



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

The Public Advocate of Western Australia
Annual Report 2010/11



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

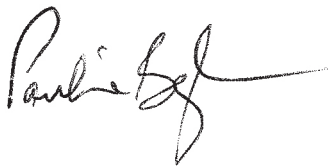


Hon Christian Porter MLA
ATTORNEY GENERAL

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 2011.

This report records the operations and performance of the Office of the Public Advocate during 2010/11. 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.

The Office of the Public Advocate reports on financial and administrative matters to the Director General of the Department of the Attorney General.



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14 September 2011

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Overview

The Year in Review

Meeting the ever increasing demand for statutory services was the single largest challenge faced by the Office of the Public Advocate in 2010/11. It was also the Office's greatest achievement for the year.

The number of investigations carried out during the year rose by 22 per cent, while new appointments of the Public Advocate as guardian of last resort grew by 47 per cent. At 30 June 2011, the Public Advocate was appointed as guardian for 27 per cent more people than at the same time the previous year.

The commitment of staff, sound policies, effective partnerships and the support of the Department, enabled the Office to provide these critical services to some of the community's most vulnerable adults.

The increasing prevalence of dementia, due to Western Australia's ageing population, continued to be a significant factor contributing to the growth in demand for the Office's services.

Of the 989 new matters referred by the State Administrative Tribunal to the Public Advocate for investigation in 2010/11, 46 per cent involved a person with dementia. Similarly, 42.5 per cent of the 330 new guardianship appointments involved a person with dementia.

The persistent growth in demand for the Office's services was recognised during the year, with additional funding totalling more than \$5 million over four years being allocated to the Office in the 2011/12 State Budget. This new funding will allow for the employment of 14 full-time employees in the advocacy and investigation, and guardianship teams, with permanent funding for eight positions in 2011/12.

Legislative reform continued to play a significant role in the work of the Office during the year. Changes to the *Guardianship and Administration Act 1990*, which introduced enduring powers of guardianship and advance health directives to Western Australia in February 2010, continued to be a focal point for the Office's community education work in 2010/11.

The Office continued to execute a State-wide awareness strategy, educating community members and service providers in the health, aged-care, disability and other related sectors, about the new planning tools and their proper use.

Ninety per cent of the 97 information and training sessions conducted by the Office in 2010/11 covered enduring powers of guardianship. Sessions also covered topics including guardianship and administration, enduring powers of attorney and the role of the Public Advocate.

The Redress WA scheme was nearing completion in 2010/11. The Public Advocate was involved in a total of 54 applications to Redress WA, the majority of which were worked on in partnership with the Public Trustee. From these, a total of \$573,000 in ex gratia payments was awarded to 36 applicants.

The Office worked with service providers from a range of sectors including disability, aged-care, hospitals and health (including mental health and drug and alcohol), housing and accommodation in 2010/11. Working in partnership with these agencies is vital to the Office's ability to act as substitute decision-maker for adults with a decision-making disability.

The Office's involvement with the People with Exceptionally Complex Needs project and the Alliance for the Prevention of Elder Abuse, continued to provide opportunities to strengthen relationships with key partner agencies.

While the Community Guardianship Program and the work of its volunteers was highlighted during the year, with the program winning the Disability Services Commission's 'Count Me In Award' for 2010 – a special mention is still required. This small group of altruistic people who donate their time and energy to advance the best interests of people with a decision-making disability is invaluable.

The support provided by the Department through the Director General Cheryl Gwilliam was once again integral to the Office's success, as was the consistent effort and professional approach taken by staff.

The Public Advocate looks forward to continuing to work with the management team and staff, volunteers and partners in the Department of the Attorney General, other government agencies and the community over the coming year to pursue the protection and promotion of adults with a decision-making disability.

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 2010/11 the Office of the Public Advocate reported on financial and administrative matters to the Director General of the Department of the Attorney General. In accordance with this arrangement, the financial statements of the Office have been published in the Department’s annual report.

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

Mission

The Public Advocate protects and promotes 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, a short or long-term mental illness, an acquired brain injury or dementia.

Function

Section 97 of the *Guardianship and Administration Act 1990* sets out the primary functions of the Public Advocate. They include:

- information, advice and training on how to protect the human rights of adults with a decision-making disability
- investigation of concerns about the wellbeing of adults with a decision-making disability and whether there is a need for an application for a guardian or administrator
- investigation of specified applications made to the State Administrative Tribunal to assist it to determine whether a guardian or administrator should be appointed
- guardianship (for personal, lifestyle and treatment related decisions) when the State Administrative Tribunal determines that there is no one else suitable, willing and available to act as the person’s guardian.

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 the greatest decision-making support.

- **Current wishes and previous actions**

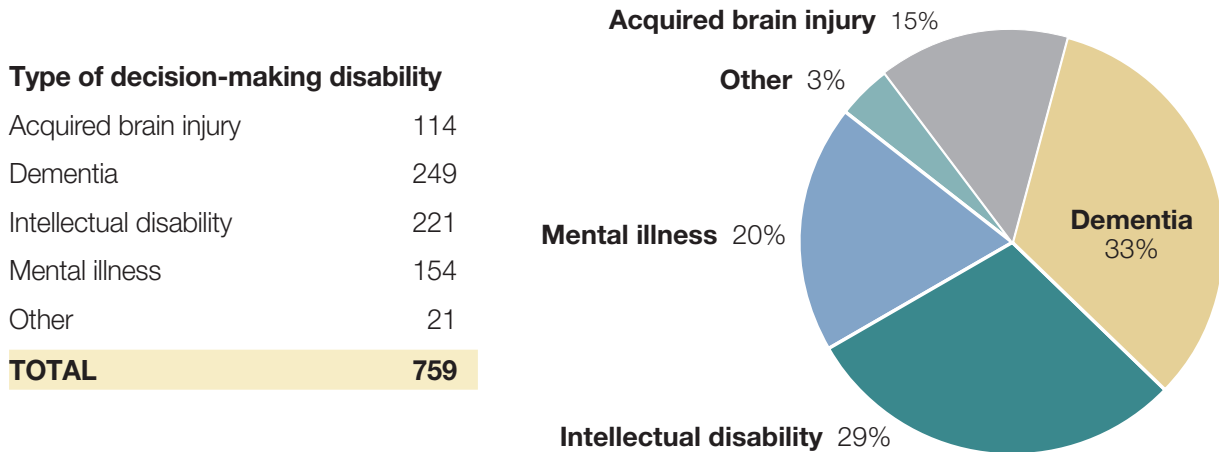
The views and wishes of the person concerned are sought to the extent possible and expressed in whatever manner, either at the time or gathered from the person's previous actions.

Stakeholders

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

At 30 June 2011, 759 adults with a decision-making disability were represented by the Public Advocate as their guardian of last resort. Of these 759 adults – referred to as represented persons – 33 per cent had dementia, 29 per cent intellectual disability, 20 per cent mental illness, 15 per cent an acquired brain injury and 3 per cent had some other form of decision-making disability (see Figure 1).

Figure 1 Profile of all guardianship orders appointing the Public Advocate by type of decision-making disability as at 30 June 2011



The number of people for whom the Public Advocate is guardian, has doubled over the past three years, from 380 in June 2008 to 759 in June 2011 (see Figure 2).

Figure 2 People under guardianship orders appointing the Public Advocate as at 30 June

	2008	2009	2010	2011
Number of people	380	484	596	759

The most significant demographic trend impacting on the growing rate of represented persons is the ageing of the population.

Like most developed countries, Australia's population is projected to grow and age over the next 40 years. From 2010 to 2050 it is estimated that the proportion of the population aged 65 and over, will nearly double to a quarter of the population. The baby boomer bulge in Australia's demographic profile means that the decade 2010 to 2020 will have a huge impact on the prevalence of dementia, the largest contributing factor for people represented by the Office of the Public Advocate.

Dementia

A recent study by Access Economics for Alzheimer's Australia '*Keeping dementia front of mind: incidence and prevalence 2009-2050*' estimates that there are currently around 245,000 Australians with dementia. By mid century they estimate that the number will have reached over 1.1 million. The projected rates of prevalence suggest that the Office of the Public Advocate can expect continued growth in the number of represented persons that far outweighs growth in the population.

A report published by Access Economics¹ predicted that the number of Western Australians diagnosed with dementia will grow to more than 79,000 by 2050. Growth of dementia in Western Australia is the third fastest in Australia, after the Northern Territory and Queensland. Around 80 per cent of people with dementia in Western Australia live in the metropolitan area.

Intellectual disability

The most commonly reported disability in Western Australia for people who received services under the National Disability Agreement is intellectual disability.² The Disability Services Commission of Western Australia funded and provided services to 16,464 people, of which 8,122 were Western Australians with intellectual disability as their primary condition in 2010/11. This accounted for 49 per cent of service users.³

Acquired brain injury

An acquired brain injury results in deterioration of cognitive, physical, emotional or independent functions and can occur as a result of 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.⁴

In 2010/11 the Disability Services Commission funded and provided services to 1,044 Western Australians with an acquired brain injury reported as their main disabling condition.⁵

Mental illness

In the 2007 National Survey of Mental Health and Wellbeing Survey, 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 (26.4 per cent) in the youngest age group (16-24 years) and to around one in 20 (5.9 per cent) in the oldest age group (75-85 years).⁶

This remains consistent with earlier reports such as the 1997 National Mental Health and Wellbeing Survey,⁷ in which it was estimated that around 19 per cent of people in Western Australia had experienced a mental disorder in the previous 12 months, with the prevalence being highest amongst those aged 18-24 years and decreasing with age.

1 Access Economics, 2005. *Dementia Estimates and Projections: Western Australia and its Regions, Executive Summary*, Report for Alzheimer's Australia WA, Canberra Australia p.i.

2 SCRGSP (Steering Committee for the Review of Government Service Provision) 2009. *Report on Government Services 2009*, Productivity Commission, Canberra. p.14.15 and Table 14a.13 Use of CSTDA Services by Primary Disability Group.

3 Disability Services Commission, 2011. Data request; Disability Services Commission methodology in calculation of numbers was amended in 2010/11. The data does not include users of Community Aids and the Equipment Program.

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

5 Disability Services Commission, 2011. Data request; Disability Services Commission methodology in calculation of numbers was amended in 2010/11. The data does not include users of Community Aids and the Equipment Program

6 Slade, T., Johnston, A., Teesson, M., Whiteford, H., Burgess, P., Pirkis, J., Saw, S. 2009. Department of Health and Ageing, Canberra. p.xii.

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

Six percent of Western Australians aged 65 years and over reported some form of mental disorder. The prevalence of high or very high psychological distress in Western Australia was 9.2 per cent in 2004.⁸

Secondary stakeholders

The people and organisations who provide support and/or assistance to adults with a decision-making disability, make up the Office of the Public Advocate's secondary stakeholders. These include:

- unpaid carers (this can include family and friends who provide ongoing support and assistance in an unpaid capacity⁹)
- paid carers
- government and non-government organisations.

Potential stakeholders

People who do not have a decision-making disability but who seek to safeguard their future decision-making by completing an enduring power of attorney and/or an enduring power of guardianship, make up the Office of the Public Advocate's potential stakeholders.

A person making an enduring power of attorney, does so in an attempt to secure their financial future by nominating a trusted family member or friend (known as their attorney), to make financial decisions on their behalf should they lose their decision-making capacity. People who are appointed as an attorney are also potential stakeholders.

A person making an enduring power of guardianship, does so in an attempt to secure their future personal, lifestyle and treatment decision-making by nominating a trusted family member or friend (known as their enduring guardian), to make some or all of these decisions on their behalf should they lose their decision-making capacity. People who are appointed as an enduring guardian are also potential stakeholders.

Agency stakeholders

These are government and non-government agencies and organisations in the disability, aged, health, legal, financial, justice and community sectors with an interest in protecting the human rights of adults with a decision-making disability.

Resources

The role and functions of the Public Advocate in 2010/11 were supported by:

- approved establishment of 34.8 (full-time equivalent) staff¹⁰
- expenditure of \$4,596,000¹¹

⁸ Australian Bureau of Statistics, 1999. *Mental Health and wellbeing: profile of Australian Adults. Western Australia 1997-1998*. ABS Catalogue No. 4326.5 Canberra: ABS reported in Health Measures 2005: a report on the health of the People of Western Australia; Department of Health, 2005, p.222.

