



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



Office of the
Public Advocate

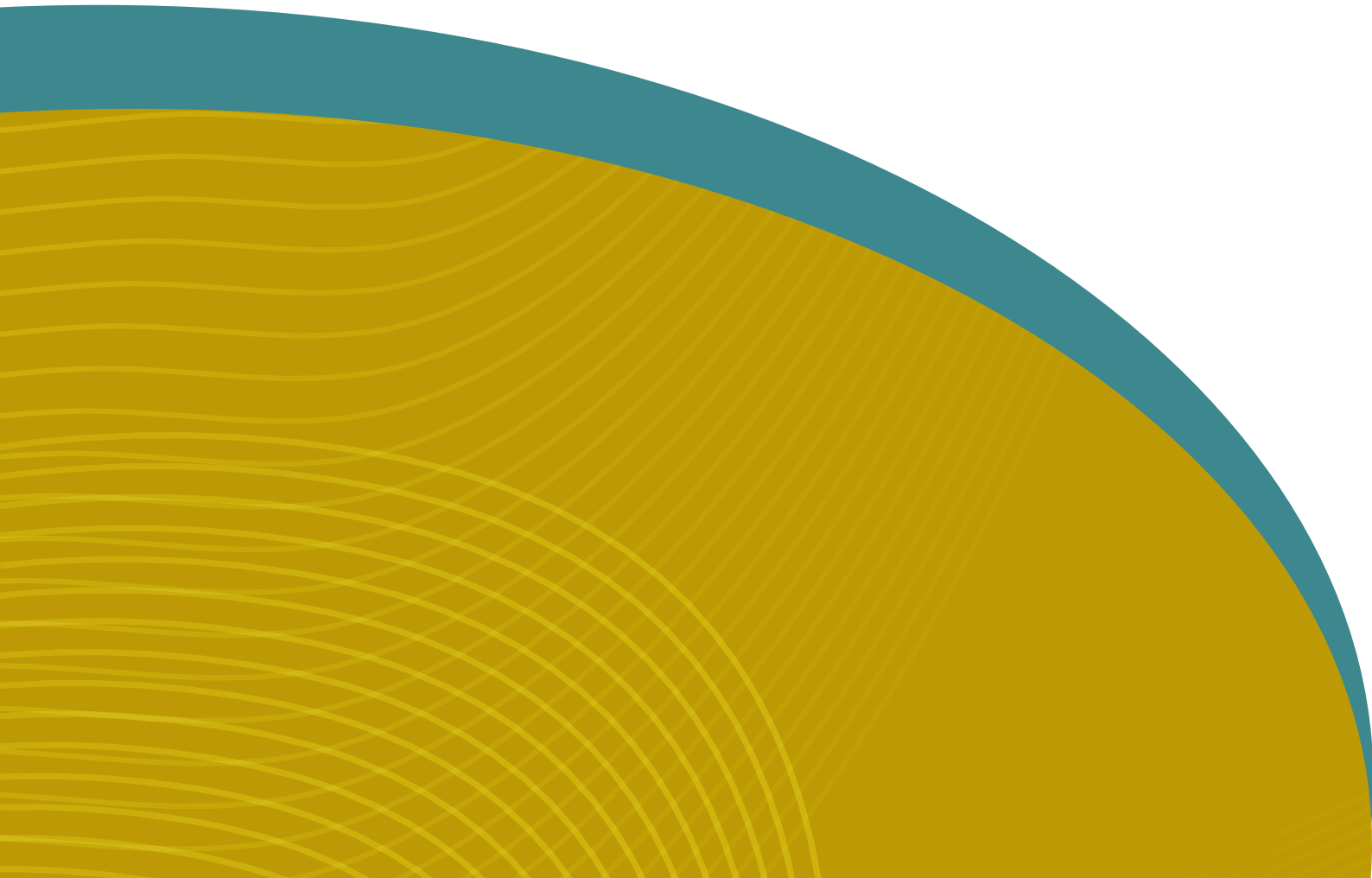
*Protecting the human rights of adults
with a decision-making disability*

The Public Advocate of Western Australia
Annual Report
2022/23

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 2023.

This report records the operations and performance of the Office of the Public Advocate during 2022/23. 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 2022/23, 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
5 September 2023

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Overview

The Year in Review

October 2022 marked 30 years of operation for the Office of the Public Advocate (OPA). The Office of the Public Guardian, as the Office was originally called, began operating on 20 October 1992 during a time of significant reform within the disability sector.

Thirty years on, the Office is experiencing generational change again, this time brought about by the introduction of the National Disability Insurance Scheme (NDIS), which is transforming the disability landscape in Australia. The implications of this reform are still unfolding for people with disabilities and their families and carers; the disability sector and many government agencies including the Office of the Public Advocate.

2022/23 also marked a particularly challenging year for the Office, with demand for the Office's statutory services of advocacy and investigation and guardian of last resort continuing to increase, amid a period of increasing public scrutiny. However, charged with providing statutory services to some of Western Australia's most vulnerable people, adults with impaired decision-making capacity, the Public Advocate's obligation to protecting and promoting the best interests of its clients remained the priority.

In November 2022 the Public Advocate gave evidence to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability. The Royal Commission is due to deliver its final report to the Australian Government by 29 September 2023. It is anticipated that the final report will be extensive and will canvass issues relating to the current guardianship and administration system operating in Western Australia. This could see significant legislative and policy reform in the future which will impact on the Office of the Public Advocate.

In 2022/23 the Office's advocacy and investigation team looked into 2,746 matters where there was concern someone may need a guardian and/or administrator appointed. This was a 10 per cent increase from 2021/22 when a total of 2,505 investigations were carried out.

At 30 June 2023 the Public Advocate was appointed as guardian for 3,351 adults, compared to 3,115 adults at 30 June 2022, representing an eight per cent increase.

At 30 June 2023 mental illness accounted for the largest proportion (32 per cent) of all Public Advocate guardianship appointments, with intellectual disability accounting for 28 per cent, and dementia accounting for 24 per cent. Prior to 2018, dementia consistently accounted for the largest proportion of total appointments of the Public Advocate as guardian. However, mental illness and intellectual disability have steadily risen to replace dementia, accounting for the highest number of appointments.

Growth in guardianship appointments of the Public Advocate for adults with mental illness and intellectual disability continue to be driven 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, meaning these appointments are likely to continue to rise.

Significant policy work was undertaken by the Office throughout the year, with the Public Advocate attending or represented on numerous working groups and committees. This year also saw the creation of a critical principal policy officer position, specifically tasked with building capability to deliver strengthened NDIS outcomes for the Office's proposed/represented persons who are eligible for NDIS funding.

In 2022/23 the Office secured \$4.321 million as part of the 2023/24 State Budget. The funding will enable the Office to procure and implement a new Customer Relationship Management (CRM) Information Technology system to replace the Office's outdated system. Since securing the funding, work has significantly progressed in procurement planning.

The Office delivered 21 community education sessions in 2022/23 and addressed 6,697 enquiries from 4,518 people via the Office's advisory service.

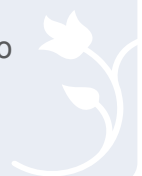
Acknowledgements

I appreciate the efforts of each OPA staff member and acknowledge the challenging circumstances often faced in our work. The dedication, hard work and collaboration across the Office sees us working together to deliver better outcomes for vulnerable adults.

The Office's Community Guardianship Program was supported by 13 volunteers this year. This small, committed group generously give their time and energy to make a difference in the community and their contribution is very much appreciated. A special congratulations goes to community guardian Mrs Di Mitchell, who completed 15 years of service with the program this year, having provided support to three represented people, including her most recent appointment in February 2023.

I would also like to extend my thanks to the Director General of the Department of Justice, Dr Adam Tomison, for his strong leadership. I 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 in delivering advocacy, investigation and guardianship services to the Western Australian community.

The Office was devastated by the passing of Senior Guardian Gray Hardy late last year. Throughout his career, Gray enriched the lives of the people he advocated for. He worked with the Disability Service Commission before joining the Office as a Guardian and then Senior Guardian, providing outstanding service and support to represented persons in Perth and the Goldfields. Gray was a colleague, role model, mentor, confidant and friend, who was held in the highest regard.



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 2022/23 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.

Of the 3,351 adults for whom the Public Advocate was appointed as guardian at 30 June 2023, 32 per cent had a mental illness, 28 per cent had an intellectual disability, 24 per cent had dementia, 14 per cent had an acquired brain injury and one per cent had some other form of decision-making disability.

Prior to 2018, dementia accounted for the largest proportion of appointments of the Public Advocate as guardian for over a decade. Forty-five per cent of the new matters referred for investigation by the State Administrative Tribunal involved a person with dementia and 39 per cent of the new guardianship orders appointing the Public Advocate this year related to dementia.

In relation to the gender identity of the 3,351 adults for whom the Public Advocate was appointed as guardian at 30 June 2023, 55 per cent were male, and 45 per cent were female.¹

Of the 626 guardianship orders appointing the Public Advocate for people of Aboriginal and Torres Strait Islander descent at 30 June 2023, intellectual disability accounted for 37 per cent, followed by 30 per cent for mental illness, 19 per cent for acquired brain injury, 13 per cent for dementia and one per cent had some other form of decision-making disability.

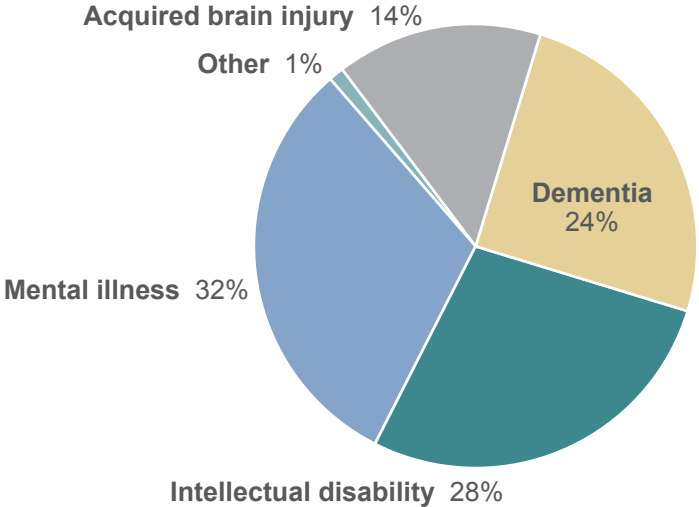
¹ This includes three people who were nonbinary or identified interchangeably as male or female.

At 30 June 2023, 1,897 or 57 per cent of the 3,351 adults for whom the Public Advocate was appointed guardian had NDIS involvement. Of the 3,351 adults 2,152 were 65 years or younger, and of these adults, 1,762 or 82 per cent had NDIS involvement.

Full transition to the NDIS under the Commonwealth and State Bilateral Agreement has resulted in consistent and continued growth in the proportion of new appointments of the Public Advocate for people with an intellectual disability and people with a mental illness. This trend continues, with higher numbers of NDIS participants than originally anticipated and associated growth in demand for guardianship services.

