



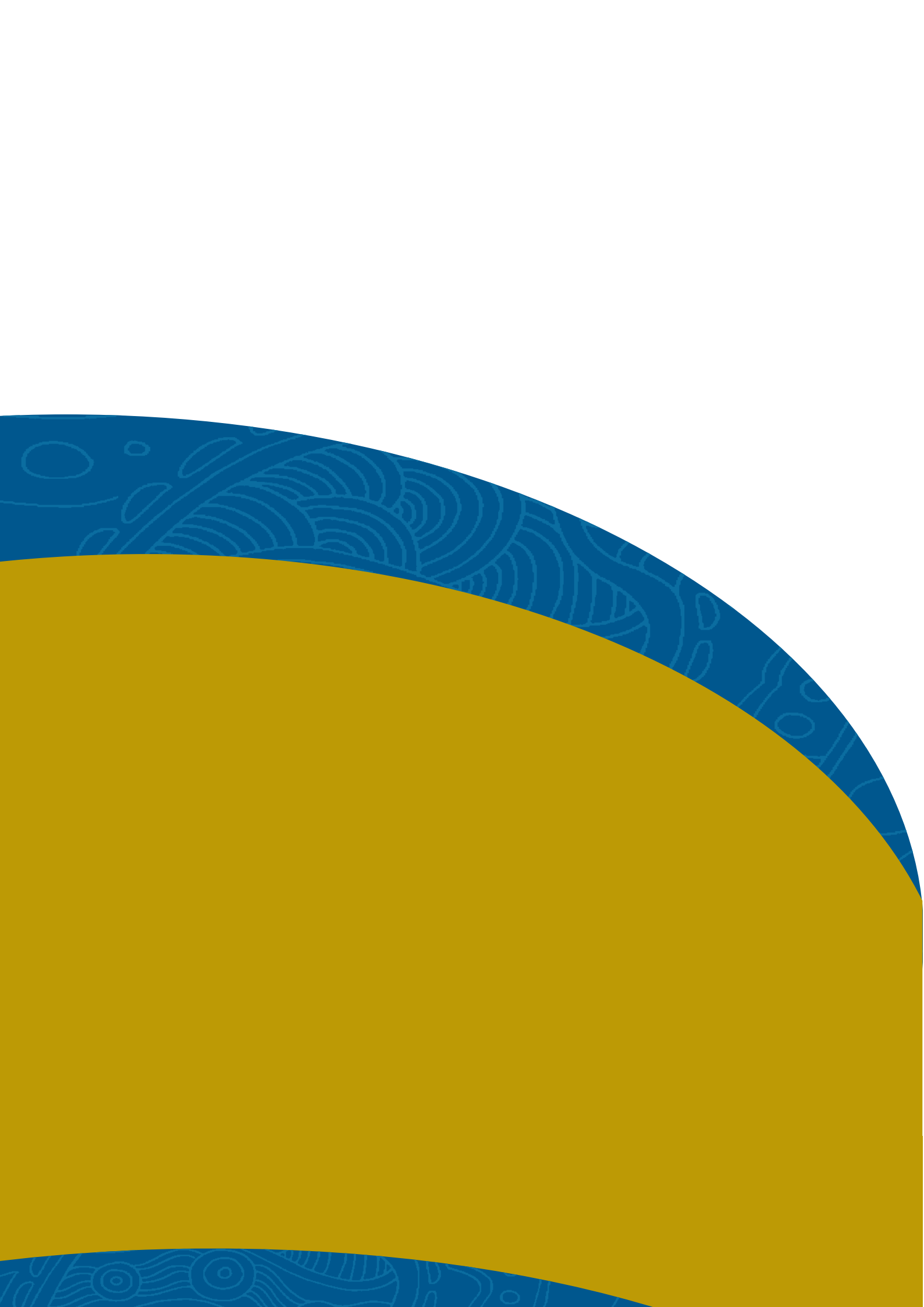
Government of **Western Australia**  
Department of **Justice**



Office of the  
**Public Advocate**

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

# Annual Report 2020/21



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 2021.

This report records the operations and performance of the Office of the Public Advocate during 2020/21. 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 2020/21, the Office of the Public Advocate reported on financial and administrative matters to the Director General of the Department of Justice.

*Pauline Bagdonavicius*

Pauline Bagdonavicius

**PUBLIC ADVOCATE**

6 September 2021

David Malcolm Justice Centre

28 Barrack Street

PERTH WA 6000

T: 1300 858 455

E: opa@justice.wa.gov.au

I: www.publicadvocate.wa.gov.au

# Contents

---

## Overview

The Year in Review .....	5
Acknowledgements .....	6

## Overview of the Agency

Operational Structure .....	7
Performance Management Framework .....	12

## Agency Performance

Advocacy and Investigation .....	13
Guardianship .....	34
Interagency Collaboration and Policy Development .....	51
Community Education .....	54
Corporate Services .....	59

## Significant Issues Impacting the Agency

Maintaining the Delivery of Statutory Services During COVID-19 .....	60
State and National Disability Sector Reform .....	60
Meeting Demand for Services .....	61
Elder Abuse .....	62

## Disclosures and Legal Compliance

Financial Statements .....	63
Key Performance Indicators .....	63
Ministerial Directives .....	65
Public Interest Disclosures .....	65
Other Legal Requirements .....	65

## Appendices

Appendix 1 – Legislation .....	66
Appendix 2 – Publications .....	68
Appendix 3 – Glossary .....	70
Appendix 4 – Easy Read Annual Report 2020/21 .....	72

# Overview

---

## The Year in Review

The Office of the Public Advocate has a mandate to protect and promote the best interests of adults with a decision-making disability in Western Australia.

Demand for the Office's statutory services of advocacy and investigation and guardianship, which aim to protect these vulnerable adults, continued to grow in 2020/21. The challenges presented by this growing demand were once again compounded by the ongoing COVID-19 pandemic.

In 2020/21 Western Australia experienced three COVID-19 lockdowns in the Perth metropolitan area and the Peel region. In order to reduce exposure and minimise the risk to staff, vulnerable adults and related agencies, face-to-face contact with clients during these periods only occurred in exceptional circumstances and part of the Office's workforce transitioned to alternative work arrangements for those periods of restriction.

During the year the Office's advocacy and investigation team looked into just over 2,200 matters where there was concern someone may need a guardian and/or administrator appointed. This was a 13 per cent increase from the total number of investigations carried out in 2019/20.

The attendance of an investigator advocate at the State Administrative Tribunal was sought by the Tribunal for 458 urgent matters in 2020/21, representing an increase of 111 per cent on the 217 urgent matters in 2019/20. In some cases, the hearing occurred on the day the matter was referred to the Office of the Public Advocate.

The guardianship team played an important decision-making role in the lives of almost 2,800 adults who had the Public Advocate appointed as guardian at 30 June 2021, a 13 per cent increase from 30 June 2020.

For more than a decade dementia had accounted for the largest proportion of total appointments of the Public Advocate as guardian at 30 June each year, until 2018 when intellectual disability accounted for the most appointments. Since then intellectual disability and mental illness have each accounted for more appointments of the Public Advocate as guardian than dementia, at 30 June each year. At 30 June 2021, mental illness accounted for the largest proportion (30 per cent) of all Public Advocate guardianship appointments, intellectual disability accounted for 27 per cent and dementia accounted for 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).

In order to achieve better outcomes, those represented persons with mental illness need to engage support through the NDIS. This, coupled with the growing prevalence of mental illness within the community seems to indicate the growth in the number of Public Advocate appointments for people with mental illness will continue.

Growth in the number of represented persons with an intellectual disability also seems set to continue, given the growing prevalence of intellectual disability within the population, coupled with the fact that the Public Advocate often remains guardian for people with an intellectual disability for a long period of time, or even for life.

The Office delivered 17 community education sessions in 2020/21, with COVID-19 lockdowns and changing restriction levels meaning some sessions were rescheduled. Community members and service providers continued to be able to access information via the Office's website and publications. Staff also provided advice and information to those seeking it via the Office's advisory service, addressing more than 5,000 enquiries from just over 3,500 people who used the service in 2020/21.

## Acknowledgements

The statutory services of this Office aim to protect vulnerable adults with a decision-making disability in Western Australia from exploitation and abuse, while promoting and advocating for their best interests.

Investigator advocates and guardians within the Office are passionate and hard-working, often going above and beyond in discharging their duties. They are supported by equally dedicated and professional managers, administration, policy and community education officers.

Together they enable the Office to delve into the lives of vulnerable adults, navigate often difficult circumstances and work tirelessly to deliver better outcomes for vulnerable adults with impaired capacity.

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

The Office's 17 community guardianship program volunteers also provide benefits to the Office's guardianship function. These volunteers have an invaluable impact on the lives of some of the most isolated and vulnerable members of our community.

*Pauline Bagdonavicius*

Pauline Bagdonavicius

**PUBLIC ADVOCATE**

# Overview of the Agency

---

## Operational Structure

The Public Advocate is an independent statutory officer appointed by Government under the *Guardianship and Administration Act 1990* which is:

*“An Act to provide for the guardianship of adults who need assistance in their personal affairs, for the administration of the estates of persons who need assistance in their financial affairs, to confer on the State Administrative Tribunal jurisdiction in respect of guardianship and administration matters, to provide for the appointment of a public officer with certain functions relative thereto, to provide for enduring powers of attorney, enduring powers of guardianship and advance health directives and for connected purposes.”*

In 2020/21 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 applications made to the State Administrative Tribunal to assist it to determine whether a guardian or administrator should be appointed
- guardianship (for personal, lifestyle, treatment and medical research 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 through the *Guardianship and Administration Act 1990*.

## 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 marked the fourth year in a row that dementia did not account for the largest proportion of appointments. However, 44 per cent of the new matters referred for investigation by the State Administrative Tribunal involved a person with dementia and 38 per cent of the new guardianship orders appointing the Public Advocate this year related to dementia.

Of the 2,771 adults the Public Advocate was appointed as guardian for at 30 June 2021, 30 per cent had a mental illness, 27 per cent had an intellectual disability, 26 per cent had dementia, 15 per cent had an acquired brain injury and two per cent had some other form of decision-making disability. Of these 2,771 adults, 55 per cent were male and 45 per cent were female.