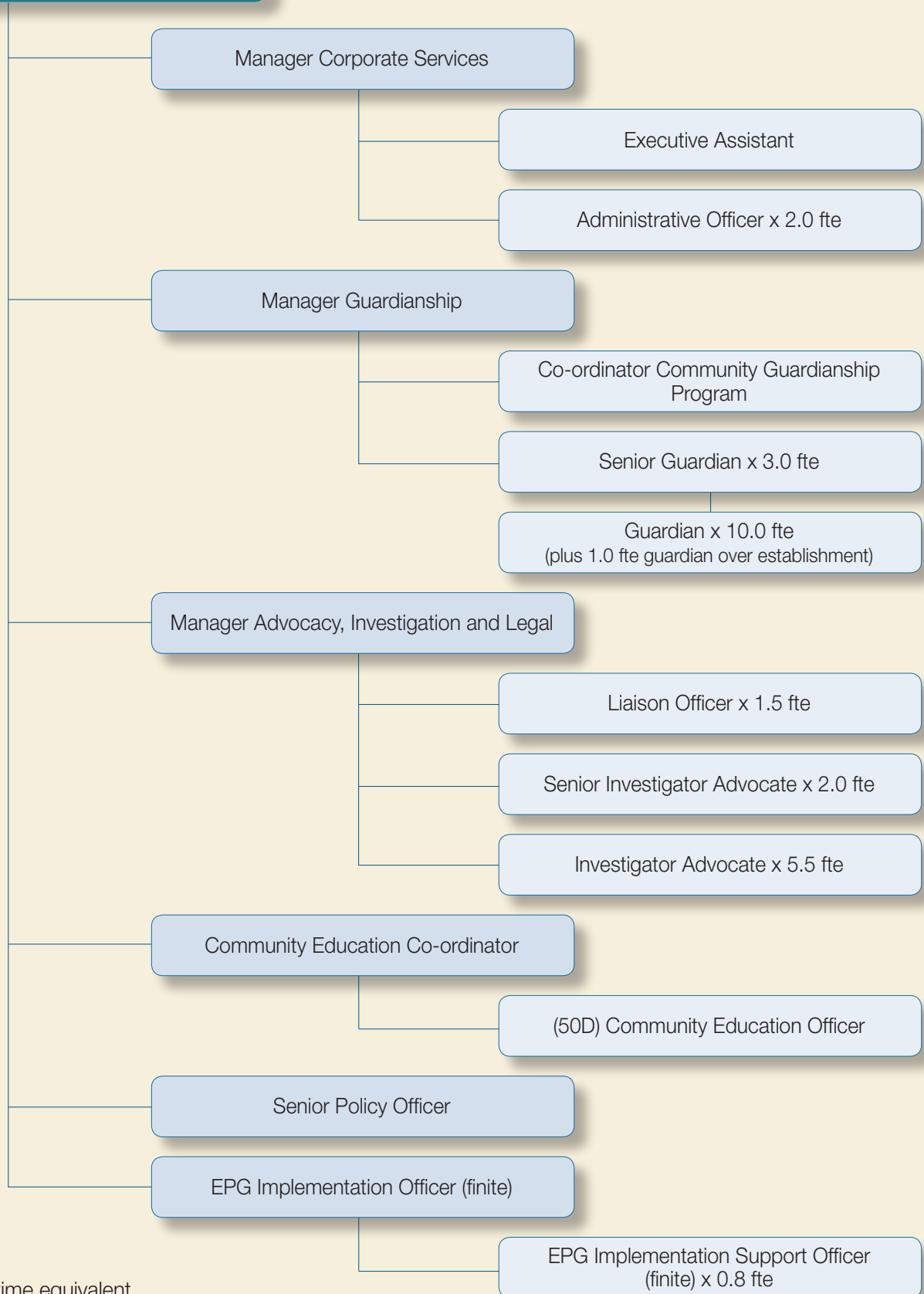
⁹ *Carers Recognition Act 2004*.

¹⁰ In response to the increasing demand experienced by the Office, the Department of the Attorney General provided temporary resources in addition to the approved establishment, while ongoing funding was sought through the 2011/12 State Budget.

¹¹ Expenditure includes shared Department of the Attorney General corporate support.

Organisational Chart

PUBLIC ADVOCATE



Performance Management Framework

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

Government goal

The work of the Office of the Public Advocate reflects the State Government goal of:

Outcomes based service delivery: greater focus on achieving results in key service delivery areas for the benefit of all Western Australians.

Department of the Attorney General purpose

The Department of the Attorney General provides high quality and accessible justice, legal, registry, guardianship and trustee services which meet the needs of the community and government.

This supports justice outcomes and opportunities for current and future generations.

In particular, the Department directly contributes to enhancing the quality of life and wellbeing of all people throughout Western Australia by providing high quality, accessible services, with particular emphasis on contributing to a safe and secure community.

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 decision-making disabilities 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
- community education services regarding the guardianship and administration system
- guardianship and administration services provided by the Public Advocate.

Cross-agency initiatives

The Office of the Public Advocate works closely with the Public Trustee with regard to administration matters. The two offices work together in providing training for private administrators, so that they can better understand their role and responsibilities.

Throughout 2010/11 the Office continued to work with the Department of Health in the introduction of enduring powers of guardianship and advance health directives, following changes to the *Guardianship and Administration Act 1990*, in February 2010. The Office of the Public Advocate is responsible for the implementation of enduring powers of guardianship and the Department of Health is responsible for advance health directives.

The Office has a number of memoranda of understanding with different agencies, to facilitate both the sharing of information and the recognition of shared roles in supporting people with decision-making disabilities. Four of these were reviewed during 2010/11.

A memorandum of understanding between the Office and the Western Australian Police, regarding procedures for reporting allegations of sexual assault of adults with a decision-making disability was created in 2007. This memorandum of understanding was updated in 2010/11.

The Office also has a memorandum of understanding with the Department for Child Protection in relation to procedures for young adults with a decision-making disability leaving the care of the Department. This was put in place in 2007 and a significant review was undertaken in 2010. For more details, refer to the Systemic Advocacy section of this report.

In 2010/11 reviews of the Office's memorandum of understanding with the Sexual Assault Resource Centre and protocol with the State Administrative Tribunal were carried out. At 30 June 2011, this work was well advanced, but not yet complete.

Other cross-agency initiatives are discussed in the Systemic Advocacy section of this report.

Agency Performance

Advocacy and Investigation

The Public Advocate investigates, advocates and provides recommendations on the need for guardianship and administration in the best interests of adults with a decision-making disability.

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

- examining and reporting at listed or urgently called hearings of the State Administrative Tribunal on whether it is in the best interests of adults 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
- investigating any complaint or allegation from the public that a person with a decision-making disability may be at risk of abuse, exploitation or neglect and may be in need of a guardian or administrator or is under an inappropriate order
- investigating whether a person held in custody under the *Criminal Law (Mentally Impaired Accused) Act 1996* is in need of a guardian or administrator
- providing on-site assistance to the State Administrative Tribunal through the liaison officers, by conducting brief investigations and providing advice to Tribunal staff
- 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, investigator advocates interview family, friends and service providers and seek the views of the person who is the subject of the application. They often prepare a detailed report to assist the State Administrative Tribunal with its deliberations about what is in the person's best interests.

Throughout the investigation, investigator advocates advance the best interests of the person with the decision-making disability. They explore whether there are less restrictive means for resolving the concerns outlined in an application for the appointment of a guardian or administrator, including advising which community services could assist the person with a decision-making disability.

The Year in Review

In 2010/11, the Public Advocate carried out 1,266 investigations into the personal or financial welfare of adults with a decision-making disability. These included new matters and matters carried over from 2009/10. Of these, 1,162 needed investigation and advocacy services relating to applications for, or reviews of, guardianship or administration orders before the State Administrative Tribunal. The other 104 were referred directly to the Public Advocate by an individual or community-based organisation.

An additional 567 preliminary investigations were carried out by the liaison officer.

New investigations (as opposed to matters carried forward from previous years), accounted for the majority of investigations. In 2010/11 a total of 1,059 new investigations were carried out. Of these new investigations, 989 related to applications before the State Administrative Tribunal and 70 were referred to the Public Advocate by an individual or community-based organisation.

Investigations referred by the State Administrative Tribunal

The 989 new investigations relating to applications for guardianship and administration referred by the State Administrative Tribunal, comprised of applications regarding guardianship, administration, enduring powers of attorney, enduring powers of guardianship and reviews of guardianship and administration orders.

Since 2005, when the State Administrative Tribunal began operation, investigations involving this Office have increased by 90 per cent. From 2009/10 to 2010/11 there was a 17.7 per cent increase.

The number of applications the Tribunal listed as urgent increased by 22.4 per cent from the previous year. This continued to place demand on the Office's resources to attend hearings at short notice to represent the best interests of proposed represented persons.

The listing of urgent matters often results in the liaison officer having to, at short notice, gather information and attend hearings. The following case study titled 'Urgent application – ascertaining the wishes of a proposed represented person about active treatment' is one such example, in which the Tribunal also sought the Public Advocate's view, prior to making a guardianship appointment.

Case Study

Urgent application – ascertaining the wishes of a proposed represented person about active treatment

Mr A is an 83 year old widower with three children. After suffering a major stroke, he was admitted to a regional hospital close to where he lived. He had previously spoken to his family and friends about not wanting any active medical treatment if he ever became unwell to the extent that he could not live a full life or if his condition meant he needed full-time residential care.

His main support is Ms Z, an adult daughter of a deceased friend, who although not related to Mr A, is like a daughter to him. Mr A had little contact with his family prior to the stroke. They were however contacted when he was admitted to hospital, and all agreed that he would not want active treatment.

Mr A was unable to communicate. After almost two months in hospital, during which he had been receiving intravenous fluid and had hardly eaten, he removed the naso-gastric tube which was providing him with nutrients.

The hospital required direction regarding Mr A's treatment – namely a decision as to whether he should have a feeding tube inserted and also, whether the intravenous fluids should continue. The treating doctor was of the opinion that Mr A had started to take food by mouth and indicated that he did not wish to die, however, Mr A's food intake was insufficient. To survive therefore, a feeding tube was required.

Ms Z made an application to the State Administrative Tribunal for the appointment of a guardian for Mr A. In the application, Ms Z proposed that she be appointed guardian. She wanted to ensure that Mr A's previously expressed wishes of having no active or invasive treatment were followed. Ms Z visited Mr A every day and in her view, he had not changed his mind – he did not want active treatment if he could not live a full life or required full-time care.

The Tribunal determined that the application was to be heard urgently and asked that the Public Advocate's liaison officer attend the hearing. The liaison officer was given 24 hours to contact all interested parties and to speak to clinical staff to gain their views and a clinical overview of Mr A's situation. This information would then be used by the liaison officer to advance Mr A's best interests at the hearing.

The consultant physician told the liaison officer that Mr A's decision-making capacity was uncertain and inconsistent. Communicating with Mr A was quite difficult as he was only using eye movements to respond to questions.

(continued)

Case Study (continued)

Family members remained consistent in their view – based on their prior knowledge of Mr A – that he would not want active treatment. They were therefore opposed to the insertion of a feeding tube.

At the hearing, a number of family members agreed with Ms Z about Mr A's previous wishes that he would not want a feeding tube inserted. However, they did not support the appointment of Ms Z as sole guardian.

Ms Z told the Tribunal that if she were appointed as Mr A's guardian, she would consult the family, take their views into account and make decisions in the best interests of Mr A. The joint appointment of Ms Z and other family members was suggested, but Ms Z would not agree to this. Medical staff advised the Tribunal that a decision about the feeding tube was needed within three to four days.

The Tribunal adjourned the hearing to allow the liaison officer to consult with the Public Advocate to gain her view about what decision she would make if appointed Mr A's guardian.

The Public Advocate provided an oral submission of her view to the Tribunal. It was the view of the Public Advocate, that if appointed, the delegated guardian would, the following day, travel to the town where Mr A lived, to obtain his views and wishes, if possible, in relation to the insertion of a feeding tube. The delegated guardian would also consult with interested parties and clinicians to gather more information before making a final decision.

Due to the differing views of parties involved as to who would be suitable to make decisions for Mr A and the uncertainty about his alleged expressed wishes, the Tribunal appointed the Public Advocate as a limited guardian for six months with authority to decide where and with whom Mr A should live and what treatment and health care he should receive, if any.

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

Liaison officer

Since the State Administrative Tribunal began operating in 2005, the Office of the Public Advocate's liaison officer has strengthened the relationship and communication between the two agencies. The liaison officer performs a significant role in providing the Tribunal with advice regarding applications it receives and making recommendations about the options available – including referral to the Office of the Public Advocate for further investigation. The liaison officer advises and liaises with Tribunal Members, Tribunal administrative staff, family members, service providers and other interested parties involved in the application process.

The number of referrals from the Tribunal in 2010/11 increased marginally (4.6 per cent) from the previous year. The liaison officer conducted preliminary investigations into 567 applications for guardianship, administration and intervention in an enduring power of attorney and enduring power of guardianship, compared to 542 in 2009/10.

Following the introduction of enduring powers of guardianship in February 2010, the liaison officer was involved in five investigations regarding possible intervention into the powers in 2010/11.

Over the five years, referrals to the liaison officer have more than doubled, from 270 in 2005/06 to 567 in 2010/11. The growing demand for the services of the liaison officer was recognised by the Department in 2009/10, with an extra 0.5 full time employee position allocated at the end of the financial year. This additional resource resulted in an improved response time for completing preliminary inquiries by the liaison officer in 2010/11.