Figure 1.1 Profile of all guardianship orders appointing the Public Advocate by type of decision-making disability as at 30 June 2023

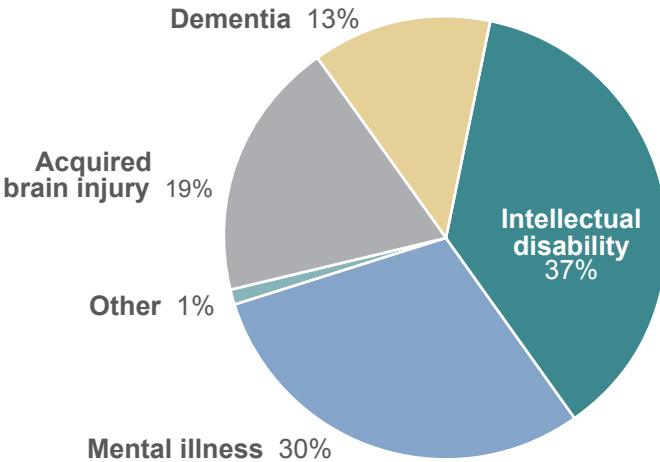
Type of decision-making disability	
Acquired brain injury	480
Dementia	819
Intellectual disability	949
Mental illness	1,063
Other	40
Total	3,351



Note 1: 30 of the 40 'other' are for represented persons with Autism Spectrum Disorder.
Note 2: Due to rounding, the total percentage does not equal 100.

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 2023

Type of decision-making disability	
Acquired brain injury	118
Dementia	80
Intellectual disability	232
Mental illness	190
Other	6
Total	626



Note: One of the six 'other' is for a represented person with Autism Spectrum Disorder.

The number of people for whom the Public Advocate is guardian has increased by 57 per cent from 2,140 in June 2019 to 3,351 in June 2023.

Figure 2 People under guardianship orders appointing the Public Advocate by type of decision-making disability as at 30 June 2019 – 30 June 2023

Type of decision-making disability	2019		2020		2021		2022		2023	
	Number	Percentage of total	Number	Percentage of total	Number	Percentage of total	Number	Percentage of total	Number	Percentage of total
Acquired brain injury	338	16%	383	16%	418	15%	463	15%	480	14%
Dementia	566	26%	634	26%	719	26%	779	25%	819	24%
Intellectual disability	630	29%	696	28%	759	27%	884	28%	949	28%
Mental illness	571	27%	706	29%	821	30%	957	31%	1,063	32%
Other	35	2%	44	2%	54	2%	32	1%	40	1%
Total	2,140		2,463		2,771		3,115		3,351	

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

Note 2: In 2023, 30 of the 40 '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.²

In 2022/23 there were 1,577 Western Australian participants engaged with the National Disability Insurance Scheme (NDIS), with an acquired brain injury reported as their primary disabling condition. This represented 3 per cent of the 52,451 active Western Australian participants in the NDIS in 2022/23.³

Dementia

According to 2023 Dementia Australia statistics,⁴ there are over 400,000 people living with all forms of dementia in Australia. This figure is expected to increase to more than 800,000 by 2058. In 2021 the Australian Institute of Health and Welfare estimated there were just under 38,000 people living with dementia in Western Australia.

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 2022-23 (www.ndis.gov.au/about-us/publications/quarterly-reports).

4 Prevalence Data - Key Facts & Statistics updated April 2023. Dementia Australia. Dementia prevalence in Australia - Figure 2.5 updated Feb 2023. Australian Institute of Health and Welfare.

Intellectual disability

According to the Department of Health and Aged care there are approximately 450,000 people with intellectual disability in Australia. Compared with the general population, people with intellectual disability have more than twice the rate of avoidable deaths and twice the rate of emergency department and hospital admissions.⁵

Of the 52,451 active Western Australian participants in the National Disability Insurance Scheme (NDIS) in 2022/23, 8,980 (17 per cent) were reported as having an intellectual disability as their primary condition in 2022/23.⁶

Intellectual disability accounted for the second largest proportion of all adults for whom the Public Advocate was appointed guardian at 30 June 2023.

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

According to the 2022 National Survey of Mental Health and Wellbeing report, over two in five Australians aged 16-85 (43.7 per cent or 8.6 million people) had experienced a mental disorder at some time in their life.

In 2020-21, 3.4 million Australians aged 16-85 years (17.5 per cent) saw a health professional for their mental health. The prevalence of mental disorders continues to decline with age starting at 24.1 per cent in the youngest group (16-34 years), compared to 16.8 per cent of people aged 35-64 and 7.5 per cent of people in the oldest group (65-85 years).⁷

The National Disability Insurance Scheme (NDIS) defines 'psychosocial disability' as a disability that may arise from a mental health issue. Of the 52,451 active Western Australian participants in the NDIS in 2022/23, 5,317 (10 per cent) were reported as having a psychosocial disability as their primary condition in 2022/23.⁸

Mental illness accounted for the largest proportion of guardianship appointments of the Public Advocate as at 30 June 2023. 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 guardianship appointments of the Public Advocate for people with mental illness will continue.

5 Why we need a roadmap - National Roadmap for Improving the Health of People with Intellectual Disability. Department of Health and Aged Care.

6 National Disability Insurance Scheme, published quarterly and full reports 2022-23 (www.ndis.gov.au/about-us/publications/quarterly-reports).

7 National Study of Mental Health and Wellbeing published July 2022. Australian Bureau of Statistics.

8 National Disability Insurance Scheme, published quarterly and full reports 2022-23 (www.ndis.gov.au/about-us/publications/quarterly-reports).

Resources

The role and functions of the Public Advocate were supported by an approved establishment of 95 ongoing full-time equivalent (FTE) positions and 1.5 FTE positions funded for a finite period, as at 30 June 2023, with an expenditure totalling \$13,768 million⁹ 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.

⁹ 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 State 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 'Safe, Strong and Fair Communities: Developing healthy and resilient communities'.

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. This enables their views to be gathered in a more informal setting, where people may feel more comfortable talking about their personal circumstances. This, in turn, enables the investigator advocate to present the person's views to the Tribunal so they are considered as part of the Tribunal's decision-making process.

Investigator advocates 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 2022/23, the Public Advocate carried out a total of 2,746 investigations into the personal or financial welfare of adults with a decision-making disability. This was a 10 per cent increase from 2021/22, when there were 2,505 investigations carried out. These 2,746 investigations included new matters and matters carried over from 2021/22.

Of the 2,746 investigations carried out during the year, 2,615 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 18 per cent from 2021/22, when 2,327 investigations related to matters before the State Administrative Tribunal.

The remaining 131 investigations were referred directly to the Public Advocate from sources including members of the public and Courts.

An additional 158 preliminary investigations were referred under the liaison role, which assisted the Tribunal in gathering further information relevant to the hearing, as compared to 60 investigations of this type in 2021/22. 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 2,281 new investigations referred by the State Administrative Tribunal in 2022/23, which was an 11 per cent increase from the previous year, when there were 2,059 new investigations.

These 2,281 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 Tribunal 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 held a number of urgent hearings with the attendance of an investigator advocate necessary in 519 urgent matters in 2022/23. In some cases, the hearing occurred on the day the matter was referred to the Office of the Public Advocate. This was an increase of 20 per cent on the urgent matters in 2021/22.

A hearing that occurs within three weeks of referral to the Office is classed by the Office as being an urgent matter. Urgent matters need to be managed within investigator advocates' existing, planned workload, and require investigator advocates to attend hearings at short notice to represent the best interests of proposed represented persons.

In many of the other matters 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.

In many cases the urgent hearing will consider the specific issue of urgency and the investigator advocate will need to continue carriage of the matter to a final hearing.

Where the Public Advocate is appointed at an urgent hearing, the investigator advocate may be 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. This includes the need for urgent decisions on behalf of a represented person 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 2022/23 the advocacy and investigation team, through the liaison role, conducted preliminary investigations into 158 new applications before the Tribunal, an increase of 98 from last year. 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 timeframe of three business days in which 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 with a decision-making disability 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, 131 such referrals were reviewed by the Office in 2022/23, a decrease from 178 such referrals in 2021/22. Of the 131 cases, 85 were closed during the financial year and 46 remained open at 30 June 2023.

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 advocate 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 an assessment to indicate that a person lacks decision-making capability, 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.
- Family members have concerns about a relative with a decision-making disability, but they are unable to resolve the issue due to a longstanding dispute.
- 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

Capacity assessments – understanding the circumstances

Mrs A is an independent elderly woman living with her husband and adult daughter in their family home south of Perth. She has a busy social life and is involved in different community groups including a cultural club where she meets up with friends from her country of birth.

One morning, Mrs A had a fall. After being admitted to hospital, she found herself alone and in pain. At this point Mrs A was given a capacity assessment, which indicated she lacked capacity to make her own decisions, which in turn led to the hospital making an application for guardianship and administration to the State Administrative Tribunal.

According to Mrs A, neither she nor her family were involved in any discussion surrounding her capacity, her views about treatment, or her living arrangements. It also appeared there had been no exploration into Mrs A's family situation or the support she had available at home.

By the time the State Administrative Tribunal referred the matter to the Public Advocate for investigation, Mrs A was back home with her husband and daughter, having fully recovered.

When an investigator advocate from the Office of the Public Advocate visited Mrs A and her husband in their home, they advised that they were unsure why the application had been made. They were very worried about the hearing because it felt like they were 'going to Court'.

Mrs A explained to the investigator advocate that immediately after her fall she was in pain and quite shaken, so she was 'not feeling herself'. Mrs A was unaware that the treating doctor was assessing her capacity and as a result she believed she may not have answered all of the questions properly.

As the discussion went on, Mrs A was able to clearly explain her living situation to the investigator advocate, along with what bills she had to pay and the support she required for her daily care, as she was quite frail. She was also able to provide information about her family situation and the support the couple received from their adult children. It appeared to the investigator advocate that Mrs A had capacity to make her own decisions.

At the State Administrative Tribunal hearing the applications were dismissed. Mrs A was able to present her own views and wishes and explain her living situation and the support she required. Having had time to recover, and when questioned in a more comfortable and familiar environment, it was apparent that Mrs A was able to make her own decisions.

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When considering making an application to the State Administrative Tribunal it is important to have a clear understanding of the person's circumstances along with information gained from a capacity assessment.

If a capacity assessment is going to be used as the basis for an application to the State Administrative Tribunal, it needs to be conducted at a time when the person's initial illness or injury has been treated. The assessment and its purpose should be fully explained to the individual involved, as much as is practicable.

If Mrs A had been assessed after the initial shock of her fall once her pain had subsided, and the purpose of the questions being asked had been clearly explained to her, it is likely that she would have performed at a much higher level.

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

Case Study 2

Capacity assessments – capturing all of the relevant information

In another matter Ms B, who lived in a remote area of northern WA with her family, was assessed through a telehealth appointment. This led to a diagnosis of dementia, which in turn led to an application to the State Administrative Tribunal for guardianship.

On the basis of her telehealth capacity assessment, it was determined that there was no other family member suitable or willing to become Ms B's guardian and the State Administrative Tribunal appointed the Public Advocate as Ms B's guardian at an urgent hearing.

Shortly after the initial appointment, Ms B's family sought a review of the order because they did not agree with the medical assessment. They were not present at the initial hearing and therefore wanted an opportunity to present their own views on Ms B's circumstances.

The application was referred to the Public Advocate for investigation and the investigator advocate spoke to family and health professionals who knew Ms B well. This provided important background information about Ms B's lifestyle and the family support she had been receiving.

