numerous 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 or a mental illness, many of whom live in group homes or hostels and have limited family support.

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.

## Elder Abuse

A heightened awareness within the community and gathering momentum across State and National Government continues to highlight elder abuse as a 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 State strategy which was released in November 2019.

# Disclosures and Legal Compliance

## Financial Statements

See the Department of Justice 2019/20 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 2016/17	Actual 2017/18	Actual 2018/19	Target 2019/20	Actual 2019/20
<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.	95%	94%	82%	95%	96%

Key efficiency indicators	Actual 2016/17	Actual 2017/18	Actual 2018/19	Target 2019/20	Actual 2019/20
<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.	\$1,735	\$1,789	\$1,445	\$1,514	\$1,560

## 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. Since 1 July 2019, any disclosures regarding the Office of the Public Advocate are 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	\$2,978
<b>TOTAL EXPENDITURE</b>	<b>\$2,978</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 2019/20 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
- Board and committee remuneration.

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# 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. Significant amendments were enacted on 15 February 2010 when the *Acts Amendment (Consent to Medical Treatment) Act 2008* came into effect and again on 7 April 2020 when the *Guardianship and Administration Amendment (Medical Research) Act 2020* came into effect.

## 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 Act 2002*

*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*

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# Appendix 2 Publications

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

## 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
- Decisions about Medical Research

## 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
- Private Guardian's Guide

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## 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.



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**Proposed represented person:** Refers to the person for whom an application for the 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.

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# Appendix 4

## Easy Read Annual Report 2019/20

### 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 (the guardianship order says what kind of decisions the guardian can make and might include things like where the person lives, who they live with, what activities they do and what medical care they have)
- does its best to improve life for people with a decision-making disability
- teaches people about what the Office does, who can make decisions for people with a decision-making disability and how to protect people with a decision-making disability.

## This year we

- investigated 1,983 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 717 adults with a decision-making disability
- made decisions for the people we were guardian for, which was 2,463 people on 30 June 2020
- held 20 information sessions about what the Office does and how to help protect people with a decision-making disability
- helped 4,884 people who contacted the Office's advisory service for information
- had 63.5 staff positions
- spent \$8.958 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 National Disability Insurance Scheme is also meaning more people need a guardian appointed and sometimes the only person who can be appointed is 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.

