



The Public Advocate of Western Australia  
**Annual Report 2007/08**

Protecting the human rights of adults with  
decision-making disabilities



Department of the  
Attorney General

Hon Christian Porter BA (Hons) BEc LLB (UWA) MSc(Dist) LSE MLA  
ATTORNEY GENERAL

In accordance with Section 101(1) of the *Guardianship and Administration Act 1990* of Western Australia, I am pleased to submit the Annual Report of the Public Advocate for the year ending 30 June 2008.

This report records the operations and performance of the Office of the Public Advocate during 2007/08 and outlines issues and general trends impacting upon the human rights of an estimated 65,300 people in Western Australia who have a decision-making disability.

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**  
30 September 2008

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# Overview

## Executive Summary

In this, my first annual report as Public Advocate, I am pleased to present the achievements of my staff in 2007/08 while conscious of the challenges that face the Office as we strive to protect and promote the human rights of adults with decision-making disabilities.

Guardians and investigators faced unprecedented demand for their services this year with a 64% increase in new appointments of the Public Advocate as guardian of last resort by the State Administrative Tribunal in 2007/08. New investigations increased by 21%. For the first time, dementia has become the primary decision-making disability for people under the Public Advocate's guardianship, reflecting the ageing nature of our population.

To facilitate planning for the future needs of people with decision-making disabilities, I have commissioned a study to examine this increasing trend and will report on the results in 2008/09.

Three volunteers were appointed guardians by the State Administrative Tribunal under the Community Guardianship Program and another seven were expected to be appointed by December 2008. The volunteers were the first in Australia to be appointed as guardians in their own right.

The Office of the Public Advocate continued to offer services to regional areas through visits by guardians and investigators to clients and service providers in country towns. Training was offered to mental health, aged and disability services providers in Albany, Northam, Merredin and Kalgoorlie and arrangements began with organisations in the Kimberley to facilitate training on a return visit in the latter half of 2008.

These seminars were part of 27 community education sessions for service providers from the aged care, health and legal sectors and the public, which were organised or attended by staff. They explained enduring powers of attorney, guardianship and administration and elder abuse.

A total of 4,233 people contacted the Statewide Telephone Advisory Service for advice or information, compared to 3,972 in 2006/07. Of the 5,041 issues discussed, almost half related to enduring powers of attorney. Answers to the most common enquiries were included in the interactive telephone voice messaging system when it was expanded in August 2007.

The achievements of the Office in 2007/08 have highlighted the importance of working collaboratively with other departments and organisations to meet the needs of vulnerable adults with decision-making disabilities in our community.

Through its involvement in the Alliance for the Prevention of Elder Abuse, the Public Advocate and senior staff gave presentations at a number of seminars to raise awareness of elder abuse in mainstream, ethnic and Aboriginal communities. Elder abuse was also incorporated into some training sessions for service providers.

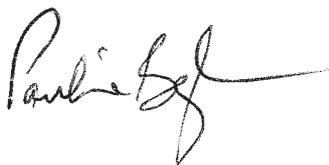
The Public Advocate has put in place a memorandum of understanding with the Department for Child Protection, to facilitate planning for young people with decision-making disabilities leaving the Department's care at 18 years of age. The Public Advocate also signed a memorandum with the WA Police, regarding the reporting of allegations of sexual abuse of adults with a decision-making disability, and with the Northern Suburbs Community Legal Centre's Older Persons Rights Service, to formalise referrals and exchange information.

Cross-agency approaches to people with decision-making disabilities who encounter the justice system were the subject of a conference organised by the Office in November 2007. The conference brought together 325 participants from mental health, disability services, corrective services and community organisations.

Submissions were made to a number of inquiries. The Public Advocate appeared before the State Parliament's Legislation Committee's Inquiry into the Jurisdiction and Operation of the State Administrative Tribunal and the Community Development and Justice Standing Committee's Inquiry into Collaborative Approaches in Government.

Looking towards 2008/09, work began this year with the Department of Health on planning for the implementation of enduring powers of guardianship and advance health directives when the *Acts Amendment (Consent to Medical Treatment) Act 2008* comes into effect.

Finally, I would like to thank the staff and volunteers of the Office of the Public Advocate. Since becoming Public Advocate on 31 March 2008, I have been impressed with the commitment and professionalism that they have shown while often working within difficult, complex and conflictual situations. I would also like to thank the service providers and other organisations that support our work in the community.



Pauline Bagdonavicius

**PUBLIC ADVOCATE**

30 September 2008

## 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 make provision for a power of attorney to operate after the donor has ceased to have legal capacity, and for connected purposes.”*

In 2007/08 the Public Advocate reported to the Attorney General. 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.

Other legislation pertinent to the Public Advocate is listed in Appendix 1.

### New Public Advocate

Pauline Bagdonavicius, an executive director with the Department for Child Protection, was appointed Public Advocate on 31 March 2008 following the departure of Michelle Scott in December 2007 to become the Commissioner for Children and Young People.

### Mission

The Public Advocate protects and promotes the human rights of adults with decision-making disabilities to reduce their risk of abuse, exploitation and neglect.

A person’s ability to make reasoned decisions in their own best interests can be restricted by an intellectual disability, a short or long-term mental illness, an acquired brain injury or dementia.

### Function

The functions of the Public Advocate are primarily set out in Section 97 of the *Guardianship and Administration Act 1990*. They include:

- information, advice and training on how to protect the human rights of adults with decision-making disabilities
- investigation of concerns about the wellbeing of adults with decision-making disabilities 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, medical and lifestyle related decisions) when the State Administrative Tribunal determines that there is no one else suitable or willing 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

### Primary stakeholders

There are an estimated 65,300 Western Australians<sup>1</sup> with a reported cognitive impairment or behavioural disorder which may limit or restrict their ability to make reasoned decisions in their own best interests. These disabilities can include intellectual and developmental disability, brain injury as a result of trauma, degenerative disease or substance abuse, or mental illness.

A decision-making disability can result from:

#### ***Dementia***

Access Economics predicts that the number of Western Australians diagnosed with dementia will grow from 17,000 in 2004 to more than 79,000 by 2050.<sup>2</sup> Growth of dementia in Western Australia is the third fastest in Australia, after the Northern Territory and Queensland. Around 80% of people with dementia in WA live in the metropolitan area.

#### ***Intellectual disability***

The Disability Services Commission of Western Australia funded and provided services to 11,124 Western Australians with intellectual disability as their primary condition in 2006/07. This included service users of all ages.<sup>3</sup>

1 Persons with a Disability: Disability Status by Main Health Condition: mental and behavioural disorder with specific limitations or restrictions, WA 2003; Australian Bureau of Statistics, 4430.0 Disability, Ageing and Carers, Table 11, 2004.

2 Access Economics; Dementia Estimates and Projections: Western Australia and its Regions, 2005 Executive Summary, p.i.

3 Disability Services Commission (DSC) Annual Report, 2006–2007, p74.

### **Acquired brain injury**

An acquired brain injury (ABI) results in deterioration of cognitive, physical, emotional or independent functions and can occur as a result of trauma, hypoxia, infection, substance abuse, degenerative neurological disease or stroke. In 1999, the Australian Institute of Health and Welfare estimated that 2% of the WA population had a disability related to ABI and that about half of those diagnosed with ABI were severely or profoundly affected. Overseas figures state that of those who experience traumatic brain injury, 68% have a history of substance misuse and 14% develop an alcohol or drug problem after an injury.<sup>4</sup>

Headwest quotes a 1994 study estimating that 600 additional Western Australians acquire a brain injury each year.<sup>5</sup> The Disability Services Commission funded and provided services to 623 Western Australians in 2006/07 with acquired brain injury reported as their main disabling condition.<sup>6</sup>

### **Mental illness**

According to the 1997 National Mental Health and Wellbeing Survey, around 19% of people in WA had experienced a mental disorder in the previous 12 months, with the prevalence being highest among 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 WA was 9.2% in 2004.<sup>7</sup>

## **Secondary stakeholders**

These are family members, carers or people and organisations supporting people with a decision-making disability.

## **Potential stakeholders**

These are people who do not have a decision-making disability but who seek to safeguard their financial future by nominating a trusted family member or other individual under an enduring power of attorney to make financial decisions on their behalf should they lose their decision-making capacity.