During this period Ms B started medical treatment. A number of underlying conditions were diagnosed and successfully treated, which in turn led to an improvement in her capacity.

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The investigator advocate captured all of this information in their report for the State Administrative Tribunal, meaning the Tribunal had a much better understanding of Ms B's circumstances than it had at the urgent hearing. This information, including the informal support networks Ms B had access to, was significant when deciding whether or not Ms B needed a guardian.

Ultimately the order was revoked because Ms B was deemed able to make her own decisions, once she had been treated and had a face-to-face assessment by a health professional who knew her.

This case study reinforces the importance of taking time to treat the person before assessing their capacity.

The investigator advocate's role was integral to the process, drafting a report for the State Administrative Tribunal that included relevant information about Ms B's lifestyle and family support networks.

This allowed the State Administrative Tribunal to consider a family appointment, if orders were needed, an option that was only possible due to the investigator advocate's newly sourced information.

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.

Administrator of last resort

As at 30 June 2023, the Public Advocate was appointed by the State Administrative Tribunal as limited administrator of last resort for five 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.

Once appointed as administrator of last resort, a key role for the principal investigator advocate 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 2,281 new investigations carried out during the year, allegations of abuse were identified in relation to 327 people. 134 of these people were 65 years of age or older. Of these alleged elder abuse cases, 78 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

Western Australia's transition to the National Disability Insurance Scheme (NDIS) has seen a number of applications to the State Administrative Tribunal where it has been identified that informal supports will no longer be sufficient to engage services for a person with a decision-making disability. 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 NDIS 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 the National Disability Insurance Scheme (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 assessing the application it becomes apparent that a person needs a substitute decision-maker in other areas of their life.

Investigator advocates will 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.

Regional referrals

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

In 2022/23 there were 530 matters referred which related to people in regional areas, compared to 540 in 2021/22, a decrease of 10 matters.

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.

Regional matters, where possible, 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 investigator advocates to visit a specific group of people, located in a particular regional area during the investigation process. It also enables them 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 travelled to regional areas to interview proposed represented persons, applicants and interested parties during the course of their investigations.

Additionally, investigator advocates continued to rely on support services to assist with interviewing proposed represented persons and other parties in regional areas, where it was not possible to visit in person.

Case Study 3

Supporting service providers to support the community

The Office supports WA service providers in the disability, health, mental health, aged care, financial and legal sectors by delivering a range of face-to-face and online training sessions throughout the year. With attendance figures rising by 25 per cent in 2022/23, demand for this component of the Office's Community Education program continues to grow.

In some cases, investigator advocates and guardians liaise with the Office's Community Education Coordinator when they identify a specific cohort who may require extra support.

For example, when an application was submitted to the State Administrative Tribunal by an NDIS Support Coordinator, the investigator advocate realised they had misunderstood the process and not explored less restrictive alternatives before making their application.

The Office always seeks less restrictive alternatives to guardianship and administration orders where practicable. On this occasion the person for whom the application was made had demonstrated capacity to manage their own finances, which meant the administration order sought by the Support Coordinator was unsuitable.

Instead, the State Administrative Tribunal appointed a guardian for a short-term with limited authority to support the person to address specific issues that had left them financially vulnerable.

Following the hearing, the investigator advocate contacted the Office's Community Education Coordinator who liaised directly with the service provider and their team, to offer a comprehensive training session that walked them through the guardianship and administration process, including information about when applications to the State Administrative Tribunal may be necessary and what kinds of things could be explored before making applications.

This training gave the team a better understanding of the guardianship and administration system, alternatives to applying for orders, an understanding of State Administrative Tribunal processes and the role of the Office.

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 and Family Support) 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 45 applications from the Department of Communities, Child Protection and Family Support were determined by the State Administrative Tribunal in 2022/23.

Following the determination by the State Administrative Tribunal of the 45 applications, 44 orders for guardianship and/or administration were made. For 36 of these young people, the Public Advocate was appointed as limited guardian, including seven young people where the Public Advocate was appointed in conjunction with private guardians with different functions. Private guardians were solely appointed for seven young people.

The Public Trustee was appointed as administrator for a total of 34 of the 44 young people for whom administration orders were made by the State Administrative Tribunal. In relation to the remaining administration orders, six orders were made appointing private administrators. Administration orders were not made for four young people where guardians were appointed.

Of the 44 guardianship and/or administration orders, 19 related to young Aboriginal people. The Public Advocate was appointed as guardian for 16 of these young people, with four of the orders in which the Public Advocate was appointed also including private guardians with different functions. Private guardians were solely appointed for two young people and there was no guardianship order made for one young person where a private administrator was appointed. The Public Trustee was appointed for 15 of the 19 young people. For four young people, private administrators were appointed.

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.

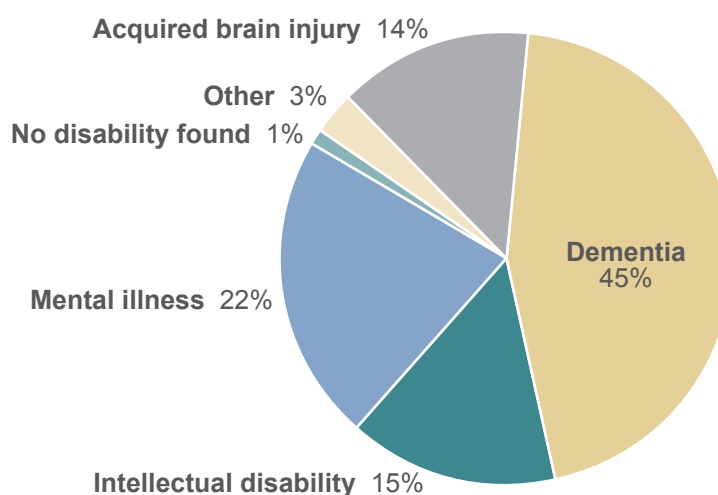
Our Customers

Of the 2,281 new matters referred to the Public Advocate for investigation by the State Administrative Tribunal in 2022/23, 45 per cent involved a person with dementia. The remaining matters involved either a person with mental illness, an intellectual disability or an acquired brain injury, and in some instances, no decision-making disability was found. In terms of gender identity of proposed represented persons, 53 per cent of the 2,281 new matters related to males and 47 per cent to females.

Figure 3 Profile of new investigations by type of decision-making disability 2022/23

Type of decision-making disability	
Acquired brain injury	322
Dementia	1,029
Intellectual disability	333
Mental illness	503
Other	73
No disability found	21
Total	2,281

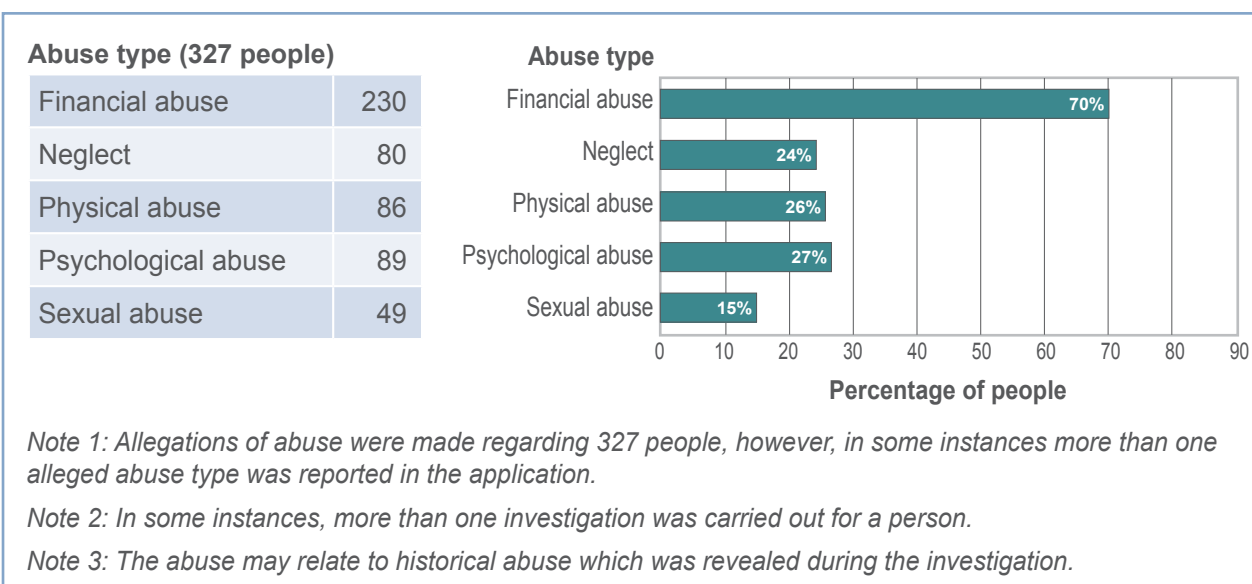
Note: 46 of the 73 'other' are represented persons with Autism Spectrum Disorder.



Of the 2,281 new investigations carried out during the year, allegations of abuse were made regarding 327 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 70 per cent alleging financial abuse.

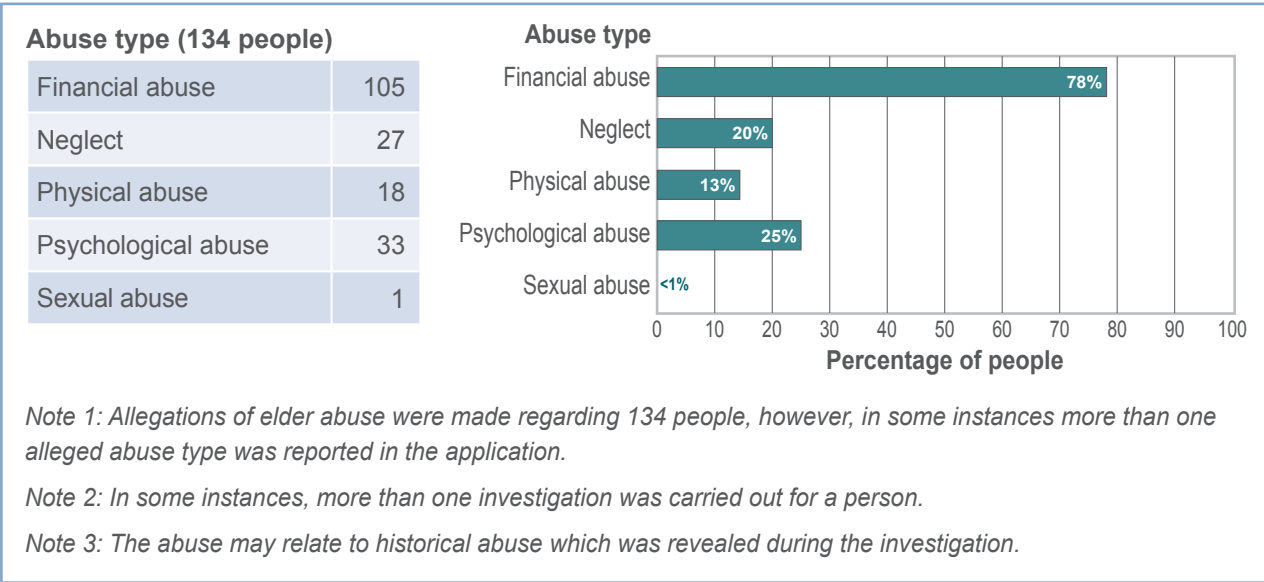
Figure 4 Profile of new investigations alleging abuse by type of abuse 2022/23 (including statistics of alleged elder abuse)



Of the 327 people for whom abuse was alleged, 134 (41 per cent) were 65 years of age or older. These instances of alleged abuse are referred to as elder abuse.

