



Office of the
PublicAdvocate

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

The Public Advocate of Western Australia
Annual Report 2011/12



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

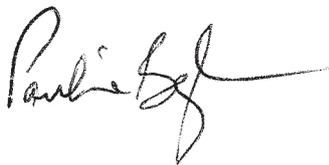


Hon Michael Mischin MLC
ATTORNEY GENERAL

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 2012.

This report records the operations and performance of the Office of the Public Advocate during 2011/12. 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.



Pauline Bagdonavicius
PUBLIC ADVOCATE
6 September 2012

Level 1
30 Terrace Road
EAST PERTH WA 6004
T: 1300 858 455
E: opa@justice.wa.gov.au
I: www.publicadvocate.wa.gov.au

Contents

OVERVIEW	5
Foreword	5
OVERVIEW OF THE AGENCY	7
Operational Structure	7
Organisational Chart.....	12
Performance Management Framework	13
AGENCY PERFORMANCE	14
Advocacy and Investigation.....	14
Guardianship.....	28
Systemic Advocacy.....	40
Implementing Legislative Change	47
Community Education.....	50
Corporate Services	55
SIGNIFICANT ISSUES IMPACTING THE AGENCY.....	57
DISCLOSURES AND LEGAL COMPLIANCE	59
Financial Statements	59
Key Performance Indicators	59
Ministerial Directives	61
Other Financial Disclosures	61
Government Disclosures	61
Other Legal Requirements.....	61
Government Policy Requirements	62
APPENDICES.....	63
Legislation.....	63
Publications	64
Glossary.....	65

Foreword

Meeting the Western Australian community's increasing need for advocacy and investigation and guardianship services is an ongoing challenge faced by the Office of the Public Advocate.

This report provides an overview of our work and the issues we face in working with vulnerable adults from 18 years of age to centenarians.

At 30 June 2012, the Public Advocate was guardian for over 20 per cent more people than at 30 June 2011 and new investigations rose by nearly 20 per cent during the year. This trend is consistent with the growth in demand for the Office's services in recent years.

In recognition of the growing demand, \$5.15 million of additional funding over four years was allocated to the Office of the Public Advocate in the 2011/12 State Budget. This funding started on 1 July 2011 and enabled the advocacy and investigation and guardianship teams to meet the growth in demand for their services during 2011/12.

Australia's ageing population and the prevalence of dementia continues to be a significant driving force behind the growth in demand for our services. The Public Advocate is also being appointed as guardian for a smaller, but growing number of people with a mental illness.

Of the new appointments of the Public Advocate as guardian in 2011/12, almost 40 per cent were for a person with dementia and at 30 June 2012, over 30 per cent of all guardianship orders appointing the Public Advocate were for a person with dementia. Similarly, over 40 per cent of the new investigations initiated in 2011/12 concerned a person with dementia.

An Access Economics study 'Keeping dementia front of mind: incidence and prevalence 2009-2050' estimates that by 2050, over 1.1 million Australians will have dementia. These projections suggest that the Office of the Public Advocate can expect demand for our services to continue to grow at a rate faster than the growth in population.

The community education function of the Office is vital in educating the community about their ability to plan for the future, by appointing substitute decision-makers before they lose capacity. We also provide education to community members and relevant service providers about the guardianship and administration system and the protection it offers adults with a decision-making disability.

In 2011/12, the Office delivered more than 100 education seminars across the State. The focus of the Office's community education remained the implementation of enduring powers of guardianship. Nearly 90 per cent of the seminars in 2011/12 covered the proper use and execution of this planning document.

As well as empowering individuals to appoint their own substitute decision-makers through an enduring power of guardianship and enduring power of attorney, the Office works to engage volunteers from the community to act as guardians.

At 30 June 2012, the community guardianship program had grown to 20 volunteer community guardians. Of these, 15 had been appointed by the State Administrative Tribunal as guardian, replacing the Public Advocate.

The Redress WA scheme was finalised in 2011/12. Throughout the process, the Public Advocate was involved in a total of 54 applications, 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.

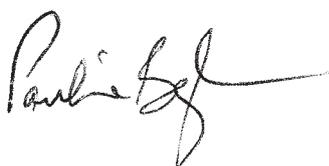
The Office continued to work with the People with Exceptionally Complex Needs Project, the Alliance for the Prevention of Elder Abuse and a range of Government and non-Government agencies who work to support the needs of people with a decision-making disability.

The work of the Office would not be possible without the input and support of a number of people.

In particular, I would like to highlight the support provided by the Department of the Attorney General through the Director General Cheryl Gwilliam.

The commitment of our volunteers, staff and management team cannot go unmentioned. Their consistent effort and professional approach has once again been integral to the Office's success this year.

I would also like to acknowledge the various Government agencies and community based organisations whose priority has been to meet the needs of people with a decision-making disability. The collaborative relationships that the Office has with a range of agencies are essential in the protection and promotion of the human rights of adults with a decision-making disability.



Pauline Bagdonavicius

PUBLIC ADVOCATE

Overview of the Agency

Operational Structure

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

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

In 2011/12 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 dementia, an intellectual disability, an acquired brain injury, or a mental illness.

Functions

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**

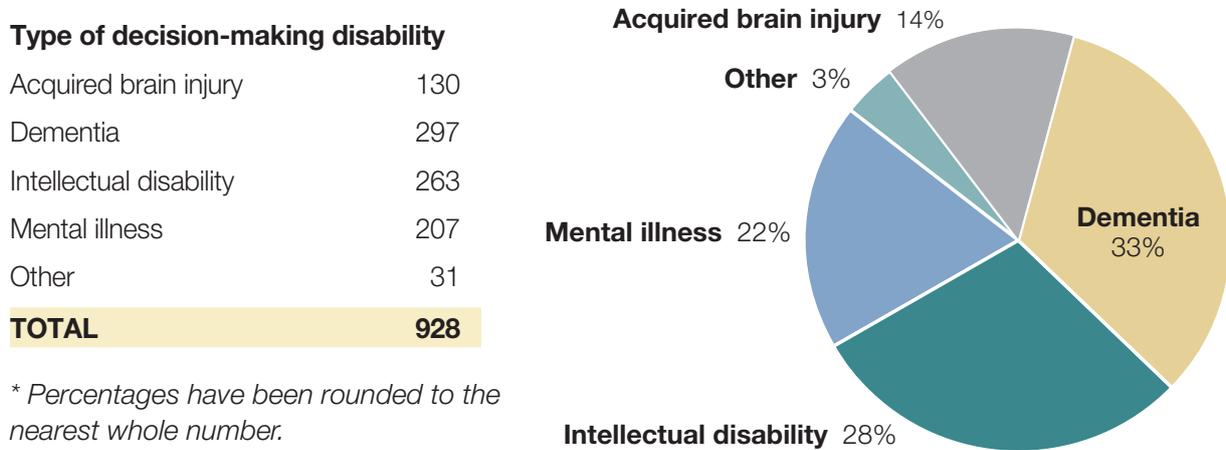
The views and wishes of the person concerned are sought to the extent possible and expressed in whatever manner, either at the time or gathered from the person's previous actions.

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 2012, 928 adults with a decision-making disability were represented by the Public Advocate as their guardian of last resort. Of these 928 adults – referred to as represented persons – 33 per cent had dementia, 28 per cent an intellectual disability, 22 per cent a mental illness, 14 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 2012



The number of people for whom the Public Advocate is guardian, has more than doubled over the past four years, from 380 in June 2008 to 928 in June 2012 (see Figure 2).

Figure 2 People under guardianship orders appointing the Public Advocate by type of decision-making disability as at 30 June 2008 to 30 June 2012

Type of decision-making disability	2008	2009	2010	2011	2012
Acquired brain injury	53	62	87	114	130
Dementia	136	157	195	249	297
Intellectual disability	120	156	176	221	263
Mental illness	62	86	114	154	207
Other	9	23	24	21	31
Number of people	380	484	596	759	928

The most significant demographic trend impacting on the growing rate of represented persons is the ageing of the population. Over the last four years, mental illness has also emerged as an area of growth.

Like most developed countries, Australia's population is projected to grow and age over the next 40 years. It is estimated that the proportion of the population aged 60 and over will rise to more than a quarter by 2050¹. 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.

¹ Access Economics, *Keeping dementia front of mind: incidence and prevalence* p.15.

Dementia

A 2009 study by Access Economics for Alzheimer's Australia 'Keeping dementia front of mind: incidence and prevalence 2009-2050' estimated that by 2012 there would be around 280,000 Australians with dementia. By mid century they estimate that the number will have reached over 1.1 million².

The report also predicts that the number of Western Australians diagnosed with dementia will grow to around 125,000 by 2050³. 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.

Intellectual disability

The most commonly reported disability in Western Australia for people who received services under the National Disability Agreement is intellectual disability.⁴ The Disability Services Commission of Western Australia funded and provided services to 16,846 people, of which 8,303 were Western Australians with intellectual disability as their primary condition in 2011/12. This accounted for 49 per cent of service users.⁵

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.⁶

In 2011/12 the Disability Services Commission funded and provided services to 772 Western Australians with an acquired brain injury reported as their primary disabling condition.⁷

Mental illness

In the 2007 National Survey of Mental Health and Wellbeing, it was estimated that approximately 20 per cent of all Australians aged 16-85 years had experienced mental disorders in the previous 12 months. The prevalence of mental disorders declines with age from more than one in four (26.4 per cent) in the youngest age group (16-24 years), to around one in 20 (5.9 per cent) in the oldest age group (75-85 years).⁸

2 Access Economics, *Keeping dementia front of mind: incidence and prevalence* p.31.

3 Access Economics, *Keeping dementia front of mind: incidence and prevalence* p.76.

4 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.

5 Disability Services Commission, 2012. 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 Australian Institute of Health and Welfare 2007. *Disability in Australia: acquired brain injury*. Bulletin no.55. Cat. No. AUS 96. Canberra:AIHW, p.1

7 Disability Services Commission, 2012. 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.

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

This remains consistent with earlier reports such as the 1997 National Mental Health and Wellbeing Survey,⁹ in which it was estimated that around 19 per cent of people in Western Australia had experienced a mental disorder in the previous 12 months, with the prevalence being highest amongst those aged 18-24 years and decreasing with age. Six 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 2004.¹⁰

Secondary stakeholders

The people and organisations who provide services such as accommodation, 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 capacity¹¹)
- paid carers
- government and non-government organisations.

