



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



Office of the  
**Public Advocate**

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

# Annual Report 2021/22

# Acknowledgement of Country

The Office of the Public Advocate respectfully acknowledges the traditional custodians of the land as being the first people of this country. We embrace the vast Aboriginal cultural diversity throughout Western Australia and recognise their continuing connection to country, water and sky.

We pay our respects to Elders past, present and emerging.



Hon. John Quigley MLA  
ATTORNEY GENERAL

In accordance with Section 101(1) of the *Guardianship and Administration Act 1990* of Western Australia, I am pleased to submit the Annual Report of the Public Advocate for the year ending 30 June 2022.

This report records the operations and performance of the Office of the Public Advocate during 2021/22. It outlines the issues and general trends impacting upon the human rights of Western Australian adults who have a decision-making disability and come into contact with this Office.

In 2021/22, the Office of the Public Advocate reported on financial and administrative matters to the Director General of the Department of Justice.

*Pauline Bagdonavicius*

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**PUBLIC ADVOCATE**  
1 September 2022

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# Overview

## The Year in Review

The Office of the Public Advocate has a mandate to protect and promote the best interests of adults with a decision-making disability in Western Australia. The demand for the Office's statutory services of advocacy, investigation, and guardianship, continued to grow throughout 2021/22, giving rise to a variety of challenges throughout the year.

These challenges were compounded by the ongoing COVID-19 pandemic, which escalated with the introduction of the Omicron variant to WA in 2022. This new, more contagious strain of the virus caused fluctuating restrictions throughout the year.

The Office was quick to respond, reducing the risk of exposure to staff, vulnerable adults and related agencies and stakeholders. Face-to-face contact with clients during these periods only occurred in exceptional circumstances with the majority of staff transitioning to alternative work arrangements as and when required.

During 2021/22 the Office's advocacy and investigation team looked into 2,505 matters where there was concern someone may need a guardian and/or administrator appointed. This was a 12 per cent increase from the total number of investigations carried out in 2020/21.

The guardianship team played an important decision-making role in the lives of 3,115 adults who had the Public Advocate appointed as guardian at 30 June 2022, a 12 per cent increase from 30 June 2021.

Prior to 2018, dementia consistently accounted for the largest proportion of total appointments of the Public Advocate as guardian. However, over the past few years, mental illness and intellectual disability have steadily risen to replace dementia, accounting for the highest number of appointments. At 30 June 2022, mental illness accounted for the largest proportion (31 per cent) of all Public Advocate guardianship appointments, with intellectual disability accounting for 28 per cent, and dementia accounting for 25 per cent.

Growth in these areas continues to be driven in part by the National Disability Insurance Scheme (NDIS) roll-out, along with a growing prevalence of mental illness across the community. In order to achieve better outcomes for these represented persons, there is an ongoing need to engage in support through the NDIS. This means that Public Advocate appointments for these types of decision-making disabilities are anticipated to continue rising into the future.

Important policy work has been ongoing, with the Public Advocate attending or represented on numerous working groups and committees including the development of the revised Advance Health Directive, led by the Department of Health and launched in August 2022.

In March 2022, the Office collaborated with the Department of Justice's Strategic Communications Division to migrate its website to the wa.gov.au platform. This enabled a full content review and the reorganisation of complex information into a more intuitive, user-friendly format. These changes improved functionality, navigation, and overall user-experience.

The Office continues to work on the prevention of elder abuse, often collaborating with other agencies to tackle this growing issue. It did so again this year, through active membership of the Alliance for the Prevention of Elder Abuse (APEA), the provision of information to community members and professionals working in this sector, along with a World Elder Abuse Awareness Day (WEAAD) community event that was hosted jointly with the Public Trustee on Wednesday 15 June 2022.

The Office delivered 21 community education sessions in 2021/22, many of which were re-scheduled multiple times due to fluctuating COVID-19 restriction levels. While the majority of these seminars were delivered face-to-face, 2022 saw a rise in online delivery, via MS Teams. Community members and service providers continued to access information and publications through the Office's website. Staff also provided advice, information and material via the Office's advisory service, addressing more than 5,600 enquiries from just over 3,700 people in 2021/22.

## Acknowledgements

The delivery of services provided by the Office of the Public Advocate is very much a collaborative effort. The managers, delegated guardians, investigator advocates, senior policy and community education officers, and the administration team, work together for the benefit of the community. Their tireless contribution, which often involves navigating very challenging circumstances, protects vulnerable adults with decision-making disabilities across the State.

A special mention should also be given to our volunteers who participate in the Office's Community Guardianship Program. This small, dedicated group generously give their time and energy to work in the best interests of people with decision-making disabilities. Their contribution is greatly appreciated.

I would also like to take this opportunity to thank the Director General of the Department of Justice, Dr Adam Tomison, for his strong leadership and acknowledge the support this office receives from staff across the Department and colleagues from other agencies. These relationships are integral to the Office's continued success and are essential when delivering advocacy, investigation and guardianship services to the Western Australian community.

This year, the Office experienced a very sad personal loss, with the passing of Business Manager, Tim Macintyre. Tim gave more than 44 years of service to Western Australia, starting in January 1977. He worked with the Department of Fisheries and Department of Agriculture, before moving to the Office of the Public Advocate in 2006. Tim made a significant contribution to budget submissions, as well as guidance to management and staff on human resource, financial, budget and IT management. He is deeply missed.



*Pauline Bagdonavicius*

Pauline Bagdonavicius

**PUBLIC ADVOCATE**

# Overview of the Agency

## Operational Structure

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

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

In 2021/22 the Office of the Public Advocate reported on financial and administrative matters to the Director General of the Department of Justice. In accordance with this arrangement, the financial statements of the Office are published in the Department’s annual report.

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

## Mission

To protect and promote the human rights of adults with a decision-making disability to reduce their risk of abuse, exploitation and neglect.

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

## Functions

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

- investigation of concerns about the wellbeing of adults with a decision-making disability and whether there is a need for an application for a guardian or administrator to be appointed
- investigation of applications made to the State Administrative Tribunal to assist it to determine whether a guardian or administrator should be appointed
- guardianship (for personal, lifestyle, treatment and medical research related decisions) when the State Administrative Tribunal determines that there is no one else suitable, willing and available to act as the person’s guardian
- information, advice and training on how to protect the human rights of adults with a decision-making disability through the *Guardianship and Administration Act 1990*.

## Values

Five principles set out in Section 4 of the *Guardianship and Administration Act 1990* guide the Office of the Public Advocate in the provision of all services. Broadly they are:

### – **Presumption of competence**

Every person is presumed to be capable of managing their own affairs and making reasonable judgements about themselves, their safety and their finances unless this is proved to the contrary.

### – **Best interests**

The primary concern is the best interests of the person with the decision-making disability.

### – **Least restrictive alternative**

A guardian or administrator is only appointed when a person's needs can no longer be met in a less restrictive way, without impacting on their freedom of decision and action.

### – **Limited versus plenary**

The authority of an appointed guardian or administrator will be limited to those areas in which the person with a decision-making disability needs decision-making support.

### – **Current wishes and previous actions**

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

## Stakeholders

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

For over a decade, dementia accounted for the largest proportion of appointments of the Public Advocate as guardian. This year marked the fifth consecutive year that dementia did not account for the largest proportion of appointments. However, 46 per cent of the new matters referred for investigation by the State Administrative Tribunal involved a person with dementia and 38 per cent of the new guardianship orders appointing the Public Advocate this year related to dementia.

Of the 3,115 adults the Public Advocate was appointed as guardian at 30 June 2022, 31 per cent had a mental illness, 28 per cent had an intellectual disability, 25 per cent had dementia, 15 per cent had an acquired brain injury and one per cent had some other form of decision-making disability. Of these 3,115 adults, 55 per cent were male and 45 per cent were female<sup>1</sup>.

Of the 570 guardianship orders appointing the Public Advocate for people of Aboriginal and Torres Strait Islander descent at 30 June 2022, intellectual disability accounted for 40 per cent, followed by 26 per cent for mental illness, 20 per cent for acquired brain injury, 13 per cent for dementia and one per cent for Autism Spectrum Disorder.

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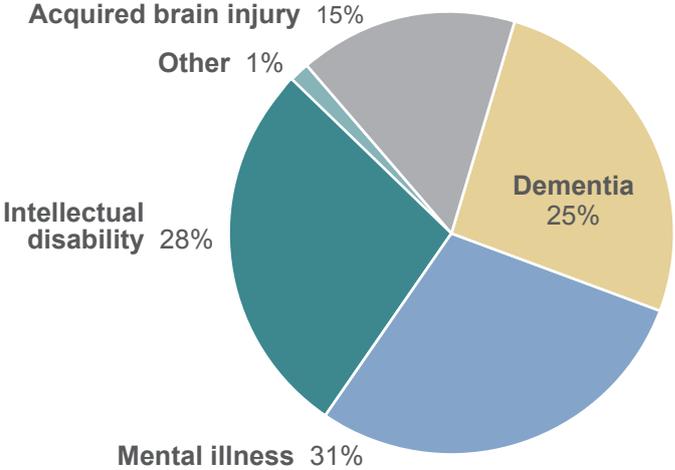
<sup>1</sup> Three people did not identify as male or female.

At 30 June 2022, 2,050 or 66 per cent of the 3,115 adults for whom the Public Advocate was appointed guardian had NDIS involvement. Of the 3,115 adults 1,973 were 65 years or younger, and of these adults, 94 per cent had NDIS involvement.

It appears that the ongoing roll-out of the NDIS has resulted in further growth in the proportion of new appointments of the Public Advocate for people with an intellectual disability and people with a mental illness. It is anticipated this trend will continue under the Commonwealth and WA State Government Bilateral Agreement, which ends on 30 June 2023.

**Figure 1.1 Profile of all guardianship orders appointing the Public Advocate by type of decision-making disability as at 30 June 2022**

Type of decision-making disability	
Acquired brain injury	463
Dementia	779
Intellectual disability	884
Mental illness	957
Other	32
<b>Total</b>	<b>3,115</b>

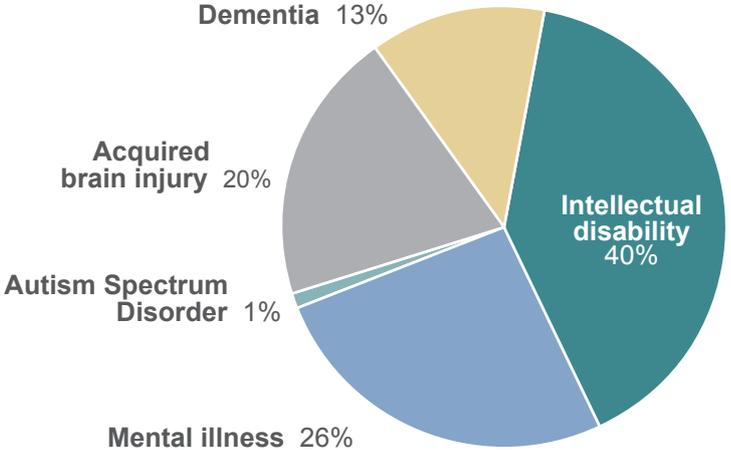


*Note: 30 of the 32 'other' are for represented persons with Autism Spectrum Disorder.*

The number of people for whom the Public Advocate is guardian has increased by 61 per cent from 1,923 in June 2018 to 3,115 in June 2022.

**Figure 1.2 Profile of all guardianship orders appointing the Public Advocate for people of Aboriginal and Torres Strait Islander descent by type of decision-making disability as at 30 June 2022**

Type of decision-making disability	
Acquired brain injury	115
Dementia	76
Intellectual disability	226
Mental illness	150
Autism Spectrum Disorder	3
<b>Total</b>	<b>570</b>



**Figure 2 People under guardianship orders appointing the Public Advocate by type of decision-making disability as at 30 June 2018 – 30 June 2022**

Type of decision-making disability	2018		2019		2020		2021		2022	
	Number	Percentage of total								
Acquired brain injury	299	16%	338	16%	383	16%	418	15%	463	15%
Dementia	531	28%	566	26%	634	26%	719	26%	779	25%
Intellectual disability	578	30%	630	29%	696	28%	759	27%	884	28%
Mental illness	499	26%	571	27%	706	29%	821	30%	957	31%
Other	16	1%	35	2%	44	2%	54	2%	32	1%
<b>Total</b>	<b>1,923</b>		<b>2,140</b>		<b>2,463</b>		<b>2,771</b>		<b>3,115</b>	

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

Note 2: In 2022, 30 of the 32 'other' are for represented persons with Autism Spectrum Disorder.

### Acquired brain injury

An acquired brain injury can result in the deterioration of cognitive, physical, emotional or independent functions. This injury can occur as a result of events including trauma, hypoxia, infection, alcohol and substance abuse, degenerative neurological disease or stroke. In 2007, the Australian Institute of Health and Welfare estimated that people aged 65 years or over were more than twice as likely as those aged less than 65 years to have an acquired brain injury with activity limitations or participation restrictions.<sup>2</sup>

In 2021/22 there were 1,446 Western Australian participants engaged with the National Disability Insurance Scheme, with an acquired brain injury reported as their primary disabling condition. This represented three per cent of the 46,475 active Western Australian participants in the NDIS in 2021/22.<sup>3</sup>

### Dementia

According to research commissioned by Dementia Australia,<sup>4</sup> there were an estimated 487,500 people living with dementia in Australia in 2022, with 46,000 of these people in Western Australia. This research estimates that the national figure will increase to 1,076,000 people by 2058, with 108,000 of these people in WA.

The projected rates of prevalence in this report suggest that the Office of the Public Advocate can expect continued and significant growth in the number of represented persons with dementia.

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

3 National Disability Insurance Scheme, published quarterly and full reports 2021-22 (<https://www.ndis.gov.au/about-us/publications/quarterly-reports>)

4 Dementia Australia, key facts and statistics updated Jan 2022 (<https://www.dementia.org.au/statistics> and <https://www.dementia.org.au/sites/default/files/2021-03/2021-DA-Prev-Data-Dementia-in-Aus.pdf>)

## ***Intellectual disability***

The Australian Bureau of Statistics' 2012 Survey of Disability, Ageing and Carers looked at the prevalence of 'intellectual disability', which it defined as "difficulty learning or understanding things". In 2012 the survey estimated that there were approximately 668,100 Australians with an intellectual disability. This was an 18 per cent increase from 2009, when the survey estimated that there were approximately 565,000 people in Australia with an intellectual disability.

Of the 46,475 active Western Australian participants in the National Disability Insurance Scheme in 2021/22, 8,719 (19 per cent) were reported as having an intellectual disability as their primary condition in 2021/22.<sup>5</sup>

Intellectual disability accounted for the second largest proportion of all adults for whom the Public Advocate was appointed guardian at 30 June 2022.

Given the Public Advocate often remains guardian for people with an intellectual disability for a long period of time, or even for life, coupled with the growing prevalence within the population, the Office can expect continued growth in the number of represented persons with an intellectual disability.

## ***Mental illness***

In the 2007 National Survey of Mental Health and Wellbeing, it was estimated that approximately 20 per cent of all Australians aged 16-85 years had experienced mental disorders in the previous 12 months. The prevalence of mental disorders declines with age from more than one in four (26 per cent) in the youngest age group (16-24 years) and to around one in 20 (six per cent) in the oldest age group (75-85 years).<sup>6</sup>

The Australian Bureau of Statistics' 2012 Survey of Disability, Ageing and Carers looked at the prevalence of 'psychological disability', which it defined as people who reported, "a nervous or emotional condition which causes restrictions in everyday activities that has lasted, or is expected to last for six months or more; or a mental illness for which help or supervision is required that has lasted, or is expected to last for six months or more; or a brain injury, including stroke, which results in a mental illness or nervous and emotional condition which causes restrictions in everyday activities". In 2009 when this survey was conducted, 606,000 people in Australia reported having a psychological disability. In 2012, 770,500 people reported having a psychological disability, indicating a 27 per cent increase.

The National Disability Insurance Scheme defines 'psychosocial disability' as a disability that may arise from a mental health issue. Of the 46,475 active Western Australian participants in the National Disability Insurance Scheme in 2021/22, 4,861 (10 per cent) were reported as having a psychosocial disability as their primary condition in 2021/22.<sup>7</sup>

<sup>5</sup> National Disability Insurance Scheme, published quarterly and full reports 2021-22 ([www.ndis.gov.au/about-us/publications/quarterly-reports](http://www.ndis.gov.au/about-us/publications/quarterly-reports)).