Community-referred investigations

Section 97 (1)(c) of the *Guardianship and Administration Act 1990* gives the Public Advocate the power to conduct investigations into matters referred by the community, about a person of concern. Referrals come from a wide variety of sources and in 2010/11, they came from people including family members, friends and neighbours of adults with impaired or suspected impaired decision-making capacity; members of the community; human service support agencies; and government and non-government agencies.

In total 104 such referrals were reviewed by the Office in 2010/11, representing an increase of 18.2 per cent from the previous year. Of those, 60 were closed during the financial year and 44 remained open at 30 June 2011. In most cases, the focus of the community-referred investigation was to establish whether the person of concern required a guardian or administrator, or was under an inappropriate order.

Some investigations take considerable time to obtain critical information such as medical records, to enable the Public Advocate to establish whether an application to the Tribunal should be made. The legislation does not provide the Public Advocate with the power to demand information from parties and this can constrain some investigations in which claims of financial or other forms of abuse, cannot be substantiated.

Occasionally the Public Advocate is asked to investigate the concerns of family members who are unable to resolve longstanding disputes or disharmony themselves. Their estrangement can result in concern about things that they have little knowledge or understanding of and therefore they seek the assistance of others. The case study titled '*Community expectations and the limits of the Office of the Public Advocate's powers*' demonstrates such circumstances in which the concern which was raised was worrying, but unfounded because in the end, what the complainant wanted was an intermediary to watch over a particular situation that they themselves were unwilling to do.

Advocacy

A total of 920 hearings were attended by staff from the Office of the Public Advocate in 2010/11.

Investigators 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. In 2010/11, they did so at 682 hearings, an increase of 20 per cent from the previous year.

Guardians also attend hearings and advocate in the best interests of people who are represented persons (have had the Public Advocate appointed as their guardian, by the Tribunal). In 2010/11, they did so at 238 hearings.

Case Study

Community expectations and the limits of the Office of the Public Advocate's role

Miss Y contacted the Office's Telephone Advisory Service as she was concerned about her brother's living and care arrangements.

Her brother – Mr P – is 47 years old and lives with his mother, who is his sole carer. When Mr P was a child, complications arose during an operation, which left him with severe physical and intellectual disabilities.

Miss Y had been estranged from her mother for a number of years and as a result, she had not had any contact with her brother during this time. She had concerns about her brother's care, as she felt her mother was ageing and possibly showing signs of a mental illness. Miss Y wanted the Public Advocate to investigate the situation as she feared her mother was struggling to provide adequate care for her brother.

The investigator advocate started by contacting various agencies and medical providers who had possibly had involvement with Mr P and his mother in the past, to gather as much information as possible regarding Mr P's capacity and details about his living situation. Limited information was provided as a result of patient confidentiality and the lack of compelling powers that the Public Advocate has. The limited information that was provided was out of date and of no use in determining the current situation.

The investigator advocate also contacted the Public Trustee, who manage a court appointed trust for Mr P that consists of his compensation payment resulting from his medical injury. The trust manager was unable to provide any significant information regarding Mr P's living situation. However, he reported that Mr P's mother was very frugal with his funds and very independent in her care for Mr P. The trust manager also advised that Mr P's mother had expressed mistrust towards government and care agencies and was reluctant to accept any assistance or advice from these agencies.

(continued)

Case Study (continued)

After a couple of months, the information that the investigator advocate was able to gather regarding Mr P's living and care arrangements, was limited. Therefore the investigator advocate arranged to visit Mr P's house and speak directly to his mother about their situation. The investigator advocate was aware of the sensitivity required for this matter, given the mother's views about outside interference, her mistrust of government agencies and her suspected mental illness. The investigator advocate contacted the local police to discuss the concerns and to seek advice about how to proceed with the visit. The police were helpful in suggesting a number of options and offering their assistance if required on the day.

When the investigator advocate arrived at the house, it was evident that no one was home. By speaking to some neighbours, the investigator advocate discovered that neither Mr P or his mother had been at the house for some time. Police assistance was requested and this revealed that Mr P and his mother had been at the local hospital for six weeks as Mr P's mother had undergone surgery for a medical condition.

The investigator advocate visited the hospital and met with the social worker who was very helpful in providing current information about Mr P and his mother and reported that she had no concerns regarding Mr P's care. She felt that after observing Mr P's mother for six weeks, there was no evidence of mental illness or dementia and she described her as a very dedicated mother and carer. It was also decided that due to the fragile nature of the situation and Mr P's mother's views about government agencies, it was best that the investigator didn't meet with Mr P or his mother. It was felt that this could have a negative impact on the availability of care for Mr P while his mother underwent rehabilitation.

Throughout this lengthy investigation, Mr P's sister (Miss Y) was informed of the progress being made with the investigation. Following the investigator advocate's meeting with the hospital social worker, Miss Y was advised that there did not appear to be any concerns relating to her brother (Mr P) or mother and that Mr P appeared to be receiving appropriate care and support. It appeared that the family was building a relationship with support staff, something which had not occurred in the past.

Miss Y was reluctant to accept this information and felt that the Office should continue to assist her, despite the evidence that was presented. Due to Miss Y's past relationship with her mother, she was not willing to pursue the matter further herself, but hoped the Office could continue to monitor the situation on her behalf. The role and limitations of the Office were explained to Miss Y, who reluctantly accepted that as there did not appear to be any risk to her brother, the Office of the Public Advocate had no further role in the matter. The investigation was therefore closed and no applications were made to the State Administrative Tribunal.

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

Issues for Advocacy and Investigation

Financial abuse of the elderly

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.

In a significant proportion of the investigations carried out in 2010/11, financial abuse was the main reason for the application being made to the State Administrative Tribunal. Other reasons included disputes within families about where a person should reside or what medical treatment they should receive. Many older Western Australians do not have support networks such as family and friends to assist them when they lose the capacity to make their own decisions. This often results in the appointment of the Public Advocate and/or the Public Trustee being necessary.

Transition of young people leaving State care

Following the signing of a memorandum of understanding between the Department for Child Protection and the Office of the Public Advocate in July 2007, the two agencies have worked together in the early identification of young people's needs, to enable a smoother transition out of the Department for Child Protection's care.

The memorandum was revised in 2010 and the changes resulted in improved processes including the timeliness and quality of the Department for Child Protection's applications to the State Administrative Tribunal concerning young people leaving their care.

During the year, the Office of the Public Advocate was involved in 13 leaving care planning meetings for young people aged 16 years and over. This involvement is consistent with the memorandum of understanding between the two agencies.

In 2010/11, 18 applications for a guardian and/or administrator were considered by the State Administrative Tribunal, for a young person who was involved with the Department for Child Protection prior to them having turned 18 years old. The Public Advocate was appointed as guardian for 13 of these young people.

Of the other five applications, three involved administration applications resulting in two appointments of the Public Trustee and the other application was dismissed. At 30 June 2011, two matters were awaiting the Tribunal's decision.

Court referrals

The Children's, Magistrates and Supreme Courts continue to seek the advice of the Public Advocate when there are concerns that a person appearing before the court (in civil matters) is unable to understand proceedings and may need a guardian to assist. In 2010/11 there were seven referrals received from the three courts.

This year, the Public Advocate received a number of requests from the Children's Court to provide advocacy for parents with a disability whose children are the subject of a matter in the Family Division of the Court. Magistrates in the Children's Court are understandably concerned about making orders in matters where the parent has a cognitive disability and is either not present or is unrepresented and unsupported at the hearing.

While the number of court referrals received by the Office are few, the investigation work involved requires considerable time and effort to seek evidence about the proposed represented person's background and their capacity to participate in the matter before the court. In most cases the court has very little information about the person and therefore considerable time is taken to gather this information. The powers afforded under the *Guardianship and Administration Act 1990* do not authorise the Public Advocate to compel parties to provide information.

Our Customers

Of the 989 new matters referred to the Public Advocate for investigation in 2010/11, 452 of them (46 per cent) involved a person with dementia, while 19 per cent had a mental illness, 15.5 per cent an intellectual disability, 15 per cent an acquired brain injury and 4.5 per cent had another disability (see Figure 3).

Guardianship matters (personal, lifestyle and treatment) were once again the dominating factor in investigations this year, with 79 per cent of applications reporting decisions about matters such as accommodation, medical treatment and service provision, being required for the proposed represented person. Financial concerns (including enduring powers of attorney) accounted for 20 per cent of investigations (see Figure 4).

The introduction of enduring powers of guardianship (in February 2010) aimed to empower adults to choose who would make their personal, lifestyle and treatment decisions if they lost capacity, therefore avoiding potential conflict.

Avoiding conflict altogether however, is not possible, and subsequently, enduring powers of guardianship featured in the Office's investigations for the first time. Five of the 989 investigations carried out in 2010/11 (one per cent), related to enduring powers of guardianship. Generally these focused on the capacity of the person to make the power. An example of the Office of the Public Advocate's involvement in an investigation regarding an enduring power of guardianship, can be found in the following case study titled 'Enduring powers of guardianship'.

People with a decision-making disability are vulnerable to abuse. Allegations of abuse were made in 125 of the 989 new investigation matters received by the Office of the Public Advocate in 2010/11 (see Figure 5). Again this year, the most commonly reported form of abuse was financial, accounting for 45 per cent of all allegations. This was followed by neglect (25 per cent), physical abuse (13 per cent), psychological abuse (9.5 per cent) and sexual abuse (7.5 per cent), some of which relates to historical abuse.

In 67 of these cases of alleged abuse, the victim was 65 years or older (see Figure 6). Financial abuse of those 65 or older, was significantly higher (52 per cent) than other reported forms of abuse.

Most new investigations (78 per cent) were carried out in the metropolitan area (see Figure 7). Nine per cent of the 989 new matters referred for investigation in 2010/11 were regarding a person of Aboriginal or Torres Strait Islander descent (see Figure 8).

Figure 3 Profile of new investigations by type of decision-making disability 2010/11

Type of decision-making disability	
Acquired brain injury	153
Dementia	452
Intellectual disability	154
Mental illness	185
Other	45
TOTAL	989

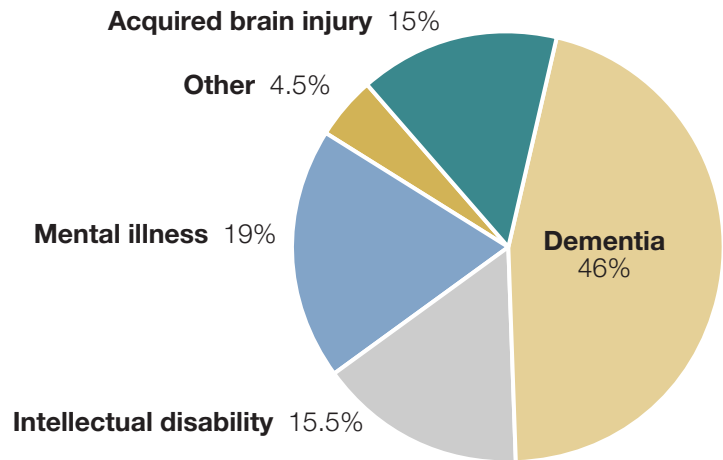


Figure 4 Profile of new investigations by issue 2010/11

Issue	
Financial (administration and enduring powers of attorney)	202
Guardianship (including reviews of guardianship orders)	782
Enduring powers of guardianship	5
TOTAL	989

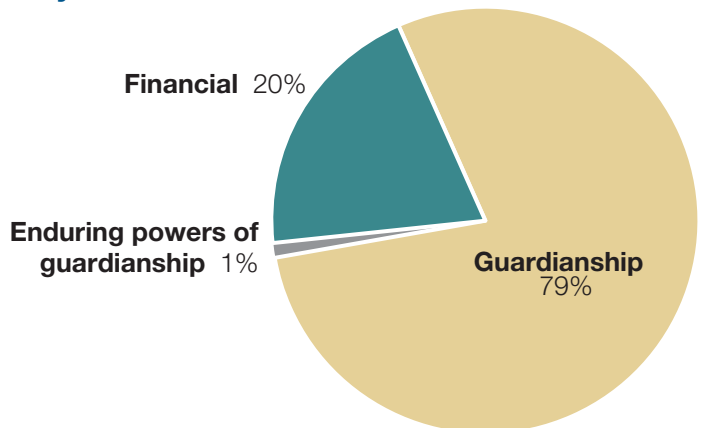
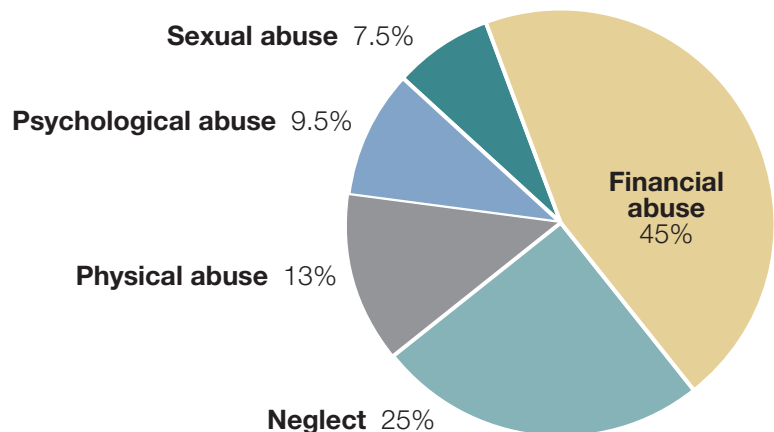