Potential stakeholders

Adults 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 2011/12 were supported by:

- approved establishment of 42.8 (full-time equivalent) staff
- expenditure of \$5,481,860¹²

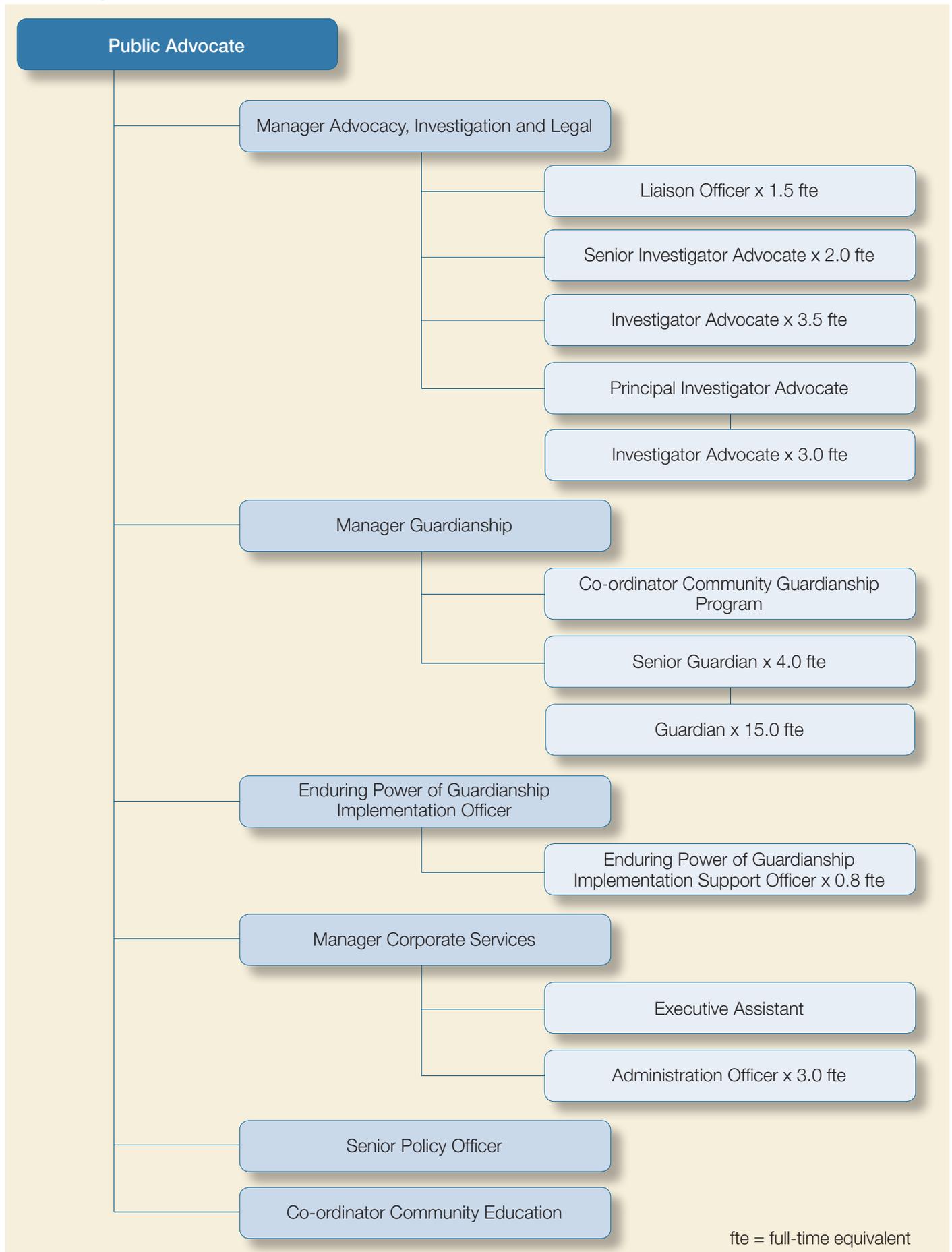
9 This survey was repeated in 2007 but no State or Territory data was obtained.

10 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.

11 *Carers Recognition Act 2004*.

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

Organisational Chart



Performance Management Framework

The performance of the Office 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:

Results-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 a greater focus on achieving results in key service delivery areas for the benefit of all Western Australians.

Office of the Public Advocate services

Within the above framework, the Office of the Public Advocate provides access to advocacy, guardianship and administration services which protect and promote the financial interests and welfare of adults with a decision-making disability by providing:

- advocacy and investigation services
- advocacy for the appropriate appointment of guardians and administrators and appropriate interventions in relation to enduring powers of attorney and enduring powers of guardianship
- 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 in 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 2011/12 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.

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 provision of liaison officers, who conduct brief investigations and provide 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 an 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 a 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 2011/12, the Public Advocate carried out 1,217 investigations into the personal or financial welfare of adults with a decision-making disability. These included new matters and matters carried over from 2010/11. Of these, 1,071 needed investigation and advocacy services relating to applications for, or reviews of, administration or private guardianship orders before the State Administrative Tribunal.

The other 142 were referred directly to the Public Advocate by an individual or community-based organisation.

An additional 576 preliminary investigations were carried out by liaison officers.

New investigations (as opposed to matters carried forward from previous years), accounted for the majority of investigations. In 2011/12 a total of 980 new investigations were carried out. Of these new investigations, 884 related to applications before the State Administrative Tribunal and 96 were referred to the Office of the Public Advocate by an individual or community-based organisation.

Investigations referred by the State Administrative Tribunal

The 884 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 administration or private guardianship orders.

In previous years the Office of the Public Advocate included in its investigation statistics, guardianship order reviews where the Public Advocate was appointed as guardian, to enable tracking of these matters in its case management system. An enhancement to the case management system in 2010/11 meant that these matters could be captured separately. In 2011/12 therefore, these review of guardianship orders have been captured in the guardianship statistics and are reported in that section of the report.

In order to get a true reflection of the growth in demand for new investigations therefore, guardianship review figures need to be deducted from the total number of investigations recorded last financial year. This shows that new investigations have risen from 751 in 2010/11 to 884 in 2011/12 – representing an increase of 17.7 per cent.

Allowing for the deduction of matters concerning guardianship reviews where the Public Advocate is appointed, investigations have more than doubled over the last seven years.

The State Administrative Tribunal requested the attendance of an investigator advocate at 142 urgent hearings in 2011/12, in comparison to 120 the previous year, representing an 18.3 per cent increase. 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.

Investigator advocates are confronted with a range of issues in their investigations. The following case titled 'Protecting parents with a decision-making disability, who have challenging children', is an example of the multifaceted nature of the work of an investigator advocate and the skills they must have in order to identify and respond to issues which arise in the course of their investigations. An awareness and knowledge of the role and legislative responsibilities of other agencies is critical to the work of investigator advocates.

Case Study

Protecting parents with a decision-making disability, who have challenging children

Ms A is a 42 year old woman with an acquired brain injury.

The Public Advocate received a referral from the State Administrative Tribunal to investigate whether Ms A needed a guardian to be appointed to make decisions on her behalf.

Ms A lived in a house which she owned. Her two children also lived with her – one who was under 10 years of age and the other who was reaching adulthood.

The Tribunal had received information alleging that Ms A was being financially and physically abused by her children and that her home was being destroyed by various young people who visited her eldest child.

By talking to various service providers who provided a range of support services for Ms A, the investigator advocate was able to establish that numerous staff had witnessed Ms A being abused. They also reported that Ms A was often stressed and concerned about what was happening in her home but appeared unable to implement any changes to make her home safer, or to get her children to modify their behaviour.

Ms A was torn between her role as mother and her own protection. Being a mother was obviously very important to her.

The investigation revealed that various agencies which provide support to young people had not been engaged to assist Ms A or her family. She was essentially left with limited assistance in managing her challenging situation. In addition to this, Ms A was reluctant to admit that she could not manage and that she was being treated badly by her children.

Just prior to the investigator advocate visiting Ms A, she was assaulted by her eldest child and another young person who was visiting the home. Ms A fled her home to stay with relatives.

The investigator advocate went to see Ms A at her relative's home and decided that a notification to the Department for Child Protection was required, informing them that young people were staying in a house without any parental supervision and were therefore at risk.

Ms A was encouraged to make an official complaint to the Police about the assault. Eventually she made this complaint, after which the Police and Department for Child Protection became engaged in the situation. They visited Ms A's home and evicted the young people who were staying there and Ms A's youngest child was placed in the care of the Department for Child Protection.

(continued)

Case Study (continued)

The Department for Child Protection then made an application for a protection order to the Children's Court. The outcome of the application is yet to be determined.

With the assistance of the Police and the Department for Child Protection, Ms A was able to apply for restraining orders against various young people, including her eldest child, so they are not legally able to visit her home.

The result of the investigation was that Ms A felt safe enough to move back into her home. She also engaged appropriate services which in combination with her family, provide her with adequate support. Therefore there was no need for a guardian to be appointed for Ms A.

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

Liaison officers

The role of the Office of the Public Advocate's liaison officers, is a significant one. They provide the State Administrative Tribunal with advice regarding applications it receives and they make recommendations to the Tribunal about the options available, including referral to the Public Advocate for further investigation.

The liaison officers advise and liaise with Tribunal Members, Tribunal administrative staff, family members, service providers and other interested parties involved in the application process.

Since the State Administrative Tribunal began operating in 2005, the Office of the Public Advocate's liaison officers have strengthened the relationship and communication between the two agencies.

Over the past six years, referrals to the liaison officers have more than doubled, from 270 in 2005/06 to 576 in 2011/12.

The number of referrals from the Tribunal remained static between 2010/11 to 2011/12. The liaison officers conducted preliminary investigations into 576 applications for guardianship, administration and intervention in an enduring power of attorney and enduring power of guardianship.