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

<sup>7</sup> National Disability Insurance Scheme, published quarterly and full reports 2021-22 ([www.ndis.gov.au/about-us/publications/quarterly-reports](http://www.ndis.gov.au/about-us/publications/quarterly-reports)).

Mental illness accounted for the largest proportion of guardianship appointments of the Public Advocate as at 30 June 2022. The growing prevalence of mental illness within the community, coupled with the need for represented persons with mental illness to engage support through the NDIS for better outcomes, particularly those with chronic mental health issues, would seem to indicate the growth in the number of Public Advocate appointments for people with mental illness will continue.

## Resources

The role and functions of the Public Advocate were supported by an approved establishment of 85.0 ongoing full-time equivalent (FTE) positions and 1.5 FTE positions funded for a finite period, as at 30 June 2022, with an expenditure totalling \$11.857 million<sup>8</sup> for advocacy, guardianship and administration services.

The Office of the Public Advocate's core services are delivered through two distinct branches - advocacy and investigation, and guardianship. These staff members are accountable to the Public Advocate through their managers and are supported by administrative, policy and community education positions.

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<sup>8</sup> Expenditure includes shared Department of Justice corporate support.

# Strategic Management Framework

The performance of the Office of the Public Advocate is assessed under the Strategic Framework established by the Department of Justice.

## Department of Justice - Mission and Role

A fair, just and safe community for all Western Australians.

The Department of Justice supports the community, Western Australian Government, judiciary and Parliament through the provision of access to high quality justice, legal and corrective services, information and products.

## Government goal

The work of the Office of the Public Advocate reflects the State Government goal of 'strong communities: safe communities and supported families'.

## Office of the Public Advocate services

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

- advocacy and investigation services
- advocacy for the appropriate appointment of guardians and administrators and appropriate interventions in relation to enduring powers of attorney and enduring powers of guardianship
- guardianship and administration services provided through the appointment of the Public Advocate by the State Administrative Tribunal
- community education services regarding the guardianship and administration system.

## Cross-agency initiatives

The Office of the Public Advocate works together with the Public Trustee with regard to guardianship and administration matters. This occurs when both the Public Advocate and Public Trustee have been appointed as guardian and administrator respectively, by the State Administrative Tribunal.

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

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

# Agency Performance

## Advocacy and Investigation

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

- conducting investigations referred by the State Administrative Tribunal in relation to applications for guardianship and administration or the operation of existing guardianship and administration orders, enduring powers of attorney or enduring powers of guardianship, to gather information on what is in the best interests of the person with a decision-making disability
- reporting at hearings of the State Administrative Tribunal on whether it is in the best interests of an adult with a decision-making disability to have a guardian or administrator appointed
- advocating for the appointment of a guardian or administrator when appropriate and in the best interests of the person with the decision-making disability when there is no other way of meeting the person's needs
- making recommendations about who could be appointed and what functions might be needed in an order
- investigating referrals from the State Administrative Tribunal where an appointed guardian or administrator has passed away, engaging with family and service providers, and making applications for a review of the orders to ensure the person has ongoing decision-making support
- under delegation, taking on decision-making for a person whose guardian and/or administrator has passed away, including liaising with family and service providers in making decisions until a review hearing occurs at the State Administrative Tribunal
- investigating complaints or allegations from the public that a person with a decision-making disability may be at risk of abuse, exploitation or neglect and may be in need of a guardian or administrator
- investigating whether a person who is placed in custody under the *Criminal Law (Mentally Impaired Accused) Act 1996* is in need of a guardian or administrator
- investigating referrals from Courts regarding the need for a person to have a guardian or administrator appointed in relation to legal proceedings – civil matters
- providing assistance to the State Administrative Tribunal through the liaison officer function, by conducting brief investigations and providing advice to the Tribunal on specific aspects of an application
- informing and advising government, community and business organisations on the best interests of adults with a decision-making disability in the development of legislation, policies and services.

In carrying out their enquiries, it is a priority for investigator advocates to seek the views of the person who is the subject of an application, where possible. They also interview a range of interested parties which may include family, friends and service providers.

The extent and nature of consultation will depend on the timeframe given by the State Administrative Tribunal, the complexity of the matter and other workload priorities.

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

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

- A person makes an application for the appointment of a guardian, as they believe a vulnerable adult does not have appropriate support services in place. In the course of the investigation, the investigator advocate advises the applicant of community services which could assist the vulnerable adult. The applicant engages these services and the situation is resolved without the need for the appointment of a guardian.
- A health professional makes an application for the appointment of a guardian, as they believe their patient has a decision-making disability and needs a substitute decision-maker to make treatment decisions. The *Guardianship and Administration Act 1990* sets out a formal order of treatment decision-makers (Section 110 ZD and Section 110 ZJ). In explaining this process to the health professional, the investigator advocate assists them to find the appropriate decision-maker within this order (hierarchy), meaning there is no need for the appointment of a guardian.

## The Year in Review

In 2021/22, the Public Advocate carried out a total of 2,505 investigations into the personal or financial welfare of adults with a decision-making disability. This was a 12 per cent increase from 2020/21, when there were 2,242 investigations carried out. These 2,505 investigations included new matters and matters carried over from 2020/21.

Of the 2,505 investigations carried out during the year, 2,327 needed investigation and advocacy relating to applications for, or reviews of, administration or guardianship orders before the State Administrative Tribunal. This represented an increase of 12 per cent from 2020/21, when 2,082 investigations related to matters before the State Administrative Tribunal.

The remaining 178 investigations were referred directly to the Public Advocate from sources including members of the public and Courts and Tribunal Services.

An additional 60 preliminary investigations were referred under the liaison role, which assisted the Tribunal in gathering further information relevant to the hearing, as compared to 100 investigations of this type in 2020/21. This included seeking preliminary information in relation to whether the matter was urgent, or if safeguards should be put in place ahead of the Tribunal hearing.

## Investigations referred by the State Administrative Tribunal

There were 2,059 new investigations referred by the State Administrative Tribunal in 2021/22, which was a 13 per cent increase from the previous year, when there were 1,824 new investigations.

These 2,059 investigations related to a range of application types, including applications:

- for the appointment of a guardian and administrator
- for intervention into enduring powers of attorney, enduring powers of guardianship, or advance health directives
- to review administration or private guardianship orders.

The complexity of some of the matters that investigator advocates work on is highlighted by an increased number of applications made under section 17A of the *Guardianship and Administration Act 1990*, where a Full Tribunal reviews the decision of a single Member. Investigator advocates attended these 17A hearings to provide further advocacy in relation to the application and the best interests of the proposed represented person, and at times investigator advocates were required to submit a further report for the hearing.

The State Administrative Tribunal referred 432 matters which were listed for hearing in 14 days or less where the attendance of an investigator advocate was required. In some cases, the hearing occurred on the day the matter was referred to the Public Advocate.

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

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

Attending urgent Tribunal hearings and advocating for proposed represented persons' best interests, presents a particular challenge for investigator advocates as they are required to assess the issues and risks regarding a person's safety or wellbeing within a limited timeframe. In some cases, this timeframe may be a matter of hours, or a matter of days. Some of these hearings occur outside of normal working hours.

Where the Public Advocate is appointed at an urgent hearing, the investigator advocate is required to urgently provide information to the Public Advocate about the represented person and the key decisions needed to enable a timely consideration of issues and a decision to be made, including the need for urgent decisions on behalf of a represented person which are required outside of usual working hours.

Investigator advocates face many and varied issues in their investigations and they require a range of skills in order to identify and respond to the situations which arise in the course of their investigations.

## Liaison role

The Office of the Public Advocate continues to provide a liaison role to respond to requests from the State Administrative Tribunal seeking advice and recommendations about specific aspects of applications, prior to listing a matter for hearing or making a formal referral to the Public Advocate to investigate.

In 2021/22, the advocacy and investigation team, through the liaison role, conducted preliminary investigations into 60 new applications before the Tribunal. This included new applications for guardianship and/or administration, review applications and applications for intervention in enduring powers of attorney and enduring powers of guardianship.

These matters require immediate attention as they often relate to an assessment of urgency or measures needed to protect a proposed represented person. There is a three-day timeframe to respond to the Tribunal in relation to these referrals.

The investigator advocate will contact selected parties, in line with the specific request from the Tribunal, and provide a short report to the Tribunal responding to the referral.

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

In some cases, the investigator advocate recommended to the State Administrative Tribunal that the matter should be referred to the Office of the Public Advocate for full investigation due to the complexities identified from speaking to interested parties.

In other cases, the investigator advocate was able to speak to key parties and gather information which would assist the Tribunal process. In these instances, the recommendation to the State Administrative Tribunal was that the Public Advocate be given notice of possible appointment and the investigator advocate attended the Tribunal hearing.

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

## Community-referred investigations

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

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

In addition to referrals from friends and neighbours of adults with impaired or suspected impaired decision-making capacity, referrals for investigation also come from other sources including community-based organisations, such as churches and social groups, where a risk is identified but no one in the community-based group is in a position to make an application to the Tribunal or intervene in any way.

There are also referrals from other agencies such as the Police, where in attending an incident, a concern is raised that a person involved may require some sort of formal support.

Referrals from Courts are included as community-referred investigations. These investigations present a range of challenges to investigator advocates as the purpose is to get information on the person's capacity as it relates to the specific Court matter, and keep the referring Court informed of the progress of the investigation to assist in Court listing dates.

In total, 178 such referrals were reviewed by the Office in 2021/22, an increase from 160 such referrals in 2020/21. Of the 178 cases, 133 were closed during the financial year and 45 remained open at 30 June 2022.

In community referred investigations, investigator advocates initially need to confirm the person is not at risk by speaking to the referring person. If there is an identified risk, the investigator advocate needs to make a recommendation about how to proceed with the investigation.

For example, it may be necessary to establish a financial safeguard, before proceeding to speak to interested parties. This is a particular issue if there is a report that the person is a victim of a scam, and this requires the investigator to establish if there is an informal safeguard, such as a bank putting a stop on any overseas transactions – or if there is a need for an urgent application for the appointment of an administrator.

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

In a small number of instances, when an investigator advocate starts making enquiries, they may make contact with a family member or friend of the person who shares the concerns that have been raised and who is willing and able to make the application to the State Administrative Tribunal.

The investigator advocate will then provide the family member or friend with the relevant information and support to make the application. Once the application has been submitted, the investigator advocate will advise the Tribunal about the Public Advocate's involvement in the matter. The investigator advocate will continue gathering information and provide a report to the Tribunal to assist in the hearing process.

In most cases, the focus of the community-referred investigation is to establish whether the person requires a guardian and/or administrator, or whether less restrictive safeguards are possible.

A critical part of the community-referred investigation is obtaining medical records, to enable the Public Advocate to establish whether a person has a decision-making disability. Gathering this information can take considerable time, as the person may not have a current General Practitioner, and medical professionals who are involved with the person may be reluctant to share information due to patient confidentiality.

Accurate medical information is critical, as without assessments that a person has a decision-making disability, it is unlikely that an application to the State Administrative Tribunal could be made by the Public Advocate.

The *Guardianship and Administration Act 1990* does not provide the Public Advocate with the power to compel parties to provide information and this can impede some investigations in which claims of financial, or other forms of abuse, cannot be substantiated.

Types of community-referred investigations undertaken by the Office of the Public Advocate include:

- A friend or neighbour sees a person is no longer making good decisions and suspects this might be due to dementia or some other decision-making disability. The friend or neighbour may not be in a position to make an application to the State Administrative Tribunal due to concerns it will impact on their friendship with the person.
- A person has concerns that a vulnerable adult with a decision-making disability is experiencing abuse or exploitation.
- A family member has concerns about a relative with a decision-making disability, but the family members are unable to resolve the issues due to longstanding disputes.
- The Police attend a home incident and have concerns that an adult with a decision-making disability does not have capacity and may be in need of some form of support.
- Referrals from a Court where there are concerns that an adult who is party to proceedings is not able to understand the Court process due to a mental disability.
- Referrals from the Mentally Impaired Accused Review Board under section 98 of the *Guardianship and Administration Act 1990*, when a person is placed on a custody order under the *Criminal Law (Mentally Impaired Accused) Act 1996*.

The outcome of community-referred investigations might include:

- The Public Advocate making applications to the State Administrative Tribunal for guardianship and/or administration orders.
- The Public Advocate referring the concerned party to other agencies to provide assistance or support.
- The Public Advocate being provided information to confirm that the person does not have a decision-making disability and the matter being closed. In such cases where concerns exist, the identified person will be given information about how they may access community-based supports.

## Case Study 1

### Conflicts of interests for an attorney

A few years ago, when he had full capacity, Mr J made an enduring power of attorney (EPA) and appointed his brother Mr F as his attorney.

Time has passed and Mr F is now making an application for the appointment of an administrator.

The situation for the brothers and their finances has changed since the EPA was made, because their father recently passed away. While their father had made a Will, leaving his estate equally to his children, this was being challenged by their father's partner, for whom no provision had been made in the Will. A claim had been commenced under the *Family Provision Act 1972* by the partner, which both Mr F and Mr J were seeking to defend.

Mr J has a long-standing mental illness, and while there was no doubt about his capacity to make an EPA, his health has now declined and he needs increased support to continue living independently in the community.

Due to his mental illness Mr J is unable to engage or instruct a solicitor in relation to his inheritance and the challenge being made to the Will by his father's partner.

His brother is concerned that he has a conflict of interest, as he understands that in addition to the current *Family Provision Act 1972* proceedings - where the brothers were seeking to defend the Will, Mr J may also be entitled to make his own family provision claim for a larger share of the estate due to his ongoing care and support needs.

As such Mr F feels that he has a conflict of interest and seeks an independent administrator to be appointed, to ensure his brother's best interests are pursued.

Mr J's recently engaged solicitors report that he is no longer responding to letters or calls about the legal matter. This is also the experience of the investigator advocate who is unable to make any contact with Mr J.

Mr F is able to show the investigator advocate how he has been managing his brother's finances under the EPA, including demonstrating that he has been able to build up Mr J's savings since he stepped into the role.

It is evident that Mr F is managing his brother's day-to-day finances well and his action to apply for an administrator, in order to ensure Mr J's legal entitlements under the Will were pursued, is further evidence that he is acting in his brother's best interests.

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*(Case study continued from previous page)*

The investigator advocate supports the EPA being left in place, except in relation to the Will and any family provision claim. A limited administration order is made appointing the Public Trustee to pursue the legal matters on Mr J's behalf.

### **Question of capacity**

If there is doubt about a person's capacity to make an enduring power of attorney where they have a mental health diagnosis, it may be useful for the maker to obtain an assessment of their capacity prior to making the EPA and then keep that capacity assessment with the EPA as evidence that they had capacity to make the EPA.

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

## **Advocacy**

In addition to conducting investigations, it is the role of an investigator advocate to advocate in the best interests of people for whom a guardianship and/or administration order is being proposed (proposed represented persons) at hearings before the State Administrative Tribunal and also advocate during the course of an investigation to assist in resolving issues before the hearing.

## **Collaboration with other States and Territories**

Throughout the year, both the advocacy and investigation team and the guardianship team were contacted by interstate counterparts regarding vulnerable adults with decision-making disabilities who were either under guardianship orders in that State or Territory or were the subject of an application proposing that they have a guardian appointed.

Where possible, staff assisted their counterparts to ensure the safety and protection of these vulnerable adults.

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

## Case Study 2

### Working in partnership

While guardianship and administration legislation is State-based and slightly different in each jurisdiction, there is regular interaction between the Office's investigator advocates and their interstate counterparts, where people may be considering moving State.

Mr P had a diagnosis of dementia and had lived in Queensland for the majority of his life, although he had family throughout Australia. Sometime after his dementia diagnosis, Mr P's capacity had declined to the point that guardianship and administration orders were made in Queensland.

Mr P decided to travel to Perth to visit family, but upon arrival he became unwell and required medical treatment. Further to this, it was determined that he also needed supported accommodation.

Although he had a guardian appointed, it was a Queensland Guardianship Order, which caused some confusion about whether the order was operational in WA. Subsequently an application was made to the State Administrative Tribunal in WA for a guardian to be appointed and this was referred to the WA Office of the Public Advocate for investigation.

The investigator advocate spoke with the family and service providers and it was clear that despite initial differences they all felt that Mr P should return to Queensland as this was where his home was and where most of his family lived.