Figure 5 Profile of new investigations alleging abuse by type of abuse 2010/11 (including statistics of elder abuse)

Abuse type	125 people*
Financial abuse	81
Neglect	45
Physical abuse	23
Psychological abuse	17
Sexual abuse	13
TOTAL	179

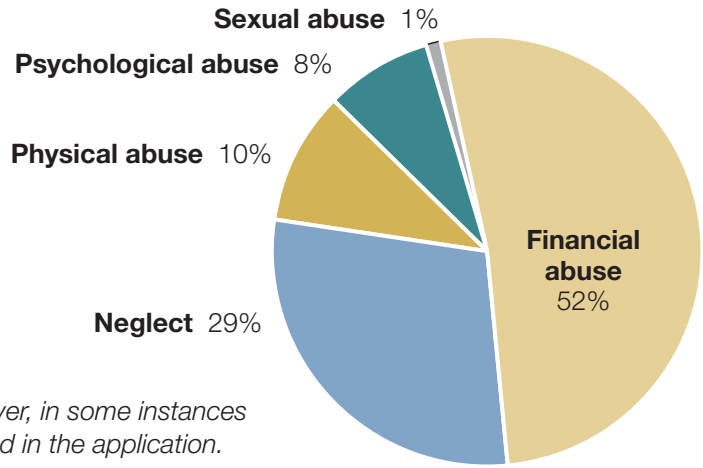


*Abuse was alleged in 125 investigations, however, in some instances more than one alleged abuse type was reported in the application.

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

Figure 6 Profile of new investigations alleging elder abuse (aged over 65) by type of abuse 2010/11

Abuse type	67 people*
Financial abuse	43
Neglect	24
Physical abuse	8
Psychological abuse	7
Sexual abuse	1
TOTAL	83



*Abuse was alleged in 67 investigations, however, in some instances more than one alleged abuse type was reported in the application.

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

Figure 7 Profile of new investigations by geographical location 2010/11

Geographical location	Count
Gascoyne	0
Goldfields-Esperance	20
Great Southern	19
Kimberley	17
Mid-West	31
Peel	36
Perth Metro	772
Pilbara	0
South West	42
Wheatbelt	32
Other	20
Total	989

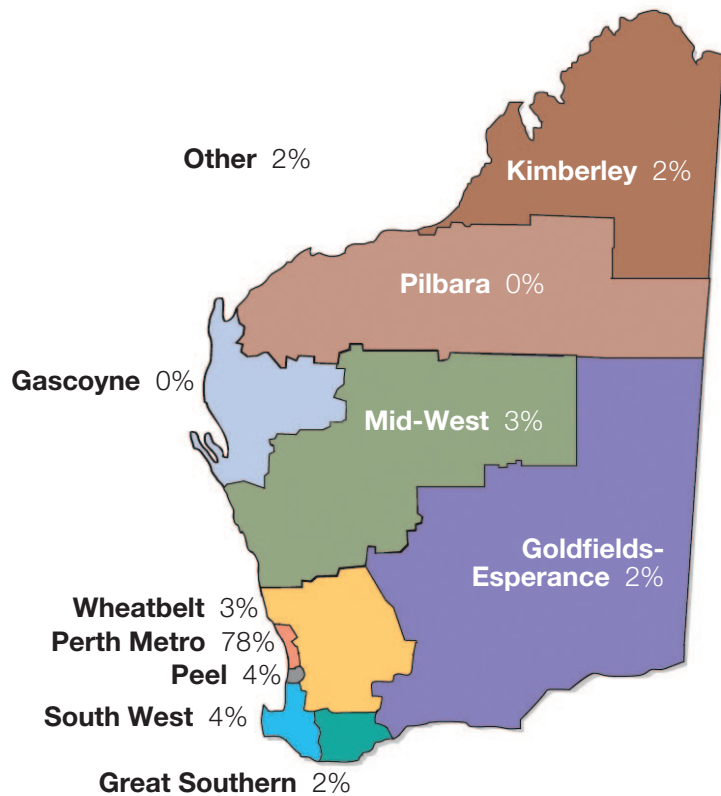


Figure 8 Profile of new investigations by Aboriginality or Torres Strait Islander descent from 2005/06 to 2010/11

Year	Total	Non ATSI*	ATSI*	ATSI* as a percentage of total
2005/06	611	601	10	2
2006/07	624	609	15	2
2007/08	757	715	42	6
2008/09	833	777	56	7
2009/10	896	808	88	10
2010/11	989	901	88	9

*ATSI = Aboriginal or Torres Strait Islander

Case Study

Enduring power of guardianship

The *Acts Amendment (Consent to Medical Treatment) Act 2008* came into effect on 15 February 2010, amending the *Guardianship and Administration Act 1990* and introducing enduring powers of guardianship.

The intent of this document is to empower adults to decide who they would like to make personal, lifestyle and treatment decisions on their behalf, if they lose the capacity to do so themselves. This will help avoid any potential conflict among friends and family in the future, or confusion over the wishes of the person regarding these decisions.

Unfortunately however, even with the best planning, conflict and/or confusion about decision making is still inevitable in some instances.

If there is any debate surrounding an enduring power of guardianship and/or the role of the enduring guardian, an application may be made to the State Administrative Tribunal. The Tribunal may then request that the Office of the Public Advocate conduct an investigation into the matter.

In 2010/11 five investigations regarding enduring powers of guardianship were referred to the Office. The key issue in all of these referrals for investigation related to the capacity of the person who made the enduring power of guardianship. This included questions about the person's capacity when they made the power and applications from enduring guardians seeking confirmation that the person had since lost capacity and that they were therefore authorised to start making decisions.

During 2010/11 the Tribunal referred an investigation to the Public Advocate regarding joint enduring guardians who were seeking directions about their authority under an enduring power of guardianship which their daughter – Miss C – had made, appointing them as her enduring guardians. In particular they wanted to know if they had authority to make decisions about where Miss C should live and to engage in legal processes on her behalf.

(continued)

Case Study (continued)

The enduring guardians had been appointed as joint, plenary enduring guardians, meaning that they had the authority to make all personal, lifestyle and treatment decisions for Miss C, including those specific areas of accommodation and legal proceedings.

However, the investigation revealed that the key question was Miss C's capacity, which fluctuated due to her diagnosed mental illness. It had to be determined whether or not Miss C had the capacity to make an enduring power of guardianship at the time she made the power, and if so, whether her capacity had now diminished to such an extent that the enduring power of guardianship should come into effect.

For an enduring power of guardianship to be valid, the person making the power (in this case, Miss C), must have full capacity at the time they make the enduring power of guardianship. The authority given to the enduring guardian(s) only comes into effect when the person loses capacity.

The investigator advocate found medical records which confirmed that Miss C had capacity when she made her enduring power of guardianship. Further medical information supported the view that she was receiving appropriate treatment at the time she made the power.

The medical records also indicated that Miss C's capacity had not changed since the time she had made the enduring power of guardianship. Miss C was therefore still in charge of making her own personal, lifestyle and treatment decisions.

The applicants (the joint enduring guardians) however, were concerned that Miss C's mental illness was currently stable due to their care and support, which was possible because she was living in close proximity to them and they were able to monitor her health and well being.

They reported that Miss C had moved to another location in the past, which had resulted in her mental illness relapsing due to her failing to take prescribed medication. They were concerned because Miss C was proposing another move, which would remove their ability to provide support because of the distance.

Miss C was interviewed and explained that she was proposing a move to be close to her partner and that she would continue to access psychiatric treatment when she moved. She understood the concerns of her enduring guardians, but felt at this time she had the capacity to make her own decisions.

The applicants accepted this, but also understood that should Miss C lose capacity, the enduring power of guardianship would come into effect and they would then have the authority to make such decisions.

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

Guardianship

The Public Advocate makes personal, lifestyle and treatment¹² decisions in the best interests of an adult with a decision-making disability when the State Administrative Tribunal determines there is no one else suitable, willing and available to be appointed as that person's guardian, and appoints the Public Advocate.

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

- ensuring that timely decisions are made in the best interests of the represented person
- protecting the represented person from abuse, exploitation and neglect
- ensuring wherever possible that 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 make judgments and 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 2010/11 there were 330 new appointments of the Public Advocate as guardian of last resort, compared to 224 new appointments in 2009/10.

At 30 June 2011, the Public Advocate had responsibility as guardian of last resort for 759 adults with a decision-making disability, compared to 596 at 30 June 2010, representing an increase of 27.3 per cent.

During the year, the Public Advocate made personal, lifestyle and treatment decisions for 1011 people compared to 723 in 2009/10. These decisions covered a range of personal circumstances including:

- treatment decisions in relation to palliative care, contraception and surgery
- locating appropriate accommodation for people with a range of support needs in the disability, aged-care and health care sectors
- determining the need for chemical or physical restraint
- acting as 'next friend' in relation to child protection matters on behalf of represented persons.

¹² Treatment refers to any medical, surgical, or dental treatment or other health care, including a life-sustaining measure or palliative care.

For the fourth year running, people with dementia accounted for the largest proportion of new appointments of the Public Advocate as guardian of last resort. Of the 330 people newly appointed in 2010/11, 140 had dementia (42.5 per cent). This is a reflection of the ageing population, the subsequent increasing prevalence of dementia in the community and the growing number of people without family or friends who are suitable, willing and available to take on the role of decision-maker.

The Public Advocate allocated a guardian to a represented person within one working day of notification of appointment in 90 per cent of cases. The shortfall from the 95 per cent target set for this measure of timeliness reflects the increased demand for the Office's guardianship services.

To meet the needs of the Office's 110 represented persons of Aboriginal or Torres Strait Islander descent, guardians liaised with Aboriginal agencies, service providers, Aboriginal community members and their families to ensure culturally appropriate practices were adopted.

Community guardianship program

The Office of the Public Advocate's community guardianship program matches volunteers from the community with adults who need a guardian and who currently have the Public Advocate appointed as their guardian.

In December 2010, five years after it was established, the community guardianship program was recognised for the important role it plays in the Western Australian community, winning the State Government Category and the overall Dr Louisa Alessandri Award for Excellence, in the Disability Services Commission's *Count Me In Awards*.

At 30 June 2011, the program had 17 volunteer community guardians. Of these, nine 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.

Issues for Guardianship

The growth in demand for guardianship services was influenced by a range of factors surrounding the protection of adults with a decision-making disability.

- While the majority of the Public Advocate's represented people live in the Perth metropolitan area, there are a number who live in regional locations. In 2010/11 some 73 of the 330 new appointments were for people who lived outside the Perth metropolitan area. Ensuring adequate support and services are provided to these clients, maintaining contact with them and conducting visits often poses unique challenges to the Public Advocate.

- In 2010/11 guardians and investigator advocates made more than 29 trips to regional areas. In some cases, the Public Advocate had to determine the suitability of accommodation options for represented persons living outside of Western Australia.
- The issues surrounding decisions which guardians are required to make may be complex, as a number of represented persons have multiple and complex needs. These people may have more than one diagnosed condition combined with a drug or alcohol problem and challenging behaviour. Sometimes as a result of their behaviour they come into contact with the criminal justice system. Making decisions for such people involves the guardian working with a number of agencies, which together, provide an intensive level of support.
- Due to the increasing number of elderly people for whom the Public Advocate is appointed guardian, decisions regularly have to be made regarding treatment decisions for people who have complex medical conditions, chronic illnesses or are terminally ill. The challenge for the Public Advocate is carefully weighing up the wishes of the represented person and those of their family members and friends, alongside the views of the treating physicians about what is in a person's best interests regarding treatment or end of life care.
- Guardians may experience pressure to locate services, seek funding and co-ordinate the provision of services for represented persons. The shortfall of appropriate services and the refusal of represented persons to accept help compound this problem. Where people have a dual diagnosis, for example, an intellectual disability and a mental illness, the task of encouraging an agency to take the lead role may be very difficult.
- Making decisions about whether a represented person remains in their own home or is placed in residential care, when concerns exist around their self-care, is often a source of conflict between guardians and represented persons and/or their relatives. Guardians must balance the rights of a represented person to remain at home and their need for care.
- In many cases the Public Advocate has been required to determine the need for chemical and/or physical restraint for represented persons. This can involve seeking a guardianship review hearing before the State Administrative Tribunal. In some cases, the Public Advocate has had to consent to psychological programs for behavioural management of disruptive or self-injurious represented persons.