## **Agency stakeholders**

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

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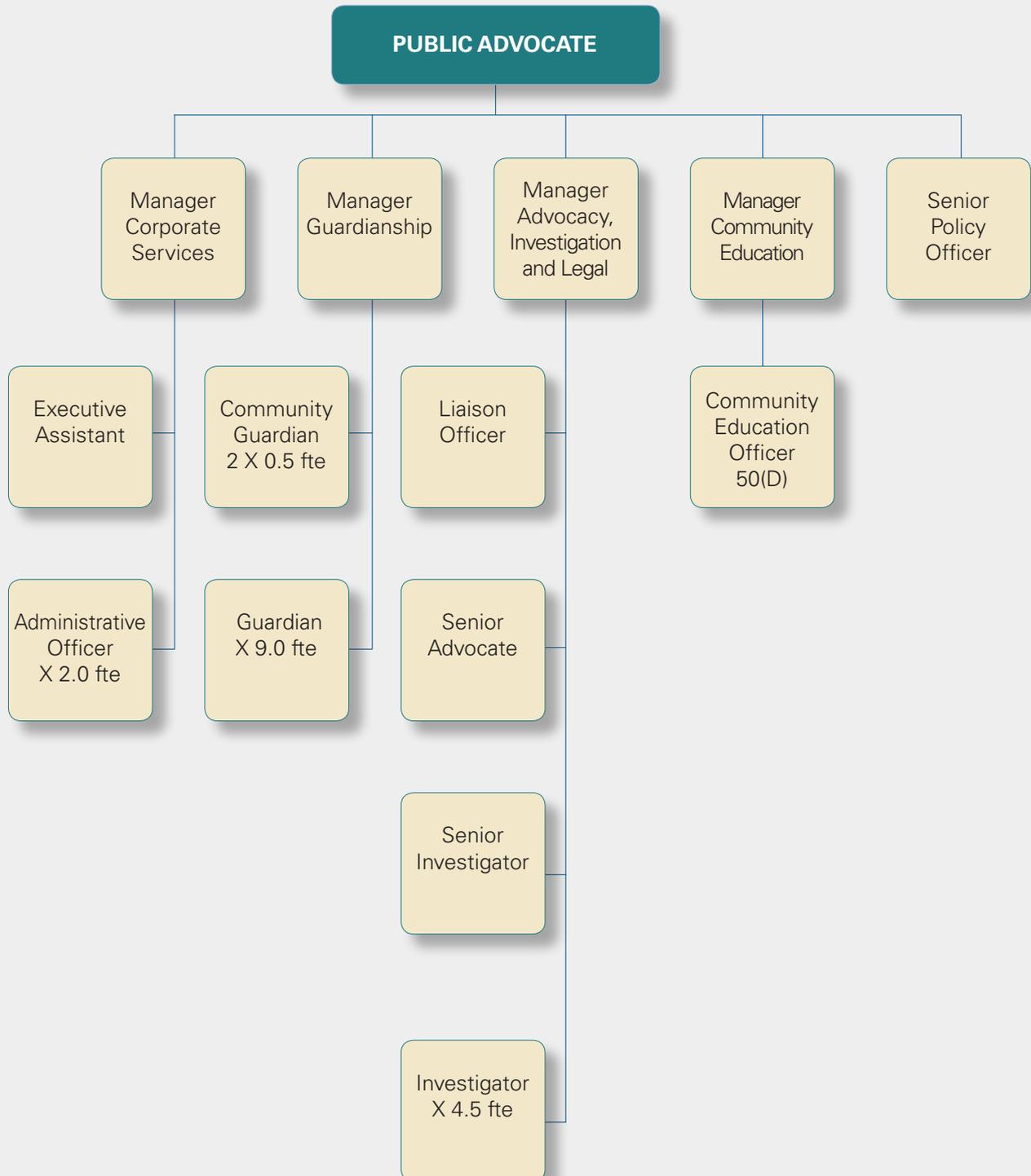
4 The Definition, Incidence and Prevalence of Acquired Brain Injury in Australia; Australian Institute of Health & Welfare, 1999 <http://www.bia.net.au>.

5 Acquired Brain Injury Accommodation and Support Needs, Stanton, 1994 <http://www.headwest.asn.au>.

6 DSC Annual Report 2006–2007, p74.

7 Australian Bureau of Statistics (1999a). 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.

## The Organisation



## Resources

The role and functions of the Public Advocate in 2007/08 were supported by:

- staff of 31 (full-time equivalent)\*
- expenditure of \$3,094,000\*

\*actual, includes shared Department of the Attorney General corporate support.

## Performance Management Framework

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

### Government goal

Better Services: enhancing the quality of life and well being of all people throughout WA by providing high quality, accessible services.

### Department of the Attorney General goal

The right to justice and safety for all people in Western Australia is preserved and enhanced.

### Department purpose

To provide high quality and accessible justice, legal, registry, guardianship and trustee services that meet the needs of the community and Government.

### Office of the Public Advocate services

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

- access to investigation and advocacy services
- appropriate appointment of guardians and administrators and appropriate interventions in relation to enduring powers of attorney
- guardianship and administration community education services
- guardianship and administration services provided by the Public Advocate.

### Cross-agency initiatives

The Office of the Public Advocate works closely with the Public Trustee who can be appointed administrator, provides support to private administrators and who, together with Office of the Public Advocate, provides training for new private administrators.

# 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 a person with a decision-making disability. The investigation and advocacy function of the Office of the Public Advocate includes:

- 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 decision-making disabilities 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 general public that a person with a disability may be at risk of neglect, exploitation or abuse 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 an administrator
- providing on-site assistance to the State Administrative Tribunal through the Liaison Officer by conducting brief investigations, providing guidance and advice to staff
- informing and advising Government, community and business organisations on the best interests of adults with decision-making disabilities in the development of legislation, policy and services.

## The Year in Review

In 2007/08, the Public Advocate investigated a total of 872 cases involving the personal or financial welfare of people with a decision-making disability. This included new cases and cases carried over from 2006/07. Of these, 740 needed investigation and advocacy relating to applications for, or reviews of guardianship, or administration appointments before the State Administrative Tribunal. Another 132 were referred directly to the Public Advocate by an individual or community-based organisation.

A total of 757 new investigations were conducted in 2007/08 compared to 624 new investigations in 2006/07, an increase of 21%. Of the new investigations, 642 related to applications before the State Administrative Tribunal and 115 were referred to the Public Advocate by an individual or community-based organisation.

### Tribunal-referred investigations

The 642 new investigations relating to applications for guardianship and administration referred by the State Administrative Tribunal, comprised 457 applications for guardianship and administration, 14 applications for interventions in enduring powers of attorney and 171 applications for review of guardianship orders.

The table below shows the increase in investigation services provided to the State Administrative Tribunal since it began operation in 2005. Over the past three years, investigations involving this Office have increased by 24%. There has been an 18.5% increase in State Administrative Tribunal initiated investigations between 2006/07 and 2007/08 and a 4.6% increase between 2005/06 and 2006/07.

**Fig. 1 Investigation services provided to the State Administrative Tribunal**

Investigation services	2005/06	2006/07	2007/08
New cases opened during the year	407	285	325
Attendance at hearing only matters	N/A**	55	90
Requests for urgent investigations	N/A**	55	56
Review of guardianship orders*	111	147	171
<b>Total investigation services provided</b>	518	542	642

\*Not statutorily referred by the Tribunal for investigation under section 97iii(b) but OPA provides an advocacy service.

\*\*Data not collected in 05/06.

In carrying out their inquiries, investigators interview friends, family and service providers and seek the views of the person who is the subject of the application. A detailed report is often prepared to assist the Tribunal with its deliberations about what is in the person’s best interests.

Investigators explore whether there are less restrictive means for resolving the concerns outlined in an application for the appointment of a guardian or administrator. This may include advising on community services that could assist the person with a decision-making disability. Throughout the investigation, investigators advance the best interests of the person with the decision-making disability.

In responding to 56 urgent applications before the State Administrative Tribunal, investigators focused on ensuring all relevant people were aware of the application and finding the least restrictive means of resolving the concerns. This number remained stable compared to last year when 55 urgent applications were referred.

## Case study

### Least restrictive alternative

A is an 87 year-old widow with dementia who had been residing at home with support from a private cleaning service and her family when she was admitted to hospital. Her medical team advised that it would be unsafe for her to return home to live. Although her capacity fluctuated, she was not able to make reasonable decisions about her living situation and she had limited understanding of her declining abilities, believing she would eventually be able to return to her home. A was placed into hostel level care.

A's son made application to the State Administrative Tribunal for the appointment of a guardian and nominated himself and his sister, who resided overseas, to be appointed joint guardians to decide where their mother should live.

There was a dispute between the son, his sister and his ex-wife. His ex-wife believed that A had capacity to live at home and should not have been placed into residential care. She reported having a good relationship with A and wanted to maintain this. She also had concerns that she and her children, A's grandchildren, had not been informed when A was hospitalised. She believed they would only be kept informed in the future if the Public Advocate was appointed guardian.

After consultations by the investigator from the Office of the Public Advocate, all three parties agreed that there was no need for the appointment of a guardian if a contact arrangement could be reached. The son and his ex-wife wanted no personal contact between them. They agreed to keep each other informed regarding A's health, accommodation and visits by telephone text messaging.

During discussions, the investigator highlighted that the appointment of the Public Advocate may result in more restrictive contact arrangements being introduced including a roster system. The parties decided that they preferred to arrive at their own arrangements without the involvement of a third party.

The application was dismissed.

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

## Case study

### Urgent investigation

The State Administrative Tribunal received a guardianship application for R, a woman who lived in WA under the care of her daughter but who was not a permanent resident and whose immigration status was unclear.

R had experienced a stroke but due to her immigration status was ineligible for many health and associated services, including residential care.

The application sought a guardian and an administrator to assist in determining the woman's immigration status and to advocate for her to become a permanent resident to be able to access relevant health care services.

The matter was listed for a hearing within a week.

An investigator from the Office of the Public Advocate contacted R's family, the hospital social worker who had made the application, an advocacy agency that was assisting the family with immigration and other issues, and various government agencies to attempt to determine the status of R.

It became clear that without legal authority and the assistance of fee-charging professionals, accessing immigration information and advocating on behalf of R would be difficult. R's position was further complicated by her having no income.

Hence the State Administrative Tribunal appointed a guardian to clarify R's immigration status and to apply for required visas or residency status. The woman's daughter was appointed administrator.