Additionally, if he returned to Queensland, he would be facilitated to remain living in his own house, whereas if he stayed in WA, he would need to move into care due to having fewer support networks.

Having identified the clear and ongoing need for a guardian and administrator, the investigator advocate was able to liaise with the interstate guardian ensuring they understood that they had authority, even while Mr P was in WA, because there was automatic recognition of the order in WA.

As there was already a guardianship order in place and Mr P's return to Queensland was fully supported by all parties, it was recommended that the Queensland guardianship order continue to be used, rather than replacing it with a WA order.

The application was subsequently dismissed, which was in part due to the liaison between the investigator advocate and their Queensland counterpart, to clarify the interstate recognition of orders under the *Guardianship and Administration Act 1990 (WA)*.

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

## Administrator of last resort

As at 30 June 2022, the Public Advocate was appointed by the State Administrative Tribunal as limited administrator of last resort for eight people where it was not appropriate for the Public Trustee to have those specific authorities.

### ***What does administrator of last resort mean?***

If a person is unable to make reasonable decisions about their finances, they did not appoint an attorney while they had capacity and informal arrangements are not working in their best interests, the State Administrative Tribunal may appoint an administrator.

An administrator has the authority to make financial and legal decisions on behalf of the person they represent.

If a person needing an administrator does not have a family member or friend who is suitable, willing and available to take on the role, the State Administrative Tribunal may appoint the Public Trustee.

If there is a conflict of interest for some reason, meaning the Public Trustee cannot be appointed as administrator for particular functions, the *Guardianship and Administration Act 1990* enables the Public Advocate to be appointed as administrator of last resort.

The Public Advocate is only appointed as administrator, if all of the other options are exhausted and the appointment is the only option available. While this does not occur often, such appointments are usually complex.

This is a significant function for the Public Advocate. When appointed administrator of last resort the Public Advocate will usually have a limited function with regard to legal proceedings, with the Public Trustee often appointed with the remaining functions. The role involves extensive liaison with legal professionals and the Public Trustee in regard to progressing the proceedings.

The principal investigator advocate will review the application and supporting documents and attend the State Administrative Tribunal hearing to advocate on behalf of the represented person. The principal investigator advocate will consider if there are other parties who could be appointed, consider the conflict of interest raised in the application and ultimately, if the appointment of the Public Advocate is to occur, advocate for orders which will enable the Public Advocate to conduct the role as administrator of last resort.

A key role for the principal investigator advocate following the appointment is to conduct a file review and briefing for the Public Advocate to enable decisions to be made about progressing the specific case.

# Issues for Advocacy and Investigation

## Allegations of abuse

The continued demand for the Office of the Public Advocate to conduct investigations into the personal or financial welfare of adults with a decision-making disability can largely be attributed to Western Australia's ageing population.

Additionally, there is an increased awareness of the role of the Office of the Public Advocate, particularly in relation to investigating concerns about elder abuse.

Some older Western Australians do not have support networks such as family and friends to assist them when they lose the capacity to make their own decisions. This often results in the appointment of the Public Advocate and/or the Public Trustee.

Of the 2,059 new investigations carried out during the year, allegations of abuse were identified in relation to 283 people. 132 of these people were 65 years of age or older. Of these alleged elder abuse cases, 82 per cent involved alleged financial abuse.

This alleged abuse often occurred in the absence of a substitute decision-maker and by a person who saw the opportunity to exploit a vulnerable individual. Often this occurs where the victim is socially isolated or dependent on their family for support.

In some instances, however, it was alleged that this abuse was perpetrated by a person with authority, including an enduring guardian appointed under an enduring power of guardianship or an attorney appointed under an enduring power of attorney.

The focus of the investigation is whether the person is in need of a substitute decision-maker. This Office looks at the importance of balancing the person's right to autonomy, with the possibility of abuse and the need for the protection afforded by appointing someone to oversee the individual's decision-making.

## Transition to the National Disability Insurance Scheme

The transition to the National Disability Insurance Scheme (NDIS) has seen a number of applications where it has been identified that informal supports will no longer be sufficient to engage services. This may be because through accessing the NDIS the person has more opportunity to engage support services and it is identified that someone needs to be appointed to make the decision about which service to engage.

In some cases applications have been made because the existing support arrangements will not be able to continue. There is an identified need for a person with a decision-making disability to have a guardian and/or administrator appointed to oversee the change in support arrangements and also to take over management of the person's finances where this may have been managed by the support agency.

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

## Restrictive practices

Both NDIS and aged care providers are responding to legislative provisions with regard to the use of restrictive practices, and the need to obtain consent if a restrictive practice is proposed.

A number of applications are initiated where the primary concern is in regard to restrictive practices, however in making the application it is apparent that a person needs a substitute decision-maker in other areas of their life.

An investigator advocate needs to look more broadly at the application and the person's situation in preparing their advocacy for the State Administrative Tribunal, to ensure the broader needs of the person are considered in the hearing.

## Increasing regional referrals

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

In 2021/22 there were 540 matters referred which related to people in regional areas, compared to 435 in 2020/21, an increase of 105 matters referred or 24 per cent.

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

To respond to regional matters, where possible, these matters are grouped and allocated to the same investigator advocate. Some matters have the same applicant, for example a WA Country Health Service or the Director of Nursing at a particular facility. This approach enables consideration to be given to investigator advocates visiting the location during the investigation process. It also allows the investigator advocate to develop professional relationships with applicants in regional areas which assists in the gathering of information and advocacy for proposed represented people.

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

However, with restrictions due to COVID-19 travel was limited in 2021/22. Therefore, investigator advocates had to rely on support services to assist with interviewing proposed represented persons and other parties in regional areas.

## Ongoing COVID-19 impact

Once again this year, the suspension of in-person interviews at times, due to COVID-19 restrictions impacted on the ability of investigator advocates in gaining proposed represented persons' views about applications, especially where the person was not able to communicate easily by phone.

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

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

## Case Study 3

### **Planning for the future – sometimes extra support is needed**

Ms K was a young woman who had been diagnosed with a degenerative neurological condition. This was a hereditary condition that had already been diagnosed in other members of Ms K's family.

Ms K was aware that her condition would progress. She had strong views about how she wanted decisions to be made in the future and what sort of treatment she would want. So, Ms K planned ahead and executed enduring powers of attorney and guardianship documents along with an advance health directive.

Ms K's sister was appointed under her enduring powers and was fully aware of Ms K's values and views. As Ms K's condition progressed, her sister took over decision making in line with the powers.

As Ms K's condition deteriorated, she began to experience some confusion and paranoia causing her to believe that her sister was taking advantage of her financially. Her paranoia began to impact on her general wellbeing and her relationship with her sister, to the point that her sister felt unable to continue in her decision-making role.

A service provider made an application for the appointment of a guardian and administrator to take over from the sister, and the application was referred to the Office of the Public Advocate to investigate.

The investigator advocate was able to meet with Ms K, who was in hospital, to explain the application. Ms K was consistent about not wanting her sister to make decisions. This was because she thought that her sister was forcing her into care, which she did not think was necessary.

The investigator advocate also talked to the specialist service providers, who all supported Ms K's sister and the decisions she had been making.

The situation continued to deteriorate as Ms K no longer understood her own care needs and believed that her sister was forcing her into care unnecessarily. The service provider advised that while her sister was acting appropriately at this time, if she continued in the role, there was a risk the sisters' relationship would be permanently damaged.

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Ms K's sister was willing to continue in the roles as she understood that Ms K's behaviour was linked to her condition and she did not take this personally.

The investigator advocate was able to identify the key decision that was causing the stress, which was where Ms K should live.

While Ms K's finances were linked to this decision, financial management was not Ms K's focus and so her sister was still able to continue managing the finances as well as Ms K's pension and property.

At the hearing, the investigator advocate supported the EPA remaining in force as it was working effectively and Ms K's sister was willing to continue as attorney. The sister had also indicated she would be able to work with an independent guardian, if an order was made, to progress accommodation and support decisions for Ms K.

The investigator advocate recommended that the Public Advocate should be appointed as limited guardian to make the decision about where Ms K should live, but the order should be for a short period, as it was hoped that once settled, Ms K's paranoia may resolve and her sister could once again be considered as guardian.

In making her enduring power of guardianship (EPG) Ms K had given some directions to her enduring guardian and although the EPG was revoked, this information was still helpful to the Public Advocate in understanding Ms K's views and wishes, which could be taken into account in future decision making

### ***Planning ahead***

A person can choose who they want to make financial, lifestyle and treatment decisions if they lose capacity by making an enduring power of attorney (EPA) for financial and property decisions, an enduring power of guardianship for personal, lifestyle and treatment decisions and an advance health directive (AHD) for decisions about future medical treatment and health care.

A person must make these documents themselves; no one can make an EPA, EPG or AHD on behalf of someone else.

A person must have full capacity when making these documents and they must be 18 years of age or older.

All documents must be completed correctly and have their signatures witnessed appropriately.

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

## Case Study 4

### Concerns about elder abuse

One of Mr Z's daughters made an application to the State Administrative Tribunal (SAT) for the appointment of a guardian and administrator.

This was because she thought her older sister, who was Mr Z's attorney under an enduring power of attorney, was taking advantage of their father and forcing him into aged care by not using his money to pay for support that would enable him to continue living at home.

The matter was referred by the State Administrative Tribunal to the Office of the Public Advocate to investigate. The investigator advocate identified that Mr Z had a large family including four adult children. Mr Z had been living at home with his younger daughter who was providing care. This daughter stated her older sister had stopped paying her as a carer, and if she was not paid, she would have to return to work, and could no longer support her father.

However, the eldest daughter, who was appointed attorney, paid for her father's care and living expenses. She noticed a change in his expenditure which had caused her to look more closely at the account into which she had been depositing money. She questioned her younger sister about these discrepancies and while waiting for a response, reduced the funds that were being deposited.

This event had caused some conflict between the siblings, which was why the application had been submitted.

To add to this complexity Mr Z was currently in transitional care following time spent in hospital. Mr Z had expressed to the investigator advocate that he no longer wished to remain at home. He understood that his care needs had increased and he did not want to put pressure on his children having to look after him. He was also beginning to settle into the facility, getting involved in a number of new activities, and felt he was happy to remain in care, so long as it was in the same area he had been living.

This situation further demonstrated the conflict between the siblings, as Mr Z's younger daughter, who provided care at home, advised that if she was guardian, she would move Mr Z back into his house. Whereas the other three siblings accepted their father's current wish to move into care, and told the investigator advocate that they would start looking for suitable places for their father to live and they would take him to view them, so that he could be involved in the decision-making process.

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At the Tribunal hearing the investigator advocated that there was no need for a guardian as Mr Z had expressed that he wanted to move into care, and the attorney could make the necessary financial arrangements for this to occur.

The investigator advocated that the enduring power of attorney was working in Mr Z's best interests as the attorney had taken quick action when concerns arose about how his money was being used, to ensure his estate was protected.

The adult children all expressed a desire to rebuild their relationship over time, but maintained their key focus was ensuring their father was well supported.

### **Best interests**

An attorney has a responsibility to ensure the person's money is managed in their best interests. If concerns are identified about the use of that person's money, even if other family members disagree, the attorney has an obligation to investigate.

In this case, a sibling's actions in identifying that the parent's money was being used for expenses that could not be correctly attributed, caused a conflict. However, it was still appropriate for the eldest sister, who was their father's attorney, to take action to protect his estate.

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

## **Transition of young people leaving State care**

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

Wherever possible, the principal investigator advocate attends leaving care planning meetings for young people aged 16 years and over, to provide information on guardianship and administration and assist in the planning process to determine if there is a need for an application to be made to the State Administrative Tribunal.

The principal investigator advocate or another member of the advocacy and investigation team provide advocacy at any State Administrative Tribunal hearing where applications have been made for the appointment of a guardian and/or an administrator for young people aged 17 and over. A total of 51 applications from the Department of Communities, Child Protection and Family Support were determined by the State Administrative Tribunal in 2021/22.

Following the determination by the State Administrative Tribunal of the 51 applications, the Public Advocate's appointment as guardian came into effect for 44 young people leaving State care when they turned 18 years of age. For 13 of these young people, the Public Advocate was appointed as limited guardian in conjunction with private guardians with different functions. Private guardians were solely appointed for six young people. In addition, a guardianship order made before 30 June 2021 for another young person came into effect in 2021/22 when she turned 18 years of age, and guardianship orders appointing the Public Advocate for two of the 44 young people will come into effect when they turn 18 years of age in July 2022.

The Public Trustee was appointed as administrator for a total of 41 of the 51 young people for whom applications were determined by the State Administrative Tribunal, with two of those appointments being as limited administrator in conjunction with private administrators appointed with different functions. In relation to the remaining 10 applications, one private administrator was appointed, and a guardianship order was not made in this case. Administration orders were not made for the other nine young people.

Of the 51 applications, 19 related to young Aboriginal people. The Public Advocate was appointed as guardian for 18 of these young people, with two of the appointments also including private guardians with different functions. One guardianship order appointed two private guardians as joint guardians. The Public Trustee was appointed for 16 of the 19 young Aboriginal people and was appointed alongside a private administrator with different functions in one of the 16 appointments.

## Court referrals

The Children's, Family, Magistrates and Supreme Courts may seek the involvement of the Public Advocate when there are concerns that a person appearing before the Court (in civil matters) is unable to understand proceedings and may need a guardian or administrator to assist.

While the number of Court referrals received by the Office are small compared to the referrals of matters by the State Administrative Tribunal, the investigation work involved requires considerable time and effort to seek evidence about the proposed represented person's background and their capacity to participate in the matter before the Court.

In most cases the Court has very little information about the person's capacity and therefore considerable effort is taken to gather this information and respond within the Court's timeframes. The Public Advocate's authority under the *Guardianship and Administration Act 1990* does not include the power to compel parties to provide information.

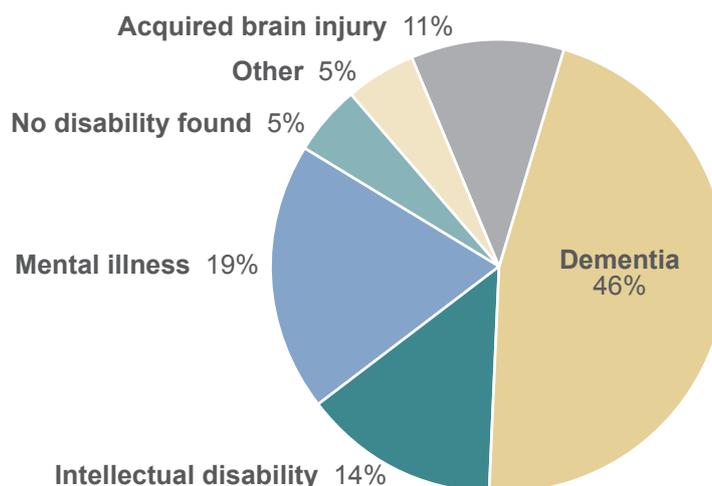
An added complexity in these matters is the need to advise parties of the investigation process, including the length of time an investigation can take, and to keep parties, including lawyers and the Court, aware of the progress of a case to assist in listing hearing dates.

## Our Customers

Of the 2,059 new matters referred to the Public Advocate for investigation by the State Administrative Tribunal in 2021/22, 46 per cent involved a person with dementia. The remaining matters involved a person with either a mental illness, an intellectual disability or an acquired brain injury, and in some instances, no decision-making disability was found. 49 per cent of the 2,059 new matters related to males and 51 per cent to females<sup>9</sup>.