In 2020/21, 44 per cent of new appointments of the Public Advocate as guardian involved a person who was engaged with the National Disability Insurance Scheme (NDIS).<sup>1</sup>

---

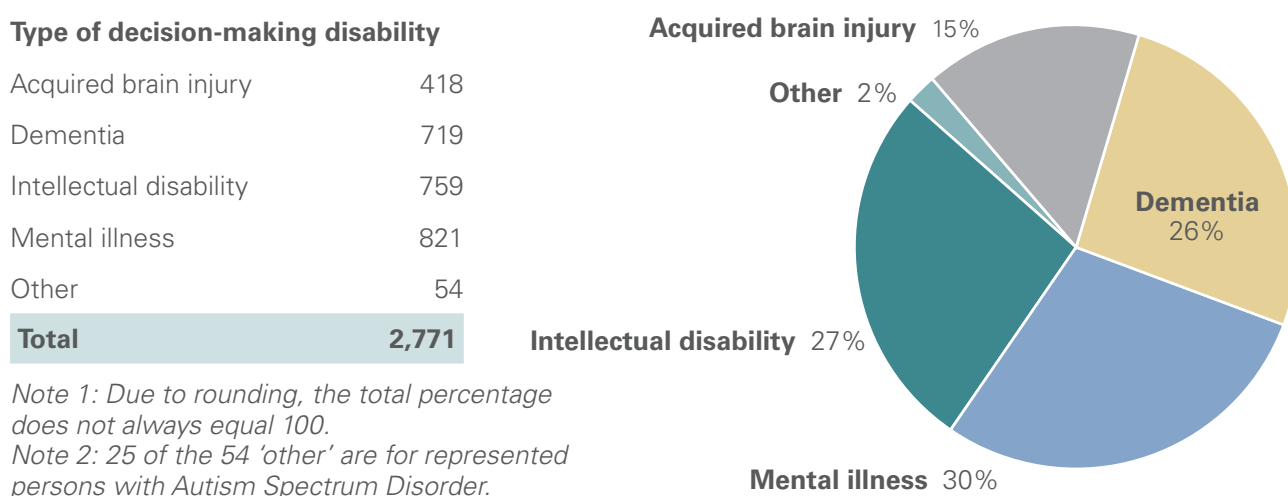
1. 'Engaged with the NDIS' does not necessarily mean the person has a current or active NDIS plan in place.



At 30 June 2021, 1,699 or 61 per cent of the 2,771 adults for whom the Public Advocate was appointed guardian had NDIS involvement. Of the 2,771 adults, 1,735 were 65 years or younger, and of these adults, 93 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 Commonwealth and WA State Government Bilateral Agreement).

**Figure 1 Profile of all guardianship orders appointing the Public Advocate by type of decision-making disability as at 30 June 2021**



The number of people for whom the Public Advocate is guardian has increased by 59 per cent from 1,738 in June 2017 to 2,771 in June 2021.

**Figure 2 People under guardianship orders appointing the Public Advocate by type of decision-making disability as at 30 June 2017 – 30 June 2021**

Type of decision-making disability	2017		2018		2019		2020		2021	
	Number	Percentage of total	Number	Percentage of total	Number	Percentage of total	Number	Percentage of total	Number	Percentage of total
Acquired brain injury	288	17%	299	16%	338	16%	383	16%	418	15%
Dementia	506	29%	531	28%	566	26%	634	26%	719	26%
Intellectual disability	505	29%	578	30%	630	29%	696	28%	759	27%
Mental illness	420	24%	499	26%	571	27%	706	29%	821	30%
Other	19	1%	16	1%	35	2%	44	2%	54	2%
<b>Total</b>	<b>1,738</b>		<b>1,923</b>		<b>2,140</b>		<b>2,463</b>		<b>2,771</b>	

Note 1: Due to rounding, the total percentage does not always equal 100.

Note 2: In 2021, 25 of the 54 'other' are for represented persons with Autism Spectrum Disorder.

## ***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>2</sup>

In 2020/21 there were 1,251 Western Australian participants engaged with the National Disability Insurance Scheme, with an acquired brain injury reported as their primary disabling condition.<sup>3</sup> This represented three per cent of the 39,951 active Western Australian participants in the NDIS in 2020/21.

## ***Dementia***

According to research commissioned by Dementia Australia,<sup>4</sup> there were an estimated 472,000 people living with dementia in Australia in 2021, with 44,300 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 39,951 active Western Australian participants in the National Disability Insurance Scheme in 2020/21, 8,334 (21 per cent) were reported as having an intellectual disability as their primary condition in 2020/21.<sup>5</sup>

In 2020/21 intellectual disability accounted for the second largest proportion of all adults for whom the Public Advocate was appointed guardian at 30 June 2021.

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.

---

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

3 National Disability Insurance Scheme, published quarterly reports 2020-21 ([www.ndis.gov.au/about-us/publications/quarterly-reports](http://www.ndis.gov.au/about-us/publications/quarterly-reports)).

4 Dementia in Australia, Prevalence Estimates 2021 – 2058 ([www.dementia.org.au/sites/default/files/2021-03/2021-DA-Prev-Data-Dementia-in-Aus.pdf](http://www.dementia.org.au/sites/default/files/2021-03/2021-DA-Prev-Data-Dementia-in-Aus.pdf)).

5 National Disability Insurance Scheme, published quarterly reports 2020-21 ([www.ndis.gov.au/about-us/publications/quarterly-reports](http://www.ndis.gov.au/about-us/publications/quarterly-reports)).

## ***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>6</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.

The National Disability Insurance Scheme defines 'psychosocial disability' as a disability that may arise from a mental health issue. Of the 39,951 active Western Australian participants in the National Disability Insurance Scheme in 2020/21, 3,907 (10 per cent) were reported as having a psychosocial disability as their primary condition in 2020/21.<sup>7</sup>

Mental illness accounted for the largest proportion of guardianship appointments of the Public Advocate as at 30 June 2021. 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 were supported by an approved establishment of 72.5 ongoing full-time equivalent (FTE) positions and 1.5 FTE positions funded for a finite period, as at 30 June 2021, with an expenditure totalling \$10.092 million for advocacy, guardianship and administration services.

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.

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

7 National Disability Insurance Scheme, published quarterly reports 2020-21 ([www.ndis.gov.au/about-us/publications/quarterly-reports](http://www.ndis.gov.au/about-us/publications/quarterly-reports)).

# 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 also jointly provide training for private administrators appointed by the State Administrative Tribunal, to enable them to better understand their role and responsibilities.

Other cross-agency initiatives are discussed in the 'interagency collaboration and policy development' section of this report.

# Agency Performance

---

## Advocacy and Investigation

The investigation and advocacy functions of the Office of the Public Advocate include:

- conducting investigations referred by the State Administrative Tribunal in relation to applications for guardianship and administration or the operation of existing guardianship and administration orders, 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
- under delegation, taking on decision-making for a person whose guardian and/or administrator has passed away, including liaising with family and service providers in making decisions until a review hearing occurs at the State Administrative Tribunal
- 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
- 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 or administrator appointed in relation to legal proceedings – civil matters
- providing assistance to the State Administrative Tribunal through the liaison officer function, by conducting brief investigations and providing advice to the Tribunal on specific aspects of an application
- informing and advising government, community and business organisations on the best interests of adults with a decision-making disability in the development of legislation, policies and services.

In carrying out their enquiries, it is a priority for investigator advocates to seek the views of the person who is the subject of an application, where possible. They also interview a range of interested parties which may include family, friends and service providers. The extent and nature of consultation will depend on the timeframe given by the State Administrative Tribunal, the complexity of the matter and other workload priorities.

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

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

- A person makes an application for the appointment of a guardian, as they believe a vulnerable adult does not have appropriate support services in place. In the course of the investigation, the investigator advocate advises the applicant of community services which could assist the vulnerable adult. The applicant engages these services and the situation is resolved without the need for the appointment of a guardian.
- A health professional makes an application for the appointment of a guardian, as they believe their patient has a decision-making disability and needs a substitute decision-maker to make treatment decisions. *The Guardianship and Administration Act 1990* sets out a formal order of treatment decision-makers (Section 110 ZD and Section 110 ZJ). In explaining this process to the health professional, the investigator advocate assists them 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 2020/21, the Public Advocate carried out a total of 2,242 investigations into the personal or financial welfare of adults with a decision-making disability. This was a 13 per cent increase from 2019/20, when there were 1,983 investigations carried out. These 2,242 investigations included new matters and matters carried over from 2019/20.

Of the 2,242 investigations carried out during the year, 2,082 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 15 per cent from 2019/20, when 1,817 investigations related to matters before the State Administrative Tribunal.

The remaining 160 investigations were referred directly to the Public Advocate from sources including members of the public, Courts and Tribunals.



An additional 100 preliminary investigations were referred under the liaison role, which assisted the Tribunal in gathering further information relevant to the hearing, as compared to 131 investigations of this type in 2019/20. All 100 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 1,824 new investigations referred by the State Administrative Tribunal in 2020/21, which was an 18 per cent increase from the previous year, when there were 1,542 new investigations.

These 1,824 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 application and the best interests of the proposed represented person.

The State Administrative Tribunal held a number of urgent hearings with the attendance of an investigator advocate necessary in 458 urgent matters in 2020/21. 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 111 per cent on the 217 urgent matters in 2019/20.

An urgent hearing requires an investigator advocate to attend a hearing at short notice to represent the best interests of the proposed represented person. Some of the urgent matters were due to applications seeking to start hospital discharge planning for a patient, due to the ongoing need to ensure hospitalisation was kept to a minimum in the ongoing COVID-19 pandemic.

In many of the other cases there were urgent and critical medical treatment decisions required, or a need to protect a person's finances due to allegations of financial abuse or there was evidence of significant debt and proceedings were on foot to pursue repayment.

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 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.

## 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 2020/21, the advocacy and investigation team, through the liaison role, conducted preliminary investigations into 100 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.

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.

## 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, such as churches and social groups, other agencies such as the Police, as well as 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 range of challenges to investigator advocates as the purpose is to get information on the person's capacity as it relates to the specific Court matter, and keep the referring Court informed of the progress of the investigation to assist in Court listing dates.

In total, 160 such referrals were reviewed by the Office in 2020/21, a slight decrease from 166 such referrals in 2019/20. Of the 160 cases, 90 were closed during the financial year and 70 remained open at 30 June 2021.

In community referred investigations, investigator advocates initially need to confirm the person is not at risk by speaking to the referring person. If there is an identified risk, the investigator advocate needs to make a recommendation to their manager about how to proceed with the investigation. For example, it may be necessary to establish a financial safeguard, before proceeding to speak to interested parties.

The investigation process often involves gathering information when parties may be unwilling to engage with the investigator advocate. This can extend the time taken to investigate a concern.

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 whether less restrictive safeguards are possible.

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

### **Meeting the needs of Culturally and Linguistically Diverse (CALD) families**

The State Administrative Tribunal received an urgent application to review orders appointing a family member Miss K, as guardian and administrator for Mr G, a young man with a decision-making disability.

Mr G and his family were refugees, whose first language was not English.

The applicant was an agency providing services to the young man. The applicant was concerned that the represented person was involved in Court action and felt that his guardian and administrator (Miss K) was not managing the Court process. There were also concerns that the young man was not getting access to all the support and services he needed.

The Tribunal referred the matter to the Office to urgently investigate and sought the attendance of an investigator advocate at the urgent hearing. In the application, the applicant was proposing that the Public Advocate be appointed as guardian.

At the hearing Miss K had support from an advocacy service who were able to explain that this was a complex situation where due to language barriers Miss K had signed legal paperwork with a government department on Mr G's behalf. The paperwork committed Mr G to pay for services which he needed urgently. However, the implications of the paperwork had not been properly explained to Miss K and subsequent paperwork she had received from the Courts had not been understood either.

Mr G and other members of his extended family also attended the hearing. The bond between all family members, including Miss K was clear. Miss K explained how she had tried to support Mr G but had been frustrated by not understanding the government systems, leading to the issues before the Court.

There was an interpreter present at the Tribunal hearing who was able to translate during the hearing for the family. To assist the process further, there was an adjournment to discuss options with the family and present a proposal to the Tribunal.