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

The role of the Office of the Public Advocate's Liaison Officer at the State Administrative Tribunal is a critical one, especially when there are urgent applications or requests for a guardian or investigator to attend a hearing at short notice. The number of referrals from the Tribunal was up 9.7% from last year. The Liaison Officer conducted preliminary investigations into 496 applications for guardianship, administration and intervention in an enduring power of attorney compared to 452 in 2006/07. She recommended that further investigations be undertaken by the Public Advocate in 231 cases.

### Community-referred investigations

In 2007/08, members of the community, human service support agencies, government and non-government agencies referred 132 matters to the Public Advocate for investigation. Of those, 115 were new referrals and 17 were carried over from 2006/07. In most cases, the focus of these investigations was to establish whether the person of concern required a guardian or administrator or was under an inappropriate order. The table below shows that investigations concerning matters referred to the Office by the community or professionals has increased 24.5% since 2005/06.

Matters referred to the Liaison Officer by the State Administrative Tribunal where brief investigations were conducted which did not result in a referral to this Office for further investigation have been included in the community-referred investigations for 2007/08 and 2006/07. These numbered 46 in 2007/08. Previously, these types of investigations were not recorded.

**Fig. 2 Community-referred Investigations**

	2005/06	2006/07	2007/08
Cases carried over from previous year	13	23	17
New cases opened during the year	93	82	115
<b>Total cases new and carried over</b>	106	105*	132*

\* These totals include preliminary investigations conducted by the Liaison Officer that are not referred by the Tribunal for further investigation and are now being recorded in OPA's case management system as community-referred investigations.

### Advocacy

Investigators attended more than 380 State Administrative Tribunal hearings where they advocated in the best interests of a proposed represented person. In addition, guardians attended hearings for 171 reviews.

## Case study

### Community-referred investigation

A group of concerned businesses contacted the Telephone Advisory Service about J who was arriving at their businesses wearing little clothing and asking for money. She appeared to be affected by alcohol or substances and they were concerned about the affect of her presence on their customers.

The investigator was able to establish that J's disorientation, poor mobility and involuntary movements were the result of a degenerative condition.

J lived alone after separating from her husband who continued to support her but visited infrequently. The investigator met with J, her family, local businesses and a medical treatment team to establish the key issues and J's wishes.

J wanted to remain living at home but she had little awareness of her deteriorating health. Her husband and family were reluctant to make decisions about future care arrangements that were against J's wishes.

The local hospital's neurosciences unit agreed to increase support services for J, however, recruitment of additional support staff took some time. In the meantime, the local businesses were becoming impatient with what they perceived as a lack of response as J continued to visit their businesses.

One of the concerns in investigating such cases is the sensitivities around maintaining a person's privacy while reassuring complainants that their concerns are being treated seriously.

Further meetings were held with local businesses to ensure they understood that J's situation was related to a medical condition and that steps were being taken to address the issues.

The Public Advocate applied to the State Administrative Tribunal seeking the appointment of a guardian and administrator. Meanwhile, J's brother decided that he preferred that the family make accommodation and medical decisions for J. He was appointed her guardian and her husband was appointed her administrator.

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

## Issues for Advocacy and Investigation

The major factor contributing to the 21% increase in referrals to the Public Advocate for investigation is the ageing population, however, other factors are also having an impact. Making a decision to place an elderly relative in residential care can cause division within families. The desire to maintain family relationships is often behind applications for the appointment of an independent guardian. In other cases, families are estranged from the proposed represented person because of a long history of alcohol or other drug abuse. A large proportion of investigations about abuse involve financial abuse by a person known to the person with a decision-making disability.

Other trends affecting the investigative work of the Office of the Public Advocate are discussed below.

### Transition of young people

Under a memorandum of understanding signed in July 2007, the Department for Child Protection continued in 2007/08 to refer to the Public Advocate young people with decision-making disabilities leaving the care of the Department when they reach 18 years of age. By working collaboratively on transition planning for young people leaving the care of the Department, the Department for Child Protection, Disability Services Commission and Office of the Public Advocate can ensure that the needs of the young people are identified early in the process. In 2007/08, transition plans were developed for 14 young people.

Advocacy in some of these cases involves balancing a young person's desire for independence, after years of the Department being legally responsible for all decision making, with their best interests and ongoing care and protection. They have the same desires and wishes as other young people but because of cognitive impairment they are vulnerable to exploitation.

In June 2007 the Public Advocate raised concerns about the Disability Services Commission's *Family Members as Paid Carers* policy which precludes former foster carers from receiving financial assistance from the Commission and being appointed a person's guardian and/or administrator. Throughout 2007/08, the Director General of the Disability Services Commission has considered on a case by case basis exemptions from the policy.

### Court referrals

The Children's, Magistrates and Supreme courts are increasingly seeking the advice of the Public Advocate when there are concerns that a person appearing before the court on child protection or housing matters is unable to understand proceedings and may need a guardian to assist. In 2007/08 there were four referrals recorded. In a few cases, a guardian has been appointed by the State Administrative Tribunal to assist the person in obtaining legal representation and understanding agreements about contact with their children.

## Our Customers

Of the 757 new investigation matters, allegations of abuse were made in 128 cases (17%). Allegations of financial abuse continued to be the most commonly reported form of abuse (52%). This was followed by neglect (28%), psychological abuse (10%), physical abuse (6%) and sexual abuse (4%).

In 87 of these cases of alleged abuse, the victim was aged over 65 years (see Fig. 4) and financial abuse was significantly higher (61%) than other reported forms of abuse.

Nearly half the investigations (354) involved a person with dementia, while 132 had an intellectual disability, 113 a psychiatric condition, 104 an acquired brain injury and 54 had other disabilities (see Fig. 5).

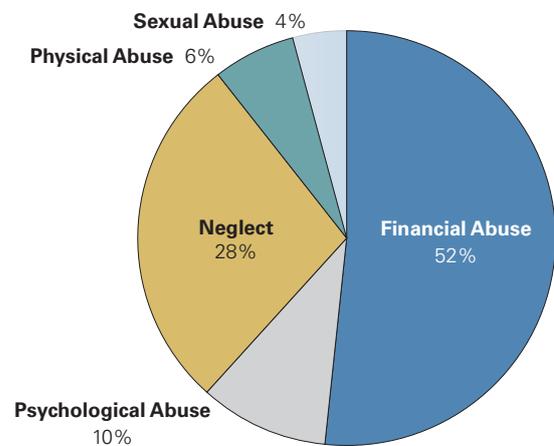
Accommodation considerations (193), followed by reviews of guardianship orders (171) continued to dominate investigations.

Again this year, most new investigations were carried out in the metropolitan area (590 or 78%).

**Fig. 3 Profile by type of abuse of new investigations alleging abuse 2007/08**

*(which includes statistics of elder abuse)*

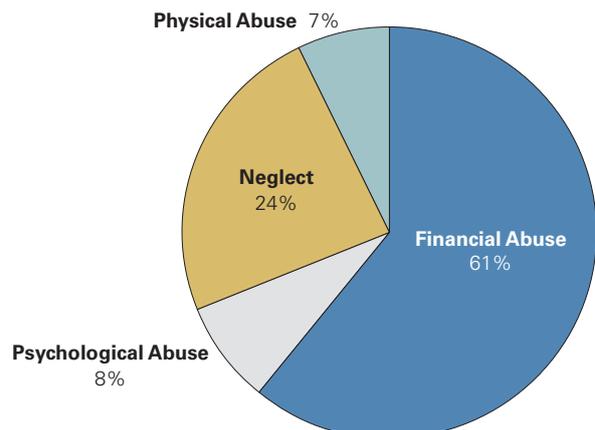
Abuse Type	128 people
Sexual Abuse	7
Physical Abuse	10
Neglect	45
Psychological	16
Financial Abuse	83
<b>TOTAL</b>	<b>161</b>



**NB** More than one abuse type can be chosen per application.

**Fig. 4 Profile by type of abuse of alleged elder (aged over 65) abuse 2007/08**

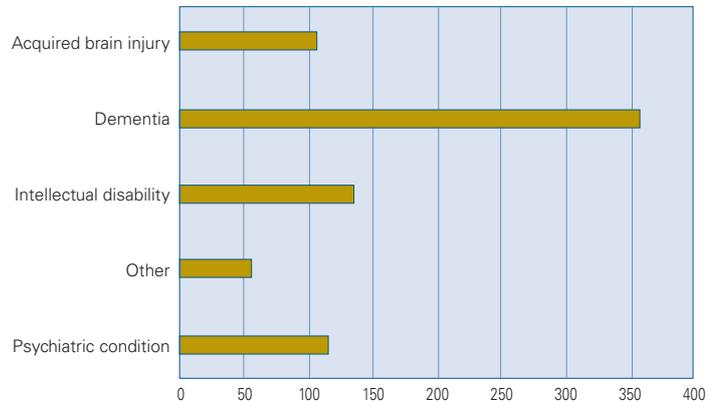
Abuse Type	87 people
Sexual Abuse	0
Physical Abuse	7
Neglect	26
Psychological Abuse	8
Financial Abuse	65
<b>TOTAL</b>	<b>106</b>



**NB** More than one abuse type can be chosen per application.

**Fig. 5 Profile by condition of disability of new investigation referrals 2007/08**

Acquired Brain Injury	104
Dementia	354
Intellectual Disability	132
Other	54
Psychiatric Condition	113
<b>TOTAL NEW ADVOCACY</b>	<b>757</b>