**Figure 3 Profile of new investigations by type of decision-making disability 2021/22**

Type of decision-making disability	
Acquired brain injury	220
Dementia	956
Intellectual disability	281
Mental illness	387
Other	111
No disability found	104
<b>Total</b>	<b>2,059</b>

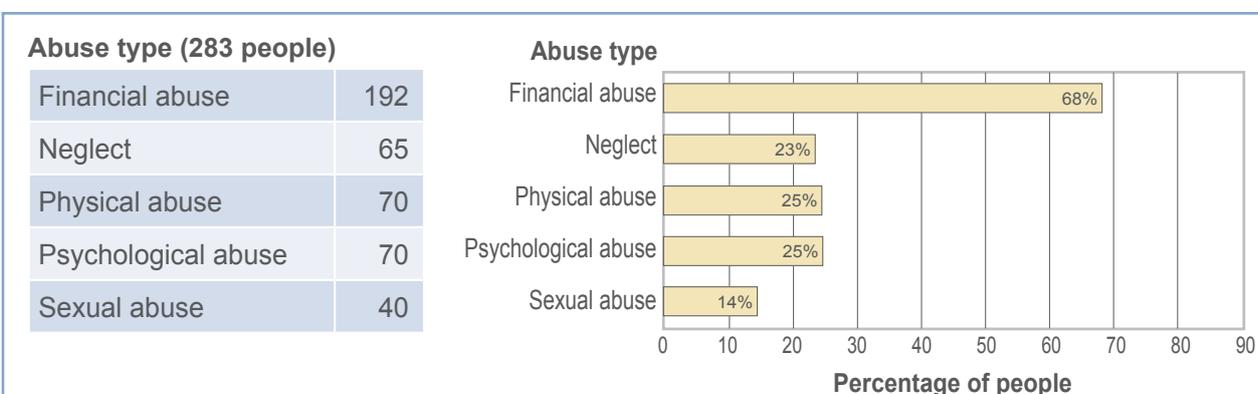


Note: 27 of the 111 'other' are for represented persons with Autism Spectrum Disorder.

Of the 2,059 new investigations carried out during the year, allegations of abuse were made regarding 283 people.

In some cases, more than one type of alleged abuse was reported in the application. The most commonly reported form of alleged abuse was financial, with 68 per cent alleging financial abuse.

**Figure 4 Profile of new investigations alleging abuse by type of abuse 2021/22 (including statistics of alleged elder abuse)**



Note 1: Allegations of abuse were made regarding 283 people, however, in some instances more than one alleged abuse type was reported in the application.

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

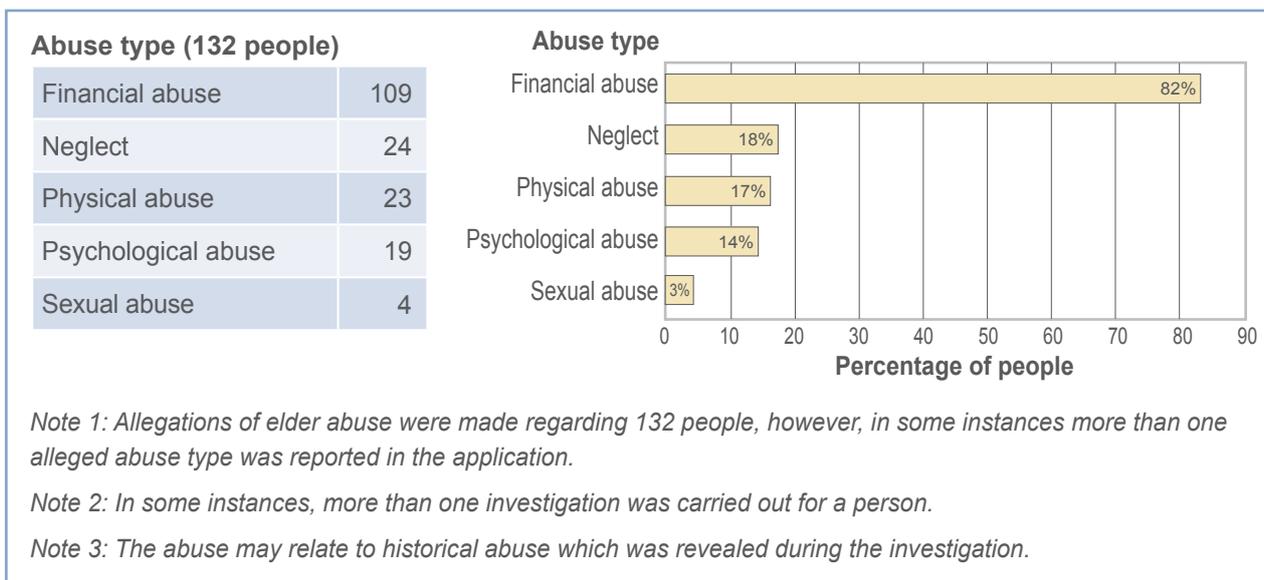
Note 3: The abuse may relate to historical abuse which was revealed during the investigation.

<sup>9</sup> Three people did not identify as male or female.

Of the 283 people for whom abuse was alleged, 132 (47 per cent) were 65 years of age or older. These instances of alleged abuse are referred to as elder abuse.

Of these 132 cases of alleged elder abuse, financial abuse was the most common, having been reported in 82 per cent of these investigations.

**Figure 5 Profile of new investigations alleging elder abuse (aged 65 or older) by type of abuse 2021/22**



Of the 132 new investigations in 2021/22 where elder abuse was alleged, 16 involved a person of Aboriginal and Torres Strait Islander descent, representing 12 per cent. Financial abuse was the most common form of abuse, having been reported in 13 of the 16 cases (81 per cent).

**Figure 6 Profile of new investigations alleging elder abuse (aged 65 or older) involving people of Aboriginal and Torres Strait Islander descent 2021/22**

Total new investigations alleging elder abuse 2021/22	Aboriginal	Non-Aboriginal	Aboriginal as a percentage of total
132	16	116	12%

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

The number of new investigations regarding a person of Aboriginal and Torres Strait Islander descent has remained fairly constant over the past five years, between nine and 13 per cent. This shows Aboriginal adults are over-represented in this client group, given only 3.3 per cent of the Western Australian population are Aboriginal.<sup>10</sup>

**Figure 7 Profile of new investigations involving people of Aboriginal and Torres Strait Islander descent as at 30 June 2018 – 30 June 2022**

Year	Total	Aboriginal	Non-Aboriginal	Aboriginal as a percentage of total
2017/18	1,219	130	1,089	11%
2018/19	1,350	135	1,215	10%
2019/20	1,542	165	1,377	11%
2020/21	1,824	236	1,588	13%
2021/22	2,059	192	1,867	9%

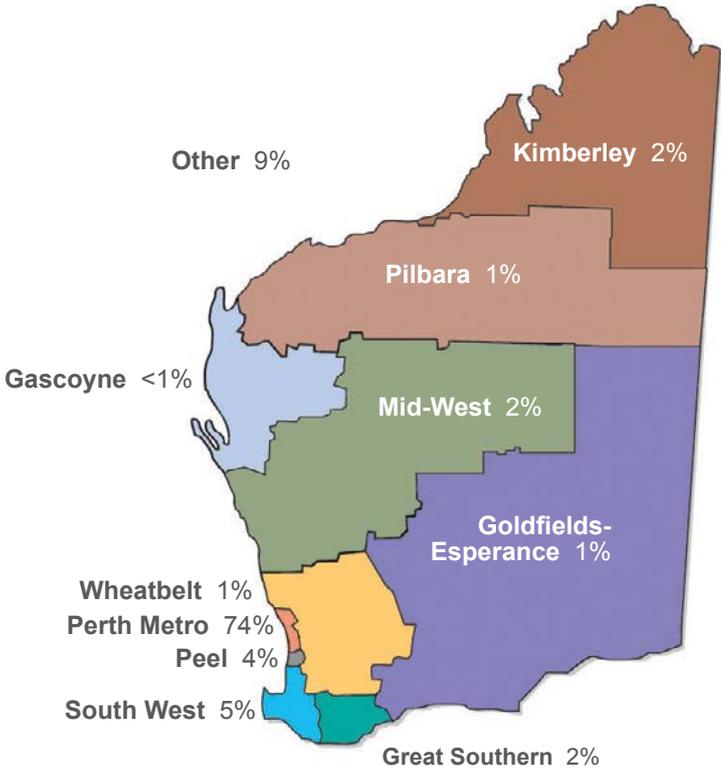
Note: Aboriginal refers to clients of Aboriginal and Torres Strait Islander descent.

Of the 2,059 new investigations in 2021/22, 1,519 matters were investigated for people located in the Perth metropolitan area.

**Figure 8 Profile of new investigations by geographical location 2021/22**

**Geographical locations**

Gascoyne	5
Goldfields-Esperance	26
Great Southern	36
Kimberley	33
Mid-West	50
Peel	86
Perth Metro	1,519
Pilbara	12
South West	93
Wheatbelt	16
Other	183
<b>Total</b>	<b>2,059</b>



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

10 Australian Bureau of Statistics 2021 Census: Aboriginal and/or Torres Strait Islander Peoples <https://www.abs.gov.au/articles/western-australia-aboriginal-and-torres-strait-islander-population-summary>

## Guardianship

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

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

## The Year in Review

In 2021/22 there were 797 new appointments of the Public Advocate as guardian of last resort, compared to 730 in 2020/21.

At 30 June 2022, the Public Advocate had responsibility as guardian of last resort for 3,115 adults with a decision-making disability, compared to 2,771 at 30 June 2021, which is an increase of 12 per cent.

The Public Advocate had responsibility as the sole guardian for 2,927 of the total 3,115 represented persons as at 30 June 2022. In relation to the remaining 188 appointments of the Public Advocate, there were 183 represented persons on a guardianship order which appointed the Public Advocate and private guardian(s) with different functions. Including one appointment which comes into effect in July when the young person turns 18.

Four of the 188 represented persons had the Public Advocate and a family member appointed to make some decisions jointly, as well as the Public Advocate as the sole decision-maker for other functions. One of the 188 represented persons had the Public Advocate and a private guardian (a family member) appointed with the same functions requiring them to jointly make decisions.

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

- decisions in relation to medical treatment, palliative care and surgery
- consenting to appropriate accommodation for people with a range of support needs in the disability, aged-care and health care sectors
- National Disability Insurance Scheme (NDIS) plans
- the need for restrictive practices
- acting as ‘next friend’ in relation to child protection matters on behalf of represented persons.

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

## **Community guardianship program**

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

The role of a community guardian is unique in terms of the long-term commitment and responsibility a volunteer community guardian takes on. The process which leads to the matching and eventual appointment of a community guardian is one that focuses on selective recruitment and the provision of ongoing training and support to volunteers. Replacing the Public Advocate enables a more personal level of involvement in the represented person's life.

In 2021/22 three of the program's community guardians resigned.

At 30 June 2022 there were 21 volunteers engaged in the community guardianship program. Of these, 15 had been appointed as guardian by the State Administrative Tribunal, including one new appointment in January 2022.

In 2021/22 induction training was provided for four new volunteers and work to match the volunteers with suitable represented people started. Another two volunteers joined the program during the year and will undergo induction training in 2022/23.

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

All guardianship orders are reviewed by the State Administrative Tribunal on a regular basis. Delegated guardians from the Office of the Public Advocate attend State Administrative Tribunal review hearings and advocate in the best interests of people for whom the Public Advocate is appointed as their guardian.

In 2021/22, delegated guardians attended 803 review hearings conducted by the State Administrative Tribunal, in which they advocated in the best interests of the represented person, including reporting on guardianship decisions since the previous hearing. This was a five per cent increase from the previous year, when 768 review hearings were attended.

## Issues for Guardianship

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

- In relation to the National Disability Insurance Scheme (NDIS), for adults who are under a guardianship order where the Public Advocate is appointed with authority to make decisions about services, delegated guardians may make applications for access to the NDIS or liaise with other parties who may make such applications. For those represented people involved in the NDIS, delegated guardians participate in the NDIS planning process, including releasing information, attending teleconferences or meetings, advocating on behalf of the represented person about what is determined by the NDIS as reasonable and necessary supports, seeking reviews of plans and negotiating with support coordinators about the selection of the most appropriate service provider/s.
- While the majority of the Public Advocate's represented people live in the Perth metropolitan area, there are a number who live in regional locations. Ensuring that adequate support and services are provided to these clients, while maintaining contact and conducting visits, can pose a variety of challenges for the Office of the Public Advocate.
- In 2021/22 delegated guardians and investigator advocates made 14 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, when considering a decision for the person to relocate.
- The issues surrounding decisions which delegated guardians are required to make may be multifaceted, as a number of represented persons have multiple and complex needs. They may have more than one diagnosed condition, combined with a drug or alcohol dependency and behaviours of concern that can often be challenging. Sometimes as a result of their behaviour they come into contact with the criminal justice system. Making decisions for these people involves the delegated guardian working with a number of government and non-government agencies, which together, provide an intensive level of support to the represented person.
- Due to the increasing number of seniors for whom the Public Advocate is appointed guardian, decisions regularly have to be made regarding treatment decisions for people who have a range of medical conditions, chronic illnesses or are terminally ill. The challenge for the Public Advocate is carefully weighing up the wishes of the represented person and those of their family members and friends, alongside the views of the treating physicians about what is in a person's best interests regarding treatment and end-of-life care.

- Delegated guardians may experience pressure to go outside their decision-maker role to locate services, seek funding and coordinate the provision of services for represented persons. The shortfall of appropriate services and the refusal of represented persons to accept support compounds this problem. Where people have a dual diagnosis, for example, an intellectual disability and a mental illness, the task of encouraging a more appropriate agency to take the lead role may be very difficult.
- Making decisions about whether a represented person remains in their own home or is placed in residential care, when concerns exist around their self-care, is often a source of conflict between delegated guardians and represented persons and/or their relatives. Delegated guardians must balance the rights of a represented person to remain at home and their need for increased support which may necessitate a move to residential care.
- With the implementation of the NDIS Quality and Safeguarding Framework and the commencement of the NDIS Quality and Safeguards Commission on 1 December 2020 in Western Australia as well as reforms in aged care, processes in relation to providing consent to restrictive practices have been strengthened. As such, more guardianship orders include this function and the Public Advocate is required to consent to restrictive practices for these represented persons. In some cases, delegated guardians have consented to behaviour support programs which include restrictive practice(s) for represented persons with disruptive or self-injurious behaviour.
- The appointment of the Public Advocate can result in major disagreement within the family of the represented person. In cases where the represented person has experienced abuse, exploitation or neglect, contact between the person and their family may often need to be supervised. During the year, the Public Advocate arranged supervised access to represented persons where there was risk of abuse. In some cases, delegated guardians are working with represented persons whose parents or relatives also have a decision-making disability or mental health issues, increasing the complexity of discussions.
- People with a decision-making disability may be extremely vulnerable to sexual assault and sexual exploitation. If there is an assault, the Office of the Public Advocate seeks Police involvement (usually via the Sex Crime Division), referral to the Sexual Assault Resource Centre (as per the memorandum of understanding which has been developed between the Office and the Sexual Assault Resource Centre) and medical and counselling services. The Public Advocate has noted the particular vulnerability of young people with intellectual disabilities and women with mental illnesses, to sexual assault. These people often lack adequate self-protective behaviours and/or family and agency support services.

- The Public Advocate makes decisions for people who are frequent and sometimes serious offenders whether detained in a psychiatric hospital, prison, or living in the community. These individuals can pose a risk to themselves as well as members of the community and often require intensive support and cross-agency collaboration which may involve the Police; the Department of Communities; the Corrective Services division of the Department of Justice; Legal Aid; the Mental Health Commission and the Department of Health's Mental Health Services.
- At 30 June 2022, the Public Advocate was appointed as guardian for 23 mentally impaired accused people under the *Criminal Law (Mentally Impaired Accused) Act 1996*, one more than at 30 June 2021.
- The Public Advocate continues to undertake the legal functions of 'next friend' and 'guardian ad litem' in relation to civil legal proceedings. This often involves a delegated guardian providing instructions to a lawyer during protection proceedings commenced by the Department of Communities on behalf of the children of a represented person. This function is undertaken by the Public Advocate where the State Administrative Tribunal determines that the parent/s is/are unable to conduct their own legal affairs due to a lack of decision-making capacity.

## Revocations

Guardianship orders are reviewed when either an application for review is made by an interested party to the State Administrative Tribunal, or at a date specified when the order was made.

The purpose of reviewing an order is to determine whether the represented person still requires a guardian and if so, who that should be, or whether changes to the authorities given in the order are required.

In 2021/22, delegated guardians from the Office of the Public Advocate were involved in 803 reviews of guardianship orders where the Public Advocate was appointed.

Of the 803 reviews, 145 orders were revoked by the State Administrative Tribunal because there was no longer a need for the Public Advocate to be the substitute decision-maker as a result of:

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

## Goals of care

Good end-of-life planning can avoid unnecessary interventions, hospital admissions and emergency department presentations, which can be distressing for individuals and their families.

The Public Advocate supports a represented person's right to appropriate care and treatment at the end of their life, including palliative care.

The goals of care approach, based on the Department of Health's framework, recognises that better end-of-life care planning can start early in a person's diagnosis. A goals of care plan sets out what can be offered across the stages of a represented person's end-of-life trajectory.