In the adjournment, the options for the hearing were discussed and after consideration Miss K was able to advise that the main area of concern for her was Mr G's financial and legal matters. She was agreeable to the Public Trustee taking on this role.

This option was proposed to the Tribunal. The Tribunal accepted the proposal as an appropriate option and made an order appointing the Public Trustee as Mr G's administrator to manage the financial and legal matters until the next hearing. The hearing was then adjourned to enable the Office to conduct a full investigation and to ensure both Miss K and Mr G were involved in the process.

*(continued next page)*

*(Case study continued from previous page)*

The investigator advocate committed to providing some translated information to Miss K and the rest of the family so they could all have a better understanding of the Guardianship and Administration Act 1990 and the State Administrative Tribunal processes.

After the translated information was provided to the family the investigator was able to discuss the key issues and options with Miss K, as she had a better understanding of the role of the Office of the Public Advocate and the Tribunal processes.

Ultimately, the Office's recommendation was for the Public Trustee to remain appointed as administrator and for Miss K to remain as guardian. The advocacy service was able to continue supporting Miss K to engage with services and ensure language and cultural differences were understood and service engagement went smoothly.

### ***Requests for documents to be translated***

The Office of the Public Advocate translates its publications into other languages on request.

The publications which have been translated to date can be found on the Office's website under 'Publications and Research'.

**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.

### ***Investigations unearthing and documenting social history***

When the Public Advocate is appointed guardian it is often at a time when a person is experiencing declining capacity, and in many cases the represented person has no family or friends who can provide information on their previous lifestyle.

Investigator advocates play an important role in gathering information, not just about the person's current situation, but also about their life. This may enable their key achievements or significant information to be recorded and passed on to the delegated guardian (if the Public Advocate is appointed) and service providers, who may then be able to use this knowledge in conversations with the person or to consider what activities they may enjoy.

Examples of this over the past year include an application where there was a comment that the person had been an international football/soccer player. The investigator advocate followed up on this comment and through some research they discovered that the person had played football/soccer for his country, even scoring a match winning goal in an international tournament.

In another application there was a comment made that the person had played Australian rules football. The investigator advocate was able to unearth more details which revealed that the man had been a renowned footballer at the State level and continued a family dynasty of high-level State representation and award winning.

By picking up on comments in applications and gathering information, investigator advocates are able to highlight the achievements of the person and ensure this information is passed on to guardians and service providers. This means important information about the person is not lost at a time when they may not be able to express their past achievements. This is an important role for investigator advocates and is a way of focussing on the whole person rather than just their current situation.

## Administrator of last resort

As at 30 June 2021, the Public Advocate was appointed by the State Administrative Tribunal as limited administrator of last resort for nine 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.

## 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 1,824 new investigations carried out during the year, allegations of abuse were made regarding 322 people. 147 of these people were 65 years of age or older. Of these alleged elder abuse cases, 83 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.



## Increasing regional referrals

Referrals for investigation are made for matters across the State. Referrals for regional matters present challenges in gathering information, as it is usually not possible to visit the person at their home location.

In 2020/21 there were 435 matters referred which related to people in regional areas, compared to 374 in 2019/20, an increase of 61 matters referred or 16 per cent.

Interviewing the proposed represented person by phone or video-link often requires the investigator advocate to negotiate with an independent party to assist in supporting the proposed represented person during the interview.

To respond to regional matters, where possible, these 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 and advocacy for proposed represented people.

During the past year, investigator advocates on occasion travelled to regional areas to interview proposed represented persons, applicants and interested parties during the course of their investigations.

However, with restrictions due to COVID-19 travel was limited in 2020/21. Therefore investigator advocates had to rely on support services to assist with interviewing proposed represented persons and other parties in regional areas. Investigator advocates increasingly used technology in order to gather information.

## COVID-19 impact

Once again this year, the suspension of in-person interviews at times, due to COVID-19 lockdowns and restrictions impacted 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, or 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

### **When duty of care overrides privacy**

Mr M is an elderly man living in regional Western Australia. Being a small town, Mr M is well known to local people and agencies who are aware that his dementia is worsening.

Mr M wants to remain living in his own home and has been able to do this up until now with the support of services.

Recently however a number of people reporting to be his friends and family have moved into his house. There are concerns about Mr M's wellbeing.

Staff at the local bank were becoming increasingly concerned with the risk of Mr M being financially exploited. In the past Mr M had lost his bank card and forgotten his PIN number, but the bank had been able to assist him with making small withdrawals from the cashier each week when he needed cash for food shopping and other expenses.

Other people started attending the bank with Mr M and he began withdrawing larger sums of money more frequently. He was also seen handing over cash to the person who accompanied him to the bank to make a withdrawal.

The informal measures the bank had been able to put into place to protect Mr M's finances were no longer sufficient to protect him from financial exploitation. The bank was concerned that the money he was withdrawing was being used by other people, therefore the bank made an application to the State Administrative Tribunal.

In the application the bank expressed their view of the importance of Mr M maintaining his financial independence, while ensuring his financial safety.

Mr M had a long-standing pattern of attending the bank weekly to withdraw money for his weekly expenses and this independence was important to him.

The application was referred to the Office of the Public Advocate to investigate. However, due to the concerns regarding the risk posed to Mr M's financial estate, the hearing was held in an urgent timeframe.

### ***Duty of care***

In this situation the bank, like many agencies, had to balance the duty of care to their client with their obligations to maintain the client's privacy.

In assessing how to proceed they focussed on the fact that Mr M's pattern of withdrawals had changed and he was observed to give his money away on withdrawal. They were also unable to work on informal processes to help Mr M manage his money, so they identified in this situation they had a duty of care to instigate processes to protect Mr M from financial abuse.

In doing so they discovered the best way forward was to make an application to the State Administrative Tribunal for the appointment of an administrator.

*(continued next page)*

*(Case study continued from previous page)*

The investigator advocate spoke to the applicant (staff from the bank) who advised of some family conflict and that Mr M appeared distressed. The applicant was also able to provide details of local agencies that may be able to assist.

The investigator advocate contacted these agencies who shared the same concerns for Mr M and who reported having been looking into how they could better support Mr M.

Mr M's GP had responded to Mr M's concerns by making a referral for a capacity assessment, and referrals to the local home care services. The home care services were aware of the situation at Mr M's home and the fact that since other people had moved into his home, he had been presenting in a distressed state to local providers.

Importantly, some family members were also concerned about Mr M's situation and were supportive of the application and of the need for a guardian and administrator being appointed.

At the Tribunal hearing the family conflict was apparent, with family members unable to put their conflict aside to focus on what Mr M wanted and the need to support him to live how he wanted to.

As a result, the Public Advocate was appointed guardian and the Public Trustee was appointed administrator, to ensure Mr M's views and wishes would be taken into account in making decisions, and to ensure his finances were protected and used only for his expenses.

### **When conflict makes family unsuitable**

Many referrals to the Office of the Public Advocate involve families who may be in conflict, have had periods of estrangement or have different views on what they think should happen for the proposed represented person.

This conflict itself does not make family or friends unsuitable to be appointed.

If people can set aside their conflict and instead focus on what it is that the proposed represented person wants and needs, and understand they need to work together to achieve this, then they may be able to be appointed in a formal role.

Investigators spend time talking with interested parties to explain the requirements if they want to propose themselves as a guardian or administrator. They explore with them if there is conflict, how they will manage this to focus on the best interests of the represented person. This time can assist family members to understand the role and find solutions which enable a family or friend to be appointed, rather than the Public Advocate or Public Trustee.

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

## Case Study

### Obligations of an attorney

Many calls are received by the Office's advisory service in relation to the obligations of an attorney, particularly when two people have been appointed as 'joint and several' attorneys.

'Joint and several' means the attorneys can always act together, always act separately or make some decisions jointly and some decisions separately.

However, both attorneys sign to accept their obligations under the Act and as such have equal responsibility to ensure the finances are managed in the person's best interests.

This responsibility was made clear in a recent matter which was referred to the Office for investigation, where siblings were appointed as joint and several attorneys. One of the joint and several attorneys had been away for a period of time and on their return they realised the other joint and several attorney had misused some of their mother's money.

The attorney immediately put a block on their mother's bank account and made an application to the State Administrative Tribunal for the second attorney to be removed from the role. However, at the hearing the Tribunal revoked the Enduring Power of Attorney and appointed the Public Trustee as administrator. The Tribunal noted at the hearing that the revocation was necessary because the applicant attorney had not fulfilled their obligations to protect their mother's estate and therefore they were not suitable to continue in the role.

### An attorney's obligation

An attorney needs to be aware of the obligation they have to protect the person's assets, regardless of whether they are a sole, joint or joint and several attorney.

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

## Case Study

### **The Tribunal's ability to vary an enduring power of guardianship**

An enduring power of guardianship enables a person, while they have capacity, to appoint someone to make personal, lifestyle and treatment decisions for them if they ever lose capacity to make decisions for themselves.

Under the *Guardianship and Administration Act 1990* the State Administrative Tribunal has the ability to vary an enduring power of guardianship to ensure it continues to work effectively.

The benefit of this was seen in a matter recently where the Tribunal varied an enduring power of guardianship to include an additional function.

The person who made the enduring power of guardianship had lost capacity and therefore their enduring guardian was making personal, lifestyle and treatment decisions for them, based on the limited functions given to them in the enduring power of guardianship document.

However, the enduring guardian found that they were needing to make decisions for the person with regard to a function that was not included in the document.

The enduring guardian made an application to the Tribunal to be appointed as limited guardian with that specific function, so that they could make decisions as required. The Tribunal referred the matter to the Office to investigate.

The investigator advocate was able to discuss with the enduring guardian what additional functions were needed and how the enduring guardian would go about making decisions if the enduring power of guardianship document was varied. The investigator advocate was then able to support the application as the enduring guardian's concern for the person and their wellbeing was evident.

Rather than making a guardianship order, the Tribunal was able to vary the enduring power of guardianship so that the additional function was included, meaning the enduring guardian could make the decisions needed, without having to be appointed as a guardian.

### **Benefits of varying an enduring power of guardianship**

The ability of the Tribunal to vary the enduring power of guardianship rather than make a guardianship order is important because it provides flexibility to the document. It means that the enduring power of guardianship can continue to work in a way which respects the person's previous wishes as expressed in the document about who they want to be their decision maker.

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

## Transition of young people leaving State care

The Office of the Public Advocate continues to work 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, provides advocacy at State Administrative Tribunal hearings where applications have been made for the appointment of a guardian and/or an administrator for young people aged 17 and over.

A total of 46 applications from the Department of Communities, Child Protection and Family Support were determined by the State Administrative Tribunal during the year. One application was also made by the Department to the Northern Territory Civil and Administration Tribunal.

Following the determination by the State Administrative Tribunal of these applications, the Public Advocate's appointment as guardian came into effect for 40 young people leaving State care when they turned 18 years of age. For five of these young people the Public Advocate was appointed as limited guardian in conjunction with private guardians with different functions. In addition, the guardianship order made in 2019/20 for another young person came into effect during this financial year when she turned 18 years of age and a guardianship order appointing the Public Advocate for one young person will come into effect when she turns 18 years of age in the 2021/22 financial year.