Of these 134 cases of alleged elder abuse, financial abuse was the most common, having been reported in 78 per cent of these investigations.

Figure 5 Profile of new investigations alleging elder abuse (aged 65 or older) by type of abuse 2022/23



Of the 134 new investigations in 2022/23 where elder abuse was alleged, 17 involved a person of Aboriginal and Torres Strait Islander descent, representing 13 per cent. Financial abuse was the most common form of abuse, having been reported in all 17 cases (100 per cent).

Figure 6 Profile of new investigations alleging elder abuse (aged 65 or older) involving people of Aboriginal and Torres Strait Islander descent 2022/23

Total new investigations alleging elder abuse 2022/23	Aboriginal	Non-Aboriginal	Aboriginal as percentage of total
134	17	117	13%

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 continues to show that Aboriginal adults are over-represented in this client group, given only 3.3 per cent of the Western Australian population are Aboriginal.¹⁰

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
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%
2022/23	2,281	222	2,059	10%

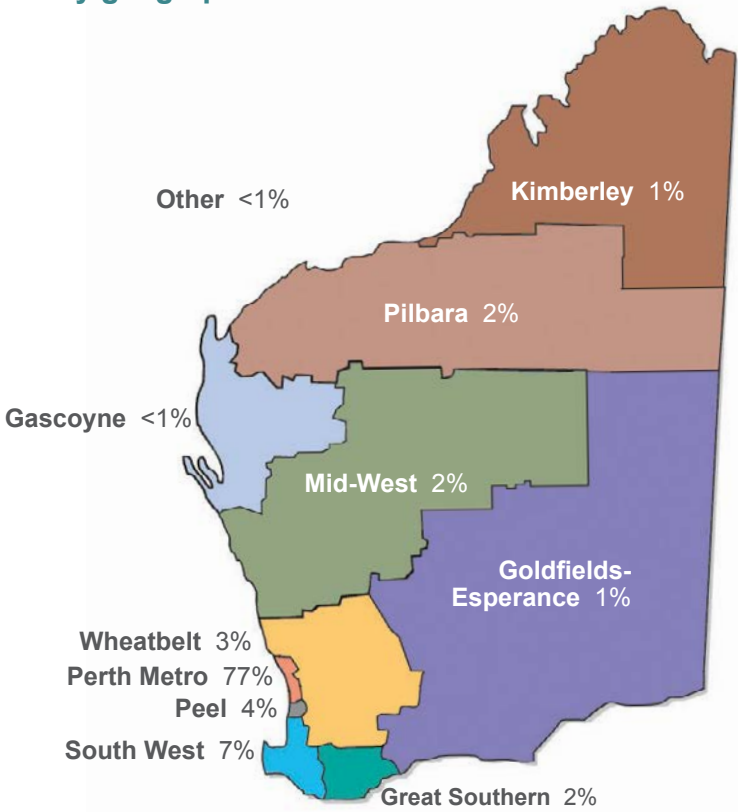
Note: Aboriginal refers to clients of Aboriginal and Torres Strait Islander descent.

Of the 2,281 new investigations in 2022/23, 1,751 matters were investigated for people located in the Perth metropolitan area.

Figure 8 Profile of new investigations by geographical location 2022/23

Geographical locations

Gascoyne	6
Goldfields-Esperance	31
Great Southern	55
Kimberley	29
Mid-West	47
Peel	90
Perth Metro	1,751
Pilbara	37
South West	151
Wheatbelt	73
Other	11
Total	2,281



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 2022/23 there were 737 new appointments of the Public Advocate as guardian of last resort, compared to 797 in 2021/22.

At 30 June 2023, the Public Advocate had responsibility as guardian of last resort for 3,351 adults with a decision-making disability, compared to 3,115 at 30 June 2022, which is an increase of eight per cent.

The Public Advocate had responsibility as the sole guardian for 3,137 of the total 3,351 represented persons as at 30 June 2023.

In relation to the remaining 214 appointments of the Public Advocate, there were 207 represented persons for whom the Public Advocate was appointed guardian and a private guardian was also appointed with different functions. Seven represented persons had the Public Advocate and a family member appointed to make some decisions jointly, and five of these seven had the Public Advocate or the private guardian appointed with other authorities as the sole decision-maker.

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

- medical treatment, palliative care and surgery
- consent 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
- Consent for restrictive practices in accordance with NDIS and aged care legislation and policies.
- acting as ‘next friend’ in relation to child protection matters on behalf of represented persons.

Consistent with the principles of the *Guardianship and Administration Act 1990*, a function is only given to a guardian when there is a need. Only 101 (three per cent) of orders were made where the Public Advocate was appointed as plenary guardian.

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 2022/23 one of the program's community guardians resigned, after a relative of the represented person returned from overseas and was appointed by the State Administrative Tribunal as the new guardian.

At 30 June 2023 there were 13 volunteers engaged in the community guardianship program. Of these, 10 had been appointed as guardian by the State Administrative Tribunal. Three volunteers were being matched with represented people.

Since the first State Administrative Tribunal appointment of a Community Guardianship Program guardian in 2007, 24 people have received training and support through the program, enabling them to act as community guardians for 27 represented people.

Advocacy at guardianship review hearings

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 2022/23 delegated guardians attended 888 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 an 11 per cent increase from the previous year, when 803 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 2022/23 delegated guardians and investigator advocates made 34 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 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 where necessary 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 alleged sexual 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 to sexual assault for young people with an intellectual disability and women with a mental illness. 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 2023, the Public Advocate was appointed as guardian for 21 mentally impaired accused people under the *Criminal Law (Mentally Impaired Accused) Act 1996*, two less than at 30 June 2022.
- 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 2022/23, delegated guardians from the Office of the Public Advocate were involved in 888 reviews of guardianship orders where the Public Advocate was appointed.

Of the 888 reviews, 189 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.

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

The Office of the Public Advocate has systems in place to ensure that when a person for whom the Public Advocate is appointed guardian dies, relatives and significant others are informed of the represented person’s passing.

Between 1 July 2022 and 30 June 2023, 333 represented persons died.

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 treatment 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 a continuing decline in their health 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.

Where the Public Advocate has treatment authority, palliative care decisions will only be considered where palliative care treatment 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 2022/23 the Public Advocate consented to palliative care for 258 represented persons, an increase of 93 consents as compared to the previous year. This figure does not include those represented persons where palliative care decisions were made previously, where the represented person had a chronic or life-limiting illness and their continuing decline was expected.

Case Study 4

Culturally sensitive consideration

At times, the State Administrative Tribunal appoints the Public Advocate with limited authority for a short period, in order to determine the services that are required by a vulnerable person with cognitive impairment. When this happens, the Office looks at less restrictive alternatives, especially when culturally sensitive support is identified as the preferred option.

Mr E is an Aboriginal man in his sixties living in a small coastal town. Some years ago, he sustained a traumatic brain injury causing cognitive impairment. Mr E also has a number of health concerns including type two diabetes, hypertension and spinal issues.

An Aged Care Assessment Team (ACAT) assessment, undertaken prior to the Public Advocate being appointed as Mr E's guardian, indicated that due to his physical and psychosocial care needs, residential care options should be considered. He requires day-to-day support with tasks such as food preparation, medication management and laundry and he is known in his local community as a calm and gentle person who copes well with supervised independence.

For the past five years, Mr E has been supported by his sister (Ms E) who is unhappy about the guardianship order. When the delegated guardian spoke with Ms E, she explained that as children, both she and Mr E had been in care, where they both experienced abuse. This meant that dealing with government agencies like the Office of the Public Advocate caused them both a high level of stress as it reminded them of their childhood trauma.

At the time of the Public Advocate's appointment, Ms E and her family, including Mr E, had recently moved to new accommodation and Ms E explained that Mr E was happy there, taking daily walks around town and on the beach, as well as visiting friends. She also explained that the community in which they lived provided a form of wrap-around support as Mr E was well known in the area. Locals were known to give Mr E a lift home if he needed one.

The delegated guardian identified that in addition to community support and his sister's advocacy and care, Mr E also had adequate access to all of the local services and medical care he required.

Satisfied that Mr E had all of the necessary supports in place, the Public Advocate made an application to the State Administrative Tribunal for a review of the guardianship order, seeking revocation of the Public Advocate as guardian.

At the Tribunal hearing the delegated guardian noted that Mr E enjoyed living with his sister and that placing him into alternative accommodation would have been detrimental to his wellbeing.

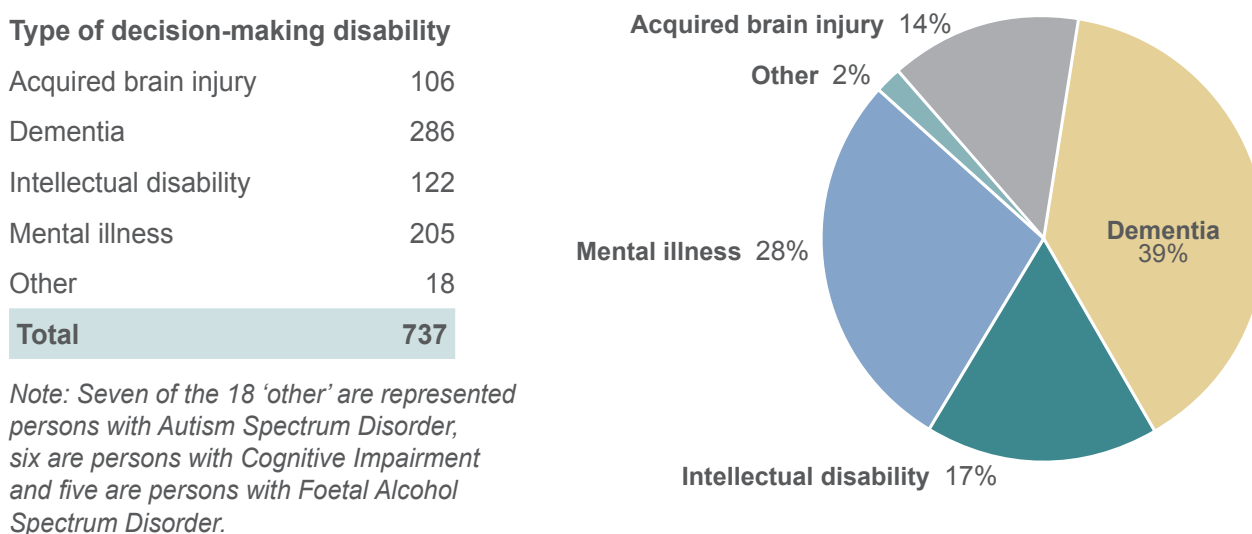
The State Administrative Tribunal appointed Ms E as her brother's limited guardian. Redress for childhood abuse was successfully sought by the Public Trustee, who had been appointed as Mr E's administrator.