Delegated guardians may consider goals of care planning for represented persons with a chronic or life-limiting illness and/or when continuing decline is expected.

With a represented person's increasing decline, the decisions may include reducing, withdrawing or withholding certain medical options; for example, a medical clinician may discuss with a delegated guardian that providing cardiopulmonary resuscitation would be futile and not in the best interests of a represented person.

The delegated guardian makes a recommendation to the Public Advocate for end-of-life treatment decisions based on the recommendation of medical and allied health professionals such as the treating doctor and facility manager, while also considering the views of the represented person and their family.

## Palliative care

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

The Public Advocate will only consider consenting to palliative care if the guardianship order includes the authority to make treatment decisions, palliative care is being recommended by the person's treating health professional, it is in the person's best interests and to the extent possible, the views of the person and their family have been taken into account. All palliative care decisions require the delegated guardian to seek the Public Advocate's specific approval.

In 2021/22 the Public Advocate consented to palliative care for 165 represented persons for whom she was appointed guardian with the authority to make treatment decisions. This figure does not include those represented persons where a palliative care decision had been made in previous years, where the represented person had a chronic or life-limiting illness and their continuing decline is expected.

## Monitoring and responding to deaths of persons for whom the Public Advocate is appointed as guardian

In July 2021 the Ombudsman Western Australia, Mr Chris Field, tabled in Parliament the report *'An investigation into the Office of the Public Advocate's role in notifying the families of Mrs Joyce Savage, Mr Robert Ayling and Mr Kenneth Hartley of the deaths of Mrs Savage, Mr Ayling and Mr Hartley'*. In response the Office of the Public Advocate strengthened its policies and procedures for:

- communicating with family and significant others about the appointment of the Public Advocate and ensuring contact details are up to date
- locating and engaging with family and significant others in end-of-life planning
- locating and communicating with family and significant others as a priority when the Office of the Public Advocate becomes aware that a represented person has died.

The Office of the Public Advocate has also strengthened its guidance to external stakeholders about advising the on-call guardian if a represented person dies after-hours and about advising the duty guardian if the delegated guardian is not available.

Between 1 July 2021 and 30 June 2022, 289 persons, for whom the Public Advocate was appointed as guardian and where the Office of the Public Advocate had been advised, were recorded as having died.

In March 2022 an internal review was conducted of responses to the deaths of represented persons which had been reported to the Office of the Public Advocate from 1 July 2021 to 28 February 2022. The review examined 173 reports. The review of these cases found that guardians and managers are making best efforts to ensure that family and significant others are informed in a timely way when a represented person dies.

## Case Study 5

### **Revoking a guardianship order for a less restrictive alternative**

The State Administrative Tribunal can appoint a guardian for up to five years at which point the order must be reviewed. While all orders are reviewed before expiry, they can be revoked at any time. The Tribunal can determine shorter orders to help individuals with decision-making disabilities transition from one set of circumstances to another.

The Public Advocate was appointed as guardian for Mr A, who had a history of substance abuse and family violence, and who was in custody awaiting release on parole. The Public Advocate was initially appointed for a two-year period.

The delegated guardian's first task was to meet with Mr A and obtain his views on parole including accommodation options and services to support him. The delegated guardian then liaised with stakeholders in order to understand Mr A's circumstances and inform decisions for a parole application to be lodged.

Mr A's release was contingent on accommodation being secured and the conditions of parole being observed.

Parole recommendations were also made for Mr A to have access to substance abuse recovery services, NDIS support services and referrals to mental health services. For Mr A to have the best chance to meet parole conditions it was essential he had access to a formal support network and service providers who were able to manage his complex support needs.

The delegated guardian secured accommodation for Mr A in a transitional housing service with staff on site.

Applications to the NDIS, which had previously been rejected, were re-submitted. Treatment for ongoing depression was prescribed. A variety of support networks and service providers were identified to help Mr A re-assimilate into the community, which were funded by the NDIS.

Mr A also reconnected with family located in New South Wales (NSW) and after consultation between all parties involved, it was decided that he would be better supported by friends and family over there. It also provided him with an opportunity for a 'fresh start' and reduced the likelihood of him committing further offences in Western Australia.

The guardian worked with Mr A and his family, together with stakeholders in both States, to facilitate the move. Planning included navigating COVID-19 travel restrictions and liaising with family to ensure all travel logistics, accommodation and employment opportunities were identified and implemented where possible. In addition, an application for the recognition of an interstate order – his WA guardianship order – to the NSW Civil and Administrative Tribunal, was also required.

*(continued next page)*

*(Case study continued from previous page)*

Following Mr A's move to NSW, the guardianship order remained in place for a period with the guardian retaining oversight of any issues encountered by Mr A and his family, engaging with services in that State.

Mr A engaged well with services, his accommodation was secure and it was decided that a guardianship order was no longer required, as he was adequately supported by friends and family who were willing and able to informally support with health, accommodation, and financial decision-making.

The appointment of a guardian is no longer necessary where informal arrangements, to ensure the best interests of the person with a decision-making disability, are being met. The Tribunal was satisfied that Mr A no longer required a guardianship order and the Public Advocate's appointment was revoked.

### **Reviewing a guardianship order**

All guardianship orders are reviewed periodically, to decide if a new order should be made, or the order should be revoked (if the person no longer requires a guardian). A review may be conducted sooner if:

- someone with an interest in the represented person (for example a family member or service provider) applies for a review
- the guardian dies
- the guardian applies to be discharged from their responsibilities
- the guardian cannot fulfil their responsibilities because of their own physical or mental incapacity
- the guardian is found guilty of neglect or misconduct which in the Tribunal's view, makes them no longer appropriate to act as guardian.

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

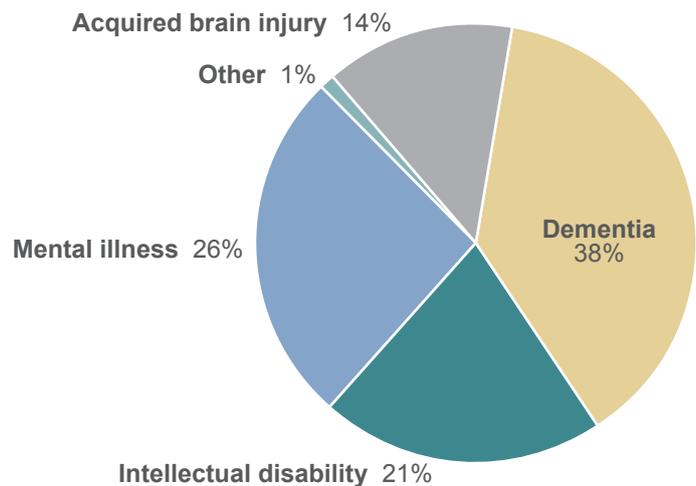
## Our Customers

People with dementia continued to account for the largest proportion of new appointments of the Public Advocate as guardian of last resort. Of the 797 new appointments in 2021/22, 38 per cent had dementia, 26 per cent a mental illness, 21 per cent an intellectual disability and 14 per cent had an acquired brain injury. Of the 797 new appointments 55 per cent were male and 45 per cent were female<sup>11</sup>.

**Figure 9 Profile of new guardianship orders appointing the Public Advocate by type of decision-making disability 2021/22**

Type of decision-making disability	
Acquired brain injury	109
Dementia	304
Intellectual disability	164
Mental illness	211
Other	9
<b>Total</b>	<b>797</b>

*Note: 6 of the 9 'other' are for represented persons with Autism Spectrum Disorder.*

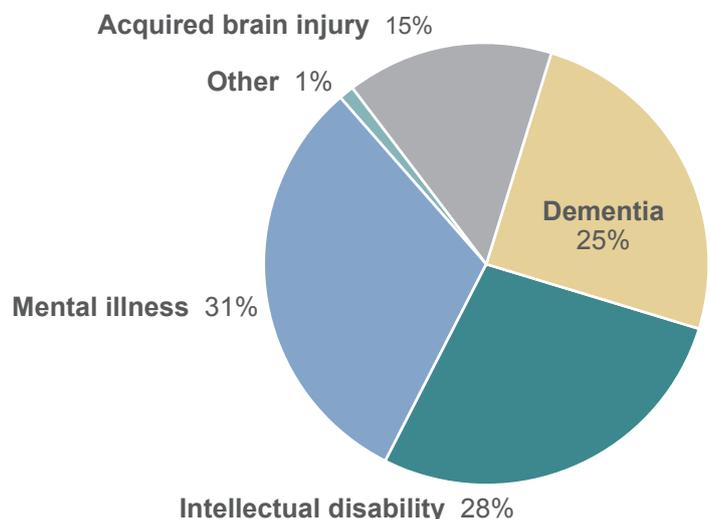


Of the total 3,115 appointments at 30 June 2022, 31 per cent of the people had a mental illness, 28 per cent an intellectual disability, 25 per cent dementia and 15 per cent an acquired brain injury. 55 per cent of the people were male and 45 per cent were female<sup>12</sup>.

**Figure 10 Profile of all guardianship orders appointing the Public Advocate by type of decision-making disability as at 30 June 2022**

Type of decision-making disability	
Acquired brain injury	463
Dementia	779
Intellectual disability	884
Mental illness	957
Other	32
<b>Total</b>	<b>3,115</b>

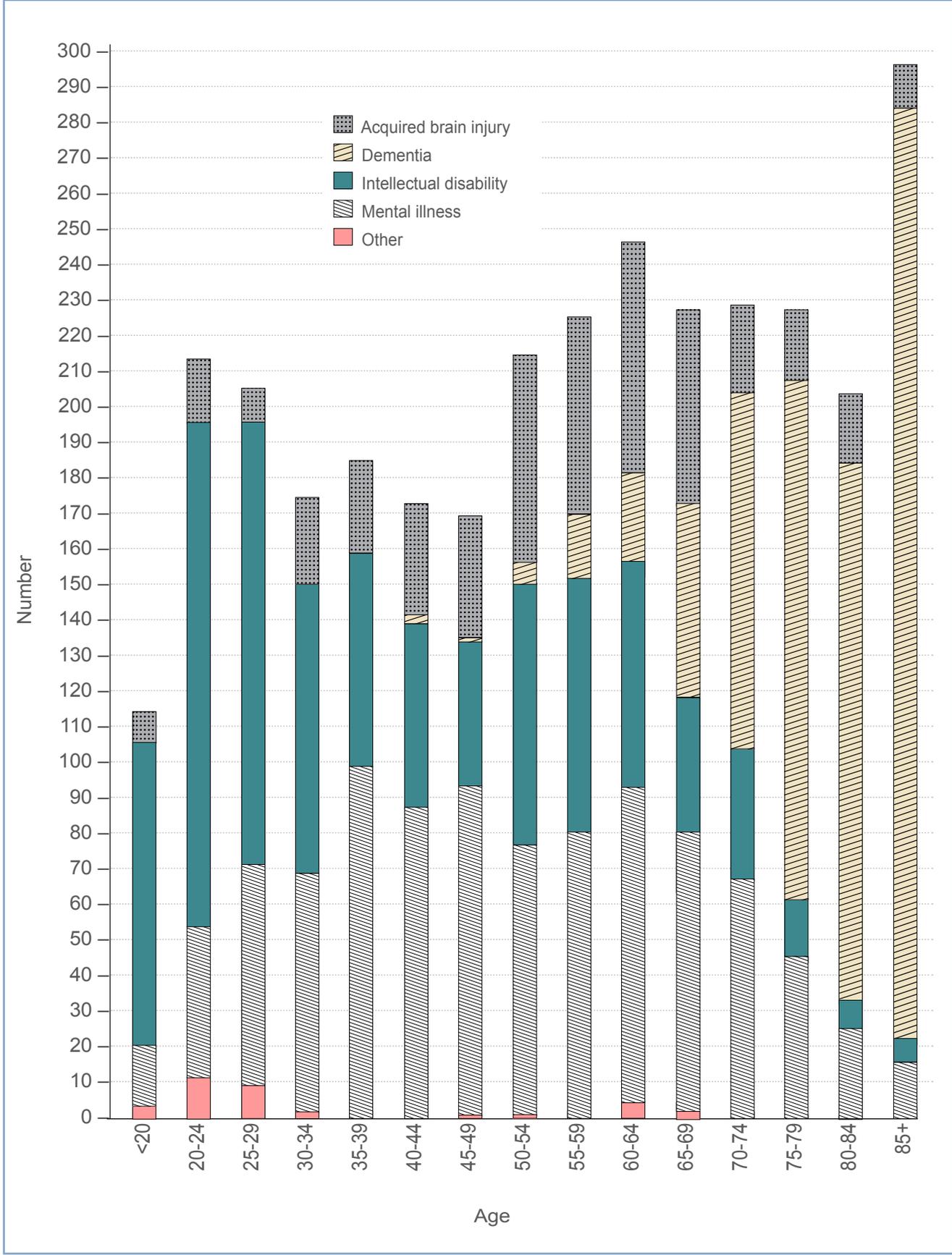
*Note: 30 of the 32 'other' are for represented persons with Autism Spectrum Disorder.*



<sup>11</sup> Two people did not identify as male or female.

<sup>12</sup> Three people did not identify as male or female.

**Figure 11 Profile by age and disability type of all people on guardianship orders appointing the Public Advocate as at 30 June 2022**



At 30 June 2022, the Public Advocate was guardian of last resort for 503 adults aged 80 years and over, who accounted for 16 per cent of all guardianship appointments. Of these 503 adults, 61 per cent were female and 39 per cent were male. Eighty-two per cent of the 503 adults had dementia.

This is a reflection of the ageing population, the subsequent increasing prevalence of dementia in the community and the growing number of people without family or friends who are suitable, willing and available to take on the role of decision-maker.

The most common single issue leading to the appointment of the Public Advocate as guardian of last resort this year was services, with 2,739 (88 per cent) of the 3,115 guardianship orders appointing the Public Advocate as at 30 June 2022, including the authority to make decisions about what services the represented person receives.

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

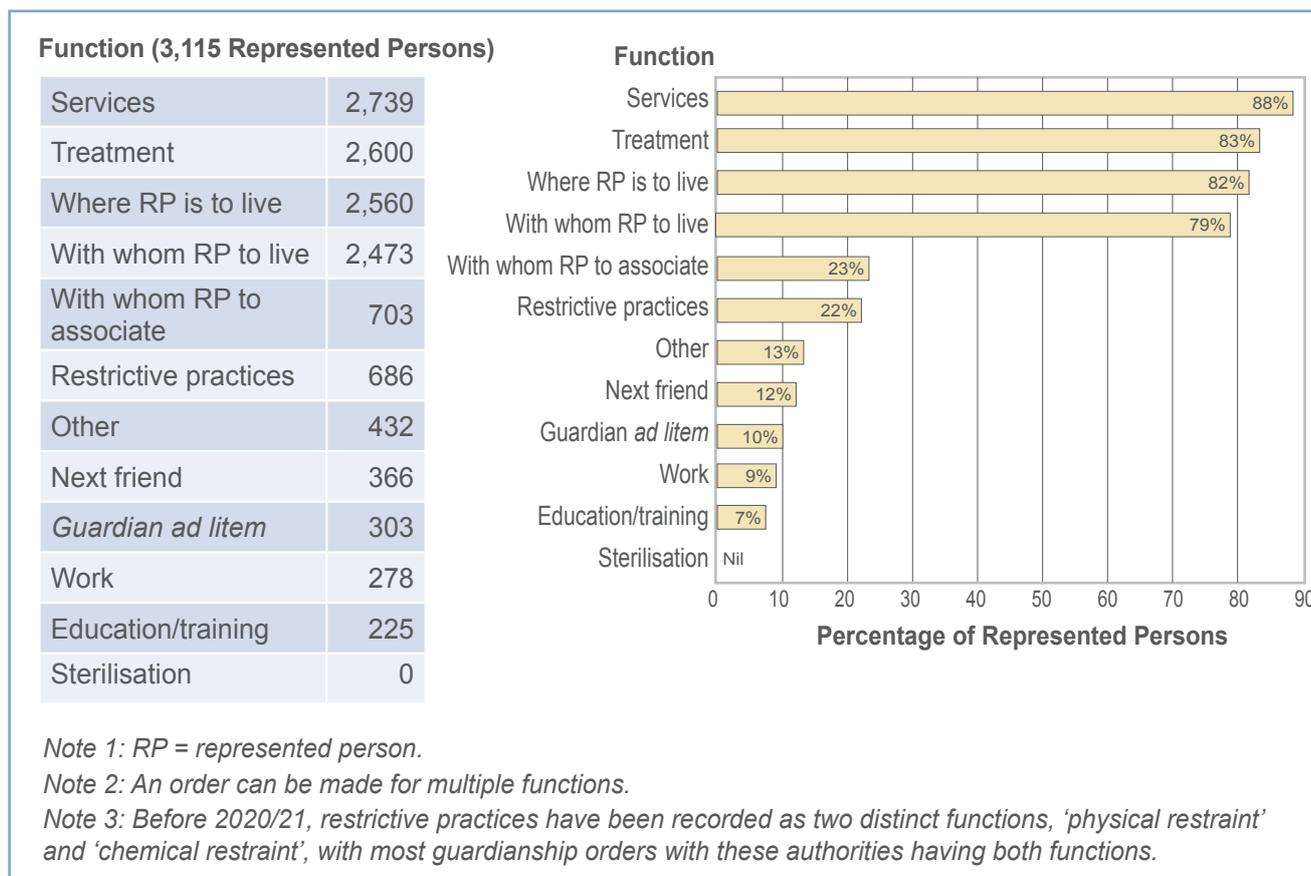
Historically, the most common single issue leading to the appointment of the Public Advocate has been the authority to make treatment decisions. At 30 June 2022, 2,600 (83 per cent) of the 3,115 orders appointing the Public Advocate as guardian included this function. The high number of orders appointing the Public Advocate to make treatment decisions could be attributed to represented persons not having a valid enduring power of guardianship, a spouse, a child over the age of 18, or a relative or a friend to act on their behalf. In some cases, these people exist, but are either unsuitable, unwilling or unavailable to act.