The Public Trustee was appointed as administrator for a total of 44 young people of the 46 applications determined by the State Administrative Tribunal and in relation to the remaining two applications, one private administrator was appointed, and in the other matter, no administrator was appointed although a private guardian was appointed. The Public Trustee was appointed administrator for three young people where a guardianship order was not made.

## 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.

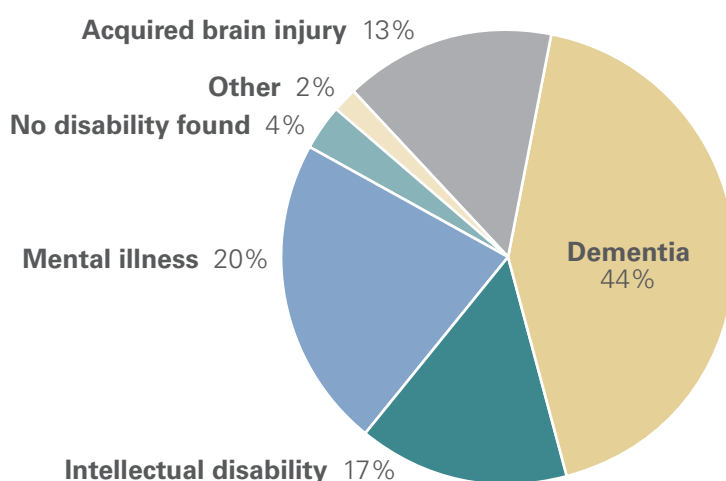
## Our Customers

Of the 1,824 new matters referred to the Public Advocate for investigation by the State Administrative Tribunal in 2020/21, 44 per cent involved a person with dementia. The remaining matters involved a person with either a mental illness, an intellectual disability or an acquired brain injury, and in some instances, no decision-making disability was found. Fifty-two per cent of the 1,824 new matters related to males and 48 per cent to females.

**Figure 3 Profile of new investigations by type of decision-making disability 2020/21**

### Type of decision-making disability

Acquired brain injury	239
Dementia	807
Intellectual disability	303
Mental illness	367
Other	38
No disability found	70
<b>Total</b>	<b>1,824</b>



Note 1: Due to rounding, the total percentage does not always equal 100.

Note 2: 13 of the 38 'other' are for represented persons with Autism Spectrum Disorder.

Of the 1,824 new investigations carried out during the year, allegations of abuse were made regarding 322 people.

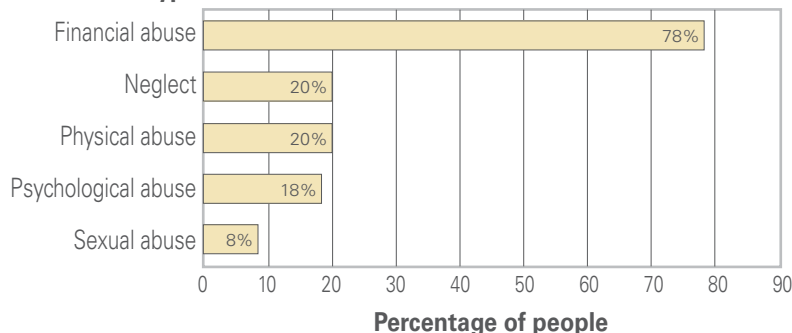
In some cases, more than one type of alleged abuse was reported in the application. The most commonly reported form of alleged abuse was financial, with 78 per cent alleging financial abuse.

**Figure 4 Profile of new investigations alleging abuse by type of abuse 2020/21 (including statistics of alleged elder abuse)**

### Abuse type (322 people)

Financial abuse	252
Neglect	66
Physical abuse	66
Psychological abuse	58
Sexual abuse	26

### Abuse type



Note 1: Allegations of abuse were made regarding 322 people, however, in some instances more than one alleged abuse type was reported in the application.

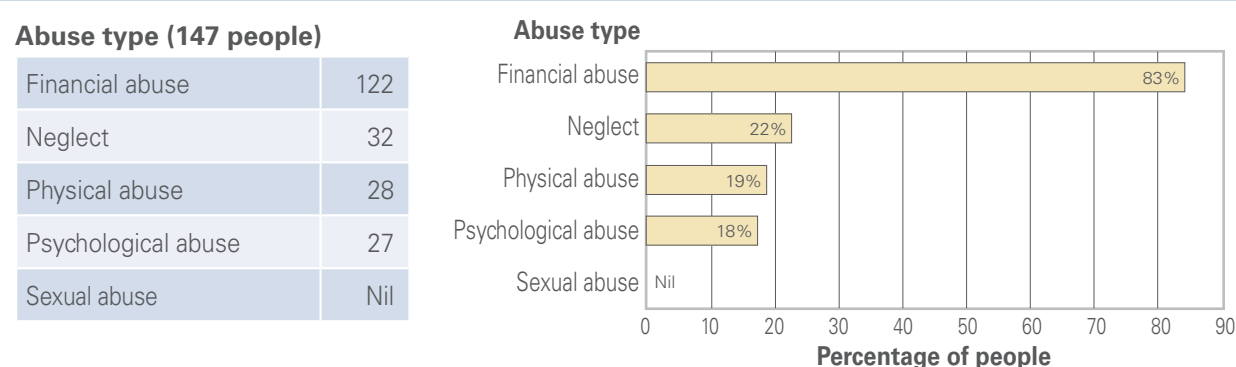
Note 2: In some instances, more than one investigation was carried out for a person.

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

Of the 322 people for whom abuse was alleged, 147 (46 per cent) were 65 years of age or older. These instances of alleged abuse are referred to as elder abuse.

Of these 147 cases of alleged elder abuse, financial abuse was the most common, having been reported in 83 per cent of these investigations.

**Figure 5 Profile of new investigations alleging elder abuse (aged 65 or older) by type of abuse 2020/21**



*Note 1: Allegations of elder abuse were made regarding 147 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 147 new investigations in 2020/21 where elder abuse was alleged, 23 involved a person of Aboriginal and Torres Strait Islander descent, representing 16 per cent. Financial abuse was the most common form of abuse, having been reported in 21 of the 23 cases (91 per cent).

**Figure 6 Profile of new investigations alleging elder abuse (aged 65 or older) involving people of Aboriginal and Torres Strait Islander descent 2020/21**

Total new investigations alleging elder abuse 2020/21	Indigenous	Non Indigenous	Indigenous as percentage of total
147	23	124	16%

*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 10 and 13 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>8</sup>

**Figure 7 Profile of new investigations involving people of Aboriginal and Torres Strait Islander descent as at 30 June 2017 – 30 June 2021**

Year	Total	Indigenous	Non Indigenous	Indigenous as a percentage of total
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 %
2020/21	1,824	236	1,588	13 %

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

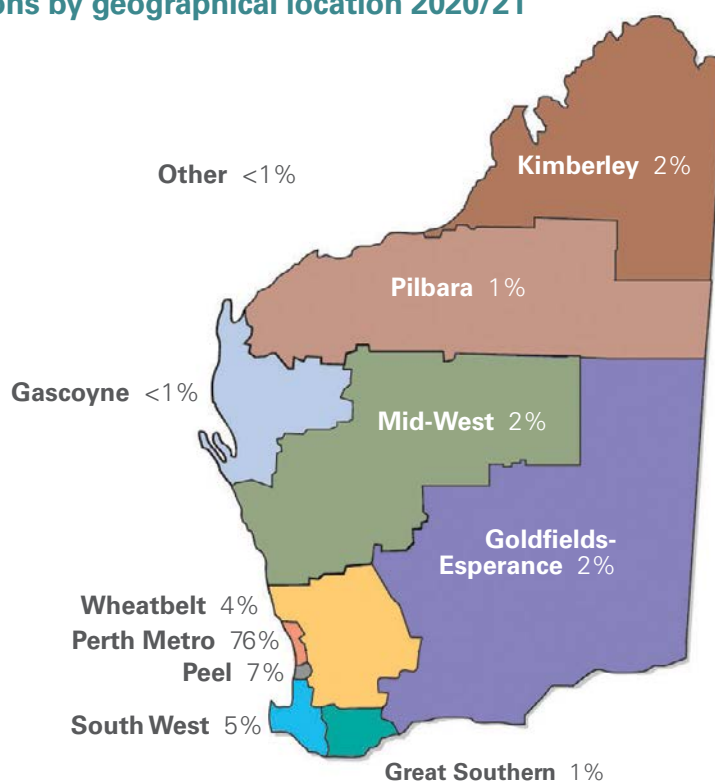
Of the 1,824 new investigations in 2020/21, 1,389 matters were investigated for people located in the Perth metropolitan area.

**Figure 8 Profile of new investigations by geographical location 2020/21**

#### Geographical locations

Gascoyne	5
Goldfields-Esperance	32
Great Southern	26
Kimberley	30
Mid-West	34
Peel	120
Perth Metro	1,389
Pilbara	25
South West	83
Wheatbelt	72
Other	8
<b>Total</b>	<b>1,824</b>

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



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

## Guardianship

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

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

## The Year in Review

In 2020/21 there were 730 new appointments of the Public Advocate as guardian of last resort, compared to 717 in 2019/20, slightly higher than the previous year.

At 30 June 2021, the Public Advocate had responsibility as guardian of last resort for 2,771 adults with a decision-making disability, compared to 2,463 at 30 June 2020, which is an increase of 13 per cent.

The Public Advocate had responsibility as the sole guardian for 2,619 of the total 2,771 represented persons as at 30 June 2021. In relation to the remaining 152 appointments of the Public Advocate, there were 148 represented persons on a guardianship order which appointed the Public Advocate and private guardian(s) with different functions. Four of the 152 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 four 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.

As the guardian of last resort, the Public Advocate made personal, lifestyle and treatment decisions in relation to a range of matters including:

- decisions in relation to medical treatment, palliative care and surgery
- consenting to 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 restrictive practices
- acting as 'next friend' in relation to child protection matters on behalf of represented persons.

To meet the needs of the Office's 502 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 2021 there were 17 volunteers engaged in the community guardianship program. Of these, 16 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 17 volunteers was formerly an appointed guardian as part of the program, but their represented person had passed away. Work was progressing to match them with another represented person.

In addition, there was a prospective volunteer working their way through the program's induction training.

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

All guardianship orders are reviewed by the State Administrative Tribunal on a regular basis. 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.

In 2020/21, delegated guardians attended 768 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 19 per cent increase from the previous year, when 644 review hearings were attended.

## 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 determined by the NDIS 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 2020/21 delegated guardians and investigator advocates made 22 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, in considering a decision for the person to relocate.
- 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 for these people 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 and end of life care.