Enduring powers of guardianship were introduced in February 2010. In 2011/12, the liaison officers were involved in nine investigations regarding possible intervention into existing enduring power of guardianship documents.

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 2011/12, 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 142 such referrals were reviewed by the Office in 2011/12, representing an increase of 36 per cent from the previous year. Of those, 71 were closed during the financial year and 71 remained open at 30 June 2012. 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.

Advocacy

In addition to conducting investigations, it is the role of investigator advocates to advocate in the best interests of people for whom a guardianship and/or administration order is being proposed (proposed represented persons), at hearings before the State Administrative Tribunal. In 2011/12, they did so at 684 hearings, which is similar to the previous year.

Collaboration with other States and Territories

Throughout the year, both the guardianship team and the advocacy and investigation team were contacted by interstate counterparts regarding vulnerable adults who were either under guardianship orders in that State or Territory, or were the subject of an application proposing that they have a guardian appointed. These people had left their State or Territory without notice and were reported to be residing in Western Australia.

Where possible, the Office tries to assist its counterparts to ensure the safety and protection of these vulnerable adults. The following case study titled 'How we can help – inter jurisdictional co-operation', is one such example.

Case Study

How we can help – inter jurisdictional co-operation

Mr B is a 36 year old man who has been diagnosed with bi-polar disorder.

While under guardianship and administration orders appointing the Victorian Public Advocate and Public Trustee, Mr B left the mental health facility where he was an involuntary patient, and travelled to Western Australia.

The Victorian Office of the Public Advocate sought the Western Australian Public Advocate's co-operation, to locate Mr B and investigate his health and general wellbeing, given his unpermitted release from care.

Under arrangements which have been put in place in accordance with the *Guardianship and Administration Act 1990* (the Western Australian legislation), the Victorian guardianship order is automatically recognised in Western Australia, therefore the Office was able to act immediately.

An investigator advocate from the Office started making enquires and gathered information from Mr B's parents, the guardian from Victoria and the Western Australian Police.

The investigator advocate discovered that Mr B had been charged by Western Australian Police for minor drug offences and was to appear in Court. Mr B had left the court by the time the investigator advocate arrived, but he was able to speak with the Community Forensic Mental Health Team and court officers, about Mr B. The investigator advocate was given an address where Mr B was staying.

The investigator advocate visited Mr B and assessed his health and general safety. Referrals were made to relevant service providers to protect his financial and welfare needs. The investigator advocate also encouraged Mr B to contact his parents.

Throughout the investigation, the investigator advocate kept the guardian in Victoria informed of developments.

Having built a rapport with Mr B, the investigator advocate arranged a formal interview. During this interview Mr B was able to adequately and articulately explain his circumstances, including a falling out with his parents, the terrible side effects of anti-psychotic medications and his motivation for leaving Victoria. By the time this interview took place Mr B had re-engaged with his parents and expressed that he was enjoying a renewed "clarity of mind".

A hearing in Victoria to review his guardianship and administration orders was scheduled for later in the year. The investigator advocate encouraged Mr B to return to Victoria and attend the hearing, which he did.

(continued)

Case Study (continued)

A formal report was prepared by the investigator advocate which concluded that Mr B was able to make reasoned decisions in the best interests of his health and safety. The report was included at the review hearing in Victoria, resulting in the guardianship order being revoked and the administration order was extended for another six months.

After the hearing Mr B called the Office's investigator advocate and thanked him for everything he had done. Mr B told the investigator advocate that his life was back on track.

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 2011/12, 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.

The information collected by this Office indicates that elder abuse was a concern in 70 investigations, and of those 73.5 per cent related to financial abuse (see Figure 6). This abuse occurred in the absence of a substitute decision-maker and by a person who saw the opportunity to exploit an individual. Often this occurs where a person is socially isolated or dependent on their family for support.

This Office looks at the importance of balancing the possibility of abuse with the protection afforded by appointing someone to oversee the individual's care and support. The case study at the end of this section, titled 'Opportunistic financial and social exploitation' demonstrates how a lack of protection can have very adverse consequences.

Transition of young people leaving State care

The Office of the Public Advocate continues to work closely with the Department for Child Protection in the early identification of young people's needs, to enable a smoother transition out of the Department for Child Protection's care.

The demand for this work continues to grow. In 2011, the growth in demand was recognised, with additional resources used to create a new position in the advocacy, investigation and legal team – a principal investigator advocate. The position was filled in August 2011.

The primary role of this position is to work collaboratively with the Department for Child Protection and other related service providers, to assist in the planning for young people with a decision-making disability, who are transitioning from State care.

The principal investigator advocate attends leaving care planning meetings and provides advocacy at the State Administrative Tribunal, where applications have been made for the appointment of a guardian and/or administrator.

During the year, the principal investigator advocate was involved in leaving care planning meetings for 30 young people aged 16 years and over. This involvement is consistent with the memorandum of understanding between the two agencies.

In 2011/12, 24 applications for a guardian and/or administrator were considered by the State Administrative Tribunal, for 17 young people (under 18 years of age) who were involved with the Department for Child Protection. The Public Advocate was appointed as guardian for nine of these young people.

In 2011/12 the State Administrative Tribunal heard a case regarding a young man (under 18 years of age) who had a decision-making disability and was transitioning out of the Department for Child Protection's care. The case looked at the issue of whether his foster parents (who received Government funding to compensate the cost of fostering him) could be appointed as his guardian under the *Guardianship and Administration Act 1990*, because the legislation does not allow for paid carers to be appointed.

The Tribunal found that a foster parent should be recognised in the hierarchy of people responsible for making treatment decisions (on behalf of an adult with a decision-making disability), and therefore, while the foster parents could not be appointed as the young man's guardian, they could legally make treatment decisions on his behalf, without the need for a guardianship order.

Court referrals

The Children's, Family, 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 2011/12 there were eight referrals received from two of the courts.

The Public Advocate received six requests from the Children's Court to provide advocacy for parents with a decision-making 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.

The Office received two referrals from the Family Court of Western Australia in regard to the appointment of the Public Trustee as case guardian or 'next friend' to ensure people were adequately represented regarding property matters.

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.

Case Study

Opportunistic financial and social exploitation

Mrs C is a 57 year old woman with an acquired brain injury.

The Office of the Public Advocate received a report from a service provider who was concerned about a friendship that was developing between Mrs C and someone she had met at her local shopping centre.

The service provider reported that Mrs C was not paying her utility bills, she had started refusing services and was isolating herself from a number of close friends. She had also indicated that she was giving money to her new friend.

The service provider was concerned that Mrs C did not have full capacity and was therefore at risk of exploitation and abuse. The service provider felt that it was likely that this new friend was responsible for Mrs C's changes in behaviour.

The Office's investigator advocate attempted to gather information from Mrs C but found it was difficult to meet with her on her own, as Mrs C's friend was always present. In addition, when the investigator advocate called Mrs C, her friend often answered the phone, or could be heard in the background coaching responses to questions.

The investigator advocate spoke to some of Mrs C's other friends who also reported that she had talked about giving money to her new friend to help her out with some financial difficulties. They added that Mrs C had inherited some money when her mother passed away and received a payout following a car accident. Mrs C's friends estimated that she might have had about \$100,000.

Mrs C's friends also told the investigator advocate that Mrs C was unable to read or write and she had a history of depression and mental illness. More significantly, she had previously been able to manage her finances and would not have given money to others.

(continued)

Case Study (continued)

The investigator advocate also discovered that Mrs C had recently been admitted to hospital. When her friends visited her in the hospital she told them that her new friend was in control of her money. Mrs C said she had given her new friend \$70,000 and her key card, so that she could look after her bills while she was in hospital, but that the friend was now refusing to return the money or the key card to her.

The investigator advocate felt that Mrs C was at risk and in need of an administrator. The Public Advocate therefore made an application to the State Administrative Tribunal for the appointment of an administrator.

As a result the Public Trustee was appointed as Mrs C's administrator, to manage her finances. The administrator confirmed that while Mrs C previously had significant funds, these had been depleted. Unfortunately, there was no evidence to prove that the funds had gone to Mrs C's new friend, as there was simply a series of large cash withdrawals.

It was also uncovered that a loan agreement had been signed for the purchase of a new car in Mrs C's name, the repayments of which were in arrears. The Public Trustee's administrator was able to demonstrate that Mrs C had not initiated this contract, and should not be responsible for the repayments.

The administrator also established a budget for Mrs C to make sure her bills were paid and she received a weekly allowance for food.

Would an enduring power of attorney have made a difference?

In this scenario, if Mrs C made an enduring power of attorney while she had capacity, appointing someone who she knew well and trusted to manage her finances, the outcome most probably would have been a lot better.

While she may have lost some money to this new friend, her attorney may have been able to intervene more quickly in the situation, putting safeguards in place to prevent Mrs C from losing all of her savings.

A further benefit of early intervention may have been in stopping the development of a 'friendship' which was based on exploitation, before it progressed.

Not long after the Public Trustee's appointment as Mrs C's administrator, her friend stopped visiting. Mrs C was unable to understand why she stopped visiting and was distressed to lose contact with the person who she had come to rely on for social contact. Mrs C can not understand that her friend no longer has access to her money and therefore has no motivation to maintain a relationship with her.

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

Our Customers

Of the 884 new matters referred to the Public Advocate for investigation in 2011/12, 377 of them (43 per cent) involved a person with dementia, while 19 per cent had a mental illness, 17 per cent an acquired brain injury, 14 per cent an intellectual disability and seven 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 72 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 28 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 a small number of applications, where an enduring power of guardianship had been made, went to the State Administrative Tribunal. Generally these focused on the capacity of the person to make the power and whether (or not) the enduring guardian was acting in the person's best interests.

People with a decision-making disability are vulnerable to abuse. Allegations of abuse were made in 123 of the 884 new investigation matters received by the Office of the Public Advocate in 2011/12 (see Figure 5). Again this year, the most commonly reported form of abuse was financial, accounting for 63 per cent of all allegations. This was followed by physical abuse (12 per cent), psychological abuse (11 per cent), sexual abuse (seven per cent) and neglect (six per cent), some of which relates to historical abuse which was revealed during the investigation.