At 30 June 2022, 2,560 (82 per cent) of the 3,115 guardianship orders appointing the Public Advocate, included the authority to make decisions regarding where the represented person was to live. Similarly, 2,473 (79 per cent) of the 3,115 orders included the authority to make decisions regarding with whom they were to live.

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

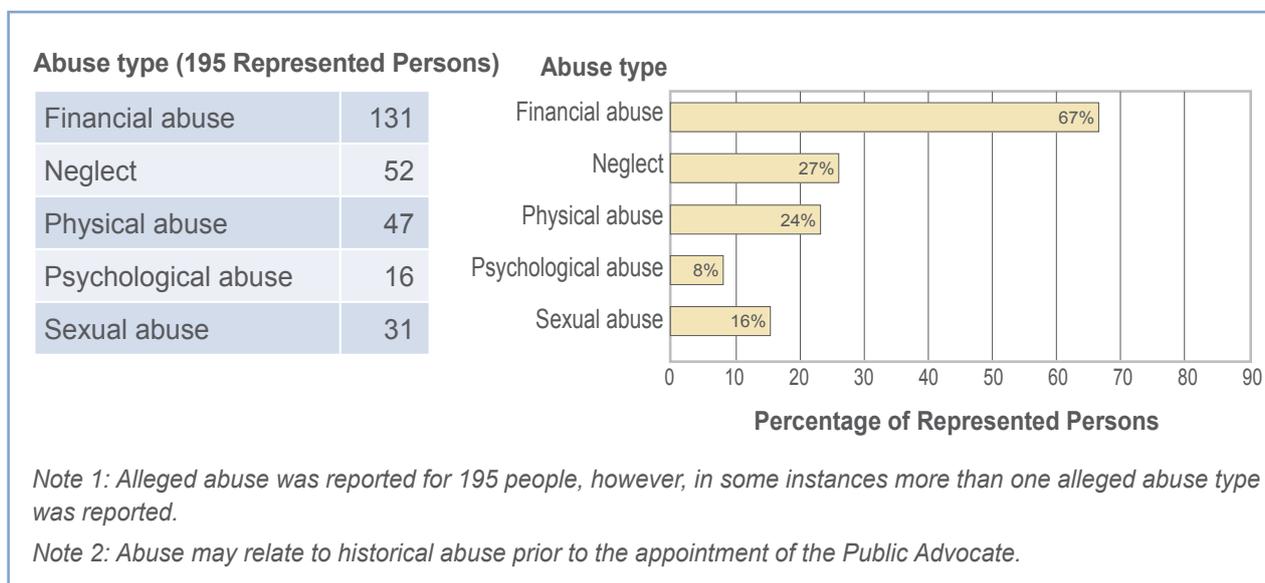
In a number of instances, the function given in the order has been labelled as 'other' (see Figure 12). Some examples of these might include to advocate on the person's behalf in relation to Police investigations; to determine if a person is to travel within Australia or overseas and to take possession of the person's passport; to seek further capacity assessments; to act on behalf of the person with respect to applications to Legal Aid WA; and to advocate on the person's behalf in connection with matters concerning the Mentally Impaired Accused Review Board, the Prisoners Review Board, the Department of Communities or the National Disability Insurance Scheme.

**Figure 12 Functions for which the Public Advocate has been appointed for all guardianship orders as at 30 June 2022**



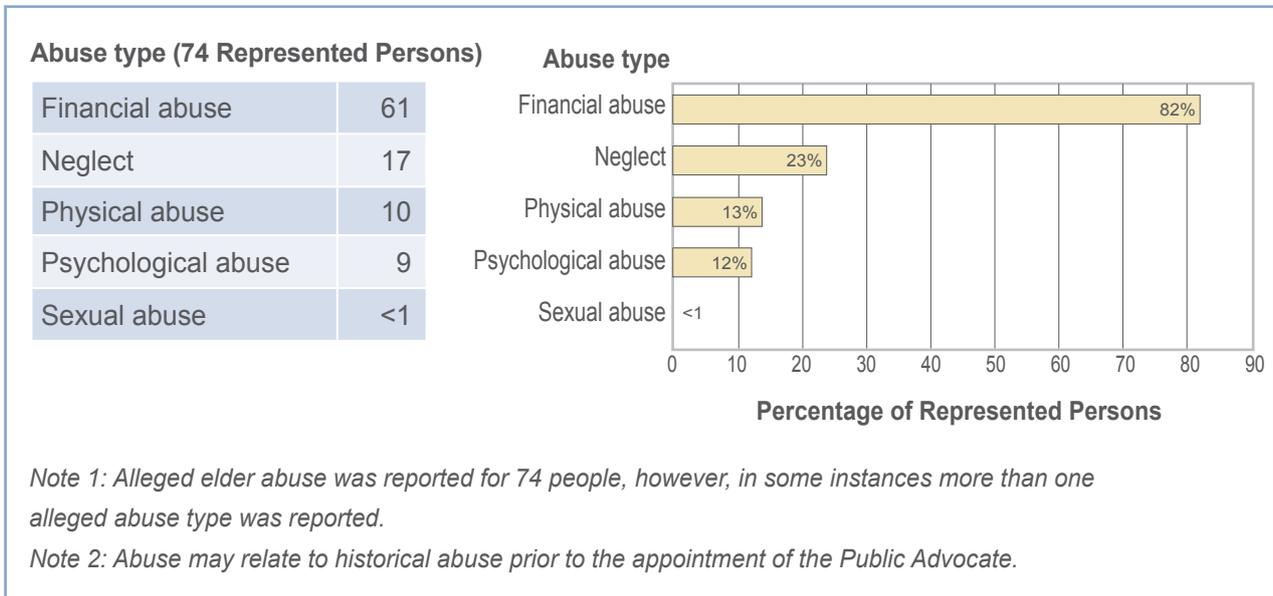
Allegations of abuse were a factor for 195 represented persons or 24 per cent of the 797 new guardianship orders appointing the Public Advocate in 2021/22. In some cases, more than one type of alleged abuse was reported. The most commonly reported form of abuse was financial, having been reported in 67 per cent of cases alleging abuse.

**Figure 13 Profile of new guardianship orders appointing the Public Advocate by type of alleged abuse 2021/22 (including alleged elder abuse)**



Of the 195 represented persons for whom abuse was alleged, 74 people were 65 years of age or older. Of these, financial abuse was also the most commonly reported form of abuse, having been reported in 61 (82 per cent) of the 74 cases.

**Figure 14 Profile of new guardianship orders appointing the Public Advocate by type of alleged elder abuse (aged 65 or older) 2021/22**



Of the 74 new appointments of the Public Advocate as guardian in 2021/22 where elder abuse was alleged, 12 were for a person of Aboriginal and Torres Strait Islander descent, representing 16 per cent. Financial abuse was the most commonly reported form of abuse, having been reported in 11 of the 12 cases (92 per cent).

**Figure 15 Profile of new guardianship orders appointing the Public Advocate where elder abuse (aged 65 or older) was alleged, for people of Aboriginal and Torres Strait Islander descent 2021/22**

Total new orders alleging elder abuse 2021/22	Aboriginal	Non Aboriginal	Aboriginal as a percentage of total
74	12	62	16%

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

Of the 797 new appointments of the Public Advocate as guardian in 2021/22, 125 were for a person of Aboriginal and Torres Strait Islander descent, representing 16 per cent of new appointments. This shows an over-representation of Aboriginal adults, given the State's Aboriginal population is only 3.3 per cent.<sup>13</sup>

**Figure 16 Profile of new guardianship orders appointing the Public Advocate for people of Aboriginal and Torres Strait Islander descent as at 30 June 2018 – 30 June 2022**

Year	Total	Aboriginal	Non Aboriginal	Aboriginal as a percentage of total
2017/18	526	77	449	15%
2018/19	591	89	502	15%
2019/20	717	99	618	14%
2020/21	730	131	599	18%
2021/22	797	125	672	16%

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

For the past five years, orders where the Public Advocate has been appointed as guardian of last resort for a person of Aboriginal and Torres Strait Islander descent, have averaged 17 per cent of all orders.

**Figure 17 Profile of all guardianship orders as at 30 June, appointing the Public Advocate for people of Aboriginal and Torres Strait Islander descent as at 30 June 2018 – 30 June 2022**

Year	Total	Aboriginal	Non Aboriginal	Aboriginal as a percentage of total
2017/18	1,923	325	1,598	17%
2018/19	2,140	368	1,772	17%
2019/20	2,463	416	2,047	17%
2020/21	2,771	502	2,269	18%
2021/22	3,115	570	2,545	17%

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

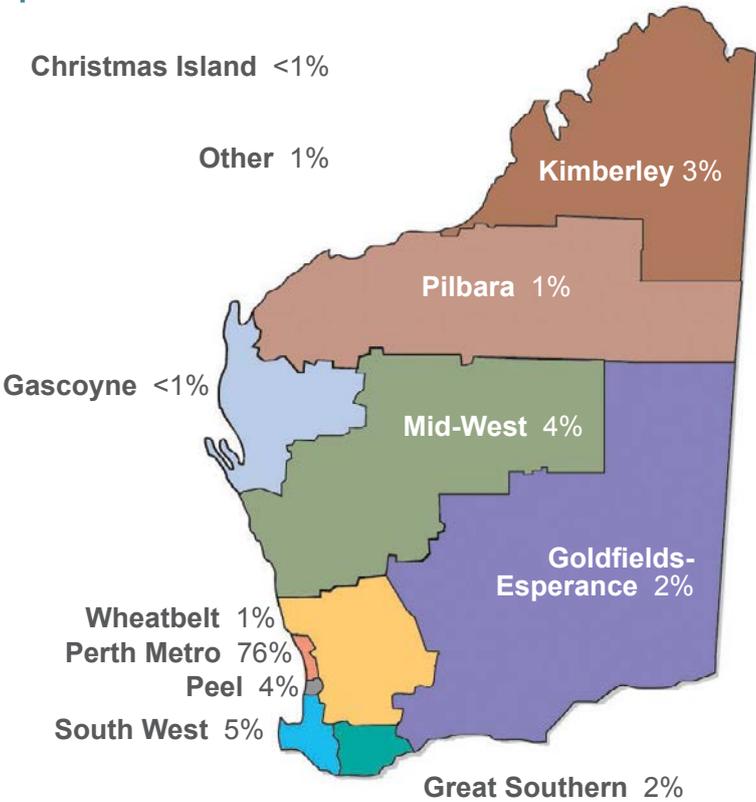
<sup>13</sup> Australian Bureau of Statistics 2022 Census: Aboriginal and/or Torres Strait Islander Peoples  
<https://www.abs.gov.au/articles/western-australia-aboriginal-and-torres-strait-islander-population-summary>

At 30 June 2022, 76 per cent of all appointments of the Public Advocate as guardian were for people living in the Perth metropolitan area.

**Figure 18 Profile of all guardianship orders as at 30 June 2022 appointing the Public Advocate by geographical location**

**Geographical locations**

Gascoyne	8
Goldfields-Esperance	54
Great Southern	65
Kimberley	83
Mid-West	113
Peel	127
Perth Metropolitan	2,378
Pilbara	45
South West	167
Wheatbelt	30
Christmas Island	2
Other	43
<b>Total</b>	<b>3,115</b>



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

**The Public Advocate’s after hours service**

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

## Case Study 6

### **Service provider collaboration to support a young adult leaving care**

Reportedly, C had an unstable upbringing as a child. Growing up he was exposed to family violence, substance abuse and neglect. As a young teenager C's parents relinquished parental rights and he was taken into the care of the Department of Communities, Child Protection and Family Services. Once in care he was diagnosed with a mild intellectual disability along with mental health issues.

Last year C turned 18, and his case was referred to the Public Advocate to investigate whether a guardian and/or administrator were required to support his transition into adulthood.

C was living with extended family and continued to exhibit anti-social behaviour including committing offences such as perpetrating family violence and engaging in illegal activity. He had no interest in applying for the services to which he was entitled, and he did not want a guardian or administrator appointed to support him.

While informal arrangements are often the preferred option when it comes to supporting young people with a decision-making disability into adulthood, there was nobody available in C's life who was suitable or willing to undertake this role. It was also clear that C had no interest in self-advocacy or the positive impact that an NDIS plan and support services could offer.

It was noted that while there was a distinct risk that C may choose not to utilise the services that would be accessed on his behalf, this did not remove the need for a guardian and administrator to be appointed. At the State Administrative Tribunal hearing the Public Advocate and Public Trustee were appointed as guardian and administrator respectively.

Over the following months, C's delegated guardian and trust manager worked collaboratively with service providers to ensure that he received all the services he was entitled to and the results were positive.

C has now re-connected with family members and is living in stable accommodation, which has given him not only security but a positive re-connection with family. He is learning new life skills, including 'community inclusion' to explore his culture and social participation. He is also carrying out tasks that provide him with a growing level of confidence and self-sufficiency.

With a stable home life C is no longer in 'survival mode' enabling him to plan ahead and work towards a more independent future. He is undertaking supervised work and leisure activities as well as setting achievable goals such as learning to drive and earning money to purchase his first car.

*(continued next page)*

*(Case study continued from previous page)*

In short, C is flourishing as a young adult thanks to a comprehensive network of stakeholders who continue to help him make better life choices for a more promising future. Working collaboratively with his delegated guardian and trust manager, who take his wishes into account, through an informal supported decision-making approach wherever possible.

### **When does an adult child with a decision-making disability need a guardian?**

If there is no conflict and informal processes are working well, it is not always necessary for someone to have a guardian, as long as the decisions made are in the best interests of the adult child.

However, if a parent can no longer provide the necessary support or if there is conflict, an application to the State Administrative Tribunal may be required to appoint the Public Advocate as guardian. This does not have to be a long-term arrangement and can help to protect a young adult with a decision-making disability from neglect, exploitation or abuse.

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

## **Case Study 7**

### **The decision-making process surrounding sterilisation**

Ms B lived in regional WA and had a diagnosis of schizophrenia. She also had a history of noncompliance with medication and illicit substance misuse, as well as presenting with social factors including domestic violence and homelessness.

Ms B was supported by her family, however the appointment of the Public Advocate as her guardian became necessary in 2021 to assist and protect Ms B, while maintaining her relationship with family members, which had become increasingly strained.

Ms B was admitted to the mental health unit of a WA hospital after becoming floridly psychotic. Once she resumed her medication and received intensive one-on-one care from her treating team, her mental health stabilised and began to improve.

During this time, Ms B decided that she would like to undergo tubal ligation, otherwise known as sterilisation. Her decision was influenced by a number of mitigating factors and it was fully supported by her family, treating multidisciplinary team and the Public Advocate.

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Medical doctors who had attained the qualification of 'specialist' assessed that Ms B had been provided with information regarding tubal ligation, the risks of the procedure had been explained, and she accepted that the procedure may not be reversible. Ms B also understood it was highly likely that she would experience significant deterioration in her mental health condition if she were to become pregnant and this would be detrimental to her long-term health and wellbeing.