- Delegated guardians may experience pressure to go outside their decision-maker role to locate services, seek funding and coordinate the provision of services for represented persons. The shortfall of appropriate services and the refusal of represented persons to accept help compound this problem. Where people have a dual diagnosis, for example, an intellectual disability and a mental illness, the task of encouraging a more appropriate agency to take the lead role may be very difficult.
- Making decisions about whether a represented person remains in their own home or is placed in residential care, when concerns exist around their self-care, is often a source of conflict between delegated guardians and represented persons and/or their relatives. Delegated guardians must balance the rights of a represented person to remain at home and their need for increased support which may necessitate a move to residential care
- With the implementation of the NDIS Quality and Safeguarding Framework and the commencement of the NDIS Quality and Safeguards Commission on 1 December 2020 in Western Australia as well as reforms in aged care, processes in relation to providing consent to restrictive practices have been strengthened. As such, more guardianship orders include this function and the Public Advocate is required to consent to restrictive practices for these represented persons. 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 are working with represented persons whose parents or relatives also have a decision-making disability or mental health issues, increasing the complexity of discussions.
- 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; 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 2021, the Public Advocate was appointed as guardian for 22 mentally impaired accused people under the *Criminal Law (Mentally Impaired Accused) Act 1996*, six more than at 30 June 2020.
- 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 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 2020/21, delegated guardians from the Office of the Public Advocate were involved in 768 reviews of guardianship orders where the Public Advocate was appointed.

Of the 768 reviews, 165 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.

A total of 433 guardianship orders ceased during 2020/21, through revocation by the State Administrative Tribunal, or due to the death of the represented person.



## 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 2020/21 the Public Advocate consented to palliative care for 180 represented persons for whom she was appointed guardian with the authority to make treatment decisions. This figure does not include those represented persons where a palliative care decision had been made previously, where the represented person had a chronic or life-limiting illness and their continuing decline is expected.

## Ombudsman WA Investigation

On 2 March 2021 Attorney General the Hon. John Quigley MLA requested that the Ombudsman WA Mr Chris Field investigate the issue of delays in death notification for family members, where the deceased person had the Public Advocate appointed as guardian.

Ombudsman WA Mr Chris Field subsequently commenced 'an investigation into the Office of the Public Advocate's role in notifying the families of Mrs Joyce Savage, Mr Robert Ayling and Mr Kenneth Hartley of the deaths of Mrs Savage, Mr Ayling and Mr Hartley'.

The cases of Mrs Savage, Mr Ayling and Mr Hartley highlighted gaps in some of the Office's practices and procedures including death notification to family, contacting family regarding palliative care decisions and the need to strengthen guidance to staff.

During the course of the investigation the Office made changes to a number of practices and procedures with a particular focus on ensuring that when the Office is notified of the death of a represented person, staff establish whether or not family had been informed of the death, and take action where family had not already been informed.

The Ombudsman's report was tabled in State Parliament on Thursday 8 July 2021. The Ombudsman made seven recommendations, all of which the Public Advocate accepted.

Further work undertaken by the Office to ensure practices, procedures and staff guidance are in line with the Ombudsman's recommendations will be captured in the Office of the Public Advocate 2021/22 Annual Report.



## Case Study

### **Consenting to end-of-life treatment**

Mr and Mrs D are an elderly couple in their late 80s, living in their own home. They both have dementia and are cared for by their daughter Ms F.

Ms F had been the principal carer for her parents for a number of years. Mr and Mrs D's care needs had been steadily increasing over the years, but with their continuing deterioration, Ms F experienced carer stress and no longer felt that she could provide her parents with the level of care they both need.

Assessments from professionals were recommending Mr and Mrs D needed to move into an aged-care facility as their care needs could no longer be adequately met in their home, even with services and the assistance of their daughter. Ms F had attempted to engage her parents in discussions about visits to aged-care facilities, without success.

After a fall at home, Mr D was admitted to hospital and then transferred to a transitional care placement. With the assistance of the hospital social worker, Ms F made applications to the State Administrative Tribunal for the appointment of a guardian, for both her mother and father.

In the applications, Ms F detailed her wish to be able to step back from the conflict with her parents regarding where they lived, in order to maintain her relationship with them. Ms F wanted an independent appointment as guardian so that she could remain in her parents' lives as their daughter and someone else could handle the contentious decision-making to ensure they were safe.

The Tribunal appointed the Public Advocate for one year as limited guardian for Mr and Mrs D. Both orders gave the Public Advocate the authority to decide where they lived, what services they received and to consent to medical treatment.

A delegated guardian from the Office was able to work with the transitional care facility and Miss F and then consent to Mr and Mrs D moving into an aged-care facility together. The delegated guardian was able to engage with Mr and Mrs D to hear their views, particularly their wish to remain in their own home. Ms F was able to be a support person to them through this difficult transition as she was removed from being the person who made the decision that they had to move from their home.

A year later at the review hearing, the Tribunal removed the accommodation function from both Mr and Mrs D's guardianship orders, as their accommodation issue had been resolved and there was no longer a need for decisions to be made in this area.

*(continued next page)*

*(Case study continued from previous page)*

There was also discussion about the Public Advocate's appointment being revoked and instead, Ms F being appointed. Ms F however did not wish to be appointed, feeling that this decision-making role would once again place pressure on her relationship with her parents. The Tribunal appointed the Public Advocate as guardian for five years, with authority to decide what services they each received and to consent to their medical treatment.

Over the next year the delegated guardian continued to liaise with Ms F and provide consent where required for services and medical treatment for both Mr and Mrs D who remained living together in the aged-care facility.

The aged-care facility contacted both Ms F and the delegated guardian to advise that Mr D had been transferred to hospital following a serious heart attack. Ms F attended the hospital to be with him.

The next day the treating team contacted the delegated guardian as Mr D was struggling to breathe and was very unwell. Although he had been given a special type of oxygen, the treating team were recommending that it be discontinued as he could not remain on it long-term. The treating team were recommending that Mr D be treated palliatively and that he be returned to the aged-care facility so that he was more comfortable in his familiar environment and with his wife.

The delegated guardian asked that the treating team discuss Mr D's prognosis and their recommendations with Ms F. The delegated guardian then spoke with Ms F to get her views and discussed with her, what she thought her father would have wanted. Ms F indicated that she accepted the treating team's recommendations and she felt that if he were able to, her father would also accept the recommendations.

Both Ms F and the aged-care facility manager indicated that it would be distressing to discuss the approach to Mr D's treatment with Mrs D, in view of the progression of her own dementia. Similarly, Mr D was unable to provide a view on his own treatment.

The delegated guardian then put the end-of-life treatment decision to the Public Advocate, consistent with the Office policy and procedure for this significant treatment decision. The Public Advocate consented to the recommendation of the treating team, considering the views of the family as provided by Ms F.

Mr D returned to the aged-care facility which enabled Mrs D and Ms F to be with him in his final hours

**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 730 new appointments in 2020/21, 38 per cent had dementia, 27 per cent a mental illness, 17 per cent an intellectual disability and 15 per cent had an acquired brain injury. Of the 730 new appointments, 54 per cent were male and 46 per cent were female.

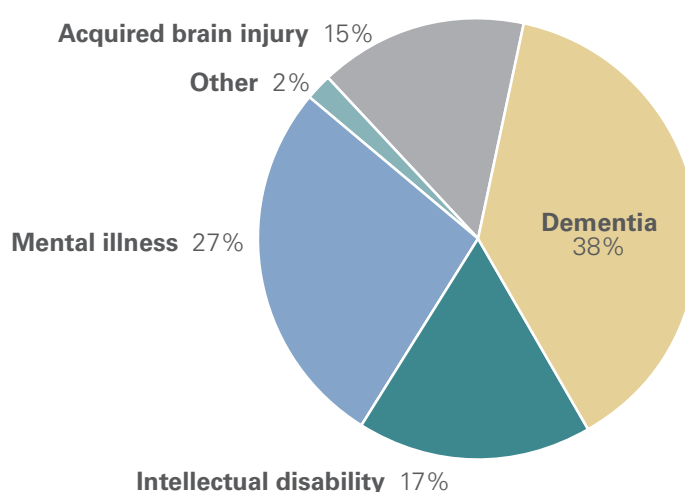
**Figure 9 Profile of new guardianship orders appointing the Public Advocate by type of decision-making disability 2020/21**

### Type of decision-making disability

Acquired brain injury	112
Dementia	279
Intellectual disability	125
Mental illness	199
Other	15
<b>Total</b>	<b>730</b>

*Note 1: Due to rounding, the total percentage does not always equal 100.*

*Note 2: 6 of the 15 'other' are for represented persons with Autism Spectrum Disorder.*



Of the total 2,771 appointments at 30 June 2021, 30 per cent of the people had a mental illness, 27 per cent an intellectual disability, 26 per cent dementia and 15 per cent an acquired brain injury. Fifty-five per cent of the people were male and 45 per cent were female.

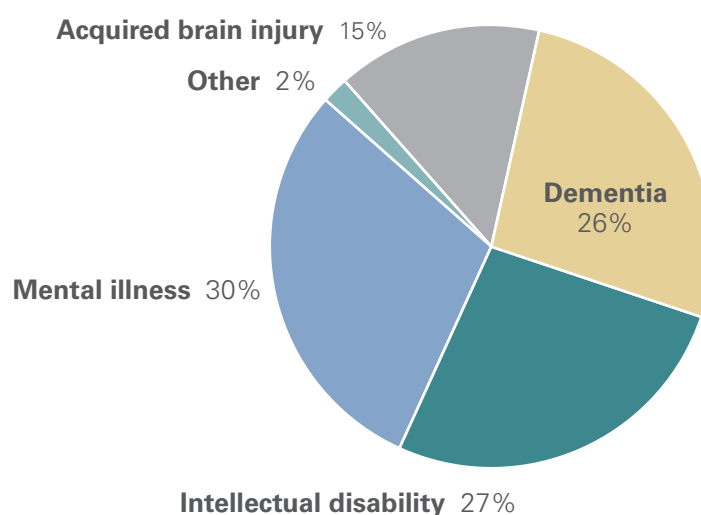
**Figure 10 Profile of all guardianship orders appointing the Public Advocate by type of decision-making disability as at 30 June 2021**