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

Our Customers

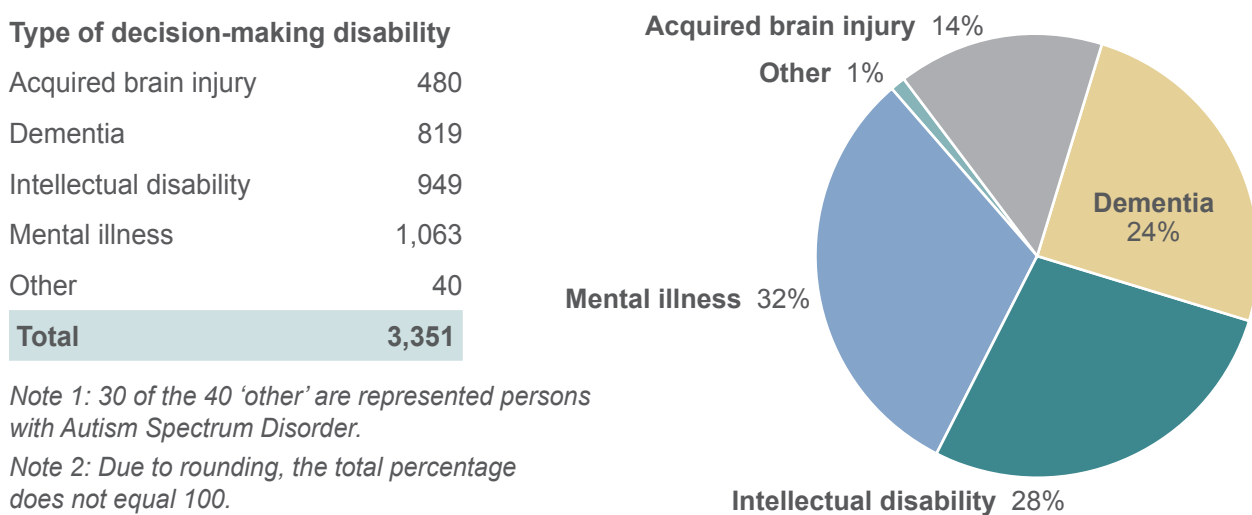
People with dementia continued to account for the largest proportion of new appointments of the Public Advocate as guardian of last resort. Of the 737 new appointments in 2022/23, 39 per cent had dementia, 28 per cent a mental illness, 17 per cent an intellectual disability and 14 per cent had an acquired brain injury. In relation to the gender identity of the 737 new appointments, 55 per cent were male and 45 per cent were female.

Figure 9 Profile of new guardianship orders appointing the Public Advocate by type of decision-making disability 2022/23



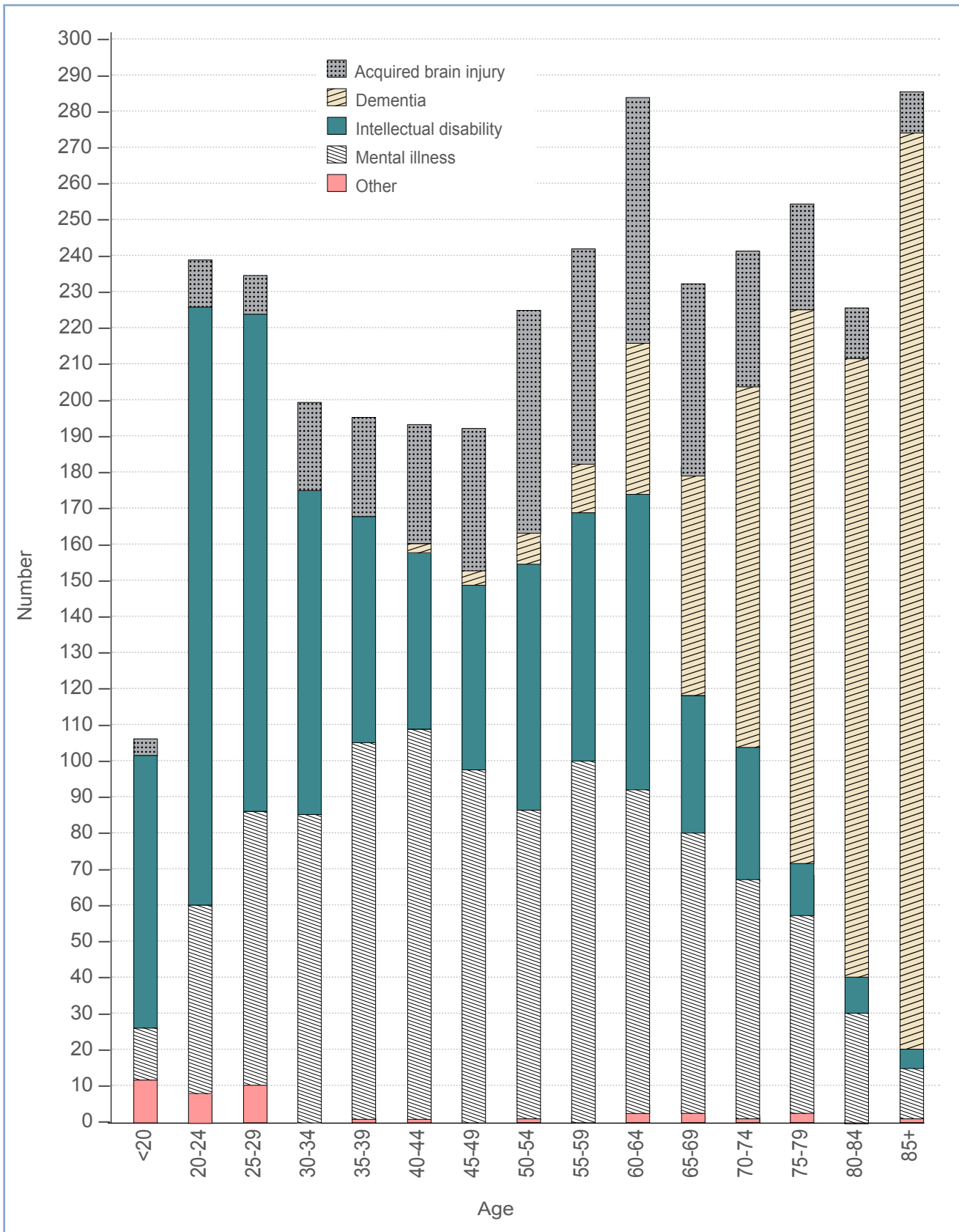
Of the total 3,351 appointments at 30 June 2023, 32 per cent of the people had a mental illness, 28 per cent an intellectual disability, 24 per cent dementia and 14 per cent an acquired brain injury. In relation to the gender identity of the 3,351 appointments at 30 June 2023, 55 per cent of the people were male and 45 per cent were female.¹¹

Figure 10 Profile of all guardianship orders appointing the Public Advocate by type of decision-making disability as at 30 June 2023



¹¹ This includes three people who were nonbinary or identified interchangeably 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 2023



At 30 June 2023, the Public Advocate was guardian of last resort for 513 adults aged 80 years and over, who accounted for 15 per cent of all guardianship appointments. Of these 513 adults, 60 per cent were female and 40 per cent were male. Eighty three per cent of the 513 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 2,994 (89 per cent) of the 3,351 guardianship orders appointing the Public Advocate as at 30 June 2023, 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 authority to make treatment decisions used to be most common authority, however it is now included in 2,812 (84 per cent) of the orders. This 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 2023, 2,793 (83 per cent) of the 3,351 guardianship orders appointing the Public Advocate included the authority to make decisions regarding where the represented person was to live. Similarly, 2,718 (81 per cent) of the 3,351 orders included the authority to make decisions regarding with whom they were to live.

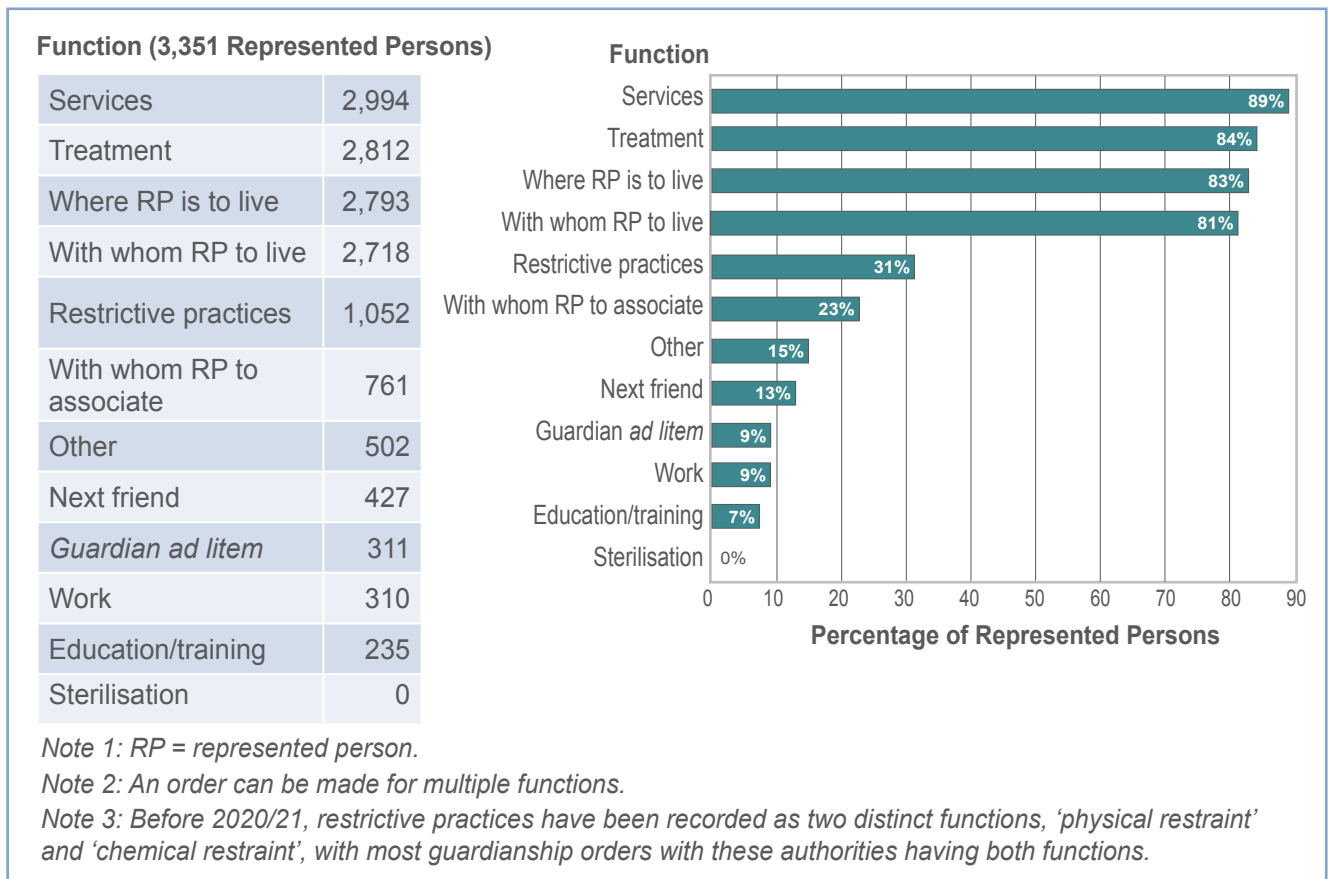
The high number of appointments regarding decisions about where and with whom a represented person lives reflects issues regarding appropriate supported accommodation for people with a decision-making disability. In many cases there is a need to consent to residential care on behalf of people with dementia,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

At 30 June 2023, 1,052 (31 per cent) of the 3,351 guardianship orders appointing the Public Advocate included the authority to make decisions regarding restrictive practices, an increase of 53 per cent from 686 at 30 June 2023.