In 70 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 (73.5 per cent) than other reported forms of abuse.

Most new investigations (76.4 per cent) were carried out in the metropolitan area (see Figure 7). Seven per cent of the 884 new matters referred for investigation in 2011/12 were regarding a person of identified Aboriginal or Torres Strait Islander descent (see Figure 8).

Figure 3 Profile of new investigations by type of decision-making disability 2011/12

Type of decision-making disability	
Acquired brain injury	150
Dementia	377
Intellectual disability	128
Mental illness	168
Other	61
TOTAL	884

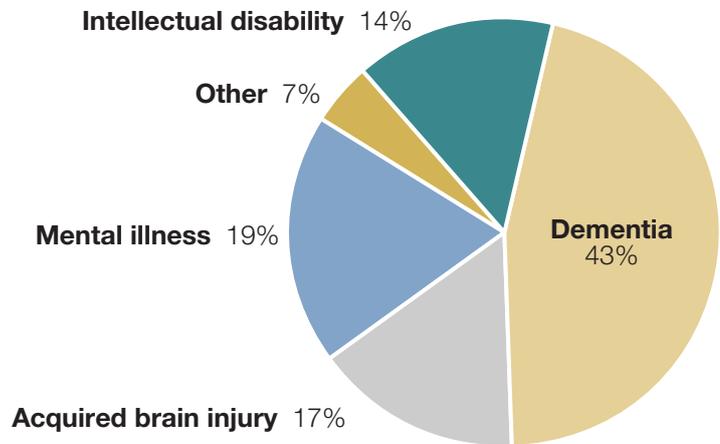
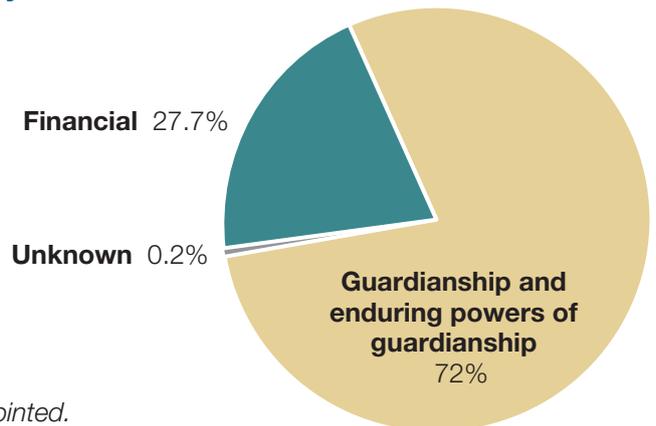


Figure 4 Profile of new investigations by issue 2011/12

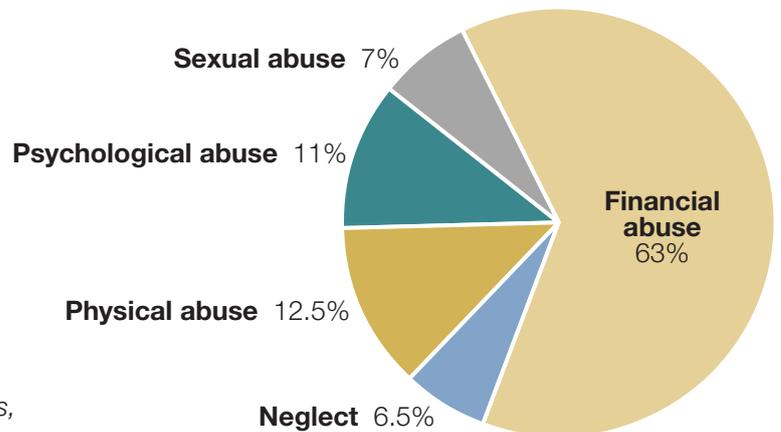
Issue	
Financial (administration and enduring powers of attorney)	245
Guardianship* and enduring powers of guardianship	637
Unknown	2
TOTAL	884



**including reviews of guardianship orders where someone other than the Public Advocate was appointed.*

Figure 5 Profile of new investigations alleging abuse by type of abuse 2011/12 (including statistics of elder abuse)

Abuse type	123 people*
Financial abuse	97
Neglect	10
Physical abuse	19
Psychological abuse	17
Sexual abuse	11
TOTAL	154

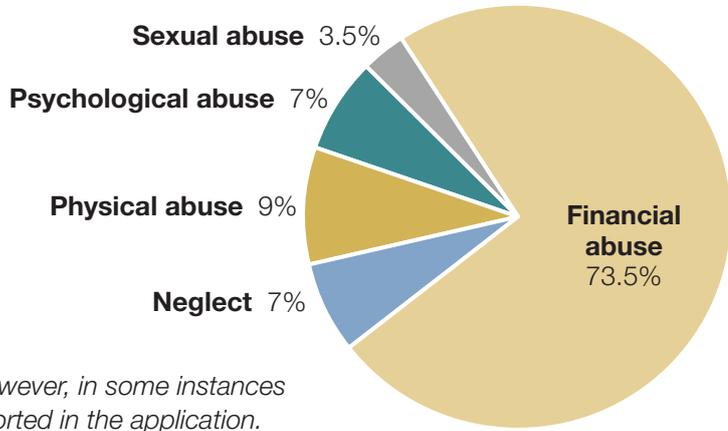


**Abuse was alleged in 123 investigations, however, in some instances more than one alleged abuse type was reported in the application.*

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

Figure 6 Profile of new investigations alleging elder abuse (aged 65 or older) by type of abuse 2011/12

Abuse type	70 people*
Financial abuse	64
Neglect	6
Physical abuse	8
Psychological abuse	6
Sexual abuse	3
TOTAL	87



*Abuse was alleged in 70 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 2011/12

Geographical location	
Gascoyne	1
Goldfields-Esperance	16
Great Southern	27
Kimberley	9
Mid-West	13
Peel	32
Perth Metro	675
Pilbara	3
South West	32
Wheatbelt	24
Other	52
Total	884

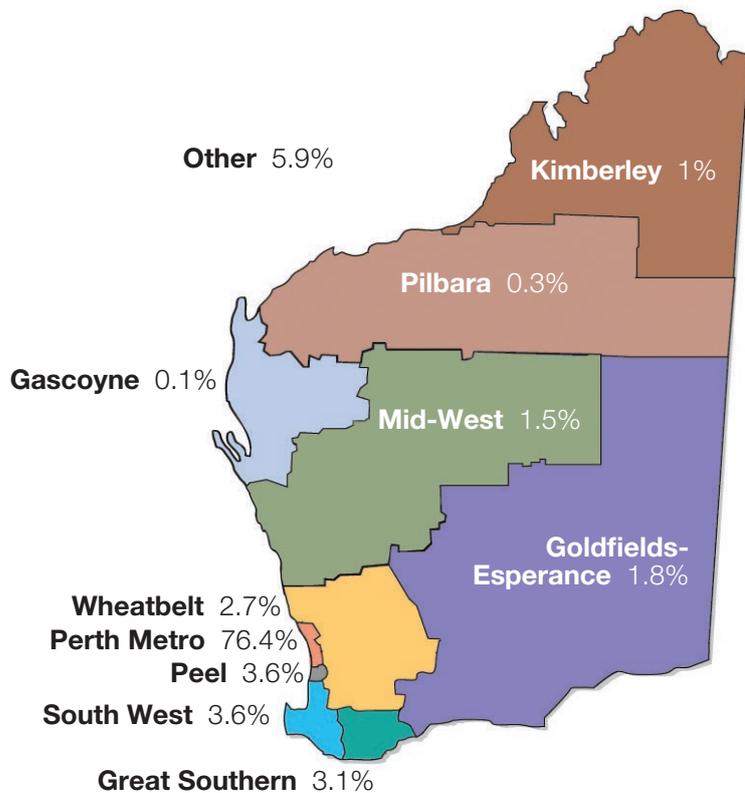


Figure 8 Profile of new investigations by identified Aboriginal or Torres Strait Islander descent from 2005/06 to 2011/12

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
2011/12	884	818	66	7

*ATSI = Aboriginal or Torres Strait Islander

Guardianship

The Public Advocate makes personal, lifestyle and treatment¹³ 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 2011/12 there were 347 new appointments of the Public Advocate as guardian of last resort, compared to 330 new appointments in 2010/11.

At 30 June 2012, the Public Advocate had responsibility as guardian of last resort for 928 adults with a decision-making disability, compared to 759 at 30 June 2011, representing an increase of 22.3 per cent.

During the year, the Public Advocate made personal, lifestyle and treatment decisions for 1,351 people compared to 1,011 in 2010/11. 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 and/or physical restraint
- acting as 'next friend' in relation to child protection matters on behalf of represented persons.

¹³ Treatment refers to any medical, surgical, or dental treatment or other health care, including a life-sustaining measure or palliative care.

For the fifth year running, people with dementia accounted for the largest proportion of new appointments of the Public Advocate as guardian of last resort. Of the 347 people newly appointed in 2011/12, 136 had dementia (39.2 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 95 per cent of cases. This meets the 95 per cent target set for this measure of timeliness.

To meet the needs of the Office's 127 represented persons of identified 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.

Advocacy at reviews of guardianship orders appointing the Public Advocate

Guardians from the Office of the Public Advocate attend State Administrative Tribunal hearings and advocate in the best interests of people for whom a guardianship order has been made, in which the Public Advocate has been appointed as their guardian.

In 2011/12, the guardianship team received 291 review referrals from the State Administrative Tribunal, for which they attended Tribunal hearings and advocated in the best interests of the represented person.

Community guardianship program

The Office of the Public Advocate's community guardianship program matches adults who currently have the Public Advocate appointed as their guardian, with volunteers from the community who are willing and able to take over that guardianship role.

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

At 30 June 2012, the program had 20 volunteer community guardians. Of these, 15 had been appointed by the State Administrative Tribunal as their represented person's guardian, replacing the Public Advocate and providing a more personal level of involvement in their life.