### Type of decision-making disability

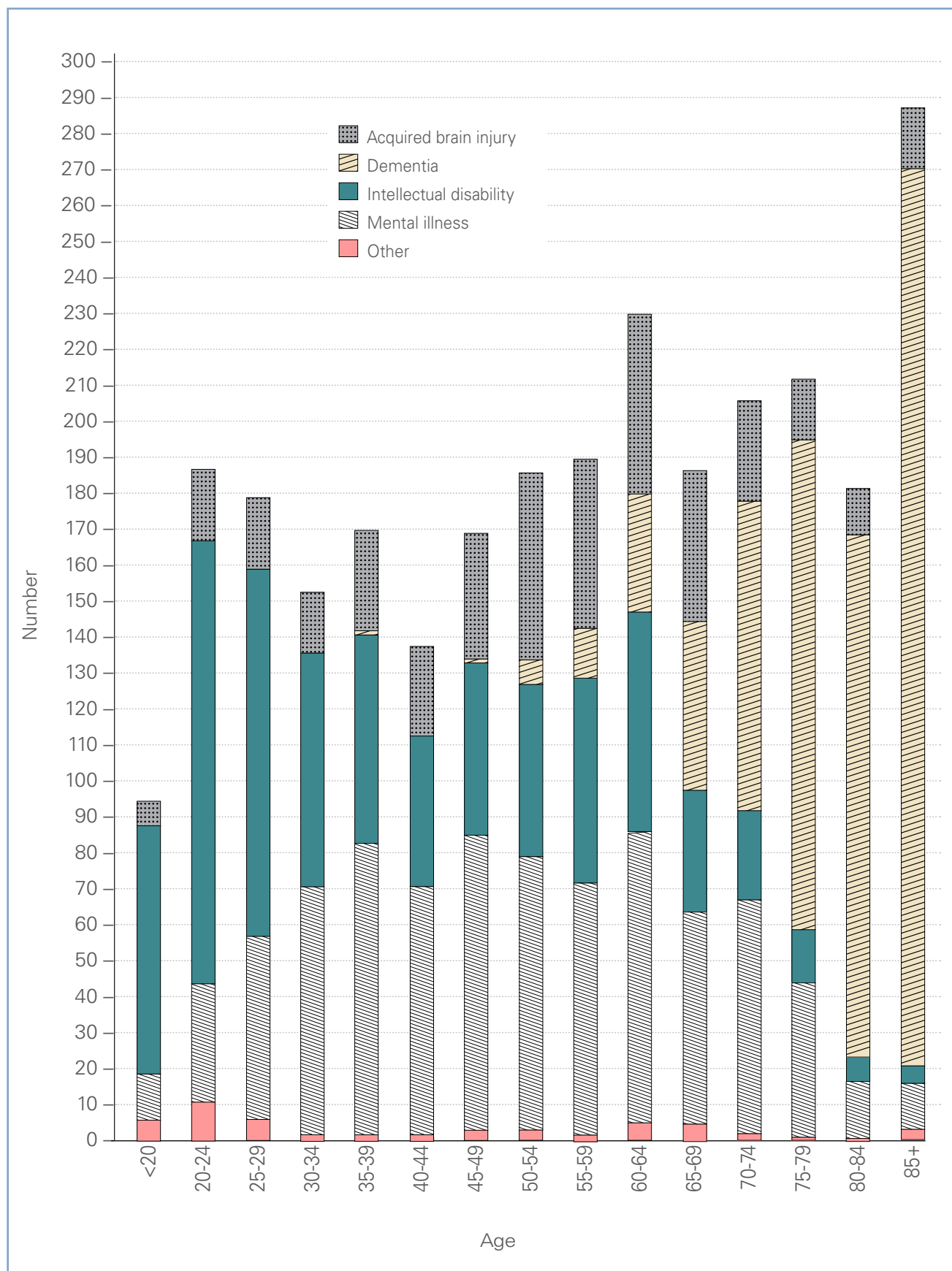
Acquired brain injury	418
Dementia	719
Intellectual disability	759
Mental illness	821
Other	54
<b>Total</b>	<b>2,771</b>

*Note 1: Due to rounding, the total percentage does not always equal 100.*

*Note 2: 25 of the 54 'other' are for represented persons with Autism Spectrum Disorder.*



**Figure 11 Profile by age and disability type of all people on guardianship orders appointing the Public Advocate as at 30 June 2021**



At 30 June 2021, the Public Advocate was guardian of last resort for 469 adults aged 80 years and over, who accounted for 17 per cent of all guardianship appointments. Of these 469 adults, 59 per cent were female and 41 per cent were male. Eighty-four per cent of the 469 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.

The most common single issue leading to the appointment of the Public Advocate as guardian of last resort this year was services, with 2,386 (86 per cent) of the 2,771 guardianship orders appointing the Public Advocate as at 30 June 2021, including the authority to make decisions about what services the represented person receives.

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.

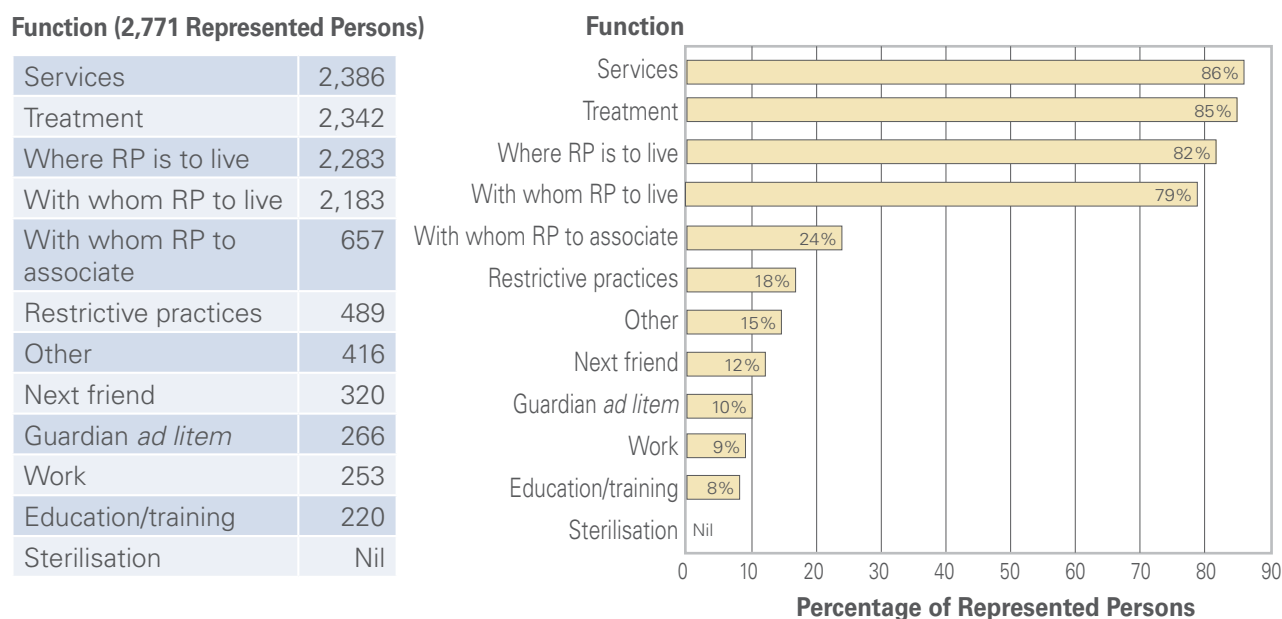
At 30 June 2021, 2,342 (85 per cent) of the 2,771 orders appointing the Public Advocate as guardian included this function. The high number of orders appointing the Public Advocate to make treatment decisions could be attributed to represented persons not having a valid enduring power of guardianship, 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 2021, 2,283 (82 per cent) of the 2,771 guardianship orders appointing the Public Advocate, included the authority to make decisions regarding where the represented person was to live. Similarly, 2,183 (79 per cent) of the 2,771 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 or the National Disability Insurance Scheme.

**Figure 12 Functions for which the Public Advocate has been appointed for all guardianship orders as at 30 June 2021**



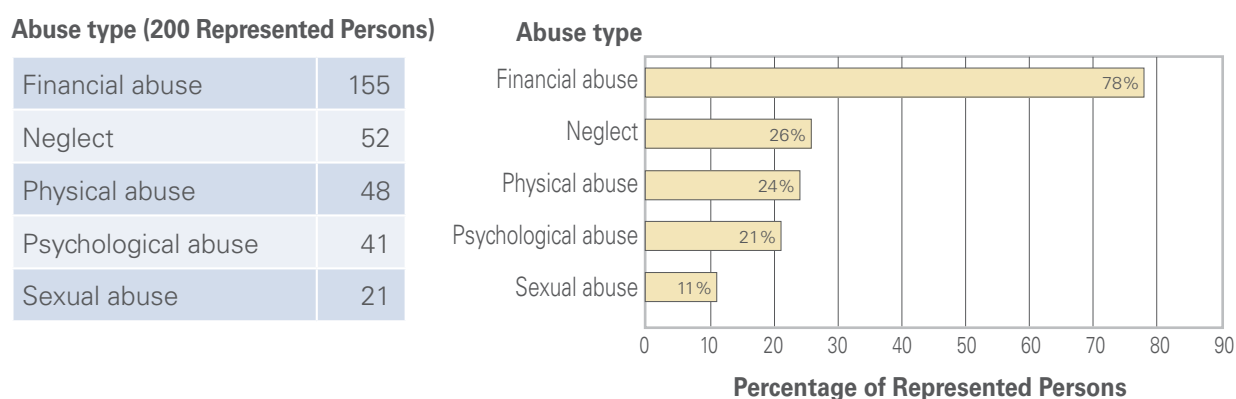
Note 1: RP = represented person.

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

Note 3: Previously, restrictive practices have been recorded as two distinct functions, 'physical restraint' and 'chemical restraint', with most represented persons having both functions.

Allegations of abuse were a factor for 200 represented persons or 27 per cent of the 730 new guardianship orders appointing the Public Advocate in 2020/21. 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 78 per cent of cases alleging abuse.

**Figure 13 Profile of new guardianship orders appointing the Public Advocate by type of alleged abuse 2020/21 (including alleged elder abuse)**



Note 1: Alleged abuse was reported for 200 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.

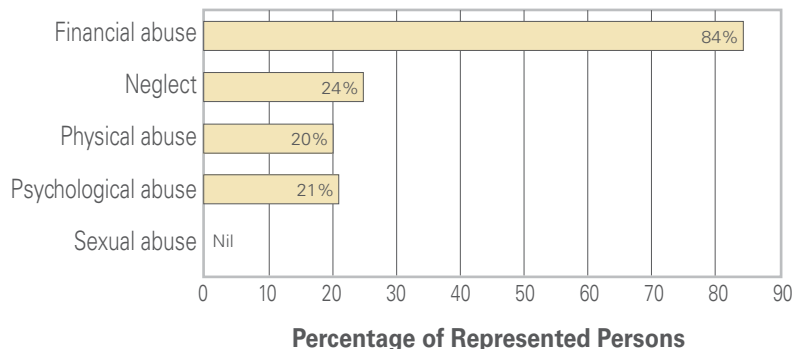
Of the 200 represented persons for whom abuse was alleged, 98 people were 65 years of age or older. Of these, financial abuse was also the most commonly reported form of abuse, having been reported in 82 (84 per cent) of the 98 cases.