Ms B's views on tubal ligation continued to be consistently expressed throughout the assessments performed. The Public Advocate considered that a tubal ligation was in Ms B's best interests given her consistent views on the procedure.

An application under 'Part 4, Division 3 – Limitations on sterilisation of persons under guardianship or where application for guardianship made' (subsections 56A-63) of the *Guardianship and Administration Act 1990*, was lodged with the State Administrative Tribunal by the delegated guardian.

The Full Tribunal, presided over by a Judge and two members, considered the application. The Tribunal heard from Ms B, medical experts, Ms B's delegated guardian and her treating mental health team. The Tribunal upheld Ms B's wishes and was satisfied that the tubal ligation procedure was in her best interests.

Ms B and her delegated guardian met with medical professionals who explained the procedure, the risks, and the permanency of tubal ligation. This was to ensure that the delegated guardian and Ms B understood the extent of the procedure.

All parties, including Ms B, remained in agreement that she undergo tubal ligation and the procedure was subsequently booked and successfully performed.

Sterilisation provided Ms B with both physical and mental benefits. While her concerns about becoming pregnant were mitigated by the procedure, her anxiety and long-term mental health issues surrounding an unwanted pregnancy were also alleviated, providing a positive outcome for Ms B and the people supporting her.

### **Sterilisation**

The management of sexuality and fertility can pose particular problems for some people with a decision-making disability and for their carers.

When an adult has a guardian appointed by the State Administrative Tribunal, the medical practitioner/specialist must have the consent in writing of both the guardian of the represented person and the State Administrative Tribunal, before undertaking a sterilisation procedure.

A represented person, his or her guardian, or the Public Advocate may apply to the State Administrative Tribunal for its consent to the carrying out of a sterilisation procedure. The Tribunal may, by order, consent to the sterilisation if it is satisfied that it is in the best interests of the represented person.

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

# Interagency Collaboration and Policy Development

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

## The Year in Review

### Collaboration regarding changes in the disability sector

A number of the Office's represented persons have been, and will continue to be, impacted by reforms to the disability sector. Since 1 July 2018, the Commonwealth agency, the National Disability Insurance Agency (NDIA) has delivered the National Disability Insurance Scheme (NDIS) in Western Australia and the transition to the full scheme is ongoing.

The introduction of the NDIS through the NDIA, the transition from the State delivered scheme, the Western Australian National Disability Insurance Scheme (WA NDIS), to the National scheme (the NDIS) and the impact of this transition on the Office of the Public Advocate and the people the Public Advocate represents, is detailed in the 'Significant Issues' section of this report.

### Young people with exceptionally complex needs

The Young People with Exceptionally Complex Needs (YPECN) project was established in April 2012, by the then Department for Child Protection, the Disability Services Commission and the Mental Health Commission. The Public Advocate was included as a member of the interagency executive committee for YPECN from its commencement in 2012, because of the Office's involvement and collaboration with the Department of Communities, to assist the transition of young people out of State care, who may need a guardian and/or an administrator appointed when they turn 18.

The YPECN project now includes senior representatives from the Department of Communities (Child Protection, Disability Services and Housing), the Department of Health's Child and Adolescent Mental Health Service and Youth Mental Health Outreach Service, the Department of Justice (Youth Justice and the Office of the Public Advocate) and the Department of Education.

Over the year, the level of support provided by this project has been invaluable to nine highly vulnerable young people, who needed intensive support with their transition from State care and where the Public Advocate is appointed guardian. Four of these young people were continuing to be assisted through YPECN at 30 June 2022, with five having exited the program during the year. In addition, there were also two young people in YPECN for whom applications to the State Administrative Tribunal are likely to be made before they turn 18 years of age in the latter half of 2022.

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

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

The Office of the Public Advocate is collaborating with the Department of Communities under an instrument of Ministerial Consent for the sharing of information to identify represented persons who have been in care and determine if there is a record of sexual abuse while in care.

The Office of the Public Advocate is also collaborating with the Public Trustee to ensure that the interests of represented persons for whom the Public Advocate has been appointed as guardian are protected and advanced. Represented persons who have grounds for a National Redress claim are referred to the Public Trustee for consideration of possible Common Law claims. The Public Trustee then sends the application to the National Redress Scheme.

As at 30 June 2022, the circumstances of over 1,625 represented persons had been considered by the Office of the Public Advocate since the start of the scheme and of these 57 represented persons with a National Redress claim had been referred to the Public Trustee.

## Elder abuse

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

In Western Australia, this vulnerable group within the community consists of a large and growing number of people who are 65 years of age or older and have a cognitive impairment, often due to dementia.

This sub-group face a higher risk of abuse, exploitation and neglect – often referred to as ‘elder abuse’ – and are a key group which the Office works to protect.

Abuse can include financial, physical and psychological or neglect and a person may experience more than one form of abuse. Concerns about elder abuse may be raised within the Office during the progress of an investigation, through enquiries to the Office’s advisory service and at times during community information sessions.

The Public Advocate is an active member of the Alliance for the Prevention of Elder Abuse in Western Australia (APEA WA). This interagency alliance was established to find ways to raise awareness of and prevent elder abuse.

Australia’s first national plan to respond to the Abuse of Older Australians (Elder Abuse) was launched on 19 March 2019, following endorsement by all the members of the Council of Attorneys-General. The national plan was a key recommendation of the 2017 Australian Law Reform Commission’s (ALRC) Report: Elder Abuse - a National Legal Response, which highlighted examples of serious physical abuse, financial abuse, neglect and exploitation of older people.

## Policy and legislative work

The Public Advocate and senior staff members were involved in policy development and reviews with other government and non-government agencies during 2021/22, including:

- Continued to assist the Director General, Department of Justice with the Meeting of Attorneys-General Working Group which is considering the recommendations of the Australian Law Reform Commission's inquiry 'Elder Abuse - A National Legal Response' in conjunction with the Department's Advisory Services and Strategic Reform divisions, the Public Trustee, the Department of Communities and other jurisdictions. This includes involvement in the National Register for Enduring Powers of Attorney Sub-Working Group.
- Continued to contribute to the development of the WA Strategy to Respond to the Abuse of Older People (Elder Abuse) 2019-2029 which is led by the Department of Communities.
- Member of the Department of Communities led Project Working Group responsible for cross-government consideration relating to the development of the WA Seniors Strategy, to support older people and harness the opportunities and address the challenges of the State's ageing population.
- Member of the Working Group for the development of the Independent Support Person Trial Project. The work has been funded by the Department of Communities and has been undertaken by Kin Disability Advocacy Incorporation and People With Disabilities Western Australia. This important project is aimed at providing support to Aboriginal and Torres Strait Islander people with a cognitive disability during the police interview or process at the police station. Approval of the implementation of the trial is subject to budget processes.
- Member of the National Disability Insurance Scheme (NDIS) Interface Steering Committee, consisting of representatives from key State Government's agencies and convened by the Department of Communities.
- Continued work with the Commonwealth National Disability Insurance Agency (NDIA) with regard to the implementation of the National Disability Insurance Scheme. This has included consolidating the positive relationship between the Office and the NDIA's Complex Support Needs Branch.
- Participation in the Royal Commission into Violence, Abuse, Neglect, and Exploitation of People with Disability through Roundtable Discussions and other consultation.
- Made a submission to the Department of Justice's review of Part 9E of the *Guardianship and Administration Act 1990*, being the provisions regarding medical research.
- Since the tabling in the Parliament of the report by the Ministerial Expert Panel on Advance Health Directives by the Attorney General on 28 August 2019, the Office of the Public Advocate has worked with the Department of Health alongside the Department of Justice's Strategic Reform division in relation to the development of a revised Advance Health Directive and supporting publications. The Office is also a member of the Department of Health's Advance Care Planning Reference Group.

## Community Education

The Office of the Public Advocate promotes the human rights of adults in Western Australia with a decision-making disability, under the provisions and operation of the *Guardianship and Administration Act 1990*.

This is done through community education activities which improve people's awareness and understanding of the legislation, the system and the surrounding issues. Activities include:

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

## The Year in Review

In 2021/22, the Office delivered a total of 21 education sessions to community members and professionals from the health, Aboriginal health, mental health, disability, aged-care and legal sectors. This was a slight increase on the 17 education sessions held in the previous financial year. Once again, some sessions were postponed due to COVID-19 restrictions and others had reduced capacity or were moved online.

Of the 21 sessions, eight addressed the needs of community members and 13 were specifically tailored for service providers.

16 of the education sessions were delivered in the Perth metropolitan area and five in regional areas.

Two of the service provider sessions were for Justices of the Peace and aimed to educate JPs about the proper completion, witnessing and operation of enduring powers of attorney, enduring powers of guardianship and advance health directives, to assist in their role when witnessing these documents and also for their own personal information.

The Office participated in the Seniors Recreation Council of WA's 'Have a Go Day' (HAGD), and PrideFEST sharing marquees with colleagues from both the Public Trustee and Commissioner for Victims of Crime respectively. Both events provided the Office with an opportunity to meet with community members and relevant service providers and provide them with information on enduring powers of attorney, enduring powers of guardianship and writing a Will.

Five of the community member sessions were held jointly with the Public Trustee. These included quarterly Private Administrator Training sessions for newly appointed private administrators as well as a joint Elder Abuse Prevention - Planning Ahead community seminar on World Elder Abuse Awareness Day 2022.

## Customer contact/enquiries

The Office of the Public Advocate offers an advisory service which provides information to community members and professionals in relation to the *Guardianship and Administration Act 1990*, who may be seeking information to assist them to plan for their future or to protect the rights of adults with a decision-making disability.

The service provides recorded information on guardianship, administration, enduring powers of attorney and enduring powers of guardianship. This information is available 24/7 and supplements the information available on the Office's website.

During office hours people also have the option to speak to an advisory officer in-person or on the telephone. People also make contact by email, enabling them to submit queries outside of office hours which the advisory officer can then respond to.

In addition to queries about the guardianship and administration system, including planning documents and advice on making applications to the State Administrative Tribunal, the advice line also provides information for private guardians, enduring guardians and attorneys (appointed under an enduring power of attorney) about the obligations of their role and where to gather support if needed to assist in their decision-making.

The advice line is also a first point of contact for community members who have concerns about someone who appears to have a decision-making disability and is in need of assistance with decision-making. This may be someone who has been observed to be having difficulty managing their day-to-day activities, or where there is a concern that the person is at risk of abuse or exploitation.

These calls sometimes lead to the opening of a community-referred investigation which will look into the situation and determine if assistance, by way of the appointment of a guardian or administrator, is required; or if there are informal supports that can be put in place to assist the person.

### EPA's and EPG's - it's all about witnessing

The Office receives a high volume of calls from people wanting to talk about making an enduring power of guardianship and/or enduring power of attorney. One of the most common queries is about the witnessing of these documents.

The advisory officer often has to clarify that the person making the document has to have their signature witnessed by two people, and both people must be present together, at the same time, to watch the person sign.

Another frequent query is whether the authorised witness still needs to be working in the profession that makes them an authorised witness. The answer to that is 'yes'.

So, for example, while a retired accountant can be the second witness, they are no longer a person who can be the authorised witness.

In a recent matter, the caller wanted to know if a person who was a Justice of the Peace (JP), who had been diagnosed with dementia, could still be a witness. The advisory officer was able to clarify that if a person has lost capacity, they will be delisted as a JP and so cannot be the witness to the EPA. In this scenario it was determined that the person was no longer a JP and so could not be the authorised witness.

In 2021/22 the Office addressed 5,663 enquiries from 3,729 people who used the advisory service.

**Figure 19 Enquiries to the advisory service by mode of handling 2021/22**

Mode of handling	Jul 2021	Aug 2021	Sep 2021	Oct 2021	Nov 2021	Dec 2021	Jan 2022	Feb 2022	Mar 2022	Apr 2022	May 2022	Jun 2022	Total
Telephone	202	285	272	276	284	229	300	288	370	257	314	300	3,377
Interview	4	4	0	4	9	3	4	5	3	5	5	6	52
Email/letter	24	22	16	25	37	23	20	5	37	11	20	60	300
<b>TOTAL</b>	<b>230</b>	<b>311</b>	<b>288</b>	<b>305</b>	<b>330</b>	<b>255</b>	<b>324</b>	<b>298</b>	<b>410</b>	<b>273</b>	<b>339</b>	<b>366</b>	<b>3,729</b>

In some instances, enquirers sought advice on multiple topics. Enquiries regarding enduring powers of attorney accounted for 35 per cent of all enquiries received during the year, with enduring powers of guardianship enquiries accounting for 23 per cent.

**Figure 20 Enquiries to the advisory service by subject 2021/22**

Subject of enquiry	Jul 21	Aug 21	Sep 21	Oct 21	Nov 21	Dec 21	Jan 22	Feb 22	Mar 22	Apr 22	May 22	Jun 22	Total	Total as percentage of all enquiries
Guardianship	65	94	50	82	80	81	87	87	92	50	79	84	931	16
Administration	49	48	47	59	60	72	72	77	63	42	61	75	725	13
Enduring powers of attorney	105	168	146	162	176	146	151	146	225	151	195	221	1,992	35
Enduring powers of guardianship	80	112	96	93	97	103	97	96	139	112	112	150	1,287	23
Advance health directives	3	6	9	3	16	7	11	9	11	4	9	6	94	2
General	43	43	33	97	88	116	44	31	55	22	31	31	634	11
<b>Total</b>	<b>345</b>	<b>471</b>	<b>381</b>	<b>496</b>	<b>517</b>	<b>525</b>	<b>462</b>	<b>446</b>	<b>585</b>	<b>381</b>	<b>487</b>	<b>567</b>	<b>5,663</b>	<b>100</b>

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

In April 2022 the Citizen's Advice Bureau ceased stocking hard copies of the Office's Enduring Power of Attorney and Enduring Power of Guardianship kits. This has resulted in an increased volume of material requests received through the advisory service. The Office received 110 material requests between April and June 2022.

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

The publications produced by the Office include a brochure on the guardianship and administration system and the role of the Office of the Public Advocate in protecting vulnerable adults, which has been developed specifically for people of Aboriginal and Torres Strait Islander descent.

In addition to this targeted resource, where appropriate, information sessions for service providers include practical examples of how the guardianship and administration system could be used to assist people of Aboriginal and Torres Strait Islander descent to ensure culturally appropriate outcomes are achieved.

## Easy Read brochures

In early 2022 The Office developed a suite of five new Easy Read brochures covering topics such as how does an investigation work, who makes treatment decisions and how does guardianship work?

These were developed in direct response to feedback from staff and stakeholders, requesting documents that broke down these complex concepts into easily understandable documents. They were drafted in consultation with a disability advocacy group and are available both online and in hard copy.

## New website

The Office collaborated with the Department of Justice's Strategic Communications Division, to migrate its website to the wa.gov.au platform. This required a full review of content and the reorganisation of complex information into a more intuitive, user-friendly format. These changes improved functionality, navigation, and overall user-experience.

The top performing pages on the new website between 21 March (website launch) to 30 June 2022 were:

- enduring power of attorney: 34,237 visitations  
(average time spent on page: one minute 32 seconds)
- enduring power of guardianship: 16,128 visitations  
(average time spent on page: one minute 34 seconds).

In line with these figures, the most downloaded documents in the same period were:

- enduring power of attorney kits and guides: over 15,500 downloads
- enduring power of guardianship kits and guides: over 3,500 downloads.

A scannable QR code and OPA App were also developed, enabling stakeholders to scan and access website information in the swipe of a button. These are utilised at community events, enabling attendees to easily access information in both hard copy and online.

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

All of the Office's publications are available in alternative formats,<sup>14</sup> including other languages, upon request.

In previous years, the Office has had three of its commonly used information sheets regarding planning for the future, translated into seven languages other than English. These information sheets provide information regarding enduring powers of attorney, enduring powers of guardianship and general planning for the future information. They are available on the Office's website and in hard copy upon request in Arabic, simplified Chinese, Dari, Italian, Malay, Polish and Vietnamese.

In addition, the Office had another four information sheets translated into both Persian and Thai. These documents provide information regarding the State Administrative Tribunal, the Tribunal process, guardianship and administration. These are available on the Office's website and in hard copy on request.