Since the program started in 2005, every volunteer guardian who has been appointed by the Tribunal continues to hold that legally appointed role.

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 2011/12 some 59 of the 347 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 challenges to the Office of the Public Advocate.
- In 2011/12 guardians and investigator advocates made more than 30 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 Office of 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 may involve the Police, Disability Services Commission, the Department of Corrective Services, Legal Aid, Mental Health Commission and the Department of Health's 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 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

Returning to Country and Kin

Mr D is a 58 year old Aboriginal man, with alcohol related brain damage and insulin dependent diabetes.

Mr D was admitted to Royal Perth Hospital after he lapsed into a diabetic coma. A social worker at the hospital made an application to the State Administrative Tribunal for the appointment of a guardian.

The Tribunal appointed the Public Advocate as Mr D's guardian with limited authority to make treatment and accommodation decisions. The Tribunal did so because Mr D was unable to give informed consent for his medical treatment, he was self-neglecting in the community and his family members, who live in a remote area of Western Australia, could not be contacted.

Mr D's guardian liaised with his treating team and made treatment decisions for him while he was in hospital. The guardian was also involved in his hospital discharge planning.

Mr D was reviewed by the hospital's Aged Care Assessment Team and found to be in need of low level aged care accommodation. The hospital's social worker advised the guardian that there was a vacancy in a Perth facility where Mr D's brother was located. Mr D was reluctant to move into the facility but eventually agreed to be placed there.

Mr D and his brother were happy to be reunited, however, they were unhappy with their placement in an aged care facility in Perth. Mr D repeatedly expressed his desire to "return to his lands" and to be with his family.

The guardian, with the assistance of the facility manager, made enquiries regarding Mr D and his brother being accommodated in an appropriate facility in their home town. Some of Mr D's family expressed great enthusiasm for their return, despite having been estranged for many years.

After a great deal of planning and persistent advocacy by Mr D's guardian, he and his brother were relocated to an appropriate aged care facility on their lands and closer to their family.

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

Case Study

Positive Medical Outcomes

Mr E is a 60 year old man with a mild intellectual disability who has been diagnosed with stomach cancer.

Against medical advice, Mr E discharged himself from hospital and subsequently became extremely unwell at home. He refused intravenous antibiotics to manage his badly infected legs, preferring Silver Chain assistance in his home.

Mr E had limited insight regarding his decision-making disability and was unable to acknowledge how serious his condition was to his long-term health. He conceded that he had “something like a cancer” but did not believe he could die from his condition because he had faith in God. Mr E was therefore resistant to any medical treatment because, in his view, he was not unwell.

Gravely concerned about her father, Mr E’s daughter made an application to the State Administrative Tribunal for the appointment of a guardian.

The Tribunal appointed the Public Advocate as Mr E’s guardian, with the authority to make treatment decisions. Mr E was extremely angry with his daughter and other family members regarding the appointment of a guardian.

Mr E’s quality of life decreased. He started spending all his time, including sleeping and eating, in a chair in his lounge room. His family became highly distressed and asked the guardian for help. Mr E’s family told the guardian they would prefer that their father have active treatment and surgery for his stomach cancer, if it would improve his quality of life, but that they would accept the guardian’s decision.

The Public Advocate decided to pursue a surgical option, which was recommended by Mr E’s doctor. However, it was suspected that Mr E would need to be involuntarily admitted to hospital because of his refusal to accept treatment. The Public Advocate’s decision caused concerns among physicians as Mr E was clearly refusing surgery. The Public Advocate sought specialist opinions in relation to what was medically in Mr E’s best interests.

While these discussions and assessments were being undertaken, Mr E’s health deteriorated as he was having difficulties keeping his food down. Reluctantly, Mr E agreed to go by ambulance to hospital, for an urgent assessment, when he was told Police would be called if he refused to go.

Doctors performed a laparoscopic investigation on Mr E, which revealed that he needed abdominal surgery. The Public Advocate consented to the surgery on Mr E’s behalf.

Mr E is now residing in a transitional aged care bed until he is fully recovered from surgery. It is hoped that he will be able to return to living independently in the community with support from his family.

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

Case Study

People with exceptionally complex needs project

Mr F is a 20 year old man with a diagnosis of schizophrenia. He has an extensive criminal history and abuses alcohol and illicit drugs.

When the Public Advocate was appointed as his plenary guardian with authority to make all personal, lifestyle and treatment decisions, he was in prison.

As Mr F had a range of complex issues, including schizophrenia, an acquired brain injury, an intellectual disability and a history of significant substance abuse, the Public Advocate referred him to the people with exceptionally complex needs project.

The people with exceptionally complex needs project is a whole-of-government project which provides a co-ordinated service delivery response to improve the well-being and quality of life for individuals with exceptionally complex needs.

After being accepted into the project, the co-ordinator of the project started working on engaging support services and identifying suitable accommodation for Mr F.

The project co-ordinator visited Mr F's home town, met with service providers and viewed suitable properties for him to move into with a live-in carer when he was released from prison. The co-ordinator found a two bedroom unit which met Mr F's needs but unfortunately support services were unable to engage a suitable live-in carer over a 12 month period. Eventually, with the consent of his delegated guardian, Mr F was released from prison to live with his father in suitable housing.

The support provided by the project was critical in co-ordinating teleconferences; engaging community mental health services; sourcing furniture; applying for accommodation funding and negotiating with the Department of Housing for a suitable house for Mr F and his father.

Mr F's situation greatly improved as a result of the Public Advocate's involvement and his subsequent participation in the people with exceptionally complex needs project.

After a period of time, Mr F was limiting his alcohol consumption, not abusing illicit drugs, engaging with support services, being compliant with his medications and he had not re-offended, therefore his involvement with the people with exceptionally complex needs project ended.

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 2011/12 guardians from the Office of the Public Advocate were involved in 291 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 291 reviews, 83 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 180 guardianship orders were closed during 2011/12.

Our Customers

The most common issue leading to the appointment of the Public Advocate as guardian of last resort continues to be treatment decisions, with 24.2 per cent of all guardianship orders appointing the Public Advocate at 30 June 2012 being for these decisions (see Figure 9).

The high number of orders appointing the Public Advocate to make treatment decisions can be attributed to these people not having a spouse, a child over the age of 18, a relative or a friend to act on their 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 2012, 19.3 per cent of all guardianship orders appointing the Public Advocate, authorised decision-making regarding with whom the represented person lives, and 20.8 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 347 new appointments of the Public Advocate as guardian of last resort in 2011/12:

- The most common type of decision-making disability was dementia, with 136 (39.2 per cent) of the newly appointed people affected by this condition. This was followed by 84 people (24.2 per cent) with a mental illness, 58 people (16.7 per cent) with an acquired brain injury, 57 people (16.4 per cent) with an intellectual disability and 12 people (3.5 per cent) with another disability (see Figure 10).
- 288 people lived in the Perth metropolitan area and 59 lived in regional areas (see Figure 12).
- Abuse of a person with a decision-making disability was a factor in 77 cases (22.2 per cent) and of these, 37 (48.1 per cent) were 65 years of age or older (see Figures 13 and 14).

Of the 928 adults with a decision-making disability for whom the Public Advocate was appointed as guardian at 30 June 2012, 127 were of identified Aboriginal or Torres Strait Islander descent (see Figure 16) and 124 were from a culturally diverse background.¹⁴

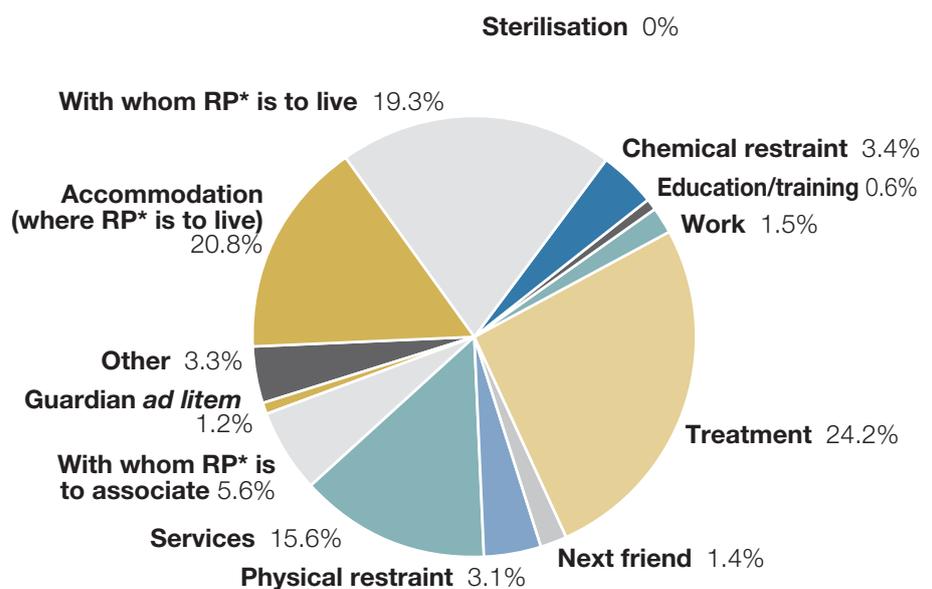
The Public Advocate maintains a 24 hour contact service so that urgent matters can be dealt with after hours. The enquiries that are responded to are either in relation to making an urgent decision for a represented person where the Public Advocate is the appointed guardian, or a concern is raised that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

In 2011/12 guardians took 571 after-hour calls which took 152 hours.