- The appointment of the Public Advocate can result in major disagreement within the family of the represented person. In cases where the represented person has experienced abuse, exploitation or neglect, contact between the person and their family may often need to be supervised. During the year, the Public Advocate arranged supervised access to represented persons where there was risk of abuse. In some cases, guardians must work with represented persons whose parents or relatives also have a decision-making disability.
- People with a decision-making disability may be extremely vulnerable to sexual assault and sexual exploitation. The Public Advocate intervenes in these matters and seeks Police involvement (via the Sex Assault Squad), referral to the Sexual Assault Resource Centre and medical and counselling services. The Public Advocate has noted the particular vulnerability of young people with intellectual disabilities and women with mental illnesses, to sexual assault. This group often lack adequate self protective behaviours and/or family and agency support services.
- Making decisions for represented people from an Aboriginal or Torres Strait Islander background requires an understanding of cultural differences. The family members of these represented people sometimes oppose or do not recognise the authority of the Public Advocate as their relative's guardian.
- The Public Advocate makes decisions for people who are frequent and sometimes serious offenders, whether detained in a psychiatric hospital or 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 might involve the Police, Disability Services Commission, the Department of Corrective Services' Intellectual Disability Diversion Program, Legal Aid, and Mental Health Services.
- The Public Advocate continues to undertake the legal functions of 'next friend' and guardian *ad litem* which is to initiate or defend any civil legal proceedings respectively. This usually involves a guardian providing instructions to a lawyer during care and protection proceedings taken by the Department for Child Protection on behalf of a represented person's child/children. This function is undertaken by the Public Advocate where the State Administrative Tribunal determines that the represented person is unable to conduct their own legal affairs due to a lack of decision-making capacity.

Case Study

Revocation

Miss D is 25 years of age, has a mild intellectual disability and extensive disfigurement, as a result of a childhood accident. The accident left her with severe physical, psychological, and emotional trauma, along with post traumatic stress and severe abandonment disorder. She has been in foster care with the Department for Child Protection (DCP) since the age of five.

Around the time Miss D turned 18, and was leaving State care with DCP, she was becoming well known to the police. She was engaging in antisocial behaviour and criminal activities.

Due to Miss D's increasing antisocial behaviour, her former foster family, who had taken on the role of host family, formed the view that they could no longer provide her with a home. The Disability Services Commission therefore made an application to the State Administrative Tribunal for a guardian to be appointed for Miss D. As she had no family or friends who were suitable, willing and able to take on this role, the Public Advocate was appointed as her plenary guardian.

The Public Advocate's initial advocacy and decision making for Miss D focused on her acquiring Department of Housing accommodation, a high level of personal, home, and social support and regular psychological counselling. In addition to that, the Public Advocate was frequently contacted for decision making in relation to events including Miss D's engagement with others in antisocial behaviour, threats to self harm and undesirable persons taking up residence in her home. Unfortunately, due to repeated breaches of her Department of Housing agreement, Miss D was evicted from that accommodation.

The delegated guardian from the Office of the Public Advocate liaised with one of Miss D's relatives and an agreement was reached for her to temporarily live with them until permanent accommodation could be secured. Fortunately, this arrangement worked extremely well. Surprisingly, Miss D was accepting of the rules of behaviour which her relative expected. Furthermore, incidents of antisocial behaviour reduced as that family member effectively fulfilled the role of mentor and social supervisor for her. Subsequently, the Public Advocate applied to the State Administrative Tribunal for a revocation. The Tribunal agreed that there was no current need for guardianship, and revoked the order.

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

Case Study

End of life decision-making

Mr E was a 67 year old man, with alcohol related brain damage, lung disease and end stage renal failure. He had been a heavy smoker and an alcoholic for most of his adult life. He was estranged from his wife, but had a son and daughter who kept in contact with him.

He was admitted to an aged-care facility after severely neglecting his health and welfare and being evicted from his rental accommodation.

The Public Advocate was appointed as Mr E's limited guardian, for the purpose of making treatment and health care decisions on his behalf, because his children were in disagreement about what medical treatment he required.

His health had deteriorated – he was in pain, having problems urinating, had high blood pressure and was no longer compliant with dialysis.

The medical specialist who had been treating Mr E with dialysis advised that his medical condition was terminal and that he should be treated palliatively, as any further active treatment would be pointless. The specialist was also concerned that Mr E was no longer able to tolerate dialysis.

Mr E's daughter would not accept the doctor's recommendation and wanted her father to continue receiving active treatment. Mr E's son however, believed his father should be treated palliatively as he was concerned that his father was in pain. Mr E's estranged wife advised that she did not want to be involved in any decision-making.

Due to Mr E's lack of mental capacity, the Public Advocate was unable to establish his wishes in relation to his medical treatment, although his refusal to accept further dialysis was viewed as indicative of his desire to stop this treatment.

After full consultation with Mr E's family, carers and medical specialists, the Public Advocate agreed with the advice that Mr E's condition was terminal and consented to palliative care. Mr E's daughter received counselling support from the hospital's social worker to help with her feelings of grief and loss for her father.

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

Case Study

Community guardianship program

The community guardianship program matches people for whom the Public Advocate has been appointed guardian, with volunteers from the community. With guidance and support from the community guardianship program co-ordinator, the represented person and the volunteer community guardian, meet regularly to get to know each other and see whether they are a good 'match'. If they are, the volunteer, together with the community guardianship program co-ordinator, apply to the State Administrative Tribunal for the appointment of the volunteer community guardian as the represented person's guardian, in-place of the Public Advocate.

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

The relationship which developed between Miss F and her community guardian is one such example. Miss F is 36 years old, has a significant intellectual disability and lives in a group home. She has not had any contact with her family for many years and has spent most of her life with paid carers.

The Public Advocate was appointed as Miss F's guardian in 2000, as she needed decisions to be made for her regarding her medical treatment and health care.

In early 2009, Miss F was recognised as a suitable candidate for the Office of the Public Advocate's community guardianship program.

After identifying Miss F as suitable for the program, a volunteer was chosen from the pool of potential community guardians. Over the next year, the volunteer visited Miss F and took her out for coffee and other outings.

The volunteer took time to get to know Miss F and her carers. She kept in regular contact with the community guardianship program co-ordinator and participated in training and other events organised by the co-ordinator.

In July 2010 the Office of the Public Advocate made an application for Miss F's guardianship order to be reviewed, recommending that the volunteer be appointed as her limited guardian and that the appointment of the Public Advocate be revoked. The Tribunal agreed with the recommendation and a new order was made, appointing the volunteer to make medical treatment decisions for Miss F for 12 months.

At the following review hearing in July 2011, Miss F's care staff commented that the relationship that had developed between Miss F and the volunteer was fantastic and that it had made a significant difference to Miss F's life. She looks forward to visits from the volunteer and the regular and positive contact is improving her behaviour and attitude in other areas of her life. The Tribunal member confirmed the guardianship order for another five years.

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

Revocations

Guardianship orders are reviewed when either an application for review is made to the State Administrative Tribunal, or when the order is nearing expiry. In 2010/11 guardians from the Office of the Public Advocate were involved in 238 reviews of guardianship orders. The purpose of reviewing an order is to determine whether the represented person still requires the Public Advocate as their guardian, or whether changes to the authority given in the order are required.

Of these 238 reviews, 64 orders were revoked by the State Administrative Tribunal because there was no longer a need for a substitute decision-maker as a result of:

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

A total of 171 guardianship orders were closed during 2010/11.

Our Customers

The most common issue leading to the appointment of the Public Advocate as guardian of last resort continues to be medical treatment decisions, with 26 per cent of all guardianship orders appointing the Public Advocate at 30 June 2011 being for these decisions (see Figure 9).

The high number of orders appointing the Public Advocate to make medical treatment decisions can be attributed to the lack of a spouse, child over the age of 18, relative or friend to act on a person's behalf, or in other instances these people exist, but are either unsuitable, unwilling or unavailable to act.

Decisions relating to accommodation are the second largest contributor to the appointment of the Public Advocate. At 30 June 2011, 20 per cent of all guardianship orders appointing the Public Advocate, authorised decision-making regarding with whom the represented person lives, and 16 per cent authorised decision-making regarding where they were to live.

The high number of appointments regarding accommodation decisions, reflects concern for appropriate supported accommodation for people with a decision-making disability, conflict surrounding where and with whom a person should reside, as well as the need to consent to residential care on behalf of people with dementia, particularly for seniors who are self neglecting, refusing support services and are opposed to entering residential care.

Of the 330 new appointments of the Public Advocate as guardian of last resort in 2010/11:

- the most common type of decision-making disability was dementia, with 140 (42.5 per cent) of the newly appointed people affected by this condition. This was followed by 67 people (20.5 per cent) with a mental illness, 64 people (19.5 per cent) with an intellectual disability, 45 people (13.5 per cent) with an acquired brain injury and 14 people (four per cent) with another disability (see Figure 10)
- 251 people lived in the Perth metropolitan area and 79 lived in regional areas (see Figure 12)
- abuse of a person with a decision-making disability was a factor in 59 cases (18 per cent) and of these, 29 were 65 years of age or older. (See Figures 13 and 14).

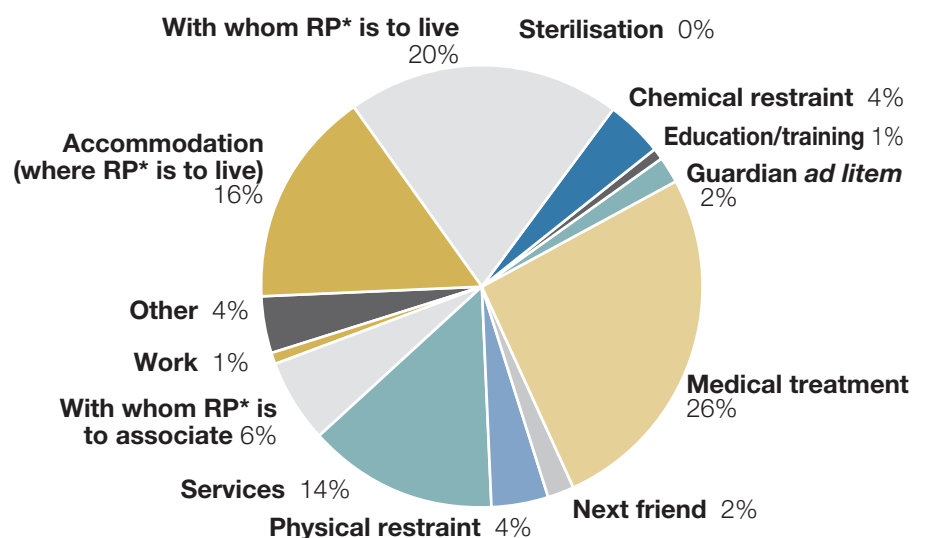
Of the 759 adults with a decision-making disability that the Public Advocate was guardian for at 30 June 2011, 110 were of Aboriginal or Torres Strait Islander descent (see Figure 16) and 103 were from a culturally diverse background¹³.

Guardians took 479 after-hour calls in 2010/11, taking 198 hours.

Figure 9 Functions given to the Public Advocate for all guardianship orders as at 30 June 2011

Accommodation (where RP* is to live)	386
Chemical restraint	94
Education/training	19
Guardian <i>ad litem</i>	36
Medical treatment	607
Next friend	38
Physical restraint	90
Services	337
Sterilisation	0
With whom RP* is to associate	140
With whom RP* is to live	459
Work	34
Other	98
TOTAL	2,338

*RP = represented person



¹³ The Western Australian Public Sector defines 'people from culturally diverse backgrounds' as people born in countries other than those categorised by the Australian Bureau of Statistics as Main English Speaking (MES) countries (i.e. Australia, United Kingdom, Ireland, New Zealand, South Africa, Canada and United States of America).