**Fig. 6 Profile by issue of new investigation referrals 2007/08**

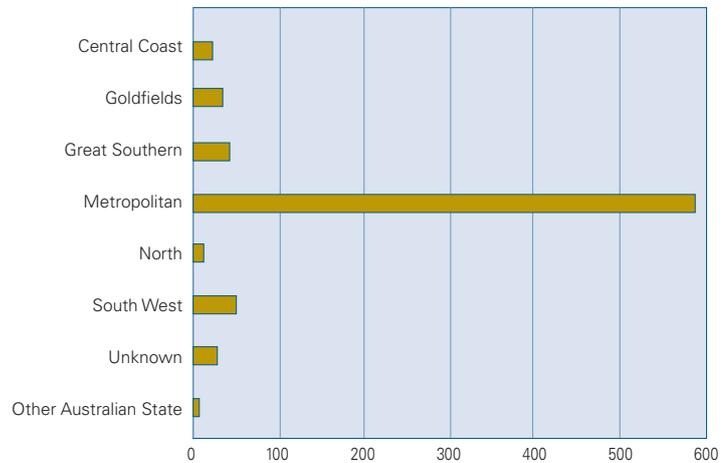
**Major IssuesType**

Access to Services	15
Accommodation	193
Assist with Money	46
Business Operations	1
Enduring Powers of Attorney	27
Legal Administration	20
Legal Guardianship	31
Management of Assets	72
Medical/Dental	108
Review of Administration	17
Review of Guardianship	171
Self Neglect	4
Relationship Contacts	11
Sterlization	0
Other Guardianship	32
Other Administration	9
<b>TOTAL</b>	<b>757</b>



**Fig. 7 Profile by geographical location of new investigation referrals 2007/08**

Central Coast	21
Goldfields	27
Great Southern	33
Metropolitan	590
North	10
South West	48
Unknown	22
Other Australian State	6
<b>Metropolitan and Other Location</b>	<b>757</b>



## Legal Issues

### Changing a Will

Amendments to the *Guardianship and Administration Act 1990* have changed the rights of guardians to alter the Will of a represented person.

Under the amendments, a plenary guardian or administrator can apply to the Supreme Court for an order allowing them to make, vary or revoke a Will of a living represented person.

The impact of this change may be that people aggrieved by a person’s Will, may make application to the State Administrative Tribunal to be appointed guardian to enable them to apply to the Supreme Court.

Matters relating to Wills often involve complexities around family dynamics as well as estate planning. This amendment may see an increase in requests from the State Administrative Tribunal for the Public Advocate to investigate applications.

## Guardianship

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

Demand for guardianship services by the Office of the Public Advocate continues to expand at an increasingly rapid rate.

There were 187 new appointments of the Public Advocate as guardian of last resort in 2007/08, representing a 64% increase from the previous year. By 30 June 2008 the Public Advocate had responsibility for 380 people with decision-making disabilities. This was 31% higher than the 288 at 30 June 2007.

During the year, the Public Advocate made personal, medical and lifestyle decisions for 475 people (288 carried forward and 187 new cases) compared to 370 people in 2006/07. For the first time, people with dementia outnumbered people with intellectual disability requiring guardianship services by the Public Advocate.

Despite the increases, the Office of the Public Advocate continued to meet targets for timeliness with 93% of guardian of last resort appointments being allocated to a guardian within one working day of notification of appointment due to the importance of making timely decisions for vulnerable adults.

Upon review, the State Administrative Tribunal reinstated 151 orders appointing the Public Advocate. The re-appointment of the Public Advocate reflects a continuing need for guardianship decision making.

Of the 187 new appointments, 11 were plenary (or total) and 176 were limited orders. These figures reflect the principle that a plenary guardian should not be appointed if the appointment of a limited guardian would be sufficient.

Sixty six appointments made by the Tribunal were for the maximum period of five years. The length of an order should be limited to the period of time determined to meet the needs of a person for decision-making support (see Fig. 12).

The increase in appointments was reflected in an increase in after hours calls taken by guardians from 135 calls in 2006/07 to 233 in 2007/08.

## Decisions

Decisions covered a range of personal circumstances including:

- medical treatment in relation to palliative care, contraception and major and minor surgery
- chemical and physical restraint (when this authority had been granted by the State Administrative Tribunal or a plenary guardianship order existed)
- supervised access to represented persons where there was risk of abuse.

On a number of occasions the Office worked with other agencies to improve services for its clients. For instance, guardians secured individualised accommodation funding for represented persons through the Disability Services Commission and liaised with the Public Trustee as appointed administrator to determine life-style decisions that have financial outcomes.

Guardians also liaised with Aboriginal agencies, service providers, communities and family members to ensure culturally appropriate practices. This was particularly challenging when families or communities did not recognise the authority of the Public Advocate as their relative's guardian.

## Community Guardianship Program

By 30 June 2008, three community guardians had been appointed by the State Administrative Tribunal under this innovative program which matches community members with people with decision-making disabilities. Preparations were underway for applications to the Tribunal for another seven appointments in 2008/09.

Ten of the original 15 volunteers remain involved with the program following a comprehensive assessment and matching process. They meet regularly with the person with whom they have been matched.

In 2007/08 support to the volunteers was provided through two training sessions, biannual newsletters and a *Manual for Community Guardians* which was provided to volunteers at the June training session.

The program provides an opportunity for community involvement in supporting and protecting people with decision-making disabilities, raising awareness of the rights of people with decision-making disabilities and enriching their lives through regular personal contact.

## Case study

### Community Guardianship Program

D has an intellectual disability and lives in a group home in Perth. He has had no contact from family members for many years. D needs a guardian to consent to medical treatment on his behalf.

A Community Guardianship Program volunteer was introduced to D and his carers in March 2007. Since then, the volunteer has been visiting D fortnightly at his home and occasionally in the community with carers where D enjoys gardening and going out for coffee.

The volunteer has taken time to get to know D and his carers, while keeping in regular contact with the program coordinator at the Office of the Public Advocate. D seems to enjoy the volunteer's visits and when asked his opinion about him he smiles and says he likes him.

In February 2008 a meeting was held with D's carers to review the match between D and the volunteer. There was a consensus that the match was progressing well and that it was appropriate for the Public Advocate to lodge an application with the State Administrative Tribunal for the volunteer to be appointed as D's guardian.

The volunteer wrote a letter to the Tribunal outlining the reasons he was suitable and willing to be appointed as D's guardian and the Public Advocate lodged a detailed report as well.

A three-member Tribunal heard the application in April 2008 and determined that the guardianship order appointing the Public Advocate be revoked and that a new order be made appointing the volunteer to make medical treatment decisions for D for 12 months.

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

## Issues for Guardianship

The growth in demand for guardianship services is compounded by the increasing complexity of the issues surrounding the protection of adults with decision-making disabilities.

- Guardians are often required to make decisions for people with decision-making disabilities who have multiple and complex needs. These people may have more than one diagnosed condition combined with a drug or alcohol problem and challenging behaviour and they may have come into contact with the criminal justice system. Decision making involves the guardian working with a number of agencies to secure an intensive level of support.
- The Public Advocate makes decisions which support people who are frequent offenders. Often these individuals require intensive support and cross-agency support and collaboration.
- There is increasing pressure on guardians to locate, find funding and coordinate services to people with decision-making disabilities. This is made difficult by a shortfall of appropriate services or the person's refusal to accept help. In particular, finding suitable accommodation is a growing problem. Where people have a dual diagnosis, for example, an intellectual disability and mental illness, the person remains vulnerable where there is a lack of clarity about which agency might take the lead role.

- At the same time, as the client base of Office of the Public Advocate is ageing, there is a greater emphasis on the medical needs of people who have complex medical conditions, chronic illnesses or are terminally ill.
- In many cases the Public Advocate has been required to investigate the need for chemical and/or physical restraint for represented persons. This can involve seeking a guardianship review hearing before the State Administrative Tribunal.
- Maintaining family contact with the represented person can sometimes be a challenge for the guardian. Some family members feel alienated by the appointment of the Public Advocate, while others may be excluded if the primary carer does not want contact to occur. In cases where the represented person has experienced abuse, neglect or exploitation, contact between the person and their family may need to be supervised.
- People with decision-making disabilities are extremely vulnerable to sexual assault and sexual exploitation. The Office of the Public Advocate intervenes in these matters and seeks Police involvement (via the Sexual Assault Squad), referral to the Sexual Assault Referral Centre and medical and counselling services.
- While the majority of the Public Advocate's represented people live in Perth there are a number of people who live in regional and remote locations. This poses unique challenges to ensure appropriate services and support. In 2007/08, guardians and investigators made more than 40 trips to regional towns including a four day visit to three represented people and service providers in the Kimberley.

## Case study

### People with complex needs

P is a 23 year old young man who was diagnosed with schizophrenia four years ago. He frequently fails to take his psychiatric medication and becomes unable to make good judgments about his health or welfare.

He is without family support, having become estranged from his parents and left home soon after his diagnosis.

P has misused amphetamines and other illicit drugs for many years and now his refusal to give up drug taking is badly affecting his health. He is homeless and his physical health has deteriorated with recurrent chest infections.

Recently his bank card was stolen when he was living in a shared house with a couple who also had a drug addiction.