## Interpreter services

To help ensure that language is not a barrier to guardianship or advocacy and investigation services for customers for whom English is a second language, the Office uses translation and interpreter services. During 2021/22 interpreter services were provided in Arabic, Cantonese, Mandarin, Myanmar language, Thai and Vietnamese.

## Catering to the needs of clients with vision impairments or print disabilities

The Office moved to its new wa.gov.au website in 2022. This provides a clearer display with simplified content sectioned into subject accordions. The user experience for vision impaired persons is further enhanced by improved functionality, along with easier, more intuitive navigation.

'Focus colours' continue to be used - meaning when a visitor to the website hovers over links contained in the website text, the links are highlighted, enhancing readability and navigation.

Buttons have also been installed, for example a person can call the Office's Telephone Advisory Service by using the TAS button, prominently located on the home page, without the need to dial. The Office's contact details are also clearly listed at the side of every web page, for easy access.

## Catering to the needs of clients with hearing impairments

Staff use the National Relay Service as required, to communicate better with clients who are deaf, or who have a hearing impairment or speech impairment. The variety of contact methods offered by the National Relay Service are promoted on the Office's website.

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<sup>14</sup> Other than the enduring power of attorney form and enduring power of guardianship form, which are not able to be translated into other languages, as they must be in English.

## Corporate Services

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

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

In 2021/22, these services were supported by the Department of Justice and costs were proportionally allocated to the Office of the Public Advocate and reflected in the Treasury Budget statements. The budget allocation and subsequent expenditure for 2021/22 was as follows:

**Figure 21 Budget allocation and expenditure 2021/22**

Original Budget 2021/22 \$'000	Revised Budget 2021/22 \$'000	Actual Expenditure 2021/22 \$'000
12,178 <sup>15</sup>	12,504 <sup>16</sup>	11,857 <sup>17</sup>

## The Year in Review

### Freedom of information

Seventeen valid applications were received during 2021/22 for the release of information. All of the requests were dealt with in full during the year.

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

If a request is denied, an application may be lodged with the Public Advocate. If the application is denied or a person is not satisfied with the decision of the Public Advocate, they may lodge an appeal with the Information Commissioner.

### Customer feedback

In 2021/22, the Office of the Public Advocate received 64 formal complaints during the year, which were all considered by the Public Advocate or a senior manager. The Office also received 35 formal compliments.

For people who lodge a formal complaint with the Office of the Public Advocate, either in writing, via email or over the telephone, the Office aims to respond to all grievances within 10 working days of the complaint being lodged and advise the relevant people (in writing) of the outcome and any corrective action to be taken.

<sup>15</sup> Includes shared Department of Justice corporate support.

<sup>16</sup> Includes shared Department of Justice corporate support.

<sup>17</sup> Includes shared Department of Justice corporate support.

# Significant Issues Impacting the Agency

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

The COVID-19 global pandemic continued to impact the way the Office delivered core services in 2021/22. The Office was further impacted by the introduction of the Omicron variant to WA in 2022. This new, more contagious strain of the virus caused lockdowns and fluctuating restrictions throughout the year. The Office had to be flexible to ensure services continued while protecting the health and safety of staff and clients.

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

This occurred from 27 June to 12 July 2021 and 15 March to 2 May 2022.

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

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

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

## State and National Disability Sector Reform

Changes to the disability sector continued to affect the Office in 2021/22. In December 2017, the Commonwealth and Western Australian (WA) Governments announced that the nationally delivered NDIS (delivered by the National Disability Insurance Agency) was being adopted as the model in WA. From 1 July 2018, the NDIA assumed responsibility for the delivery of NDIS in WA.

## Meeting Demand for Services

The Office of the Public Advocate has experienced growth in demand for its statutory services, year on year, for more than a decade.

This trend continued in 2021/22 with a 12 per cent increase in the total number of investigations carried out compared to 2020/21 and a 13 per cent increase in the number of new matters for investigation referred to the Office by the State Administrative Tribunal.

The Office also experienced a nine per cent increase in new appointments as guardian of last resort in 2021/22, compounding the total number of people under the Public Advocate's guardianship and resulting in a 12 per cent increase in total guardianship orders at 30 June 2022, compared to 30 June 2021.

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

Of the 3,115 people for whom the Public Advocate was guardian at 30 June 2022, 1,188 (38 per cent) were 65 years of age or older. Of these 717 people, 60 per cent had dementia.

In 2021/22, 46 per cent of the 2,059 new matters referred for investigation by the State Administrative Tribunal involved a person with dementia.

According to research commissioned by Dementia Australia<sup>18</sup> there were an estimated 46,000 people with dementia in Western Australia in 2022. The projected rates of prevalence in this report estimate there will be 108,000 people with dementia in WA by 2058.

Mental illness accounted for the largest proportion (31 per cent) of all adults for whom the Public Advocate was appointed guardian at 30 June 2022, closely followed by intellectual disability, which accounted for 28 per cent of the appointments.

Western Australia's transition to the Commonwealth National Disability Insurance Scheme (NDIS) continued to have a significant impact on demand for the Office's services.

Although it is not a requirement for anyone with a decision-making disability to have a guardian appointed in order to access the NDIS, the process of applying sometimes highlights other decision-making areas within a person's life for which they may need a guardian. Navigating the system can also present challenges. These factors have led to numerous new applications being made for the appointment of a guardian.

The transition to the Commonwealth NDIS has also affected some people's accommodation and support arrangements, so informal processes that were enabling decisions to be made have ceased to exist, for example, where a service provider decides not to register as an NDIS provider. This has resulted in an increase in

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<sup>18</sup> Dementia Australia, key facts and statistics updated Jan 2022 (<https://www.dementia.org.au/statistics> and <https://www.dementia.org.au/sites/default/files/2021-03/2021-DA-Prev-Data-Dementia-in-Aus.pdf>)

guardianship orders appointing the Public Advocate, particularly with respect to adults with an intellectual disability or a mental illness, many of whom live in group homes or hostels and have limited family support.

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

Since WA's transition to the Commonwealth NDIS in 2017/18, the Office has observed an increase in demand for and complexity of the Office's services. In recognition of this and in order to substantiate this and better position the Office to meet this demand, an independent review of the impact of the NDIS on the work of the Office was undertaken. The review substantiated the driving force the NDIS was having on demand for the Office's services and subsequently increased funding has been secured from 2021/22 to 2022/23.

Another key recommendation coming from the review was the need for a new Information and Communication Technology (ICT) system. Work to acquire a new system is progressing and if approved, will see future benefits to the Office in improved efficiency and business processes.

Due to the ongoing impact of the NDIS and the growing prevalence of mental illness, intellectual disability and dementia within the population, the Office can expect continued growth in demand for its services

## Elder Abuse

According to 2022 State Government estimates, between two and 14 per cent of older Western Australians – between 7,000 and 49,000 people – are experiencing or have experienced some form of elder abuse.

Over the past 12-month period, new guardianship orders relating to alleged elder abuse, appointing the Public Advocate were made for 74 represented persons.

Led by the Department of Communities, the WA Seniors Strategy 2022-2032 was launched in November 2021, to support WA's ageing population. Consultation ended in August 2022 and the strategy aims to connect, coordinate and evaluate activities across State Government agencies.

The Office continues to promote elder abuse prevention and awareness through the dissemination of enduring power of attorney, enduring power of guardianship and advance health directive material, along with delivering community and service provider seminars throughout the year. The Office also jointly hosted a World Elder Abuse Awareness Day (WEAAD) community seminar on 15 June 2022.

Scrutiny and heightened awareness continue to build across State and National Government, underlining the importance of elder abuse as a priority agenda item.

# Disclosures and Legal Compliance

## Financial Statements

See the Department of Justice 2021/22 annual report.

## Key Performance Indicators

### Notes to the Key Performance Indicators

The following performance indicators should be read in conjunction with the accompanying *notes to the key performance indicators*.

### Advocacy, Guardianship and Administration Services

Key effectiveness indicators	Actual 2018/19	Actual 2019/20	Actual 2020/21	Target 2021/22	Actual 2021/22	Comment on significant variation
<p><b>Percentage of guardians 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>	82%	96%	78%	95%	91%	There is no significant variation between the 2021/22 actual result and target. The 2021/22 actual results is 17% higher than the 2020/21 actual result of 78% due to implementation of a refined guardian of last resort allocation process during the year.

Key efficiency indicator	Actual 2018/19	Actual 2019/20	Actual 2020/21	Target 2021/22	Actual 2021/22	Comment on significant variation
<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>	\$1,445	\$1,560	\$1,573	\$1,695	\$1,665	

## Notes to the Key Performance Indicators

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

Efficiency indicator	Description
<p><b>Average cost per case of providing advocacy and guardianship services.</b></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, Planning and Budgeting Cloud Services (PBCS), and the Public Advocate Case Management System (PACMAN).</p>

## Ministerial Directives

Nil.

## Public Interest Disclosures

Nil. Since 1 July 2019, any disclosures regarding the Office of the Public Advocate are reported in the Department of Justice Annual Report.

## Other Legal Requirements

### Advertising

The Public Advocate discloses the following information relating to advertising, direct mail and market research expenditure as required under Section 175 ZE of the *Electoral Act 1907*.

#### Figure 22 Advertising

Advertising, recruitment, directory charges and other	\$12,345
<b>TOTAL EXPENDITURE</b>	<b>\$12,345</b>

### Recordkeeping Plans

Records are maintained in accordance with the Department of Justice's records keeping plans and those of the State Records Office. An updated Retention and Disposal Schedule was approved by the State Records Office, effective December 2013.

See the Department of Justice 2021/22 annual report for any further information on:

- Other financial disclosures
- Other governance disclosures
- Disability Access and Inclusion Plan outcomes
- Compliance with Public Sector Standards and Ethical codes
- Substantive equality
- Occupational Safety, Health and Injury Management
- Board and committee remuneration
- Multicultural Policy Framework.

# Appendix 1

## Legislation

### Legislative Authority

The Public Advocate's legislative authority is contained in the *Guardianship and Administration Act 1990*. The Act was proclaimed to come into full operation on 20 October 1992. Significant amendments were enacted on 15 February 2010 when the *Acts Amendment (Consent to Medical Treatment) Act 2008* came into effect and again on 7 April 2020 when the *Guardianship and Administration Amendment (Medical Research) Act 2020* came into effect.

### Related Legislation

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

*State Administrative Tribunal Act 2004*

*Aged Care Act 1997 (Commonwealth)*

*Carers Recognition Act 2004*

*Civil Liability Act 2002*

*Community Protection (Offender Reporting) Act 2004*

*Criminal Investigation (Identifying People) Act 2002*

*Criminal Investigation Act 2006*

*Criminal Law (Mentally Impaired Accused) Act 1996*

*Declared Places (Mentally Impaired Accused) Act 2015*

*Disability Services Act 1993*

*Health Act 1911*

*High Risk Serious Offenders Act 2020*

*Magistrates Court (Civil Proceedings) Act 2004*

*Mandatory Testing (Infectious Diseases) Act 2014*

*Mental Health Act 2014*

*National Disability Insurance Scheme Act 2013 (Commonwealth)*

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

*Prisons Act 1981*

*Public Trustee Act 1941*

*Supreme Court Act 1935*

The Public Advocate also complied with legislation that relates to the management and accountability requirements of Government during 2021/22, including:

*Corruption and Crime Commission Act 2003*

*Electoral Act 1907*

*Equal Opportunity Act 1984*

*Financial Management Act 2006*

*Freedom of Information Act 1992*

*Occupational Safety and Health Act 1984*

*Parliamentary Commissioner Act 1971*

*Public Interest Disclosure Act 2003*

*Public Sector Management Act 1994*

*State Records Act 2000*

*State Supply Commission Act 1991*

*Work Health and Safety Act 2020*

*Workers' Compensation and Injury Management Act 1981*

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

# Appendix 2

## Publications

Office of the Public Advocate publications are available online at [www.publicadvocate.wa.gov.au](http://www.publicadvocate.wa.gov.au)

### Information sheets

- Introduction to the Guardianship and Administration System (also available in two languages other than English)
- Role of the Public Advocate
- Role of the State Administrative Tribunal (also available in two languages other than English)
- Guardianship (also available in two languages other than English)
- Administration (also available in two languages other than English)
- Sterilisation
- Public Advocate — Customer Feedback and Service Standards
- Enduring Power of Attorney (also available in seven languages other than English)
- Enduring Power of Guardianship (also available in seven languages other than English)
- Planning for the Future (also available in seven languages other than English)

### Position statements

- Decisions about treatment
- Restrictive Practices (Restraint)
- Role of the Public Advocate as guardian of last resort with authority to make accommodation decisions
- Role of the Public Advocate as guardian of last resort with authority to make treatment decisions
- Role of the Public Advocate as guardian of last resort with authority for contact decisions
- Role of the Public Advocate as guardian of last resort with authority to make treatment decisions: palliative care
- Decisions about medical research
- Role of the Public Advocate as Guardian of Last Resort with authority to make decisions about restrictive practices

## Easy Read factsheets

- How does an investigation work?
- How does Guardianship work? If a friend or family member is my guardian
- How does Guardianship work? If the Public Advocate is my guardian
- How treatment decisions work - If you have a guardian
- Who makes treatment decisions? The Hierarchy of Decision Makers

## Brochures

- Office of the Public Advocate
- Your choices to make an advance health directive and appoint an enduring guardian
- Community Guardianship Program
- Are you worried about a vulnerable adult who needs help making decisions? (a brochure for Aboriginal people)
- If you can't make your own decisions, who will make them for you? (a plain English brochure)

## Guides and kits

- A Guide to Enduring Power of Attorney in Western Australia
- Enduring Power of Attorney Information Kit
- A Guide to Enduring Power of Guardianship in Western Australia
- Enduring Power of Guardianship Information Kit
- Private Guardian's Guide

## Appendix 3

### Glossary

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

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

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

**Enduring power of attorney:** A document in which a person who is capable appoints another person or agency to manage their property and/or financial affairs. Unlike an ordinary power of attorney, an enduring power of attorney authority continues even when the person granting it loses their capacity to make decisions for themselves.

**Enduring power of guardianship:** A document in which a person who is capable appoints another person to make personal, lifestyle and treatment decisions on their behalf in the event that they lack full legal capacity in the future.

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

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

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

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

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

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

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

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

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

# Appendix 4

## Annual Report 2021/22 – at a glance

### This document is about

- the Office of the Public Advocate
- the things the Office does
- what the Office did this year
- what might make it harder in the future for the Office to do its work.

### The Office of the Public Advocate

- protects adults who can't make decisions for themselves because of some kind of illness or injury to their brain, known as a decision-making disability (some people are born with a decision-making disability and other people may get a disability later, from an accident or illness)
- looks into reports of concern about other people harming or taking advantage of a person with a decision-making disability
- makes decisions for people with a decision-making disability, when a guardianship order is made by the State Administrative Tribunal that makes the Public Advocate the guardian (the guardianship order says what kind of decisions the guardian can make and might include things like where the person lives, who they live with, what activities they do and what medical care they have)
- does its best to improve life for people with a decision-making disability
- teaches people about what the Office does, who can make decisions for people with a decision-making disability and how to protect people with a decision-making disability.

## This year we

- looked into 2,505 matters about adults with a decision-making disability who might have had someone trying to harm them or take advantage of them or their money
- were appointed as guardian for the first time, for 797 adults with a decision-making disability
- made decisions for the people we were guardian for, which was 3,115 people on 30 June 2022
- held 21 information sessions about what the Office does and how to help protect people with a decision-making disability
- helped 3,729 people who contacted the Office's advisory service for information
- had 86.5 FTE staff positions (at 30 June 2022), with \$11.857 million spent to protect people with a decision-making disability.

## What will happen in future years?

There are more people getting older in Western Australia, which means there are more people with dementia, as well as other brain injuries and illnesses.

More people with decision-making disabilities means there will be more work for the Office of the Public Advocate.

The National Disability Insurance Scheme is also meaning more people need a guardian appointed and sometimes the only person who can be appointed is the Public Advocate.

The Office has to keep finding ways to manage more work so that it can keep helping all of the people who need help.

## How to contact us

If you:

- have a question about someone with a decision-making disability and think they might need a guardian (a person to make decisions for them about where they live or what medical care they have), or an administrator (a person to make decisions for them about their money)
- are worried about the safety and welfare of someone with a decision-making disability, or
- want to know what you can do to plan for a time when you might not be able to make decisions for yourself

call the Office on **1300 858 455** between 9am and 4.30pm, Monday to Friday.



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