The increase in guardianship orders including the authority to consent to restrictive practices reflects the increased accountability for service providers in this regard, within both NDIS and residential aged care services.

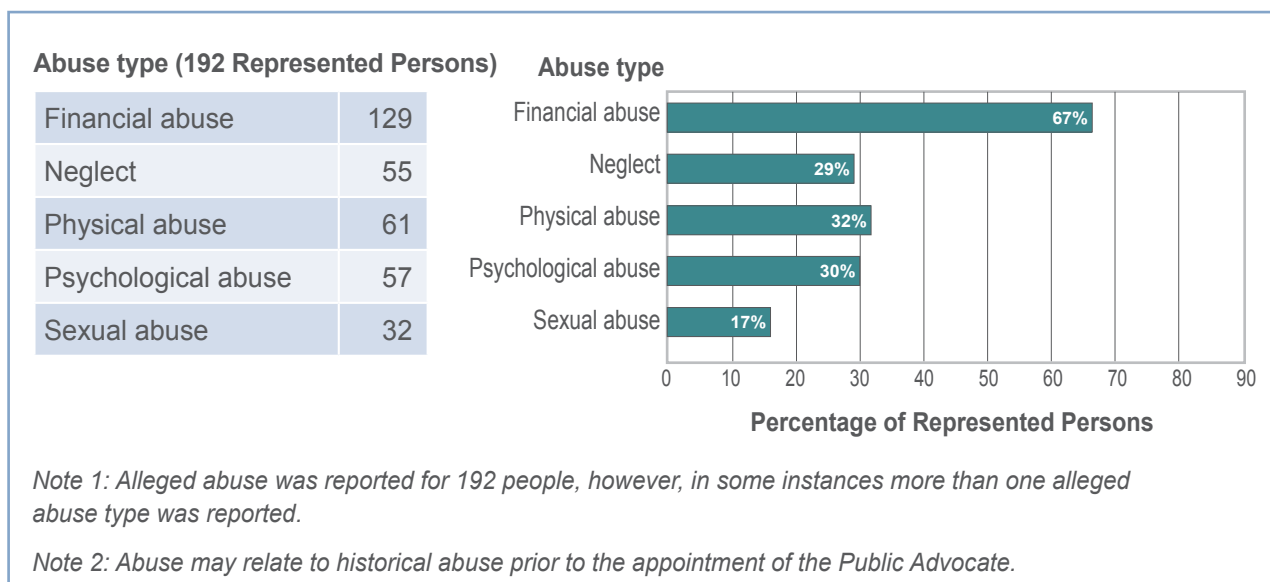
In a number of instances, the function given in the order has been labelled as 'other' (see Figure 12). Some examples of these might include to advocate on the person's behalf in relation to Police investigations; to determine if a person is to travel within Australia or overseas and to take possession of the person's passport; to seek further capacity assessments; to act on behalf of the person with respect to applications for legal aid, 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 (NDIS).

Figure 12 Functions for which the Public Advocate has been appointed for all guardianship orders as at 30 June 2023



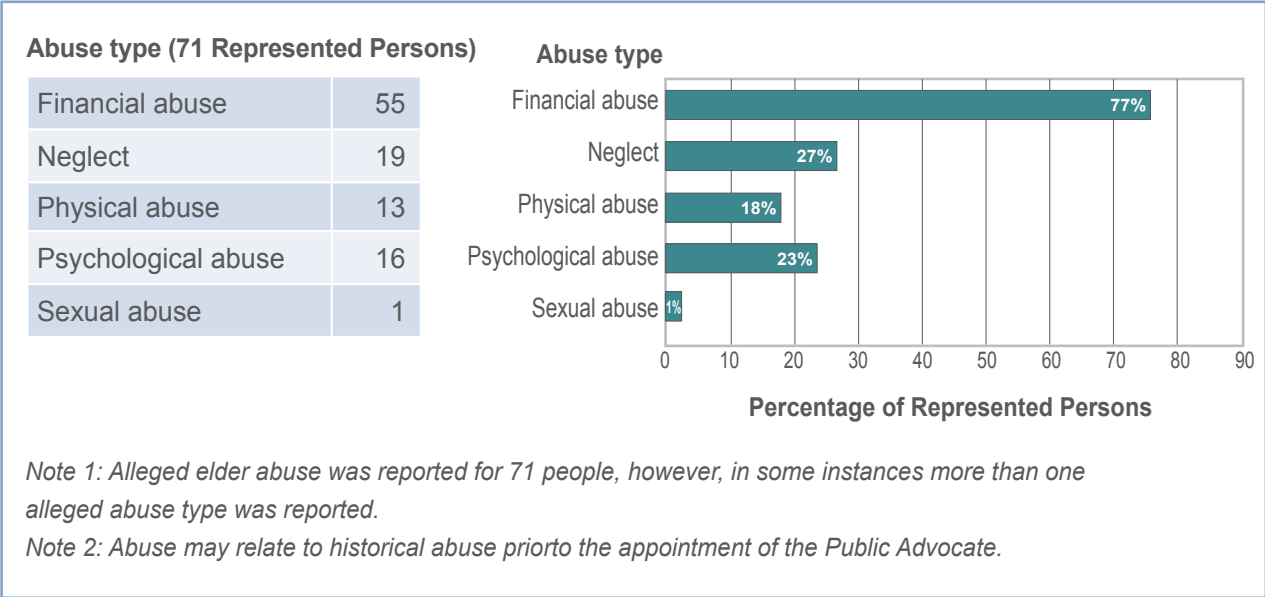
Allegations of abuse were a factor for 192 represented persons or 26 per cent of the 737 new guardianship orders appointing the Public Advocate in 2022/23. In some cases, more than one type of alleged abuse was reported. The most commonly reported form of abuse was financial, having been reported in 67 per cent of cases alleging abuse.

Figure 13 Profile of new guardianship orders appointing the Public Advocate by type of alleged abuse 2022/23 (including alleged elder abuse)



Of the 192 represented persons for whom abuse was alleged, 71 people were 65 years of age or older. Of these, financial abuse continues to be the most commonly reported form of abuse, having been reported in 55 (77 per cent) of the 71 cases.

Figure 14 Profile of new guardianship orders appointing the Public Advocate by type of alleged elder abuse (aged 65 or older) 2022/23



Of the 71 new appointments of the Public Advocate as guardian in 2022/23 where elder abuse was alleged, 12 were for a person of Aboriginal and Torres Strait Islander descent, representing 17 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 2022/23

Total new orders alleging elder abuse 2022/23	Aboriginal	Non Aboriginal	Aboriginal as a percentage of total
71	12	59	17%

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

Of the 737 new appointments of the Public Advocate as guardian in 2022/23, 124 were for a person of Aboriginal and Torres Strait Islander descent, representing 17 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.¹²

Figure 16 Profile of new guardianship orders appointing the Public Advocate for people of Aboriginal and Torres Strait Islander descent as at 30 June 2019 – 30 June 2023

Year	Total	Aboriginal	Non Aboriginal	Aboriginal as a percentage of total
2018/19	591	89	502	15%
2019/20	717	99	618	14%
2020/21	730	131	599	18%
2021/22	797	125	672	16%
2022/23	737	124	613	17%

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 18 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 2019 – 30 June 2023

Year	Total	Aboriginal	Non Aboriginal	Aboriginal as a percentage of total
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	18%
2022/23	3,351	626	2,725	19%

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

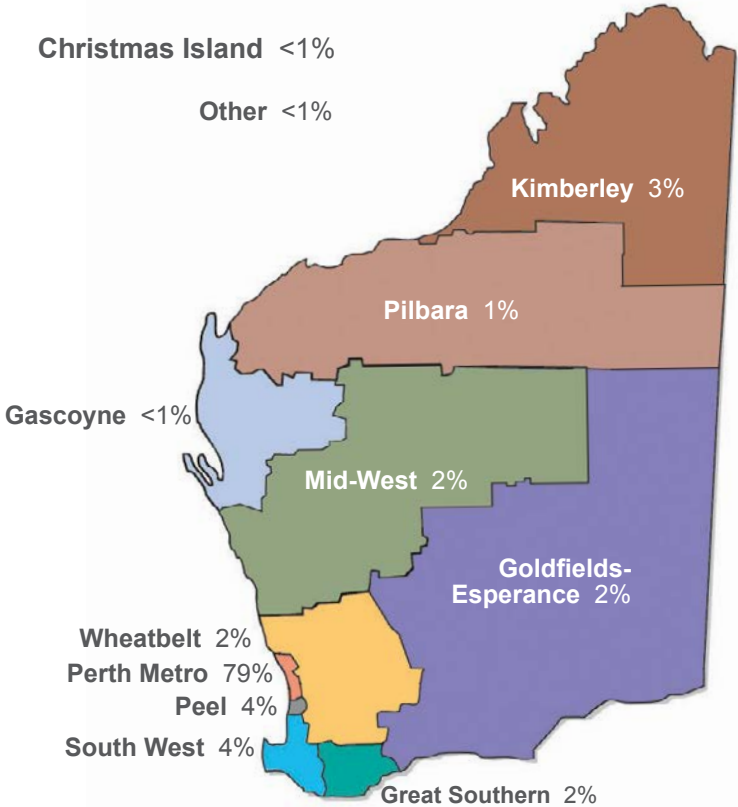
¹² Australian Bureau of Statistics 2022 Census: Aboriginal and/or Torres Strait Islander Peoples
<https://www.abs.gov.au/articles/western-australia-aboriginal-and-torres-strait-islander-population-summary>

At 30 June 2023, 79 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 2023 appointing the Public Advocate by geographical location

Geographical locations

Gascoyne	8
Goldfields-Esperance	61
Great Southern	68
Kimberley	90
Mid-West	71
Peel	125
Perth Metropolitan	2,652
Pilbara	49
South West	142
Wheatbelt	80
Christmas Island	0
Other	5
Total	3,351



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

The Public Advocate’s after hours service

The Office of 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 5

Collaborative support to help a younger person move out of aged care

A delegated guardian can often be appointed when a represented person is transitioning from one set of circumstances to another. This means there is a need for a delegated guardian to quickly and effectively assess the individual's circumstances to ensure decisions made prior to the appointment were appropriate, and to ensure ongoing decisions deliver the best outcomes for that person.

Mr F is a 60-year-old living in a residential aged care facility in the southeast of Perth. He has a number of serious health concerns having experienced a heart attack and a stroke brought on by alcohol abuse and neglect. As a result of the stroke, Mr F has an acquired brain injury and vision impairment. He uses a wheelchair and depends on others for all of his mobility needs. In addition to his physical health issues, Mr F has been experiencing declining cognition, meaning that he is no longer able to rely on informal supports to meet his care requirements.