Figure 10 Profile of new guardianship orders appointing the Public Advocate by type of decision-making disability 2010/11

Type of decision-making disability	
Acquired brain injury	45
Dementia	140
Intellectual disability	64
Mental illness	67
Other	14
TOTAL	330

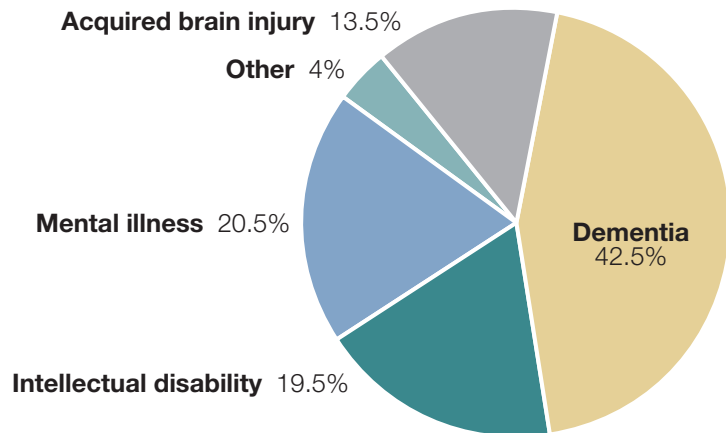


Figure 11 Profile of all guardianship orders appointing the Public Advocate by type of decision-making disability as at 30 June 2011

Type of decision-making disability	
Acquired brain injury	114
Dementia	249
Intellectual disability	221
Mental illness	154
Other	21
TOTAL	759

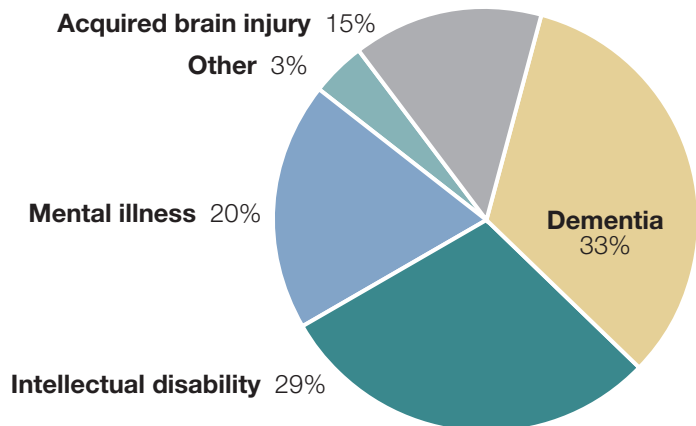


Figure 12 Profile of new guardianship orders appointing the Public Advocate by geographical location 2010/11

Geographical location	
Gascoyne	0
Goldfields-Esperance	6
Great Southern	7
Kimberley	11
Mid-West	15
Peel	13
Perth Metropolitan	251
Pilbara	0
South West	11
Wheatbelt	10
Other	6
Total	330

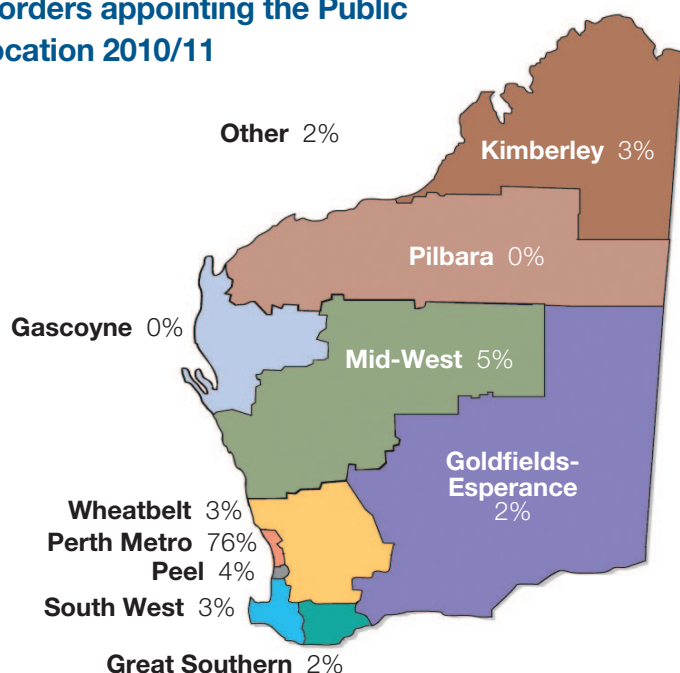
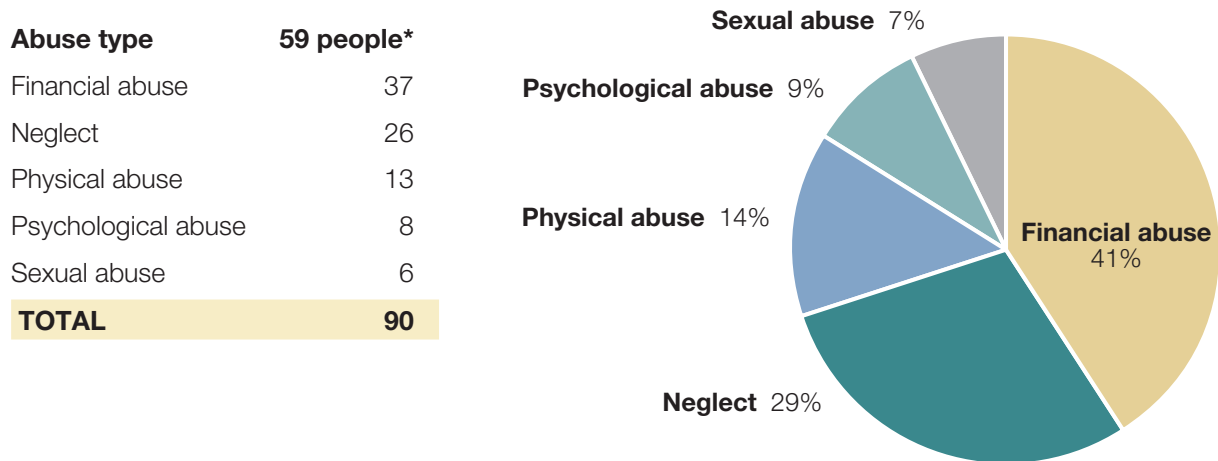


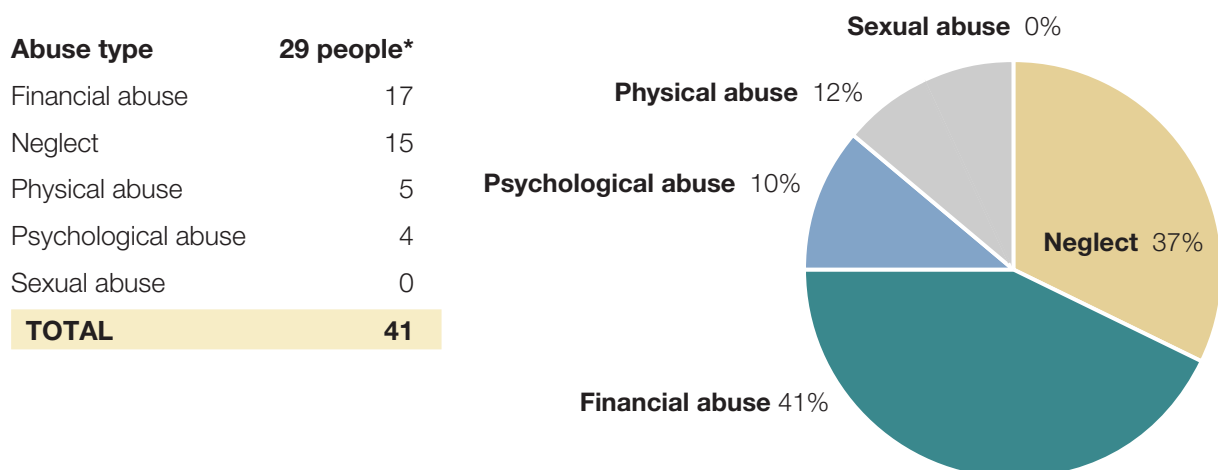
Figure 13 Profile of new guardianship orders appointing the Public Advocate by type of alleged abuse 2010/11 (including elder abuse)



*Alleged abuse was reported in 59 people's cases, however, in some instances more than one alleged abuse type was reported.

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

Figure 14 Profile of new guardianship orders appointing the Public Advocate by type of alleged elder abuse (aged over 65) 2010/11



*Alleged elder abuse was reported in 29 people's cases, however, in some instances more than one alleged abuse type was reported.

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

Figure 15 Profile of new guardianship orders appointing the Public Advocate by Aboriginality or Torres Strait Islander descent from 2005/06 to 2010/11

Year	Total	Non ATSI*	ATSI*	ATSI* as a percentage of total
2005/06	95	93	2	2%
2006/07	118	114	4	3%
2007//08	187	172	15	8%
2008/09	231	206	25	11%
2009/10	224	197	27	12%
2010/11	330	282	48	15%

*ATSI: Aboriginal or Torres Strait Islander

Figure 16 Profile of all guardianship orders appointing the Public Advocate by Aboriginality or Torres Strait Islander descent from 2005/06 to 2010/11

Year	Total	Non ATSI*	ATSI*	ATSI* as a percentage of total
2005/06	256	242	14	5%
2006/07	288	271	17	6%
2007//08	388	350	38	10%
2008/09	484	436	48	10%
2009/10	596	518	78	13%
2010/11	759	649	110	14%

*ATSI: Aboriginal or Torres Strait Islander

Systemic Advocacy

The Public Advocate advocates for adults with a decision-making disability at a government and community level. The Public Advocate liaises with government, community and business organisations regarding the best interests of adults with a decision-making disability in the development of legislation, policy and services.

The Year in Review

Redress WA

Background

In December 2007, the State Government committed \$114 million to Redress WA, a scheme aimed at helping adults - who as children, were abused and/or neglected¹⁴ - to move forward with their lives.

In view of the difficulty for people with decision-making disabilities recalling their life stories to identify their potential to apply to Redress WA, the Public Advocate sought the assistance of the Department for Child Protection.

This liaison led to the Department for Child Protection being given the authority (via a Ministerial Consent pursuant to section 241(2) of the *Children and Community Services Act 2004*) to share identifying information with the Public Advocate. The Ministerial Consent also enabled the Public Advocate to share the confidential information obtained from the Department for Child Protection's records with the Public Trustee and significant others for the purpose of Redress WA.

In August 2008 (when the Office started the Redress WA application process) the Public Advocate cross-referenced the names of everyone who came under her guardianship, with the Department for Child Protection's client records. This cross-referencing continued with every new appointment of the Public Advocate, until the application period ended in 30 April 2009. In total, 571 people's names were cross-referenced with the Department for Child Protection's records.

This process identified 137 people having a historical record with the Department for Child Protection. Their records were then reviewed to confirm that they were placed in care as children, and to identify any potential claim to Redress WA. In some cases, information was obtained from sources other than the Department for Child Protection's records, to support an application.

The Public Advocate also made eight applications to the State Administrative Tribunal for additional legal authority to enable the Public Trustee or the Public Advocate to sign applications to Redress WA on behalf of represented persons.

¹⁴ in State care in Western Australia before 1 March 2006.

As a result of this advocacy, review and research process, applications were made on behalf of 49 people (which represented almost 10 per cent of all guardianship orders appointing the Public Advocate at that time). Almost all of these applications were jointly prepared with the Public Trustee, with two people choosing to complete their applications with the assistance of other agencies.

The co-operation between the Offices of the Public Advocate and Public Trustee during this process, further advanced the best interests of people under guardianship and administration orders appointing the Public Advocate and Public Trustee.

While the Public Trustee took the lead role in negotiating the settlement of Redress WA claims, they consulted with the Public Advocate throughout the process and sought the Office's view regarding the offers made by Redress WA.

The Redress WA Guidelines included a scale to assist in determining the level of abuse and/or neglect and the degree of harm, injury, and loss suffered by the applicant, as compared to other applicants, as follows:

- Level 4 - very severe abuse or neglect with ongoing symptoms and disabilities
- Level 3 - severe abuse or neglect with ongoing symptoms and disabilities
- Level 2 - serious abuse or neglect with some ongoing symptoms and disabilities
- Level 1 - moderate abuse or neglect.

Outcome of applications

In order to give a more complete picture, information regarding a small number of applications which were finalised after 30 June 2011, has been included in the following summary.

In addition to the 49 Redress WA applications submitted in 2009, the Public Advocate was subsequently appointed as guardian for another five people for whom applications to Redress WA had already been made. This took the total number of applications to 54.

In all but two of the 54 applications, the Public Advocate worked with the Public Trustee in considering the recommendations of Redress WA regarding people's eligibility to apply, and the offers of *ex gratia* payments they then received.

From the 54 applications that the Public Advocate was involved with, more than half a million dollars was provided in compensation for the abuse experienced by 36 represented persons while in State care as children. Twelve people were assessed as meeting the criteria for *ex gratia* payments at level 1 (\$5,000); 14 people at level 2 (\$13,000); seven people at level 3 (\$28,000) and three people at level 4 (\$45,000).

At the time of writing this report, the 54 applications had resulted in \$573,000 of *ex gratia* payments.

Two of the three people who received payment at the highest level were child migrants and both had compelling information that accompanied their applications. Fortunately, one of the former child migrants had documented his story of abuse many years ago before his memory was affected by the development of his decision-making disabilities.

Eighteen of the 54 applications were deemed ineligible. A significant factor in the majority of these 18 applications, which resulted in them being deemed ineligible according to the Redress WA guidelines, was the lack of sufficient supporting documentation. This was because of the difficulty in finding good historical records relating to the alleged abuse and the lack of information that could be corroborated by anecdotal stories of other family members.

This is not surprising, given that the Public Advocate is appointed when there is no one else suitable, willing and available to be appointed as guardian. In a number of instances, there was no additional information available beyond what was gleaned from the records of the Department for Child Protection, Disability Services Commission, Department of Corrective Services, and Department of Health (including mental health).