P's girlfriend is pregnant and he does not want this child taken into the care of the Department for Child Protection which is what occurred with her previous child.

Exhausted by P's behaviour, his mother applies to the State Administrative Tribunal for a guardianship and administration order but the young man refuses to attend the hearing. He advises that he does not need any help. The Tribunal appoints the Public Trustee administrator and the Public Advocate guardian with responsibility for accommodation and medical treatment decisions.

*(continued next page)*

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Once located, P refuses to speak with the guardian. Eventually, the guardian locates a vacancy in a psychiatric hostel and a drug rehabilitation program, but he won't agree to visit. At this stage P's condition has markedly deteriorated and he is unable to look after his own health and safety. The guardian involves P's General Practitioner who arranges for him to be involuntarily admitted for treatment.

When P's mental state improves he is still refusing to cooperate with discharge planning or work with the guardian. He insists he will return to live with his friends or girlfriend where there is a risk that he will return to drug use. The guardian will continue to work with him and try to overcome the challenges in engaging him and other agencies, as well as his girlfriend and family.

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

## Revocations

Of the 93 cases closed in 2007/08, a total of 57 guardianship orders were revoked by the State Administrative Tribunal – the same as in 2006/07.

Orders can be revoked when there is no further need for a substitute decision-maker. For example, due to the person regaining capacity, the issues leading to the Public Advocate's appointment being resolved or medical treatment no longer being considered necessary.

In some cases, a less restrictive alternative is found to guardianship, or a family member or friend is identified who can become the decision maker.

## Our Customers

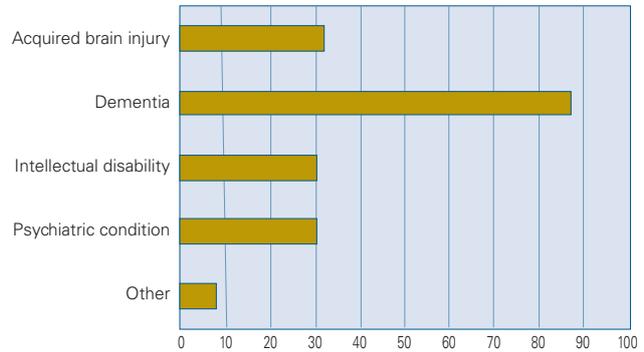
The most common issue leading to the appointment of the Public Advocate as guardian of last resort was medical treatment and health care, which was the subject of 317 orders, followed by accommodation, which was included in 230 orders.

Of the 187 new appointments in 2007/08:

- Abuse of a person with a decision-making disability was a factor in 31 (17%) cases (and of these, 17 were aged 65 or over). Neglect was significantly higher (55%) than other reported forms of abuse (see Fig. 14).
- 87 people had dementia, 30 people had an intellectual disability, 30 people had a psychiatric condition, 32 people had an acquired brain injury and eight people had other conditions (see Fig. 8).
- 159 people lived in the Perth metropolitan area and 28 people lived in regional areas (see Fig. 11).
- 15 people were of Aboriginal or Torres Strait Islander descent and 55 were born overseas.

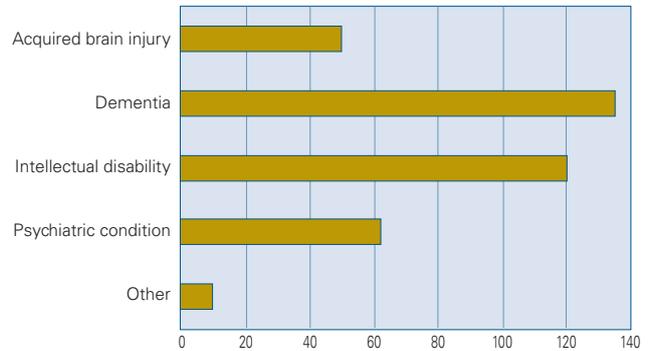
**Fig. 8 Profile by condition of disability of new guardianship orders appointing the Public Advocate 2007/08**

Acquired Brain Injury	32
Dementia	87
Intellectual Disability	30
Psychiatric Condition	30
Other	8
<b>TOTAL</b>	<b>187</b>



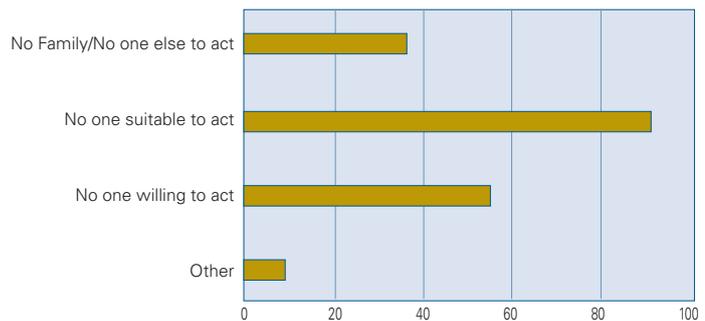
**Fig. 9 Profile by condition of disability of all guardianship orders appointing the Public Advocate as at 30 June 2008**

Acquired Brain Injury	53
Dementia	136
Intellectual Disability	120
Psychiatric Condition	62
Other	9
<b>TOTAL</b>	<b>380</b>



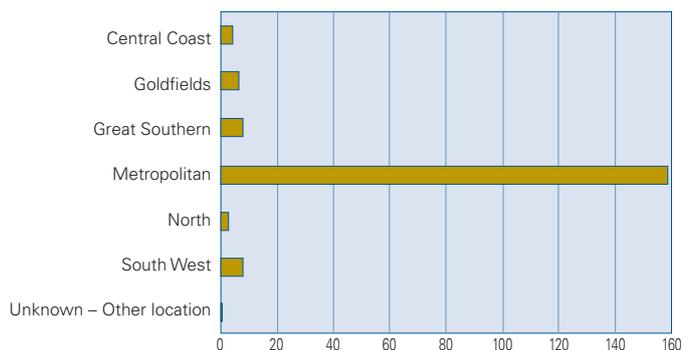
**Fig. 10 Profile of new guardianship orders by reason for appointment 2007/08**

No Family/No one else to act	36
No one suitable to act	89
No one willing to act	56
Other	6
<b>TOTAL</b>	<b>187</b>



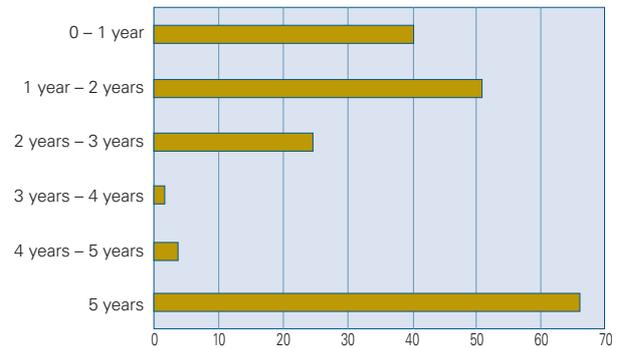
**Fig. 11 Profile of new guardianship orders by geographical location 2007/08**

Central Coast	3
Goldfields	6
Great Southern	8
Metropolitan	159
North	2
South West	8
Unknown - Other Location	1
<b>TOTAL</b>	<b>187</b>



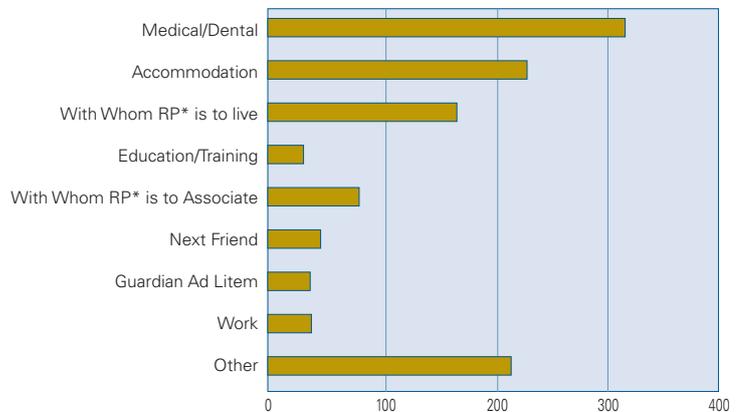
**Fig. 12 Length of new guardianship orders appointing the Public Advocate 2007/08**

0 - <1 year	40
1 year - <2 years	51
2 years - <3 years	24
3 Years - <4 years	2
4 Years - <5 years	4
5 Years	66
<b>TOTAL</b>	<b>187</b>



**Fig. 13 Functions given to the Public Advocate for all guardianship orders as at 30 June 2008**

Medical/Dental	317
Accommodation	230
With Whom RP* is to live	167
Education/Training	31
With Whom RP* is to Associate	80
Next Friend	48
Guardian Ad Litem	39
Work	39
Other	217