Figure 9 Functions given to the Public Advocate for all guardianship orders as at 30 June 2012

Accommodation (where RP* is to live)	651
Chemical restraint	106
Education/training	19
Guardian <i>ad litem</i>	36
Next friend	44
Physical restraint	98
Services	488
Sterilisation	0
Treatment	756
With whom RP* is to associate	175
With whom RP* is to live	603
Work	46
Other	104
Total	3126

*RP = represented person



¹⁴ 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 2011/12

Type of decision-making disability	
Acquired brain injury	58
Dementia	136
Intellectual disability	57
Mental illness	84
Other	12
TOTAL	347

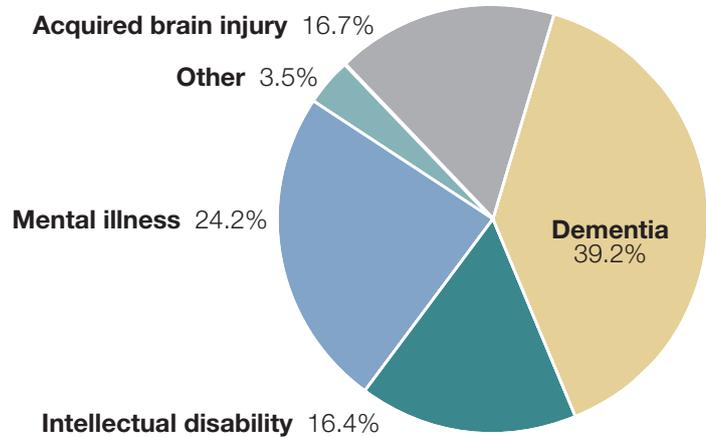


Figure 11 Profile of all guardianship orders appointing the Public Advocate by type of decision-making disability as at 30 June 2012

Type of decision-making disability	
Acquired brain injury	130
Dementia	297
Intellectual disability	263
Mental illness	207
Other	31
TOTAL	928

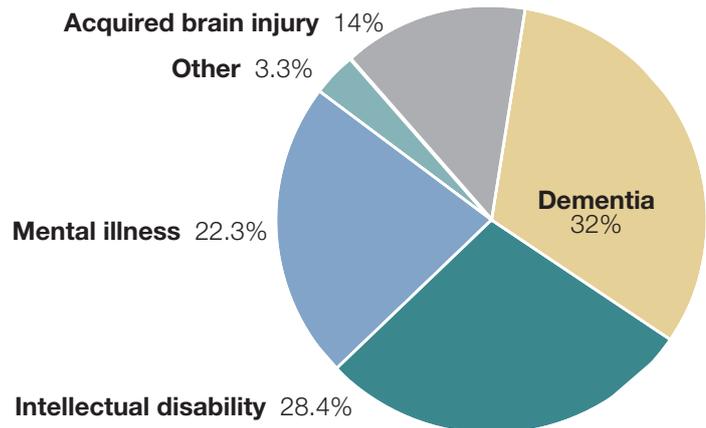


Figure 12 Profile of new guardianship orders appointing the Public Advocate by geographical location 2011/12

Geographical location	
Gascoyne	1
Goldfields-Esperance	5
Great Southern	9
Kimberley	2
Mid-West	2
Peel	10
Perth Metropolitan	288
Pilbara	3
South West	12
Wheatbelt	9
Other	6
Total	347

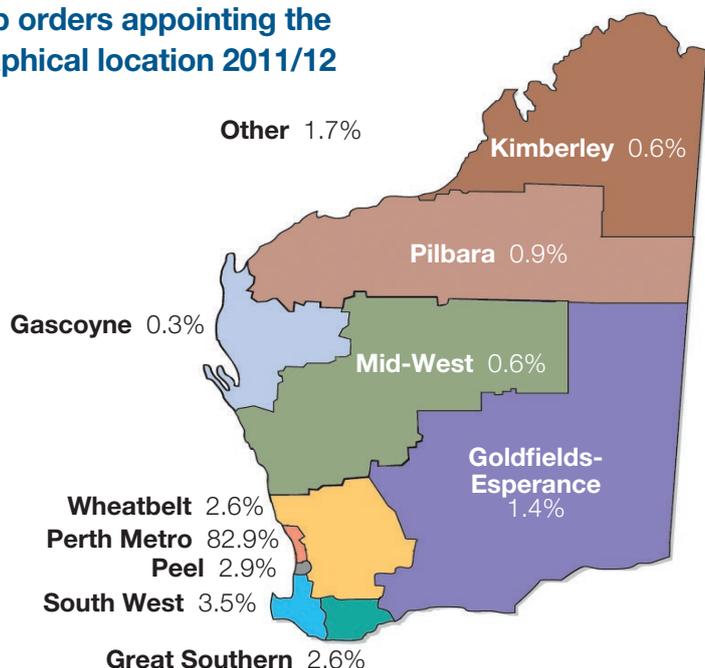
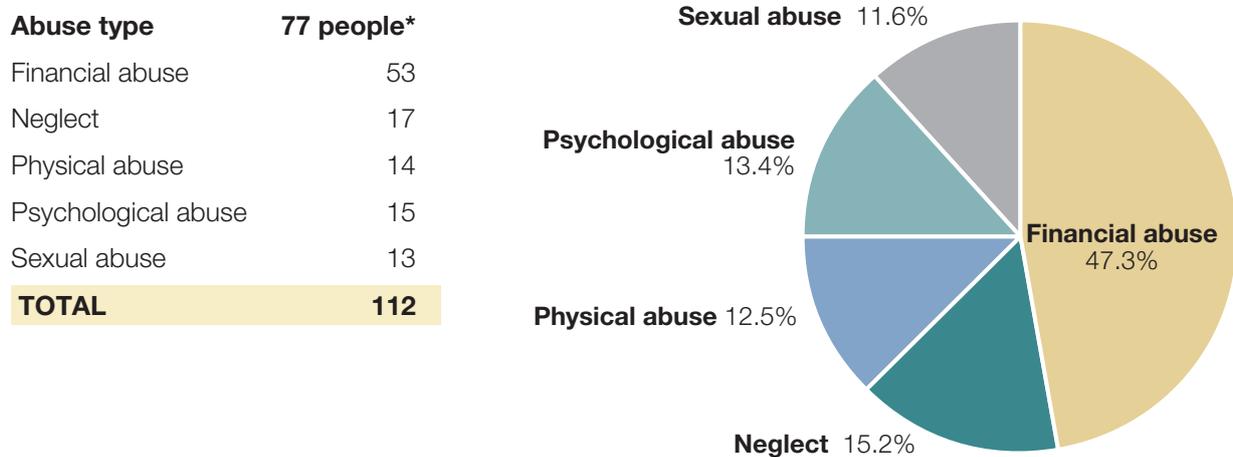


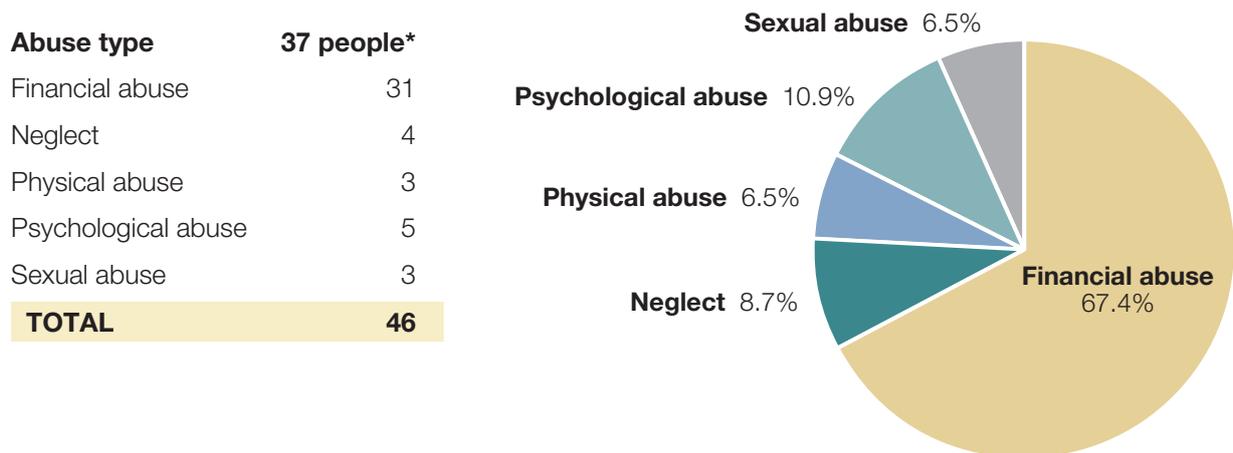
Figure 13 Profile of new guardianship orders appointing the Public Advocate by type of alleged abuse 2011/12 (including elder abuse)



*Alleged abuse was reported in 77 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 65 or older) 2011/12



*Alleged elder abuse was reported in 37 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 identified Aboriginal or Torres Strait Islander descent from 2005/06 to 2011/12

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
2011/12	347	311	36	10

*ATSI: Aboriginal or Torres Strait Islander

Figure 16 Profile of all guardianship orders appointing the Public Advocate by identified Aboriginal or Torres Strait Islander descent from 2005/06 to 2011/12

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
2011/12	928	801	127	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

At 30 June 2011, the majority of Redress WA applications had been finalised. Accordingly, the outcome of those applications was reported in the Public Advocate's 2010/11 annual report. At the time of writing the report (in August 2011) the remaining applications were finalised and therefore, to include a complete picture of the Redress WA scheme, those applications were also included in the report.

In order that the work done regarding applications in the 2011/12 financial year not be lost, the summary has been repeated in this year's annual report.

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 neglected¹⁵ - 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.

¹⁵ in State care in Western Australia before 1 March 2006.

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.

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 four - very severe abuse or neglect with ongoing symptoms and disabilities
- level three - severe abuse or neglect with ongoing symptoms and disabilities
- level two - serious abuse or neglect with some ongoing symptoms and disabilities
- level one - moderate abuse or neglect.

Outcome of applications

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 with which the Public Advocate was involved, 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 one (\$5,000); 14 people at level two (\$13,000); seven people at level three (\$28,000) and three people at level four (\$45,000). In total, the 54 applications 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 one and the other at level two. 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 two to level three.

The joint advocacy by the Public Advocate and the Public Trustee in relation to Redress WA was a major achievement. Most importantly it gave people with a decision-making disability a voice about the abuse or neglect they experienced in State care, despite being unable to advocate for themselves.