**Figure 14 Profile of new guardianship orders appointing the Public Advocate by type of alleged elder abuse (aged 65 or older) 2020/21**

**Abuse type (98 Represented Persons)**

Financial abuse	82
Neglect	24
Physical abuse	20
Psychological abuse	21
Sexual abuse	Nil

**Abuse type**



*Note 1: Alleged elder abuse was reported for 98 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 98 new appointments of the Public Advocate as guardian in 2020/21 where elder abuse was alleged, 15 were for a person of Aboriginal and Torres Strait Islander descent, representing 15 per cent. Financial abuse was the most commonly reported form of abuse, having been reported in 14 of the 15 cases (93 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 2020/21**

Total new orders alleging elder abuse 2020/21	Indigenous	Non Indigenous	Indigenous as percentage of total
98	15	83	15%

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



Of the 730 new appointments of the Public Advocate as guardian in 2020/21, 131 were for a person of Aboriginal and Torres Strait Islander descent, representing 18 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>10</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 2017 – 30 June 2021**

Year	Total	Indigenous	Non Indigenous	Indigenous as a percentage of total
2016/17	487	81	406	17%
2017/18	526	77	449	15%
2018/19	591	89	502	15%
2019/20	717	99	618	14%
2020/21	730	131	599	18%

*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 17 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 2017 – 30 June 2021**

Year	Total	Indigenous	Non Indigenous	Indigenous as a percentage of total
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%
2020/21	2,771	502	2,269	18%

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

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

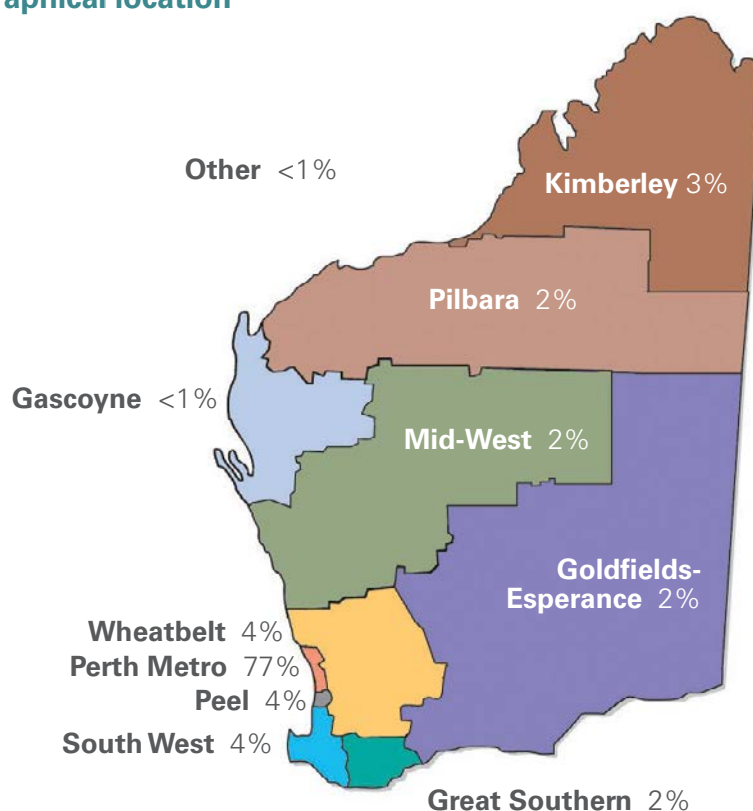
At 30 June 2021, 77 per cent of all appointments of the Public Advocate were for people living in the Perth metropolitan area.

**Figure 18 Profile of all guardianship orders as at 30 June 2021 appointing the Public Advocate by geographical location**

**Geographical locations**

Gascoyne	6
Goldfields-Esperance	58
Great Southern	47
Kimberley	70
Mid-West	59
Peel	117
Perth Metropolitan	2,135
Pilbara	42
South West	120
Wheatbelt	106
Other	11
<b>Total</b>	<b>2,771</b>

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



## The Public Advocate's after hours service

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

## Case Study

### **Collaboration maximising NDIS funding and producing good outcomes**

Mrs L is a 57 year old Aboriginal woman with an acquired brain injury and some physical disabilities. She lives in a regional community and has some support services in place and some informal support from family and local community members.

With the introduction of the National Disability Insurance Scheme (NDIS) it became evident that Mrs L did not have capacity to coordinate her involvement with the NDIS, or to consent to services. Mrs L did not have a family member or friend in her life who was willing and able to take on the role informally.

An application for guardianship and administration was made to the State Administrative Tribunal and the Public Advocate was appointed guardian and the Public Trustee was appointed administrator.

The delegated guardian applied for NDIS funding for Mrs L and set about ensuring that adequate support was in place. It quickly became evident however, that with very few local services available, Mrs L's funding was largely being used to cover transport fees, leaving very little for the actual support services she needed.

The delegated guardian engaged a support coordinator from an agency based at the largest nearby regional hub, which also serviced the small town Mrs L lived in.

Working with Mrs L and the support coordinator, the delegated guardian formed the view that the best way for Mrs L's NDIS funding to work for her, was to appoint the support coordinator to manage Mrs L's plan, with the focus being on engaging local people, specifically other Aboriginal residents of the town, to deliver some of the services she needed locally, and to engage local people to provide transport to other services as required.

Mrs L required regular preventative treatment at the local hospital for an ongoing condition, but prior to the Public Advocate's appointment this engagement had been sporadic. This had resulted in Mrs L requiring urgent treatment and multiple hospital admissions.

The delegated guardian engaged with hospital staff who were happy to work with the support coordinator to find the right local people to employ.

The support coordinator and hospital staff reported to the delegated guardian that they felt a sense of pride in not only finding better solutions for Mrs L, but also because they were able to build capacity in the local and somewhat impoverished town, including employment opportunities and cultural connections.

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

# Interagency Collaboration and Policy Development

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

## The Year in Review

### **Collaboration regarding changes in the disability sector**

A number of the Office's represented persons have been, and will continue to be, impacted by 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**

Since the establishment of the NDIA's Complex Support Needs Pathway in Western Australia, 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.

### **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, 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 six highly vulnerable young people, who needed intensive support with their transition from State care and where the Public Advocate is appointed guardian.

## **National Redress Scheme for people sexually abused as children in institutional care**

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

The Office of the Public Advocate is 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.

The Office of the Public Advocate is also 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. Represented persons who have grounds for a National Redress claim are referred to the Public Trustee for consideration of possible Common Law claims. The Public Trustee then sends the application to the National Redress Scheme.

As at 30 June 2021, 47 represented persons with a National Redress claim had been referred to the Public Trustee 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.

## **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 2020/21, including:

- Assisting the Director General, Department of Justice with the Meeting 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 continues to be led by the Department of Communities.
- Member of the National Disability Insurance Scheme (NDIS) Interface Steering Committee, convened by 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.
- 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 in conjunction with the Department of Justice's Strategic Reform division.
- Consulted by the Department of Communities regarding the implementation of the Quality and Safeguarding Framework and the development of legislation for the application of restrictive practices in disability services in Western Australia.

## 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 2020/21, the Office delivered a total of 17 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 20 education sessions held in the previous financial year. Once again this year, some sessions were postponed due to COVID-19 restrictions.

Of the 17 sessions, five addressed the needs of community members, 11 were specifically tailored for service providers and one catered to the needs of both groups.

Fourteen of the education sessions were delivered in the Perth metropolitan area and three in regional areas.

Two of the service provider sessions were for Justices of the Peace and aimed to educate JPs 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.



For the third 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. Two of these sessions were held during the year.

The Office also participated in the Seniors Recreation Council of WA's 'Have a Go Day', sharing a marquee with colleagues from the Public Trustee. The joint stand provided community members and relevant service providers with information on enduring powers of attorney, enduring powers of guardianship and writing a Will.

Three of the five community member sessions were held jointly with the Public Trustee for newly appointed private administrators who were interested in information and advice about their role and responsibilities.

## **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 or on the telephone. People can also make contact in writing.

In addition to queries about the guardianship and administration system, including planning documents and advice on making applications to the State Administrative Tribunal, historically the service also dealt with calls about matters where the Public Advocate was appointed guardian, and the delegated guardian was not available.

As reported in the Public Advocate's 2019/20 annual report, the Office conducted a trial in which the advisory service no longer dealt with calls regarding represented persons. Instead, these calls went to delegated guardians in the Office as part of a new duty guardian system. The 2019/20 trial was a success and therefore the new split model was implemented from 1 July 2020.

In 2020/21 the Office addressed 5,238 enquiries from 3,552 people who used the advisory service.

**Figure 19 Enquiries to the advisory service by mode of handling 2020/21**

Mode of handling	Jul 2020	Aug 2020	Sep 2020	Oct 2020	Nov 2020	Dec 2020	Jan 2021	Feb 2021	Mar 2021	Apr 2021	May 2021	Jun 2021	Total
Telephone	221	270	282	286	276	206	264	280	323	250	283	310	3,251
Interview	4	5	1	10	1	6	2	4	6	7	7	3	56
Email/letter	18	25	30	18	19	14	19	15	39	9	23	16	245

In some instances, enquirers sought advice on multiple topics. Enquiries regarding enduring powers of attorney accounted for 37 per cent of all enquiries received during the year, with enduring powers of guardianship enquiries accounting for 22 per cent.

**Figure 20 Enquiries to the advisory service by subject 2020/21**

Subject of enquiry	Jul 20	Aug 20	Sep 20	Oct 20	Nov 20	Dec 20	Jan 21	Feb 21	Mar 21	Apr 21	May 21	Jun 21	Total	Total as percentage of all enquiries
Guardianship	43	70	69	69	95	56	68	89	115	70	81	82	907	17%
Administration	33	67	57	41	64	43	33	58	68	56	69	64	653	12%
Enduring powers of attorney	96	177	182	182	155	111	171	149	190	142	175	186	1,916	37%
Enduring powers of guardianship	90	100	102	119	84	61	95	94	114	90	99	124	1,172	22%
Advance health directives	28	9	8	14	3	4	7	8	24	7	16	11	139	3%
General	16	30	30	36	50	27	38	27	51	47	42	57	451	9%
<b>Total</b>	<b>306</b>	<b>453</b>	<b>448</b>	<b>461</b>	<b>451</b>	<b>302</b>	<b>412</b>	<b>425</b>	<b>562</b>	<b>412</b>	<b>482</b>	<b>524</b>	<b>5,238</b>	<b>100%</b>

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

## **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.

## **Restrictive practices publications**

On 1 December 2020 the National Disability Insurance Scheme (NDIS) Quality and Safeguards Commission began operating in Western Australia. With this change, it became necessary for consent to be provided in relation to the use of restrictive practices, for people receiving NDIS funding, consistent with the NDIS Quality and Safeguarding Framework.

It was necessary for the Office to review its position statement regarding restrictive practices. The amended publication 'Position Statement 2: Restrictive Practices (Restraint)' was published on the Office's website in January 2021, along with a new position statement, 'Position Statement 8: Role of the Public Advocate as guardian of last resort with authority to make decisions about restrictive practices'.

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

All of the Office's publications are available in alternative formats,<sup>11</sup> including other languages, upon request.

In previous years, the Office has had three of its commonly used information sheets regarding planning for the future, translated into seven languages other than English. These information sheets provide information regarding enduring powers of attorney, enduring powers of guardianship and general planning for the future information and 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.

During 2020/21 the Office had another four information sheets translated into Persian to assist a client navigating the guardianship and administration system. These information sheets provide information regarding the State Administrative Tribunal, the Tribunal process, guardianship and administration. These are available on the Office's website and in hard copy on request.

## **Interpreter services**

To help ensure that language is not a barrier to guardianship and investigation services for customers for whom English is a second language, the Office uses translation and interpreter services. During 2020/21 interpreter services were provided in Arabic, Bosnian, Burmese, Cantonese, Czech, Farsi, German, Greek, Italian, Mandarin, Polish, Swahili, 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.

---

<sup>11</sup> Other than the enduring power of attorney form and enduring power of guardianship form, which are not able to be translated into other languages, as they must be in English.

## Corporate Services

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

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

In 2020/21, 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 2020/21 was as follows:

**Figure 21 Budget allocation and expenditure 2020/21**

Original Budget 2020/21 \$'000	Revised Budget 2020/21 \$'000	Actual Expenditure 2020/21 \$'000
9,057 <sup>12</sup>	9,332 <sup>13</sup>	10,092 <sup>14</sup>

## The Year in Review

### Freedom of information

Six valid applications were received during 2020/21 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 2020/21, the Office of the Public Advocate received 74 formal complaints during the year, which were all considered by the Public Advocate or a senior manager. The Office also received 36 formal compliments and three suggestions for service improvement.