Mr F had appointed his friend, Ms H, as his attorney with an Enduring Power of Attorney (EPA). Ms H was also acting as his informal decision maker for guardianship decisions. As Mr F's attorney, Ms H had the responsibility of managing his finances and paying his bills. However, she had become unreliable and was misusing his funds, which resulted in Mr F incurring various debts. Concerned about overdue fees not being paid, the aged care facility made an application for State Administrative Tribunal to appoint the Public Trustee to manage Mr F's finances and the Public Advocate to manage his lifestyle and treatment decisions.

Once the Public Trustee was appointed and Mr F's finances were secured, it became evident to the delegated guardian that Mr F's aged care accommodation was unsuitable. In the context of aged care, at 60 years old, Mr F was considered to be a younger person and felt he didn't fit in. Being under 65 years old, he was also eligible for NDIS support, which meant alternative supported accommodation could be sought.

Once NDIS funding was secured for Mr F, his Specialist Support Coordinator quickly identified some supported independent living (SIL) accommodation north of Perth, which they thought would work well for Mr F. With the delegated guardian's consent, they started the process of transitioning Mr F to the new accommodation.

However, when a delegated guardian visited Mr F in his aged care facility and spoke to him at length about the pending move, they realised that while the *type* of accommodation Mr F was moving to was an improvement, the *location* was problematic, as his family lived 100km south of Perth.

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Mr F was close to his grandchildren and worried that the distance between them would reduce time spent with his family and increase his taxi fares to visit them. In addition to proximity to his family, Mr F was also concerned about moving to a new area that he had no connection with. Being near family was important, but he was also keen to find somewhere to live within his local community.

With the transition to SIL accommodation already in progress, the delegated guardian had to act quickly to suspend the placement and identify somewhere more suitable to Mr F's requirements. The process was successfully delayed while the team identified an alternative that was close to Mr F's family and local community.

The funding was approved and Mr F left the aged care facility and moved into his new SIL accommodation, which is very close to his family. A good outcome for all parties involved.

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

Case Study 6

Restrictive practices transitioning into supported independent living (SIL) accommodation

Mr G has a diagnosis of schizophrenia as well as type two diabetes and hypertension. While described as being a kind-hearted and generous person, Mr G is unable to look after his own finances, which are managed by the Public Trustee. He also lacks insight into his health and support needs, and has a history of non-compliance with medication, therefore the Public Advocate is appointed as his guardian. Both the administration and guardianship orders have been in place for a number of years.

Mr G received NDIS funding and lived in hostel accommodation just outside Perth. However, due to persistent medication refusal, he became an inpatient at Graylands Hospital. His mental wellbeing was heavily impacted whenever he stopped taking his medications making him highly agitated, which could lead to restraint and seclusion. Mr G's physical health was also compromised, as he would refuse to take his insulin, putting him at further risk.

While at Graylands Hospital, it was identified that Mr G required more support than he was currently receiving. Mr G wanted to live close to Perth so he could visit his friends, but he also wanted his own space. Mr G had hoarding tendencies and had accumulated a large range of belongings that were housed in storage units, so he was keen to find somewhere to accommodate this.

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In order to discharge Mr G from Graylands Hospital, it was identified that he required support taking his medications which in turn would allow him to safely re-enter the community. In response, Mr G's inpatient Mental Health team and his Positive Behaviour Support specialist devised a plan for all supports to have the same coordinated approach with interventions.

Part of this coordinated approach involved Mr G's delegated guardian applying to the State Administrative Tribunal for a review of his guardianship order, to seek the authority for restrictive practices. This was requested to enable restrictive practices to be considered when Mr G refused his medications. The hearing took place in early 2023 and the authority was included.

Over the following months, Mr G slowly transitioned out of Graylands Hospital into his new accommodation which is located near the centre of town. It is an older property with plenty of storage space and he is close to his friends. Mr G continues to receive a high level of formal support services and has been allocated a Community Mental Health Team case manager. During the stages of his transition, Mr G and his care team worked together to develop and practice skills and strategies to help him cope with transitioning to a more independent lifestyle. There are also a number of conditions surrounding treatment compliance to which Mr G must adhere, in order to avoid a return to hospital for an inpatient stay and remain living in the community.

While there has been one case of medication non-adherence since moving into his new supported independent living accommodation, Mr G's situation is being closely managed. He has access to support services 24 hours a day to safely administer his medications and monitor his blood sugar levels and he is doing well.

With the support of Mr G's care team to help manage his schizophrenia and diabetes, he can now enjoy more independence, choice and control while remaining safe. His transition to a more independent lifestyle is ongoing and his team continue to review and develop opportunities for him to broaden and increase meaningful engagement in the wider community.

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 (Out of Home Care, 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, Adult Corrections and the Office of the Public Advocate) and the Department of Education.

Throughout 2022/23, the level of support provided by this project has been invaluable to eleven highly vulnerable young people for whom the Public Advocate is appointed guardian and who needed intensive support with their transition from State care. Four of these young people were continuing to be assisted through YPECN at 30 June 2023, with seven 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 2023.

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 and will operate until 2028.

In 2022/23 the Office of the Public Advocate has continued its examination of the circumstances of eligible represented persons for whom the Public Advocate is appointed as guardian to ensure their interests are protected and advanced through the Scheme. Applications to the Scheme are made in consultation and collaboration with the represented person and/or their administrator. This includes supporting consideration of possible common law claims for abuse in care before the acceptance of an offer made under the Scheme.

The Public Advocate is also 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 if there is a record of sexual abuse while in care.

Case Study 7

Seeking consideration for eligibility of National Redress

In 2023 a review of records held by the Office of the Public Advocate identified that a represented person, for whom the Public Advocate was appointed as limited guardian, had been sexually assaulted as a young adult by their stepfather. The stepfather had been convicted and jailed.

To explore their eligibility for National Redress, a request was made to the Department of Communities for access to records the Department may have had about that person. This request was made under a Ministerial Consent for information sharing for purposes of National Redress.

An examination of Department of Communities' records established that the represented person had been in the care of the Department of Communities until 18 years of age and had been placed with their mother and stepfather from early childhood. However, in the Department of Communities' records there were no reports of sexual abuse.

Discussion with the represented person's delegated guardian and private administrator revealed that while the person had spoken about being sexually abused by their stepfather from early childhood into adulthood, they were limited in their capacity to detail the abuse because of their significant post-traumatic stress disorder symptoms and intellectual disability. For these reasons, it was decided that it was not in their best interests to question the represented person for more information, as to do so could re-traumatise them.

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Eligibility for National Redress is assessed by the Scheme against the legal principle of “reasonable likelihood” that sexual abuse occurred. Consequently, the Office drafted a National Redress Scheme application for the represented person, as they had been in the care of an institution as a child, they had been sexually assaulted on multiple occasions as an adult by the person who had responsibility for them throughout their childhood, and they had spoken about being sexually abused as a child by that person.

The draft application was then forwarded to the represented person’s administrator for signing as the represented person’s nominee under the Scheme. It was recommended to the administrator that they seek advice from a National Redress Scheme funded community based legal service before submitting the application, in case there were other possible legal claims and to ensure the application was complete before it was submitted.

The represented person’s delegated guardian continues to liaise with the private administrator to ensure that the represented person’s interests are promoted and protected.

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

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 with 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 2022/23, including:

- Continued to assist the Director General, Department of Justice with the Standing Council 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 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 opportunities and address the challenges of the State's ageing population.
- Member of the National Working Group for Restrictive Practices and Consent in Aged Care, led by the Commonwealth Department of Health and Aged Care for the use of restrictive practices in residential aged care under the Quality of Care Principles 2014 as well as the development of advice to Governments and the Intergovernmental Health and Aged Care Senior Officials Group on consent requirements for the use of restrictive practices in residential aged care; in conjunction with representatives from the Department of Health (WA) and Advisory Services of the Department of Justice.
- Participation in the Royal Commission into Violence, Abuse, Neglect, and Exploitation of People with Disability through providing written evidence as requested. In addition, the Public Advocate appeared in-person in November 2022 to provide evidence as part of Public Hearing 30: Guardianship, substituted and supported decision-making. The Royal Commission is due to deliver its final report to the Australian Government by 29 September 2023.
- Member of the Human Services Deputy Director Generals Disability Committee consisting of representatives from key State Government 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 (NDIS). This has included establishing and consolidating positive relationships with NDIA's national office and WA service delivery, specifically:
 - o Ongoing scheduled interactions with the Complex Support Needs Branch and the local WA office of NDIA to drive improved NDIS outcomes for people for whom the Public Advocate is appointed guardian.
 - o Utilising established stakeholder relationships within NDIA's national office to address systemic issues impacting people for whom the Public Advocate is appointed and to advocate for systemic change to build capacity and independence for people with a decision-making disability.
 - o Securing early access to NDIA 's improved service to government appointed advocates through the National Call Centre for both the Office of the Public Advocate staff and community guardians.
- Ongoing activities to support the current NDIS Review, including participation in multiple workshops and providing input to responses to submission papers and a collective submission from Public Advocates and Public Guardians across Australia.
- Internal policy development of a new NDIS Practice Standard to embed processes and guidance into everyday practice to support optimised NDIS outcomes for people for whom the Public Advocate is appointed.
- 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 remained a member of the Department of Health's Advance Care Planning Reference Group until the revised Advance Health Directive was launched by the Department of Health in August 2022.

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 2022/23, 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 the same as the number of education sessions delivered in the previous financial year, although service provider attendance figures increased by 25 per cent. COVID-19 had less impact on this year's program than the previous two years, with a few individuals cancelling their attendance due to becoming unwell.

Of the 21 sessions, nine addressed the needs of community members and 12 were specifically tailored for service providers.

While all of the education sessions were delivered in the Perth metropolitan area, four were delivered online to support community members and service providers in regional areas. This included the Office's World Elder Abuse Awareness Day 'Planning Ahead' community seminar which resulted in online registrations from Northam, Bunbury and Esperance.

The Office delivered a service provider session for Justices of the Peace, educating them 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), sharing a marquee with the Public Trustee. As ever, the event was well attended giving both offices the 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 Will drafting.

The Office had LGBTQIA+ representation on the Department of Justice's PrideFEST Working Group. 'SHINE' Recruitment Drive flyers were developed for the event encouraging diversity in the workplace and Office staff joined colleagues from the Department to march in the PrideFEST parade.

Quarterly private administrator training sessions continued to run for newly appointed private administrators, which were held jointly with the Public Trustee, and biannual joint service provider seminars were held with the State Administrative Tribunal.

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 hours a day, seven days a week, 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 during office hours.

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 roles and where to gather support if needed to assist in their decision-making.

The advisory service 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 involve an investigator advocate looking into the situation and determining 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.

Case Study 8

Right idea, wrong process

The process for making an enduring power of attorney (EPA) and enduring power of guardianship (EPG) is the subject of many applications to the State Administrative Tribunal which are referred to the Public Advocate for investigation. The process also generates many calls to the Office's telephone advisory service and questions in community presentations. Demand for information surrounding these documents continues to grow and the following case studies illustrate how important it is to understand how the powers should be made, and how they operate.

Ms K had a lifelong intellectual disability. So when an application for guardianship and administration was referred to the Office by the State Administrative Tribunal for investigation, the fact that the application detailed Ms K having an enduring power of attorney and enduring power of guardianship in place, raised immediate concern regarding her capacity to make such documents.