The extensive support provided by both the Department for Child Protection and the Department for Communities helped make this possible, as did 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 identified Aboriginal 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 - Sexual Assault Resource Centre

In 2000 a memorandum of understanding between the Office of the Public Advocate and the Sexual Assault Resource Centre was established to document the procedures which should be followed for a medical or forensic examination where there was an allegation of sexual assault on a person with a decision-making disability. The memorandum of understanding was updated in 2007.

In February 2010 the *Guardianship and Administration Act 1990* underwent some changes, which included the introduction of enduring powers of guardianship and a new hierarchy of people who could consent to a person's medical treatment.

These legislative changes had a direct impact on how consent can be obtained for medical examinations on a person with a decision-making disability, following an allegation of sexual assault. These changes were the catalyst for a second review of the memorandum of understanding in 2011/12.

The review of the memorandum of understanding provided an opportunity for both agencies to discuss the new legislative provisions as well as any changes within the agencies and related work practices.

In October 2011, the revised memorandum of understanding was finalised and signed by both agencies. It outlines the role of each agency in meeting the needs of a person with a decision-making disability following an allegation of sexual assault, within the current legal framework.

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 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 2012, 20 people were participating in the people with exceptionally complex needs project, 17 of whom had guardianship orders appointing the Public Advocate and administration orders appointing the Public Trustee; one with an administration order appointing the Public Trustee and one with a family member appointed as their guardian and administrator.

In March 2012, the Department for Child Protection, Disability Services Commission and the Mental Health Commission started a young people with exceptionally complex needs project. The Public Advocate is a member of the interagency executive committee for this new project, given the collaborative work between the Office and the Department for Child Protection in regard to young people in State care who may require a guardian and/or an administrator when they turn 18 years old. The project will become fully operational in 2012/13.

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 2011/12 this group assisted the Department for Child Protection to implement across government initiatives to address homelessness.

Elder abuse

The Office of the Public Advocate has a mandate to protect and promote the human rights of adults with a decision-making disability.

A large and growing number of people in Western Australia, who are 65 or older, have a cognitive impairment (often due to dementia). This group of people are vulnerable to abuse, exploitation and neglect. Therefore, they are a key group which the Office works to protect.

Concerns about elder abuse are often raised within the Office during the progress of investigations. Abuse can be financial, physical, psychological and sexual, as well as in the form of neglect.

The Public Advocate is an active member of the Alliance for the Prevention of Elder Abuse in Western Australia, which is an interagency alliance dedicated to finding ways to prevent this form of abuse.

The Office of the Public Advocate holds an annual forum on elder abuse, during World Elder Abuse Awareness Week. In June 2012, this forum consisted of two seminars – one for community members and one for service providers. The focus of these seminars was the protection offered by the *Guardianship and Administration Act 1990* for an adult when they lose capacity.

These seminars 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.

The community member session covered the factors people might want to consider before making these powers, how to make them and the potential benefits and pitfalls. It also provided information on the guardianship and administration system, as the safeguard if a person chose not to complete these powers and later lost capacity.

The focus of the service provider seminar was on the proper use of the tools, the role of the attorney and enduring guardian and service providers' duty of care to respond if there are concerns that a substitute decision-maker is not acting in the best interests of the person they represent.

Policy reviews 2011-2012

The Public Advocate and senior staff members participated in a number of policy reviews and inquiries in 2011/12, including:

- Review of the protocol between the State Administrative Tribunal and the Public Advocate: completed July 2011.
- Feedback into the State Government's response to the National Disability Strategy 2010-2020 - Laying the Groundwork (2011-2014) Implementation Plan: January 2012.
- Feedback into the State Government's response to the National 10 Year Roadmap for Mental Health: January 2012.
- Submission to *Working with Children (Criminal Record Checking) Act 2004*: February 2012.
- Submission to Consultation on the Draft *Mental Health Bill 2011*: March 2012.
- Feedback into the Disability Services Commission's Policy Framework: Elimination of Restrictive Practices: April 2012.
- Department for Communities – Preventing elder exploitation and abuse marketing reference group: May 2012 (ongoing).
- Australian Human Rights Commission – Survey on the Sterilisation of Girls and Women with a Disability: June 2012.
- Contribution to the Department of the Attorney General's submission to the Department for Child Protection's review of the *Children and Community Services Act 2004*: June 2012.

Implementing Legislative Change

Implementation of enduring powers of guardianship

This year marked the second full year of work in relation to the introduction of enduring powers of guardianship and advance health directives in Western Australia.

Changes to the *Guardianship and Administration Act 1990* brought these legal documents into force on 15 February 2010.

The focus of the Office's enduring powers of guardianship implementation team continued to be raising awareness about these documents, in the community and with key stakeholders within the aged care, community services and disability sectors.

The team provides people with access to information about the documents through a variety of mediums, including printed and online publications, education seminars and an advisory service.

An enduring power of guardianship gives an adult with capacity the opportunity to appoint someone to make their personal, lifestyle and medical treatment decisions, in the event that they ever lose capacity.

An advance health directive enables an adult to specify what medical treatment decisions they would make in certain situations, so that doctors can follow these decisions if the person loses capacity and finds themselves in that specific medical situation.

Western Australia's ageing population and the subsequent prevalence of dementia is a major factor contributing to the increase in the number of people for whom the Public Advocate is appointed as guardian of last resort. Of the 347 new appointments of the Public Advocate in 2011/12, 136 people had dementia (39.2 per cent).

This demonstrates the critical need to ensure that people are aware of the options that are available to them in planning for their future. They have the ability to make their own choices about future decision making and potentially limit any intervention by Government authorities, including the Office of the Public Advocate, in their lives.

In many instances, making an enduring power of guardianship will mean that if a person loses capacity to make decisions, their enduring guardian will step into the role and make decisions in the person's best interests. The enduring guardian will make decisions in accordance with the person's previous wishes, as they will have appointed someone that they know well and trust to do so.

In some instances however, these plans do not eventuate. Enduring powers of guardianship however, are legal documents which fall under the *Guardianship and Administration Act 1990*. Therefore, if they are not operating in a person's best interests, people have recourse to the State Administrative Tribunal who can intervene where necessary.

The following case study titled 'The duty of care to intervene when an enduring guardian is not acting appropriately' illustrates this.

Case Study

The duty of care to intervene when an enduring guardian is not acting appropriately

In early 2011 Mr G completed an enduring power of guardianship appointing his daughter as his enduring guardian.

Mr G was keen to make the document as he had been diagnosed with dementia. Mr G's doctor felt that he still had legal capacity to complete the document as he was only in the early stages of the disease, but that he should have an assessment of his capacity before he made the enduring power of guardianship. Mr G's doctor referred him for the assessment.

The assessment stated that Mr G had capacity, and subsequently his doctor witnessed the enduring power of guardianship and a copy of the capacity assessment was kept with the enduring power of guardianship.

In early 2012 an investigator advocate working on the Office of the Public Advocate's telephone advisory service, took a call from a social worker at a metropolitan hospital. The social worker advised the investigator advocate that Mr G had been admitted to hospital after a series of falls at home and had now been assessed as requiring high level care. He was eligible for an aged care package, but the local service provider had withdrawn their home care services because they were concerned about the actions of Mr G's enduring guardian.

The treating team at the hospital wanted to plan for Mr G's discharge but the enduring guardian refused to be involved in planning or organising home services, and had advised the treating team that she would remove Mr G from the hospital, against medical advice. She stated that as the enduring guardian she had authority to do this. The treating team were concerned that they could not intervene in her actions because she was appointed as Mr G's enduring guardian.

Despite the hospital's best attempts to gain the co-operation of Mr G's enduring guardian, she removed Mr G from hospital and took him back to his home, without any support services in place.

Shortly after, Mr G returned to the hospital, having had further falls in his home. He appeared not to have been showered and it was also revealed that he had not been taking his medication.

(continued)

Case Study (continued)

The hospital identified that the enduring guardian was not acting in Mr G's best interests for a number of reasons, including that she had not:

- considered professional advice about his medical needs
- given Mr G his required medication
- engaged adequate support services.

In talking with the investigator advocate, the social worker decided that they had a duty of care to lodge an application with the State Administration Tribunal to revoke the enduring power of guardianship, as it was not working in Mr G's best interests.

At the subsequent Tribunal hearing the enduring power of guardianship was revoked and another family member was appointed as Mr G's guardian.

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

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

The significant legislative changes to the *Guardianship and Administration Act 1990*, which came into effect in February 2010, continued to be the driving force behind the Office's community education activities in 2011/12.

These changes came about because of the *Acts Amendment (Consent to Medical Treatment) Act 2008*. The most significant changes this legislation resulted in were the introduction of enduring powers of guardianship and advance health directives in Western Australia.

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 again the primary focus of the Office's community education program in 2011/12.

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. Information and training for health professionals, regarding advance health directives, remains the responsibility of the Department of Health.

In addition to this core element, education on enduring powers of attorney, the guardianship and administration system in general, elder abuse and exploitation, and joint training with the Public Trustee's Office for private administrators continued.

In 2011/12, the Office conducted a total of 101 education seminars. Of these, 88 seminars focused on educating community members and relevant service providers about the proper use and execution of enduring powers of guardianship.

The provision of these seminars was made possible by \$1 million funding over four years to the Office of the Public Advocate from 2009/10 to implement enduring powers of guardianship and advance health directives in Western Australia.

Of the 101 seminars held in 2011/12, 64 were tailored to the needs of community members, 30 specifically targeted service providers and seven catered to the needs of both groups.

Sessions were held throughout the State, with 80 in the metropolitan area and 21 in regional areas including Balingup, Bridgetown, Bunbury, Busselton, Dalwallinu, Geraldton, Harvey, Morawa, Narrogin, Northam, Pingelly and York. In addition to these regional trips, video conferencing facilities were used to provide one session in 2011/12.

In June 2012, the Office once again held a forum to raise people's awareness and understanding of elder abuse, in recognition of World Elder Abuse Awareness Day.

Service providers were given information on how to identify 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 331 people who responded to the surveys in 2011/12, 95.3 per cent were satisfied with the content and conduct of the session.