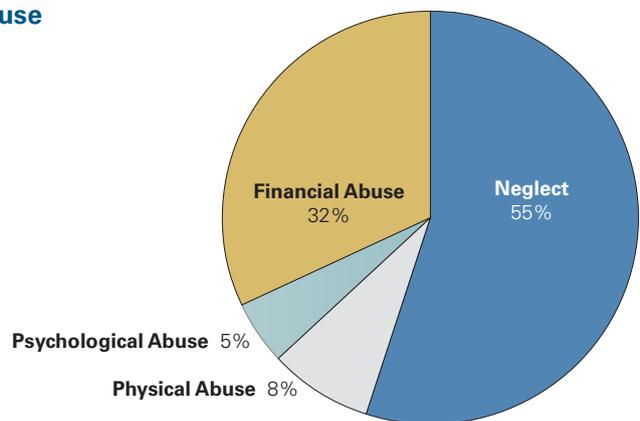


\*RP = Represented person

**Fig. 14 Profile by type of abuse of alleged abuse 2007/08 (New Orders)**

*(which includes statistics of elder abuse)*

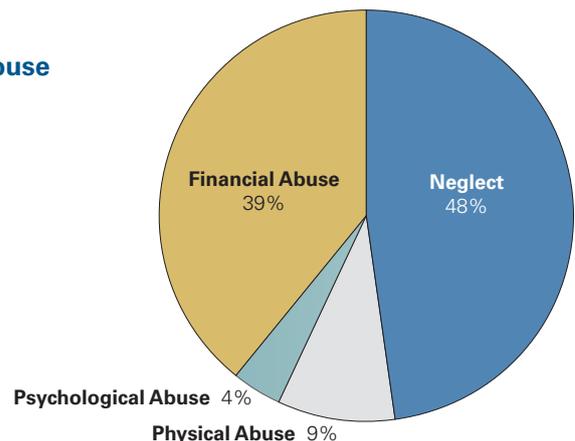
Abuse Type	31 people
Sexual Abuse	0
Physical Abuse	3
Neglect	21
Psychological Abuse	2
Financial Abuse	12
<b>TOTAL</b>	<b>38</b>



**NB** More than one abuse type can be chosen per application.

**Fig. 15 Profile by type of abuse of alleged elder abuse (aged over 65) 2007/08 (New Orders)**

Elder Abuse	17 people
Sexual Abuse	0
Physical Abuse	2
Neglect	11
Psychological Abuse	1
Financial Abuse	9
<b>TOTAL</b>	<b>23</b>



## Case study

### **Allegation of abuse: need for guardianship averted**

M is a young man with severe cognitive and physical impairments as a result of a serious head injury. His compensation payout is administered by the Public Trustee, and he receives 24 hour care in his home.

A guardianship application was made to the State Administrative Tribunal by a former carer alleging that M was being abused by his mother. She alleged that M was not being given choices and was being punished for misdemeanours by being left in his room. This application followed a similar complaint to the Public Trustee which had resulted in a report that had found no substance to the allegations of abuse but had recommended improvements to M's care planning.

The Public Advocate was asked by the Tribunal to investigate and concluded that 'the implementation of the recommendations made in the unreleased report commissioned by the Public Trustee will ensure that M is safe and cared for appropriately'. It also suggested that 'the current arrangements constitute a suitable less restrictive alternative to the making of an order' for a guardian.

At the hearing, three former carers and two current carers were present. It transpired that the applicant had not witnessed any physical abuse, but this had been reported to her by another carer. The Tribunal was not able to find any records in the care notes of the incidents reported by this carer.

The Tribunal accepted the evidence of the current carers that M's needs were being 'adequately met'. However, it found that while there was not evidence of physical abuse there was evidence that emotional mistreatment had been occurring.

In dismissing the application, the Tribunal said that the appointment of a service provider as a case manager was a less restrictive alternative to the appointment of a guardian and it 'should ensure that M receives optimal care and that all his needs and rights are protected, both now and in the future'.

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

## Systemic Advocacy

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

## The Year in Review

### Policy reviews

Submissions were made to a number of inquiries by the Public Advocate. These included:

#### ***Human Rights for WA Discussion Paper***

Submission to WA Human Rights Act Consultation Committee in August 2007

#### ***Inquiry into the Jurisdiction and Operation of the State Administrative Tribunal***

Submission to the State Parliament's Standing Committee on Legislation in August 2007

Appearance before the committee on 7 May 2008

#### ***National Consultation Disability Supported Accommodation Program***

Submission to the Federal Department of Families, Community Services and Indigenous Affairs in October 2007

#### ***Consultation on the Possible Ratification of the UN Convention on the Rights of Persons with Disabilities***

Submission to Federal Attorney-General's Department's Human Rights branch in February 2008

#### ***Inquiry into Collaborative Approaches in Government***

Submission to the State Parliament Community Development and Justice Standing Committee in March 2008

Appearance before the committee on 11 June 2008

#### ***Consultation on the Draft Public Health Bill***

Submission to Department of Health in April 2008

#### ***Statutory Review of the Criminal Investigation (Identifying People) Act 2002***

Submission to Statutory Review Reference Group in June 2008.

The Public Advocate contributed to the response by the Department of the Attorney General on the Consultation on the UN Convention on the Rights of Indigenous People in April 2008. In addition, the Public Advocate contributed to the Government's response to *Which Way Home: A New Approach to Homelessness Green Paper* in June 2008.

The Public Advocate is a member of the steering group for the review of the *Carers Recognition Act 2004*. This review is being led by the Department for Communities.

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

Since May 2008, the Public Advocate has been a participant of the interagency executive committee for the next phase of the People with Exceptionally Complex Needs project. This work is building on the first pilot that was initiated in August 2005 by the Department of the Premier and Cabinet in response to the Public Advocate raising serious concerns about a small but difficult cohort of people with exceptionally complex and multi-layered needs for whom the existing service system was not working.

Senior officers from the Mental Health Division (Department of Health), Disability Services Commission, Departments of the Premier and Cabinet, Corrective Services and Housing and Works, Drug and Alcohol Office and the Office of the Public Advocate are continuing to develop this whole of government response. Funding has been made available by Mental Health, the Disability Services Commission and the Department of the Premier and Cabinet to enable the employment of an experienced coordinator to ensure sound case management for a small number of people during 2008/09 and provide justification for a longer term strategy with this collaborative approach.

### **Disability and Justice Conference**

The Public Advocate convened a major national conference on 13 November 2007 to encourage a cross-sector approach to dealing with people with decision-making disabilities who encounter the justice system. Many of these people have complex and multiple needs that overlap a range of different services.

The conference was supported by the departments of Attorney General, Corrective Services, Health, Office of Crime Prevention, WA Police and the Disability Services Commission.

It attracted 325 people from mental health, disability services, corrective services and community organisations to hear the keynote speaker, Professor Jim Ogloff, Head of Psychological Services with Forensicare Victoria and other speakers and to participate in workshops exploring the issues.

### **Elder abuse**

As a member of the *WA Alliance for the Prevention of Elder Abuse (APEA)*, the Public Advocate works with Advocare, Department for Communities (Seniors Interests and Carers), Department of Health, Office of the Chief Psychiatrist, WA Police, Public Trustee and Legal Aid to develop inter-agency responses to elder abuse.

The Office of the Public Advocate was actively involved in the development of the APEA strategic plan for 2008–2011 which outlines the Alliance's priorities and goals. Community education and awareness raising were high priorities for 2007/08. The Public Advocate and two senior staff presented at two seminars for World Elder Abuse Awareness Day which is held on 16 June each year. This included presenting information on the prevention of elder abuse and enduring powers of attorney to service providers, and a general talk on guardianship and enduring powers of attorney to seniors.

Liaison continues with researchers from Curtin University and Marr Mooditj in relation to a project to develop a training package to assist Aboriginal health care workers identify and report mistreatment of older people. The development of training was a recommendation of Public Advocate research into the Mistreatment of Older People in Aboriginal Communities completed in 2006.

### **New protocols**

The Department for Child Protection has been working with the Public Advocate to implement new procedures for young adults with decision-making disabilities leaving the care of the Department for Child Protection under a memorandum of understanding signed in July 2007.

The Office of the Public Advocate signed a protocol with the new Northern Suburbs Community Legal Centre's Older Persons Rights Service to formalise referrals and the exchange of information.

A memorandum of understanding was signed with the WA Police related to procedures for the reporting of allegations of sexual abuse of adults with a decision-making disability.

### **Reconciliation Action Plan**

The Office of the Public Advocate registered a Reconciliation Action Plan (RAP) with Reconciliation Australia in December 2007.

All Office of the Public Advocate staff were involved in contributing to the plan's development, highlighting areas which they felt were important for reconciliation and ways in which the office could work more effectively with Aboriginal people.

The key features of the current financial year included developing culturally appropriate training materials for Aboriginal service providers, increasing knowledge of issues affecting Aboriginal people through presentations and attendance at events celebrating the national apology to the Stolen Generation, and building partnerships with bodies such as the Aboriginal Justice Agreement and Advocare.

## Community Education

The role of Community Education is to promote the human rights of adults in Western Australia with decision-making disabilities under the provisions and operation of the *Guardianship and Administration Act 1990* through community education, awareness and understanding. This includes:

- developing a framework for the delivery of effective community and professional education and training which promotes the human rights of people with decision-making disabilities
- producing and publishing written and other material accessible to the community 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 decision-making disabilities at risk of exploitation, neglect and abuse.

## The Year in Review

Staff from the Office of the Public Advocate organised and delivered 17 community education sessions for service providers from the aged care, health and legal sectors in 2007/08 and they presented at another 10 sessions organised by other groups.

A total of 433 people registered for the guardianship and administration, enduring power of attorney, private administrator and elder abuse training seminars.

People attending Public Advocate presentations are asked to complete a survey indicating their level of satisfaction with the seminar and the information provided. Of the 291 who responded in 2007/08 to the surveys, 97% were satisfied or very satisfied with the content and conduct of the session.