After receiving the initial assessments by Redress WA, the Public Trustee, with the support of the Public Advocate, made further submissions on behalf of eight people. These resulted in improved outcomes for three of the eight people. Two of these were subsequently deemed eligible, with one assessed as level 1 and the other at level 2. In the case of the third person, additional information had become available which strengthened the evidence of the abuse experienced in care, and led to a change from level 2 to level 3.

The joint advocacy by the Public Advocate and the Public Trustee in relation to Redress WA has been a major achievement over the past three years. Most importantly it has meant that people with decision-making disabilities have been given a voice about the abuse or neglect they experienced in State care, even though they can no longer advocate for themselves.

The extensive support provided by both the Department for Child Protection and the Department for Communities has helped make this possible, as has the support of other agencies including the Disability Services Commission, the Department of Health and the Department of Corrective Services.

Figure 17 Profile of Redress WA applications involving the Public Advocate by outcome and value

Outcome	Number of applications	Value
Level 1 (\$5,000)	12	\$60,000
Level 2 (\$13,000)	14	\$182,000
Level 3 (\$28,000)	7	\$196,000
Level 4 (\$45,000)	3	\$135,000
Ineligible	18	\$0
Total	54	\$573,000

Figure 18 Profile of Redress WA applications involving the Public Advocate by Aboriginality or Torres Strait Islander descent

	Level 1 (\$5,000)	Level 2 (\$13,000)	Level 3 (\$28,000)	Level 4 (\$45,000)	Ineligible	Total
ATSI	4	5	2	0	8	19
Non ATSI	8	9	5	3	10	35
Total	12	14	7	3	18	54

*ATSI = Aboriginal or Torres Strait Islander

Figure 19 Profile of Redress WA applications involving the Public Advocate by age

	Level 1 (\$5,000)	Level 2 (\$13,000)	Level 3 (\$28,000)	Level 4 (\$45,000)	Ineligible	Total
≤ 25 years	4	9	3	1	8	25
> 25 years	2	2	1	0	3	8
> 40 years	4	1	0	0	1	6
> 50 years	2	2	3	2	6	15
Total	12	14	7	3	18	54

Renegotiation of the Memorandum of Understanding - Procedures for young people with a decision-making disability leaving the care of the Department for Child Protection

A memorandum of understanding between the Office of the Public Advocate and the Department for Child Protection was established in 2007. The memorandum covered procedures regarding young people with a decision-making disability leaving the care of the Department for Child Protection.

The memorandum of understanding was reviewed in 2010 and a new memorandum of understanding was signed by the two parties in January 2011.

The need to strengthen the memorandum of understanding was highlighted during the Redress WA application process. During this time, the Public Advocate reviewed the Department for Child Protection records of 137 people under a guardianship order appointing the Public Advocate.

The gaps in sufficient planning, which were highlighted during the Redress WA process, prompted the Public Advocate to conduct a review of a selection of her clients, who had previously been under the care of the Department for Child Protection.

The records of the nine young people for whom the Public Advocate was appointed guardian, following applications to the State Administrative Tribunal from the Department for Child Protection in 2008/09 were reviewed.

The review of these files provided further evidence that the leaving care planning procedures for young people with a decision-making disability needed to be improved. It also indicated that there was a need for the Department for Child Protection to address funding issues earlier in the planning process and to provide more comprehensive information in applications to the State Administrative Tribunal for guardianship and/or administration orders.

As well as agreeing to the revised memorandum of understanding, additional information was placed in the Department for Child Protection's Casework Practice Manual, to prompt caseworkers to consider what information would better inform the State Administrative Tribunal's deliberations about the appointment of a guardian or administrator. The Department's Civil Litigation Unit has also become routinely involved in applications to the Tribunal for a guardian or administrator.

People with exceptionally complex needs

The People with Exceptionally Complex Needs project was initiated in 2006 when the Public Advocate raised serious concerns about a small, but difficult cohort of adults with exceptionally complex needs, such as a significant intellectual disability, a mental illness, an alcohol or drug abuse problem and other unmet needs, for whom existing services were not working.

The People with Exceptionally Complex Needs initiative aims to significantly improve interagency collaboration and co-ordination of services and encourages agencies to use existing resources in innovative and creative ways to respond to individual needs.

The project operates through the partnership of senior officers from the Disability Services Commission, Mental Health Commission, Mental Health Services and the Drug and Alcohol Office of the Department of Health, Department of Corrective Services, Department of Housing, and the Office of the Public Advocate. It is also part of the National Partnership Agreement on Homelessness.

In 2010 the Mental Health Commission conducted an evaluation of the People with Exceptionally Complex Needs program. The evaluation supported the continuation and expansion of the project. In response, the Disability Services Commission and the Mental Health Commission committed additional funding to expand the program during 2011/12.

As at 30 June 2011, nine people were participating in the project, eight of whom had guardianship orders appointing the Public Advocate and administration orders appointing the Public Trustee. A total of 11 people have been assisted by the project since it started.

Across Government strategies on homelessness

The Public Advocate is a member of the Across Government Senior Officers group for the National Partnership Agreement on Homelessness. In 2010/11 this group assisted the Department for Child Protection to implement across government initiatives to address homelessness.

Elder abuse

The Public Advocate continues to be involved in responding to elder abuse, as a member of the Alliance for the Prevention of Elder Abuse (WA).

In 2010/11, senior staff from the Office of the Public Advocate contributed to joint research by the Crime Research Centre, University of Western Australia and Advocare Inc, which examined the extent of elder abuse in Western Australia. The results of this research were made available on World Elder Abuse Awareness Day (15 June 2011).

The Office of the Public Advocate also held events to recognise World Elder Abuse Awareness Day, in order to increase awareness of elder abuse and the role of service providers and community members in identifying and reporting abuse.

A series of information sessions across the South-West of the State were conducted by the Office during the week of World Elder Abuse Awareness Day, 13-16 June. These sessions provided an opportunity for community members and service providers to consider how adults can protect themselves in the event they lose capacity in the future, by completing an enduring power of attorney and an enduring power of guardianship.

Policy reviews

Submissions were made to a number of policy reviews and inquiries in 2010/11. These included:

- WA Mental Health Towards 2020 and the WA Mental Health Consumer Care and Community Consultation.
- National Framework for Advance Care Directives Consultation: October 2010.
- The State Government's response to the Productivity Commission's Inquiry on Disability Care and Support.

Community Education

The Office promotes the human rights of adults in Western Australia with a decision-making disability, under the provisions and operation of the *Guardianship and Administration Act 1990*. This is done through community education activities which improve people's awareness and understanding of the legislation, the system and the surrounding issues. Activities include:

- providing the community and relevant service providers with education and training which promotes the human rights of adults with a decision-making disability
- producing and publishing written and other material accessible to the community and service providers in a variety of formats and languages
- developing partnerships with other government agencies, non-government organisations and community groups to disseminate information about guardianship and administration
- promoting community responsibility for the wellbeing of vulnerable adults with a decision-making disability who may be at risk of abuse, exploitation or neglect.

The Year in Review

Significant legislative change continued to be the driving force behind the Office's community education program in 2010/11.

The *Acts Amendment (Consent to Medical Treatment) Act 2008*, altered parts of the *Guardianship and Administration Act 1990*, with the most significant changes being the introduction of enduring powers of guardianship and advance health directives on 15 February 2010.

The delivery of a State-wide information strategy to raise awareness and understanding in the community about enduring powers of guardianship and advance health directives, was the primary focus of the Office's community education program in 2010/11.

Community members and service providers in the health, aged-care, disability and other related sectors were educated on the proper use and execution of the two documents.

The training/information sessions focused primarily on enduring powers of guardianship and changes to the legal order of substitute decision-makers for non-urgent treatment decisions. Limited information on advance health directives was also provided. In some instances, the Office presented sessions in conjunction with the Department of Health. Information and training for health professionals, regarding advance health directives however, is the responsibility of the Department of Health.

In 2010/11 the Office conducted a total of 97 information sessions. Of these, 55 were tailored to the needs of community members, 37 specifically targeted service providers and five catered to the needs of both groups.

Sessions were held throughout the State, with 72 in the metropolitan area and 25 in regional areas including Albany, Armadale, Augusta, Bunbury, Busselton, Collie, Esperance, Geraldton, Kalgoorlie, Manjimup, Margaret River, Merredin, Moora, Peel and Wagin. In addition to regional trips, video conferencing facilities were used at some of the sessions, to increase the accessibility of information sessions. These facilities were utilised in 19 instances in 2010/11.

With the prime focus of the community education campaign being enduring powers of guardianship, 88 of the 97 sessions covered this topic. Of the other nine sessions, three were held in conjunction with the Public Trustee, specifically for private administrators. Presentations covering general guardianship and administration information, enduring powers of attorney, elder abuse and the role of the Public Advocate were also delivered.

Three of the 88 sessions covering enduring powers of guardianship were tailored to the needs of Culturally and Linguistically Diverse community members. Interpreters worked with the presenter to deliver the session in alternative languages.

In recognition of World Elder Abuse Awareness Day, the Office ran information sessions across the South-West of the State in June 2011 to raise people's awareness and understanding of elder abuse. Service providers were given information on how to recognise and prevent elder abuse and community members were educated on the potential benefits of using enduring powers of attorney and enduring powers of guardianship. They were shown how these planning tools can be used to prevent elder abuse by choosing the person they would like to make decisions on their behalf if they lost capacity. More than 100 people attended the sessions and feedback was overwhelmingly positive.

People attending Office of the Public Advocate presentations are asked to complete a survey indicating their level of satisfaction with the seminar and the information provided. Of the 1,257 people who responded to the surveys in 2010/11, 95.7 per cent were satisfied with the content and conduct of the session.

Customer contact/enquiries

A total of 4,120 people used the Office of the Public Advocate's advisory service in 2010/11, compared to 4,505 in 2009/10. Contact was made via telephone, email, mail and in person (see Figure 20).

In some instances, enquirers sought advice on multiple topics. Enduring powers of attorney continued to dominate enquiries, accounting for 40 per cent of all enquiries received this year. Enquires regarding guardianship accounted for 26 per cent, administration 13 per cent and enduring powers of guardianship accounted for nine per cent (see Figure 21).

The Office's telephone advisory service (TAS) provides recorded information on guardianship, administration, enduring powers of attorney and enduring powers of guardianship. It also gives callers the option to speak to an advisory officer.

Figure 20 Enquiries to the advisory service by mode of handling 2010/11

Mode of handling	Jul 2010	Aug 2010	Sep 2010	Oct 2010	Nov 2010	Dec 2010	Jan 2011	Feb 2011	Mar 2011	Apr 2011	May 2011	Jun 2011	Total
Telephone	351	347	307	305	296	204	350	372	336	317	357	441	3,983
Interview	10	12	7	4	2	3	7	3	5	3	5	5	66
Email/letter	5	4	4	7	5	1	8	4	2	13	8	10	71
TOTAL	366	363	318	316	303	208	365	379	343	333	370	456	4,120

Figure 21 Enquiries to the advisory service by subject 2010/11

Subject of enquiry	Jul 2010	Aug 2010	Sep 2010	Oct 2010	Nov 2010	Dec 2010	Jan 2011	Feb 2011	Mar 2011	Apr 2011	May 2011	Jun 2011	Total	Total as % of all enquiries
Guardianship	101	106	106	119	93	90	100	134	117	108	107	156	1,337	26%
Administration	60	82	56	58	51	27	62	66	59	45	80	28	674	13%
Enduring powers of attorney	191	192	162	142	163	81	186	158	169	167	185	218	2,014	40%
Enduring powers of guardianship	26	37	34	38	38	17	45	54	41	42	31	54	457	9%
Advance health directives	7	14	21	15	9	3	13	21	31	12	10	14	170	3%
General	45	37	20	44	29	29	28	48	50	30	48	30	438	9%
Total	430	468	399	416	383	247	434	481	467	404	461	500	5,090	100%

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

Services to Aboriginal people

The printed resources of the Office include a brochure regarding the guardianship and administration system and the role of the Public Advocate in protecting vulnerable adults, which has been developed specifically for Aboriginal people. It aims to explain the concepts in a simple and easy to understand format.

In addition to this targeted resource, service providers with a high proportion of Aboriginal clients, who attend the Office's training sessions, are given practical examples in terms of how the guardianship and administration system could be used to assist Aboriginal people to ensure culturally appropriate outcomes are achieved.

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.

These services are supported by the Department of the Attorney General under a service-level agreement and costs are proportionally allocated to the Public Advocate and reflected in the Treasury Budget statements. The budget allocation and subsequent expenditure for 2010/11 are as follows:

Figure 22 Budget allocation and expenditure 2010/11

	Total Cost of Output
\$'000 Actuals 2010-11	4,596
\$'000 Budget 2010-11	4,291 (revised budget)
\$'000 Variations from Budget	(305)

The Year in Review

Human resources

The staff training committee continued to co-ordinate and develop staff training opportunities through the staff training program in 2010/11. The program aims to meet the specific training needs of staff in the Office of the Public Advocate.