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 aims 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>12</sup> Includes shared Department of Justice corporate support.

<sup>13</sup> Includes shared Department of Justice corporate support.

<sup>14</sup> Includes shared Department of Justice corporate support.

# Significant Issues Impacting the Agency

---

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

The COVID-19 global pandemic continued to impact the way the Office delivered core services in 2020/21. With three lockdowns in Western Australia and changing levels of restrictions throughout the year, the Office had to be flexible to ensure services continued while protecting the health and safety of staff and clients.

In order to reduce exposure and minimise the risk to staff, vulnerable adults, related agencies and service providers from transmitting and/or contracting COVID-19, there were periods where face-to-face contact with clients ceased and routine contact between staff and other parties was conducted via telephone, email, or where available, videoconference. Some community education activities were also deferred.

This occurred from 31 January to 12 February 2021; 23 April to 14 May 2021; and 27 June to 12 July 2021.

Where face-to-face contact with clients was critical, approval was sought from the Public Advocate and meetings were conducted using appropriate hygiene and social distancing measures.

At times during the year, part of the Office's workforce also transitioned to working from home arrangements.

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 and video conference.

## State and National Disability Sector Reform

Changes to the disability sector continued to affect the Office in 2020/21. 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.

## 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 2020/21.

There was a 13 per cent increase in the total number of investigations carried out in 2020/21 compared to 2019/20 and an 18 per cent increase in the number of new matters for investigation referred to the Office by the State Administrative Tribunal.

In 2020/21, the Office experienced a two 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 13 per cent increase in total guardianship orders at 30 June 2021, compared to 30 June 2020.

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 2,771 people for whom the Public Advocate was guardian at 30 June 2021, 1,074 (39 per cent) were 65 years of age or older. Of these 1,074 people, 62 per cent had dementia.

In 2020/21, 44 per cent of the 1,824 new matters referred for investigation by the State Administrative Tribunal involved a person with dementia.

According to research commissioned by Dementia Australia<sup>13</sup> there were an estimated 44,300 people with dementia in Western Australia in 2021. The projected rates of prevalence in this report estimate there will be 108,000 people with dementia in WA by 2058.

Mental illness accounted for the largest proportion (30 per cent) of all adults for whom the Public Advocate was appointed guardian at 30 June 2021, closely followed by intellectual disability, which accounted for 27 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.<sup>15</sup>

---

<sup>15</sup> Dementia in Australia, Prevalence Estimates 2021 – 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)).



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.

On 1 December 2020 the NDIS Quality and Safeguards Commission began operating in Western Australia. This change strengthened consent processes in relation to the use of restrictive practices, for people receiving NDIS funding, consistent with the NDIS Quality and Safeguarding Framework. This has resulted in the need for applications to the State Administrative Tribunal for the appointment of a guardian with this function, where the person did not have a guardian with authority, or where a person had a limited guardian appointed, an application to the Tribunal was required to review the order and include the additional function.

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 of elder abuse 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 2020/21 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 2017/18	Actual 2018/19	Actual 2019/20	Target 2020/21	Actual 2020/21	Comment on significant variation
<b>Percentage of guardians of last resort allocated in one day</b> This indicator measures the timeliness of the Public Advocate in allocating a guardian to a represented person in order to make decisions on their behalf and protect them from neglect, abuse or exploitation. A guardian is appointed only when considered necessary and when there is no one else suitable or available to take on the role.	94%	82%	96%	95%	78%	The 2020/21 actual result is 18 per cent lower than target and decreased by 19 per cent from the 2019/20 actual result of 96 per cent. This is due to the ongoing increase in demand for appointment of the Public Advocate as Guardian of Last Resort and operational pressures.

Key efficiency indicator	Actual 2017/18	Actual 2018/19	Actual 2019/20	Target 2020/21	Actual 2020/21	Comment on significant variation
<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.	\$1,789	\$1,445	\$1,560	\$1,387	\$1,573	The 2020/21 actual result is higher than the 2020/21 target due to an increase in staff and associated costs during the year in response to the continuing demand for the services of the Office of the Public Advocate.

## Notes to the Key Performance Indicators

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

Efficiency indicator	Description
<b>Average cost per case of providing advocacy and guardianship services.</b>	<p>This indicator is calculated by dividing the total cost of providing advocacy, guardianship and administration services by the number of advocacy and guardianship services provided. The information for this indicator was extracted from the Department's activity based cost management system, 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	\$4,171.26
<b>TOTAL EXPENDITURE</b>	<b>\$4,171.26</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 2020/21 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.

# 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*

*Aged Care Act 1997 (Commonwealth)*

*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*

*Declared Places (Mentally Impaired Accused) Act 2015*

*Disability Services Act 1993*

*Health Act 1911*

*High Risk Serious Offenders Act 2020*

*Magistrates Court (Civil Proceedings) Act 2004*

*Mandatory Testing (Infectious Diseases) Act 2014*

*Mental Health Act 2014*

*National Disability Insurance Scheme Act 2013 (Commonwealth)*

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

*Prisons Act 1981*

*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*

*Parliamentary Commissioner Act 1971*

*Public Interest Disclosure Act 2003*

*Public Sector Management Act 1994*

*State Records Act 2000*

*State Supply Commission Act 1991*

*Workers' Compensation and Injury Management Act 1981*

*Working with Children (Criminal Record Checking) Act 2004*

# Appendix 2

## Publications

---

All Public Advocate publications 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 (also available in two languages other than English)
- Role of the Public Advocate
- Role of the State Administrative Tribunal (also available in two languages other than English)
- Guardianship (also available in two languages other than English)
- Administration (also available in two languages other than English)
- 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
- Restrictive Practices (Restraint)
- Role of the Public Advocate as guardian of last resort with authority to make accommodation decisions
- Role of the Public Advocate as guardian of last resort with authority to make treatment decisions
- Role of the Public Advocate as guardian of last resort with authority for contact decisions
- Role of the Public Advocate as guardian of last resort with authority to make treatment decisions: palliative care
- Decisions about medical research
- Role of the Public Advocate as Guardian of Last Resort with authority to make decisions about restrictive practices



## 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

# 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 who is capable 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 document in which a person who is capable appoints 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 who is capable appoints another person to make personal, lifestyle and treatment decisions on their behalf in the event that they lack full legal capacity in the future.

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

**Individual advocacy:** Making recommendations in the best interests of adults with decision-making disabilities, on the need for guardianship or administration at hearings of the State Administrative Tribunal.

**Interested parties:** Any person or persons with a personal or professional interest in the outcome of a guardianship or administration application.

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

**Limited guardianship or administration order:** The authority given to an appointed substitute decision-maker to make guardianship or administration decisions on behalf of the represented person, limited to certain specified areas.

**Plenary guardianship or administration order:** The authority given to an appointed substitute decision-maker to make all guardianship or administration decisions on behalf of the represented person.

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

# Appendix 4

## Easy Read Annual Report 2020/21

---

### 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

- looked into 2,242 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 730 adults with a decision-making disability
- made decisions for the people we were guardian for, which was 2,771 people on 30 June 2021
- held 17 information sessions about what the Office does and how to help protect people with a decision-making disability
- helped 3,552 people who contacted the Office's advisory service for information
- had 74 staff positions (at 30 June 2021), with \$10.092 million spent 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.

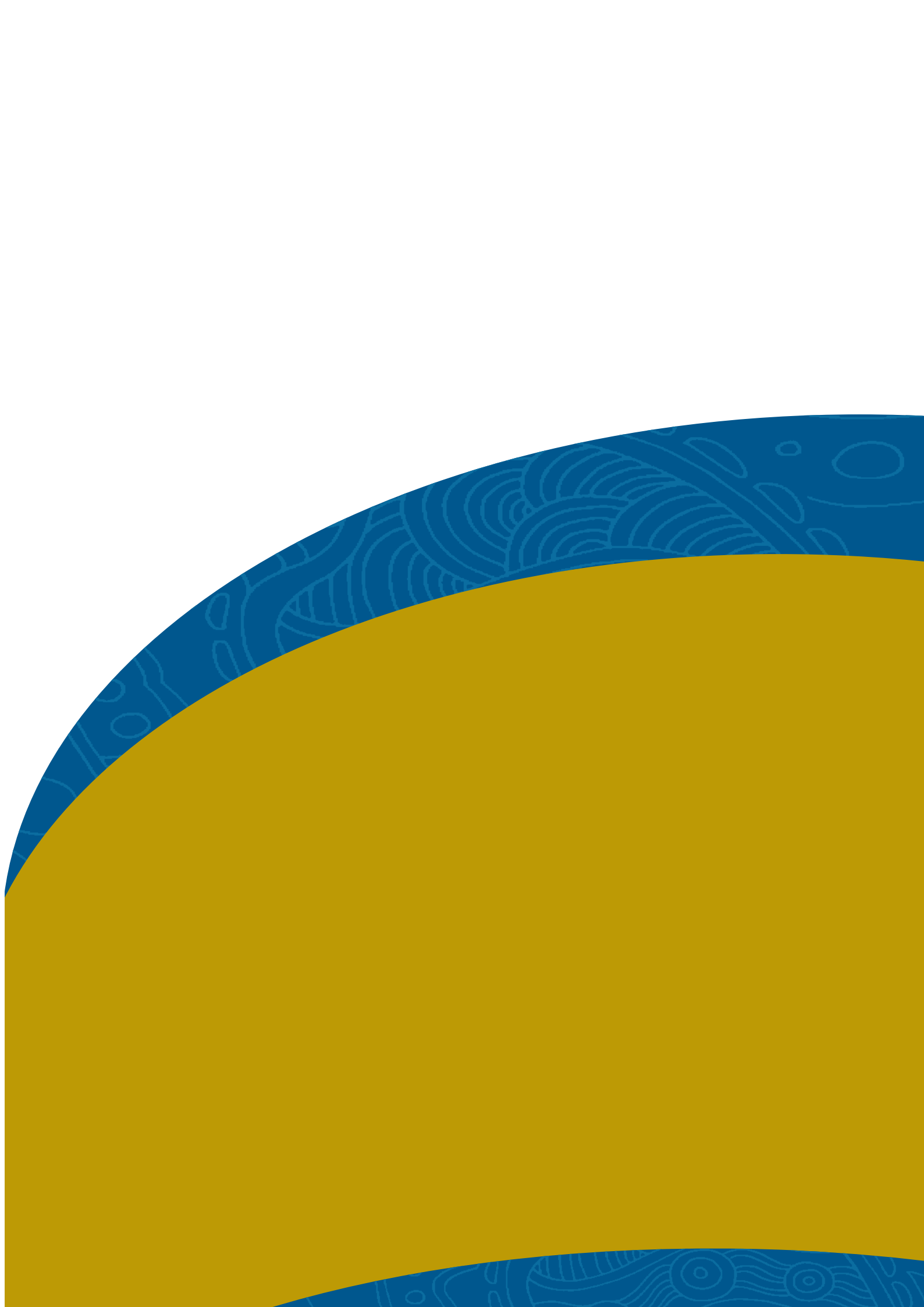
## How to contact us

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.









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

OFFICE OF THE PUBLIC ADVOCATE

28 Barrack Street

PERTH WA 6000

T: 1300 858 455

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

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