## Consolidation of regional services

The Office of the Public Advocate continued to offer training services to regional areas. Formal training was offered to mental health, aged and disability services providers in Albany, Northam, Merredin and Kalgoorlie and arrangements began with organisations in the Kimberley to facilitate training on a return visit in the later half of 2008. Several training sessions in the metropolitan area were targeted at regional participants.

## Telephone Advisory Service

An interactive telephone voice messaging system was expanded in August 2007 to provide key information regarding guardianship, administration and enduring powers of attorney. In the first six months of operation until February 2008, a total of 1248 calls were made to the system at 1300 858 455.

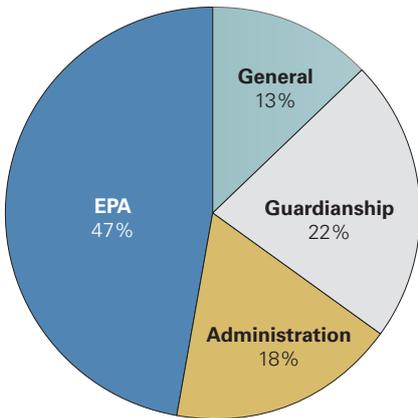
Callers can listen to a range of recorded information or elect to speak to a receptionist at any point in the call.

With the progressive roll-out of the new telephone number in brochures and telephone directories, most public calls are expected to be routed through the system in the future.

A total of 4,233 people received advice from a guardian or investigator through the Office of the Public Advocate’s telephone advisory service (including 150 enquiries made by email, letters or attending the office) compared to 3,972 in 2006/07 – an increase of 6%. Almost half the 5,041 enquiries related to enduring powers of attorney.

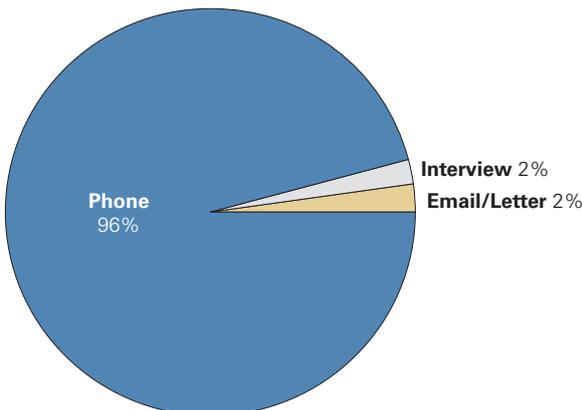
**Fig. 16 Number of Enquiries to the Telephone Advisory Service 2007–08**

	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Total
Guardianship	94	105	92	78	100	73	94	89	91	107	114	96	<b>1133</b>
Administration	100	75	67	70	88	48	77	65	73	71	82	75	<b>891</b>
EPA	201	180	200	188	212	134	216	213	207	203	184	218	<b>2356</b>
General	61	53	69	60	71	38	55	47	45	60	65	37	<b>661</b>
<b>Total</b>	<b>456</b>	<b>413</b>	<b>428</b>	<b>396</b>	<b>471</b>	<b>293</b>	<b>442</b>	<b>414</b>	<b>416</b>	<b>441</b>	<b>445</b>	<b>426</b>	<b>5041</b>



**Fig. 17 Mode of Handling Enquiries**

	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Total
Phone	362	333	356	317	369	236	358	349	348	361	341	353	<b>4083</b>
Interview	6	8	4	8	7	5	6	4	6	10	9	6	<b>79</b>
Email/Letter	6	5	9	7	6	6	3	3	3	6	9	8	<b>71</b>
<b>Total</b>	<b>374</b>	<b>346</b>	<b>369</b>	<b>332</b>	<b>382</b>	<b>247</b>	<b>367</b>	<b>356</b>	<b>357</b>	<b>377</b>	<b>359</b>	<b>367</b>	<b>4233</b>



### **Protecting vulnerable Aboriginal adults**

A brochure and training materials were developed by an Aboriginal community education officer and trialed at several training sessions in the Perth metropolitan area and Kalgoorlie. Relationships with service providers were enhanced by trips to the Kimberley and Kalgoorlie and training sessions in the metropolitan area. The Public Advocate hopes that attendance at the training sessions will improve with the appointment of a permanent Aboriginal community education officer to cultivate and maintain relationships with service providers.

### **Publications**

A new logo and corporate colours were adopted in 2007 and incorporated into all information sheets, position statements and other publications.

Plain English editions of the *Guide to Enduring Power of Attorney* and *Enduring Power of Attorney Information Kit* were printed in late 2007 and the Guide for Service Providers was updated and redesigned. The kit and guide are available for purchase from the State Law Publisher and Newspower newsagencies.

About 100 requests from service providers and individuals for information kits were met, in addition to kits distributed at training sessions. Publications can also be downloaded from the website at [www.publicadvocate.wa.gov.au](http://www.publicadvocate.wa.gov.au).

### **Media relations**

The Public Advocate seeks to promote the human rights, dignity and autonomy of people with decision-making disabilities through relevant media. In 2007/08, the work of the Office was highlighted in several newspaper, online and aged care magazine articles discussing medical consent, community guardianship, elder abuse and the appointment of a new Public Advocate. The keynote speaker from the Disability and Justice Conference, Professor Jim Ogloff was a guest on ABC Radio. A quarterly newsletter is distributed to about 1200 people in the health, aged care and disability fields.

## Corporate Services

The role of Corporate Services is to support 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 2007/08 are as follows:

**Fig. 18 Budget Allocation and Expenditure 2007/08**

	Total Cost of Output
\$'000 Actual 2007–08	3,094
\$'000 Budget 2007–08	2,898 (revised budget)
\$'000 Variations from Budget	(196)

## The Year In Review

### Human resources

The staff training committee, which was established in late 2006/07, developed a training program to meet the specific needs of staff in the Office of the Public Advocate in 2007/08. Group training was provided on conflict resolution, the changing role of the Public Trustee and implications of the new *Criminal Investigation (Identifying People) Act 2006* for sexual assaults. Staff also attended training sessions on mental illness, ethics and other topics relevant to their work.

### Office technology

Tenders for a new Case Management System for the recording and management of client and case information closed in June 2007. The contract was awarded in October and development commenced in January 2008. The system should be fully operational by early 2009.

The Office's videoconferencing facility was used for nine client interviews, service provider training or seminars in 2007/08.

The progressive update of computers continued with about half the Office's computers upgraded to current standards and printers upgraded to improve efficiency.

### Interpreter services

To help ensure that language is not a barrier to services for customers for whom English is a second language, the Office uses translation and interpreter services. During 2007/08 interpreter services were provided in Croatian, Macedonian, Arabic, Swahili, Czech and German.

## Freedom of information

Two valid applications were received during 2007/08. One application was refused as it was seeking information about third parties and the other was allowed edited access.

Anyone who wishes to access information held by the Public Advocate should contact the Freedom of Information Coordinator on 9278 7300 or 1300 858 455. They may be invited 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 a complaint with the Information Commissioner.

## Customer feedback

The Office surveyed customers of its guardianship, investigation and community education services in 2007/08. Respondents rated access to staff and services, responsiveness to individual needs, confidentiality, provision of information, professionalism, response to feedback and grievances, and overall satisfaction.

Surveys of guardianship and investigation customers were conducted at random with 169 customers responding (compared to 163 last year).

At 30 June 2008, 117 customers of the guardianship service had responded. On average, 79% were satisfied with the overall level of service (compared to 88% in 2006/07).

In the investigation area, 52 individuals responded. On average, 84% were satisfied or very satisfied with the overall level of service (compared to 83% in 2006/07).

The combined satisfaction level averaged 79%. This compares with 85% in 2006/07.

In 2007/08, six formal complaints were received by the Office and all were resolved after being contacted by the Public Advocate or a senior manager.

Two of the complaints highlighted the lack of understanding of the different roles of the State Administrative Tribunal and the Public Advocate.

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

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

## Significant issues and trends

For the past four years the demand for the Public Advocate's services has been increasing at a rate much greater than predicted, culminating in a 64% increase in new guardianship orders in 2007/08.

*Data Analysis Australia*, in its report entitled "*Forecasting the Demand for the Services of the Public Advocate*," April 2004, forecast an annual growth of 5.9% for new guardianship orders appointing the Public Advocate over the following five years.

The actual growth rate was 10% in 2004/05, followed by 9.4% in 2005/06, 22% in 2006/07 and an unprecedented 64% in 2007/08.

The increase is largely attributable to an increase in people with dementia as the population ages. Although the 2004 research had forecast an increase in guardianship appointments attributable to the ageing population, it had predicted that the growth in the number of orders appointing the Public Advocate would be dominated by people with intellectual disabilities. However, this financial year the total number of people under the Public Advocate's guardianship with dementia has exceeded those with an intellectual disability.

At present, there are approximately 17,000 Western Australians with severe to moderate dementia and this number is expected to double in the next 10 years. Of the 187 new appointments this year, 87 individuals had dementia.

The increase in new appointments brought the total number of people for whom the Public Advocate made personal and lifestyle decisions to 475 (288 carried forward and 187 new cases) in 2007/08. This compares to 370 people in 2006/07 – an increase of 95 cases.