Staff from the advocacy and investigation, and guardianship teams participated in a full day of training on mental health issues covering strategic policy developments and some specific specialist services. This training was made possible through one-off funding by the Mental Health Commission to the Department of the Attorney General.

Office technology

Enhancements to the Public Advocate Case Management system (PACMAN) were carried out in 2010/11. These changes improved the data collection and reporting capabilities of the system.

Video conferencing continued to be used for client interviews, service provider training and seminars involving people in regional areas.

Interpreter services

To help ensure that language is not a barrier to services for customers for whom English is a second language, the Office uses translation and interpreter services. During 2010/11 interpreter services were provided in Auslan, Croatian, Greek, Italian, Macedonian, Polish, Serbian, Tamil and Vietnamese.

Freedom of information

Two valid applications were received during 2010/11 for the release of information. The information requested was released.

Anyone who wishes to access information held by the Public Advocate should contact the Freedom of Information Co-ordinator on 9278 7300 or 1300 858 455. They may be asked to submit their request in writing.

If a request is denied, an application may be lodged with the Public Advocate. If the application is denied or a person is unhappy with the decision of the Public Advocate, they may lodge an appeal with the Information Commissioner.

Customer feedback

In 2010/11, the Office of the Public Advocate received four formal compliments and four suggestions. The Office also received 17 formal complaints during the year, which were all considered by the Public Advocate or a senior manager.

For people who lodge a formal complaint with the Public Advocate, either in writing, via email or over the telephone, the Office undertakes to:

- respond to all grievances within 10 working days of the complaint being received
- keep records of all relevant proceedings including details of the grievance, the investigation, methods of resolution and customer feedback
- make documentation of the investigation available to the person who lodged the complaint (except where this contravenes confidentiality requirements)
- communicate the outcome in writing, together with any corrective action to be taken, to all parties.

Significant Issues Impacting the Agency

Growth in demand for services

The Office of the Public Advocate has experienced a persistent and substantial increase in demand for its statutory services of advocacy and investigation, and guardianship. In 2010/11, the total number of investigations increased by 22 per cent and the number of new appointments as guardian of last resort increased by 47 per cent. At 30 June 2011, the Public Advocate was guardian for 27 per cent more people than at the same time last year.

Western Australia's ageing population and the resulting increase in the number of people with dementia are significant factors contributing to the increasing demand for the Office's services. In 2010/11, 46 per cent of new matters referred for investigation involved a person with dementia and 42.5 per cent of the people for whom the Public Advocate was appointed guardian for the first time have dementia.

A detailed, independent study on forecasting demand for services undertaken in 2003/04 by Data Analysis Australia indicated an annual growth over the next five years of 5.9 per cent for guardianship orders, 2.1 per cent for community-referred investigations and two per cent for investigations referred by the State Administrative Tribunal. The number of guardianship orders has been consistently higher than those projections.

As noted in previous Annual Reports, the Public Advocate received a repeat study by Data Analysis Australia in November 2008. The revised forecasts show a substantial increase in the number of appointments of the Public Advocate as guardian of last resort, with an annual growth rate of a minimum of 12.7 per cent for the next five years. This growth rate is considered likely to be an underestimate.

The growth in investigations is not predicted to be as strong, with annual growth rates of 3.2 per cent for investigations referred by the State Administrative Tribunal and 3.6 per cent for community-referred investigations over the next five years.

The report notes that the revised forecasts are substantially higher than the original forecasts because of:

- the sudden increase in the rates of people with dementia coming under guardianship orders appointing the Public Advocate
- the increased length of time clients with dementia stay with the Public Advocate
- other considerations including the transition from the Guardianship and Administration Board to the State Administrative Tribunal.

The effects of the baby boomer generation will impact strongly on organisations such as the Office of the Public Advocate, in which elderly people are increasingly the users of the service. It is expected that this will continue to be a factor until 2022/2023, when it is anticipated that the growth of this older demographic (60 to 85 years) will stabilise.

The Department provided the Office with additional staff ahead of the successful budget outcome for 2011/12. This enabled the Office to provide its statutory services during the year, despite the high demand.

Implementing legislative change

Changes to the *Guardianship and Administration Act 1990* in February 2010, which introduced enduring powers of guardianship and advance health directives, continued to be the priority focus of the Office's community education program. The feedback from training/information sessions has been overwhelmingly positive and word-of-mouth and targeted promotions continue to generate interest for information, publications and training sessions.

Disclosures and Legal Compliance

Financial Statements

See the Department of the Attorney General annual report.

Key Performance Indicators

Notes to the 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

In any society, the ability of a community to care for those who are unable to care for themselves is a measure of its maturity. In Western Australia, the preservation and enhancement of the right to justice and safety for all of its community members, requires that the State safeguards the rights of adults with reduced decision-making abilities, and reduces the incidence of risk, neglect and exploitation. The Public Advocate represents and advances the best interests of people with decision-making disabilities, both at hearings for the appointment of a guardian and in the community.

Key effectiveness indicator	Actual 2007-08	Actual 2008-09	Actual 2009-10	Target 2010-11	Actual 2010-11	Comment on significant variation
<p>Percentage of Guardians of Last Resort allocated in one day</p> <p>This indicator measures the timeliness of the Public Advocate in allocating a guardian to a represented person in order to make decisions on their behalf and protect them from neglect, abuse or exploitation. A guardian is appointed only when considered necessary, and when there is no one else suitable or available to take on the role.</p>	93%	91%	94%	95%	90%	N/A

Key efficiency indicator	Actual 2007-08	Actual 2008-09	Actual 2009-10	Target 2010-11	Actual 2010-11	Comment on significant variation
<p>Average cost of providing advocacy and guardianship services</p> <p>This indicator measures the average cost per case of providing advocacy and guardianship services on behalf of people with decision-making disabilities.</p>	\$2,582	\$2,229	\$1,851	\$1,900	\$1,610	The lower than target result is due to a greater than expected increase in the number of investigations and represented persons on guardianship orders.

Key effectiveness indicator	Description
<p>Guardian of Last Resort allocated in one day</p>	<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
<p>Average cost per case of providing Advocacy and Guardianship services</p>	<p>This indicator is calculated by dividing the total cost of providing advocacy, guardianship and administration services by the number of advocacy and guardianship services provided. The information for this indicator was extracted from the Department's activity based cost management system (Business Objectives) and the Public Advocate Case Management System (PACMAN).</p>

Ministerial Directives

Nil.

Other Financial Disclosures

See the Department of the Attorney General annual report.

Governance Disclosures

See the Department of the Attorney General 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 175ZE of the *Electoral Act 1907*:

Figure 23 Advertising

Adcorp and Whitepages: Government Gazette, community guardianship program, community education and recruitment advertising	\$12,634
TOTAL EXPENDITURE	\$12,634

Disability Access and Inclusion Plan Outcomes

See the Department of the Attorney General annual report.

Compliance with Public Sector Standards and Ethical codes

The Office of the Public Advocate, as part of the Department of the Attorney General, complied with the Public Sector Standards, the WA Code of Ethics and the Department's code of conduct. The code of conduct outlines the ethical principles, obligations and standards applying to staff. It aims to instil the values of "respect, integrity, unity and diversity, justice and collaboration" in all our people. The code specifies standards of behaviour and helps inform employees how to exercise judgement and accept personal responsibility in their professional roles.

In adhering to these policies, the Office of the Public Advocate made 11 conflict of interest declarations and reported one offer of gifts, hospitality or other benefits which exceeded a value of \$25.

In line with the Department of the Attorney General's ongoing commitment to improve staff awareness on ethical conduct and public standards, 98 per cent of Office of the Public Advocate staff completed on-line training in accountability and ethical decision-making in 2010/11.

Recordkeeping Plans

Records are maintained in accordance with the Department of the Attorney General's records keeping plans. For more details, please refer to the Department of the Attorney General annual report.

Government Policy Requirements

For information on substantive equality see the Department of the Attorney General annual report.

Occupational Safety, Health and Injury Management

For administrative purposes, Occupational Safety and Health is managed under Department of the Attorney General policies and procedures which are in accordance with legislative requirements and the Code of Practice 'Occupational Safety and Health in the WA Public Sector'.

The Office of the Public Advocate recognises its general duty of care obligations and is committed to providing a productive, safe and healthy work environment for all. The Office supports the work of managers and employees in identifying and managing safety and health issues in the workplace. As far as practicable, the goal is a workplace free of work-related harm, disease or injury. The Office complies with the injury management requirements of the *Workers Compensation and Injury Management Act 1981*.

Due to the relatively small size of the Office, there is no formal Occupational Safety and Health Committee. Staff are able, and encouraged, to raise occupational safety and health issues in regular team meetings. The Manager Corporate Services is responsible for investigating any issues raised and co-ordinating the reporting and claims process. During 2010/11 there were no fatalities and no lost time injuries.

During 2010/11 84 per cent of Office of the Public Advocate staff undertook the Department of the Attorney General's Occupational Health and Safety training (either in-person or via the on-line training system).

Appendix 1 Legislation

Legislative Authority

The Public Advocate's legislative authority is contained in the *Guardianship and Administration Act 1990*. The Act was proclaimed to come into full operation on 20 October 1992. The *Acts Amendment (Consent to Medical Treatment) Act 2008* amended the *Guardianship and Administration Act 1990* on 15 February 2010.

Related legislation

Other legislation relating to the circumstances and needs of people with a decision-making disability include:

State Administrative Tribunal Act 2004

Health Act 1911

Supreme Court Act 1935

Magistrates Court (Civil Proceedings) Act 2004

Public Trustee Act 1941

Disability Services Act 1993

Mental Health Act 1996

Community Protection (Offender Reporting) Act 2004

Criminal Law (Mentally Impaired Accused) Act 1996

Criminal Investigation (Identifying People) Act 2002

Criminal Investigation Act 2006

Carers Recognition Act 2004

The Public Advocate also complies with legislation that relates to the management and accountability requirements of Government, including:

Corruption and Crime Commission Act 2003

Electoral Act 1907

Equal Opportunity Act 1984

Financial Management Act 2006

Freedom of Information Act 1992

Occupational Safety and Health Act 1984

Public Interest Disclosure Act 2003

Public Sector Management Act 1994

State Records Act 2000

State Supply Commission Act 1991

Workers' Compensation and Rehabilitation Act 1981

Appendix 2 Publications

All Public Advocate publications are available online at www.publicadvocate.wa.gov.au and printed copies of all except the enduring power of attorney kit and guide, can be obtained from the Office of the Public Advocate.

Annual Report

Information sheets

- Introduction to the Guardianship and Administration System
- Role of the Public Advocate
- Role of the State Administrative Tribunal
- Guardianship
- Administration
- Sterilisation
- Public Advocate — Customer Complaints and Service Standards
- Enduring Power of Attorney
- Enduring Power of Guardianship
- Planning for the Future

Position statements

- Decisions About Treatment
- Restraint
- Role of the Public Advocate as Guardian of Last Resort in Accommodation Decisions
- Role of the Public Advocate as Guardian of Last Resort in Treatment Decisions
- Role of the Public Advocate as Guardian of Last Resort in Contact Decisions

Brochures

- Office of the Public Advocate
- New laws offering you choices to make an advance health directive and appoint an enduring guardian
- Community Guardianship Program
- Caring for and respecting older people
- Are you worried about a vulnerable adult who needs help making decisions?
(a brochure for Aboriginal people).

Enduring power of attorney and enduring power of guardianship information kits and guides

The kits and guides can be downloaded for free from the Office of the Public Advocate's website, www.publicadvocate.wa.gov.au, or purchased from the State Law Publisher, 10 William Street, PERTH, WA, 6000, sales@dpc.wa.gov.au or at selected newsagents.

Appendix 3 Glossary

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

Advance health directive: A document in which a person makes decisions about their future treatment.

Community-referred investigation: The investigation of any complaint or allegation made by an interested party that a person is in need of a guardian or administrator, or is under inappropriate guardianship or administration. This type of investigation is carried out under Section 97(1)(c) of the *Guardianship and Administration Act 1990*.

Enduring power of attorney: A means for competent people to appoint another person or agency to manage their property and/or financial affairs. Unlike an ordinary power of attorney, an enduring power of attorney authority continues even when the person granting it loses their capacity to make decisions for themselves.

Enduring power of guardianship: A document in which a person nominates an enduring guardian to make personal, lifestyle and treatment decisions on their behalf in the event that they lack full legal capacity in the future.

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

Individual advocacy: Investigating and 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.

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

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

Proposed represented person: Refers to the person for whom an application for appointment of a guardian or administrator is made.

Represented person: Refers to a person for whom a guardian or administrator has been appointed.

State Administrative Tribunal: An independent statutory tribunal that makes and reviews orders appointing guardians and administrators and considers applications for intervention into enduring powers of attorney, enduring powers of guardianship, advance health directives and related matters.