Customer contact/enquiries

A total of 5,086 enquiries were made to the Office of the Public Advocate's advisory service in 2011/12, compared to 4,120 in 2010/11. 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 36 per cent of all enquiries received this year. Enquires regarding guardianship accounted for 33 per cent, administration 10 per cent and enduring powers of guardianship accounted for nine per cent (see Figure 21).

The Office's telephone advisory service 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 2011/12

Mode of handling	Jul 2011	Aug 2011	Sep 2011	Oct 2011	Nov 2011	Dec 2011	Jan 2012	Feb 2012	Mar 2012	Apr 2012	May 2012	Jun 2012	Total
Telephone	447	476	438	406	384	342	440	479	354	406	433	299	4,904
Interview	5	7	5	3	7	4	6	4	2	3	2	6	54
Email/letter	13	8	8	10	19	6	13	7	12	13	13	6	128
TOTAL	465	491	451	419	410	352	459	490	368	422	448	311	5,086

Figure 21 Enquiries to the advisory service by subject 2011/12

Subject of enquiry	Jul 2011	Aug 2011	Sep 2011	Oct 2011	Nov 2011	Dec 2011	Jan 2012	Feb 2012	Mar 2012	Apr 2012	May 2012	Jun 2012	Total	Total as percentage of all enquiries
Guardianship	165	182	182	173	192	174	189	180	135	175	157	115	2,019	33
Administration	65	75	65	55	47	45	36	64	33	30	46	37	598	10
EPA	237	239	181	169	139	122	204	222	184	138	214	132	2,181	36
EPG	61	59	47	48	33	29	41	49	24	50	48	47	536	9
AHD	15	22	23	11	12	11	16	20	3	9	5	20	167	3
General	32	53	42	62	46	54	55	53	42	63	56	48	606	10
Total	575	630	540	518	469	435	541	588	421	465	526	399	6,107	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.

Catering to the needs of clients from a Culturally and Linguistically Diverse (CALD) background

In 2011/12 the Office delivered four information sessions to Culturally and Linguistically Diverse community groups. These sessions covered information on enduring powers of guardianship and interpreters worked with the presenter to deliver the sessions in Cantonese, Italian, Mandarin and Tamil.

All of the Office's publications are available in alternative formats¹⁶, including other languages, upon request. In 2011/12, the Office translated three of its most commonly used information sheets – regarding enduring powers of attorney, enduring powers of guardianship and general planning for the future information – into Chinese and Italian.

Catering to the needs of clients with vision impairments

In 2011/12, the Office utilised the services of the Association for the Blind of Western Australia to record three of its publications into audio, so that clients with vision impairments could easily access the information.

These publications were:

- A Guide to Enduring Power of Guardianship in Western Australia
- the brochure: New laws offering you choices to make an Advance Health Directive and appoint an Enduring Guardian
- Enduring Power of Attorney Information Kit.

Review of the enduring power of attorney form and information kit

Prior to the changes to the *Guardianship and Administration Act 1990* which came into effect on 15 February 2010, all of the Office's publications were updated to reflect the new legislative requirements. This included some small amendments being made to the Office's enduring power of attorney information kit and form.

Consultation with key stakeholders, which shaped the new enduring power of guardianship publications, highlighted the need for a complete overhaul of the enduring power of attorney publications. Feedback included the need for larger font on the form and plainer English in the kit.

From the Office's contact with completed enduring power of attorney forms, there were also a range of common mistakes being made by people completing the form.

The overview sought to address these issues and bring the kit and form into line with the newly created enduring power of guardianship publications.

This work was completed in 2011/12, with the new enduring power of attorney information kit and form available to download for free on the Office's website and hardcopy versions available to purchase from the State Law Publisher.

¹⁶ Other than the enduring power of attorney form and enduring power of guardianship form, which are not able to be translated into other languages, as they must be in English.

The Office liaised with Landgate and the State Solicitor's Office in finalising the new information kit and form. The result is a new form with a larger font size and more space, making the publication easier to read and complete, as well as meeting access requirements and catering to the needs of people with a vision impairment.

The new information kit addresses a number of problem areas where people often made mistakes. It also contains easy to follow, step-by-step instructions on how to complete the form. Both the form and information kit complement the enduring power of guardianship publications, making it easier for people to identify the Office's suite of 'planning for the future' resources.

Work to update the Office's more substantial guide to enduring powers of attorney was also undertaken in 2011/12 and is continuing.

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 2011/12 are as follows:

Figure 22 Budget allocation and expenditure 2011/12

	Total Cost of Output
\$'000 Actuals 2011-12	5,482
\$'000 Budget 2011-12	5,281 (revised budget)
\$'000 Variations from Budget	(201)

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 2011/12. 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 were given a range of presentations from specialists in relevant fields, at their monthly meetings. Topics covered included:

- negotiating compromises or undertakings from parties involved in State Administrative Tribunal proceedings
- the use of the *Guardianship and Administration Act 1990* to freeze property transactions
- Wills
- research findings in relation to the predictability of outcomes for people who have an acquired brain injury.

All staff were given the opportunity to participate in a half day training session on dementia, which was presented by a range of professionals in the field.

Office technology

Enhancements to the Public Advocate Case Management system (PACMAN) were carried out in 2011/12. These changes improved the data collection and reporting capabilities of the system. A post-implementation audit review of the system commenced in May 2012, with a final report due in early 2012/13.

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 guardianship and investigation services for customers for whom English is a second language, the Office uses translation and interpreter services. During 2011/12 interpreter services were provided in Arabic, Auslan, Bosnian, Burmese, Cantonese, Croatian, German, Hakka, Italian, Karen, Korean, Macedonian, Mandarin, Polish, Serbian, Thai and Vietnamese. Interpreters were also used for community education purposes, the details of which are provided in that section of the report.

Freedom of information

Four valid applications were received during 2011/12 for the release of information. Two of the requests were dealt with in full and two are still under consideration.

Anyone who wishes to access information held by the Office of the Public Advocate can 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

Feedback from customers is welcomed and encouraged. It is important that people contact the Office with suggestions, compliments and complaints regarding services.

In 2011/12, the Office of the Public Advocate received 23 formal compliments and one suggestion. The Office also received 24 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 Office of the Public Advocate, either in writing, via email or over the telephone, the Office undertakes to:

- respond to all grievances within 10 working days of the complaint being lodged
- keep records of all relevant proceedings including details of the grievance, the investigation, methods of resolution and customer feedback
- advise the relevant people (in writing) of the outcome and any corrective action to be taken.

Significant Issues Impacting the Agency

Meeting demand for services

The demand for the Office of the Public Advocate's statutory services of advocacy and investigation and guardianship is persistent.

Demand for guardianship services continued to grow in 2011/12, with the total number of people the Public Advocate was guardian for at 30 June 2012, increasing by over 20 per cent from 30 June 2011.

In 2011/12, demand for advocacy and investigation services continued to grow, with new investigations increasing by almost 20 per cent from the previous year. The total number of investigations carried out during the year remained steady at over 1,200.

Western Australia's ageing population and the resulting increase in the number of people with dementia, continue to be significant factors contributing to the increasing demand for the Office's services. The Public Advocate is also being appointed as guardian for a smaller, but growing number of people with a mental illness.

In 2011/12, over 40 per cent of new matters referred for investigation involved a person with dementia and nearly 40 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 2004 by Data Analysis Australia indicated an annual growth rate from 2004 to 2009 of almost six per cent for guardianship orders, just over two 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 these 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 nearly 13 per cent from 2008 to 2013. To date, this growth rate has been an underestimate.

The growth in investigations was not predicted to be as strong, with annual growth rates of just over three per cent for investigations referred by the State Administrative Tribunal and nearly four per cent for community-referred investigations.

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.

In recognition of the growing demand for services, \$5.15 million of additional funding over four years was allocated to the Office of the Public Advocate in the 2011/12 State Budget. This funding started on 1 July 2011 to provide a permanent increase of 14 full-time employees over the four years, with funding for eight positions in 2011/12. Four of those eight positions were already operational as they had been made available during 2010/11, while ongoing funding was sought through the Budget process.

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 four year funding will cease on 30 June 2013, limiting the capacity of the Office to continue to meet the demand for training/information 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 a decision-making disability, both at hearings for the appointment of a guardian and in the community.

Key effectiveness indicator	Actual 2008-09	Actual 2009-10	Actual 2010-11	Target 2011-12	Actual 2011-12	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>	91%	94%	90%	95%	95%	N/A

Key efficiency indicator	Actual 2008-09	Actual 2009-10	Actual 2010-11	Target 2011-12	Actual 2011-12	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>	\$2,229	\$1,851	\$1,610	\$1,950	\$1,744	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 Guardian 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	\$14,844
TOTAL EXPENDITURE	\$14,844

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, 11 staff from the Office of the Public Advocate made conflict of interest declarations and 10 offers of gifts, hospitality or other benefits which exceeded a value of \$25 were reported.

In line with the Department of the Attorney General's ongoing commitment to improve staff awareness on ethical conduct and public standards, all staff completed online training in accountability and ethical decision-making in 2011/12.

Recordkeeping Plans

Records are maintained in accordance with the Department of the Attorney General's records keeping plans. In line with the Department's ongoing commitment to improve staff awareness in records management, 98 per cent of Office of the Public Advocate staff completed records awareness training in 2011/12.

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*.

The Department of the Attorney General introduced a formal policy regarding the appointment of first aid officers in 2011/12. In keeping with that policy, the Office appointed one first aid officer and one deputy first aid officer.

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 2011/12 there were no fatalities and one lost time injury.

During 2011/12 all staff undertook the Department of the Attorney General's Occupational Health and Safety training (either in-person or via the online 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

Dangerous Sexual Offenders Act 2006

Prisons Act 1981

Prohibited Behaviour Orders Act 2010

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

Working With Children (Criminal Record Checking) Act 2004

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 Feedback and Service Standards
- Enduring Power of Attorney (also available in Chinese and Italian)
- Enduring Power of Guardianship (also available in Chinese and Italian)
- Planning for the Future (also available in Chinese and Italian)

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 (also available in audio format)
- 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.

The enduring power of attorney information kit and the guide to enduring power of guardianship are also available in audio format from the Office.

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.