Pressure on the Public Advocate's investigation services is also increasing. In 2007/08, investigators carried out 757 investigations into new applications or reviews of existing orders before the State Administrative Tribunal. This was a 21% increase on the 2006/07 total of 624. Another 132 investigations were carried out at the request of community members.

## Enduring Powers of Guardianship

Preparations have begun, in conjunction with the Department of Health, for the implementation of the *Acts Amendment (Consent to Medical Treatment) Act 2008*, which was passed by the Parliament in June 2008. Once proclaimed, the Act will enable adults with full legal capacity to appoint enduring guardians to make decisions regarding medical or other lifestyle and personal issues. It will also enable people to prepare an advance health directive setting out their treatment wishes if they become incapacitated. The Act will also change some of the provisions in the *Guardianship and Administration Act 1990* which impact on the work of the Office of the Public Advocate.

The new legislation is expected to significantly increase the number of calls to the telephone advisory service and demand on the Office of the Public Advocate for training and materials.

# Disclosures and legal compliance

## Financial Statements

See 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*.

### Service 2: 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 its people requires that the State safeguards the rights of adults with reduced decision-making abilities, and reduces the incidence of risk, neglect and exploitation. The Public Advocate represents and advances the best interests of people with decision-making disabilities, both at hearings for the appointment of a guardian and in the community.

Effectiveness Indicators	Actual 2004-05	Actual 2005-06	Actual 2006-07	Target 2007-08	Actual 2007-08	Comment on significant variation
<p><b>Proportion of customers provided with advocacy relative to the number of referrals</b></p> <p>This indicator measures the number of matters allocated for advocacy as a percentage of the total referrals, including community referrals.</p>	100%	100%	100%	95%	100%	

Effectiveness Indicators	Actual 2004-05	Actual 2005-06	Actual 2006-07	Target 2007-08	Actual 2007-08	Comment on significant variation
<p><b>The percentage of customers surveyed satisfied with information and advice provided by the Office of the Public Advocate</b></p> <p>This indicator measures the satisfaction level of clients in respect to the information and advice received at training sessions.</p>	N/A	97%	97%	90%	97%	
<p><b>Guardian of Last Resort allocated in one day</b></p> <p>This indicator measures the timeliness of the Public Advocate in allocating a guardian to a represented person in order to make decisions on their behalf and protect them from neglect, abuse or exploitation. A guardian is appointed only when considered necessary, and when there is no one else suitable or available to take on the role.</p>	93%	93.5%	92%	95%	93%	
<p><b>Average cost of providing advocacy and guardianship services</b></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>	\$2,219	\$2,395	\$2,506	\$2,582	\$2,287	The lower than estimated cost per service is due to a higher than anticipated number of services delivered during the year.

## Notes to the Key Performance Indicators

### Service 2: Advocacy, Guardianship and Administration Services

Effectiveness Indicator	Description
Proportion of customers provided with advocacy relative to the number of referrals	<p>This indicator measures the ability to provide advocacy to clients identified as requiring advocacy and is considered a key indicator because it shows the extent to which the Office of Public Advocate (OPA) is able to protect the rights of adults with decision-making disabilities and reduce the risk of neglect, exploitation or abuse. Data for this indicator is extracted from OPA Statistical Collection Access System (OSCAS).</p> <p>The Office of the Public Advocate receives applications referred by the State Administrative Tribunal, as well as community referrals, and assesses their priority before allocating the highest priority applications to investigators. Applications not able to be allocated are placed on a waitlist.</p>
The percentage of customers surveyed satisfied with the information and advice by the Office of Public Advocate	<p>Customer surveys are distributed to secondary customers. That is, people with a direct personal or professional involvement in the lives of people in the primary customer group. Feedback questionnaires are distributed to the target group at the conclusion of every training course. The level of satisfaction with the services delivered is measured by collating the ranking level (1 = high satisfaction and 4 = unsatisfied) assigned to the feedback questions by clients.</p> <p>In 2007/08, 433 people attended community education sessions held by the Office of the Public Advocate. All attendees were given survey forms at the end of each session. 291 responses were received, yielding a response rate of 67%. The survey's sampling error rate is 3.25% and the confidence interval was at 95%.</p> <p>The indicator relates directly to one of the key elements of the Public Advocate's outcome statement of providing information and advice to the community about the Guardianship and Administration system.</p>
Guardian of Last Resort allocated in one day	<p>The indicator is based on the Public Advocate's best practice to ensure the needs of the represented person are met immediately. It is measured by the number of appointments of Guardians of Last Resort made by the SAT 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 indicator is extracted from OSCAS.</p>

Efficiency Indicator	Description
Average cost per case of providing Advocacy and Guardianship services	<p>This indicator is calculated by dividing the total cost of providing advocacy, guardianship and administration services by the number of advocacy and guardianship services provided. The information for this indicator is extracted from Advisor and OSCAS.</p>

## Ministerial Directives

Nil

## Other Financial Disclosures

See Department of the Attorney General annual report

## Other Legal Requirements

### Advertising and marketing expenditure

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*:

**Fig. 19 Advertising and Marketing Expenditure**

Marketforce Productions/Media Decisions: Recruitment Advertising & Community Education	14,077
Department of Premier and Cabinet: Intersector – Recruitment Advertising	0
Direct Mail Organisation	0
Market Research Organisation	0
<b>TOTAL EXPENDITURE</b>	<b>\$14,077</b>

### Compliance with Public Sector Standards and Ethical Codes

For administrative purposes, compliance with Public Sector Standards and Ethical Codes is managed under the Department of the Attorney General Code of Conduct and relevant supporting legislation, policy and procedures.

A member of the Management Team attended a Corruption and Crime Commission training session on 'Identifying and Managing Conflicts of Interest in the WA Public Sector'. Information from the course was distributed to management and staff.

### Record keeping

As part of a Department of the Attorney General records management initiative, the Office reviewed its case and administrative records in 2007/08. In accordance with the Office's records keeping plan a large quantity of closed or inactive files were transferred to offsite storage and case files for deceased people were destroyed.

At 30 June 2008, 80% of staff had completed online training in records awareness designed to increase understanding of their obligations under the *State Records Act 2000*.

## Government Policy Requirements

For information on corruption prevention, substantive equality and sustainability action plans see Department of the Attorney General annual report.

### **Occupational safety and health (OSH)**

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

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

Due to the relatively small size of the Office there is no formal Occupational Safety and Health Committee. Staff are able to, and encouraged, to raise occupation safety and health issues in monthly team meetings. The Manager Corporate Services is responsible for investigation of any issues raised and the coordination of the reporting and claims process. During 2007/08 there were no fatalities and no lost time injuries.

# 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.

## Related legislation

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

*State Administrative Tribunal Act 2004*

*Health Act 1911*

*Supreme Court Act 1935*

*Public Trustee Act 1941*

*Disability Services Act 1993*

*Mental Health Act 1996*

*Criminal Law (Mentally Impaired Accused) Act 1996*

*Criminal Investigation (Identifying People) Act 2002*

*Criminal Investigation Act 2008*

*Carers Recognition Act 2004*

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

*Corruption and Crime Commission Act 2003*

*Electoral Act 1907*

*Equal Opportunity Act 1984*

*Financial Management Act 2006*

*Freedom of Information Act 1992*

*Occupational Safety and Health Act 1984*

*Public Interest Disclosure Act 2003*

*Public Sector Management Act 1994*

*State Records Act 2000*

*State Supply Commission Act 1991*

*Workers' Compensation and Rehabilitation Act 1981*

# Appendix 2 Publications

All Public Advocate publications are available online at [www.publicadvocate.wa.gov.au](http://www.publicadvocate.wa.gov.au) and all except the enduring power of attorney kit and guide, can be obtained from the Office of the Public Advocate.

## Information sheets

1. Introduction to the Guardianship and Administration System
2. Role of the Public Advocate
3. Role of the State Administrative Tribunal
4. Guardianship
5. Administration
6. Sterilisation
7. Public Advocate — Customer Complaints and Service Standards
8. Enduring Power of Attorney

## Position statements

1. Consent to Medical and Dental Treatment
2. Restraint
3. Role of the Public Advocate as Guardian of Last Resort in Accommodation Decisions
4. Role of the Public Advocate as Guardian of Last Resort in Medical Decisions
5. Role of the Public Advocate as Guardian of Last Resort in Contact Decisions

## Brochures

- Office of the Public Advocate
- Community Guardianship Program
- Caring for and respecting older people (available in English, Italian, Greek, Dutch, Polish, Serbian, Croatian, Chinese and Vietnamese)
- Are you worried about a vulnerable adult who needs help making decisions? (a brochure for Aboriginal people).

## Enduring Power of Attorney information kit and guide

The kit and professional guide can be purchased at the State Law Publisher, 10 William Street, PERTH, WA, 6000, [sales@dpc.wa.gov.au](mailto:sales@dpc.wa.gov.au) or at selected Newspower newsagents.

## Professional guides

*A Guide for Service Providers* 2005 Edition (Practice Manual)

## Research reports

*Mistreatment of Older People in Aboriginal Communities – an Investigation into Elder Abuse* 2005

*Care and Respect – Elder Abuse in Culturally and Linguistically Diverse Communities* 2006

## Newsletter

Quarterly

## Annual Report

## 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.

**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 (EPA):** 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 EPA authority continues even when the person granting it loses their capacity to make decisions for themselves.

**Guardianship:** The legal appointment of a responsible person who can make personal, medical and lifestyle 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.