Both the enduring power of attorney and enduring power of guardianship documents appointed Ms K's niece (who was her carer). They had been witnessed by Ms K's treating doctor. However, there was conflicting medical information surrounding Ms K's capacity to make these powers and also a concern that they had been made solely because Ms K was unable to make her own financial and medical decisions.

A person must have capacity to make an enduring power of attorney (EPA) and enduring power of guardianship (EPG). Nobody can make these powers on someone else's behalf.

A good indication about capacity is whether the person is currently able to make their own decisions.

If the person cannot make their own decisions and needs someone else to do so, it is likely they do not have capacity to make these documents.

When the investigator advocate spoke to Ms K's niece, it was clear that she was trying to help her aunt, but she had been given the wrong information about how to help with decision-making.

When the investigator advocate spoke to the doctor who had witnessed the documents, it was clear they had also been trying to help. After the discussion, the doctor understood that due to Ms K's intellectual disability, she did not have capacity to make an enduring power of attorney or enduring power of guardianship.

While both Ms K's doctor and niece had been trying to do the right thing, the approach was not in line with the legislation.

The investigator advocate subsequently made an application to the State Administrative Tribunal who determined that the intent of the niece had been to help her aunt and ensure decisions were made in her best interests, therefore she was appointed as Ms K's guardian and administrator.

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

Case Study 9

Differentiating between help and potential coercive behaviour

The Office received a phone call from Mr J seeking information about making an enduring power of attorney and enduring power of guardianship on behalf of his grandmother, and requested the kits be sent to his home address.

The advisory officer explained that while Mr J could help his grandmother through the process, he could not make the enduring powers on her behalf. She had to do this herself. The advisory officer also explained that kits are mailed to the address of the person making the powers and where possible, people making their powers are encouraged to call the Office direct if they have any questions. The advisory officer logged the call thinking that Mr J's grandmother would be in touch, in due course.

Two days later, the advisory service received an email from Mr J, asking similar questions about making the powers for his grandmother, indicating that she did not have the ability to make these powers herself.

The advisory officer explained that while Mr J could help his grandmother, he could not make an enduring power of attorney or enduring power of guardianship on her behalf. The advisory officer encouraged him to provide his grandmother's contact details, so the information could be sent direct, enabling her to decide whether or not she wished to make the powers. However, Mr J did not want his grandmother to be involved, or the information to be sent to her address.

There were concerns about whether the grandmother was directly choosing to make the enduring power of attorney and enduring power of guardianship, or if Mr J was influencing her to make them. Due to these concerns the Office did not provide the kits to Mr J, but offered to contact Mr J's grandmother direct to offer her assistance.

The Office's Telephone Advisory Service is available from 9.00am to 4.30pm, Monday to Friday and it receives many calls from adult children making enquiries on behalf of ageing parents.

While there are comprehensive enduring power of attorney (EPA) and enduring power of guardianship (EPG) kits and guides on the Office's website, which provide information to both the person making the power and the people being nominated, not everyone has access to a computer or printer, so the advisory service offers the opportunity for people to request hard copies of the kits, ask specific questions about the powers and raise any concerns they have.

Supporting families through this process is an important service offered by the Office, which ensures enduring powers of attorney and enduring powers of guardianship are completed correctly.

The Office also has a responsibility to reduce the risk of coercion, and tries to balance this by sending kits direct to the person making the documents, rather than a relative or friend. Having an adult child organise this is a great way of helping an elderly relative, but it is always up to the person themselves as to whether they wish to make these powers and they must have capacity to do so.

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

In 2022/23 the Office's advisory service was contacted by 4,518 people, an increase of 21 per cent from 3,729 in 2021/22. The advisory service addressed 6,697 enquiries, an increase of 18 per cent from 5,663 in 2021/22.

Figure 19 Enquiries to the advisory service by mode of handling 2022/23

Mode of handling	Jul 2022	Aug 2022	Sep 2022	Oct 2022	Nov 2022	Dec 2022	Jan 2023	Feb 2023	Mar 2023	Apr 2023	May 2023	Jun 2023	Total
Telephone	288	380	308	321	358	228	361	369	369	249	367	355	3,953
Interview	5	16	15	9	9	15	13	14	13	2	16	11	138
Email/letter	32	38	32	29	37	20	21	22	73	32	42	49	427
TOTAL	325	434	355	359	404	263	395	405	455	283	425	415	4,518

In some instances, enquirers sought advice on multiple topics. Enquiries regarding enduring powers of attorney accounted for 37% per cent of all enquiries received during the year, with enduring powers of guardianship enquiries accounting for 28 per cent.

Figure 20 Enquiries to the advisory service by subject 2022/23

Subject of enquiry	Jul 22	Aug 22	Sep 22	Oct 22	Nov 22	Dec 22	Jan 23	Feb 23	Mar 23	Apr 23	May 23	Jun 23	Total	Total as percentage of all enquiries
Guardianship	74	96	87	97	117	88	98	97	85	55	94	68	1,056	16%
Administration	63	42	63	75	79	67	64	66	71	50	66	48	754	11%
Enduring powers of attorney	180	244	191	193	203	132	212	239	251	158	223	237	2,463	37%
Enduring powers of guardianship	133	179	151	125	162	102	189	164	203	120	172	176	1,876	28%
Advance health directives	9	12	11	10	3	4	10	14	11	12	13	15	124	2%
General	32	36	28	26	30	29	52	32	44	33	37	45	424	6%
Total	491	609	531	526	594	422	625	612	665	428	605	589	6,697	100%

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 exponential increase in material requests received through the advisory service. Over the past 12 months, the Office received over 800 material requests and disseminated 2,500 EPA and EPG kits, along with 2,100 brochures, flyers and other material.

Easy Read brochures

In early 2022 the Office developed a suite of five Easy Read factsheets covering topics such as how an investigation works, who makes treatment decisions and how guardianship works.

In 2023 an additional four factsheets were developed, in response to staff and community feedback. The new factsheets include: 'What is the Office of the Public Advocate?', 'What is the difference between the Public Trustee and the Office of the Public Advocate?', 'How to give feedback and make a complaint', and a supporting glossary factsheet of 'Hard Words'.

These documents break down complex concepts into easily understandable handouts. They were drafted in consultation with a disability advocacy group, can be read through most standard screen readers and are available both online and in hard copy.

Website

The Office migrated its website to the wa.gov.au platform in March 2022 and since then updates have been implemented on a rolling basis.

Functionality has been improved and cultural and linguistic reach was extended following the installation of Google Translate (more recently upgraded to a Language Translation widget), allowing visitors to translate page content into a different language and Talk To Speech (TTS) which reads aloud a webpage.

When accessing the Office's website, 70 per cent of visitors used their desktop, 27 per cent used a mobile phone and three per cent used a tablet.

Similar to last year, the top performing pages on the website between 1 July 2022 and 30 June 2023 were:

- enduring power of attorney: 111,133 visitations
(average time spent on page: one minute and 35 seconds)
- enduring power of guardianship: 60,202 visitations
(average time spent on page: one minute and 49 seconds)

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

- enduring power of attorney kits: over 40,350 downloads
- enduring power of guardianship kits: over 17,430 downloads

Due to the choice of material available on the Office's website, visitations often result in multiple downloads.

CGP Volunteer Information Portal (VIP)

The Office collaborated with the Department of Justice's Strategic Communications division to develop an online portal for Community Guardianship Volunteers.

The Volunteer Information Portal (VIP) provides an online space for volunteers to share community guardianship materials, manuals, newsletters and other useful information, in an easy-to-use, secure online environment. The portal was launched in December 2022. It can be securely accessed from the community guardianship webpage and continues to evolve as information and new materials are uploaded.

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

All of the Office's publications are available in alternative formats,¹³ including other languages, upon request.

Three of the Office's most commonly used information sheets regarding planning for the future, have been translated into eight 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. This year, Spanish documents were added to the existing list of; Arabic, simplified Chinese, Dari, Italian, Malay, Polish and Vietnamese. These are all available on the Office's website and in hard copy on request.

The Office also has 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 format on request.

Information for people of Aboriginal and Torres Strait Islander descent

The Office has produced a brochure specifically for people of Aboriginal and Torres Strait Islander descent, about the guardianship and administration system and the role of the Office of the Public Advocate in protecting vulnerable adults. This flyer was reviewed and updated in early 2023 to coincide with the Office's participation in the Rockingham Aboriginal Justice Open Day, and was later made available for the other Open Days.

The Office also provided training to the Aboriginal Health Council of WA in 2022/23. This was delivered online to maximise reach to the 23-member Aboriginal community-controlled health services across WA.

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.

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 2022/23 interpreter services were provided in 18 languages: Cantonese, Croatian, Dari, Greek, Hungarian, Italian, Malay, Mandarin, Martu, Myanmar, Polish, Serbian, Slovene, Spanish, Swahili, Turkish, Urdu and Vietnamese.

The Office also delivered a 'planning ahead' seminar to a cohort of Spanish aged care residents using a Spanish interpreter.

¹³ The enduring power of attorney form and enduring power of guardianship form are not able to be translated into other languages, as they must be in English.

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

Following the Office's website moving to wa.gov last year, which provided a clearer display with simplified content sectioned into subject accordions, the user experience for vision impaired persons has been further enhanced by the Talk To Speech (TTS) function, which enables vision impaired users to listen to the page being read out loud.

The Office's Easy Read factsheets, information sheets and position statements can also run through most standard screen readers, as can community education training presentations, upon request.

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

Buttons were also 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 needing to dial the phone number. 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 contact methods offered by the National Relay Service are promoted on the Office's website.

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 2022/23, 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 2022/23 was as follows:

Figure 21 Budget allocation and expenditure 2022/23

Original Budget 2022/23 (Service Group 2) \$'000	Revised Budget 2022/23 (Service Group 2) \$'000	Actual Expenditure 2022/23 (Service Group 2) \$'000
13,996 ¹⁴	14,820 ¹⁵	13,768 ¹⁶

The Office of the Public Advocate does not charge any fees for their services.

The Year in Review

Freedom of information

Three valid applications were received by the Office during 2022/23 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 2022/23, the Office of the Public Advocate received 68 formal complaints during the year, which were all considered by the Public Advocate, a senior manager or a senior policy officer. The Office also received 27 formal compliments.

¹⁴ Includes shared Department of Justice corporate support.

¹⁵ Includes shared Department of Justice corporate support.

¹⁶ Includes shared Department of Justice corporate support.

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.

To support this process, an Easy Read factsheet titled 'How to give feedback and make a complaint' was developed earlier this year and is available both online and in hard copy format.

Reduced impact of COVID-19

Western Australia's State of Emergency and the Public Health State of Emergency came to an end on Friday 4 November 2022.

Compared to the previous two years, COVID-19's impact on the Office's delivery of core services was minimal in 2022/23. However, the necessity to develop alternative work arrangements and methods of contacting clients has enabled the Office to continue some of these practices where appropriate, allowing staff to work in a more effective and flexible manner.

Significant Issues Impacting the Agency

State and National Disability Sector Reform

Australia's changing disability landscape continued to impact the Office of the Public Advocate in 2022/23.

Western Australia's transition to the Commonwealth National Disability Insurance Scheme (NDIS) since 2017/18 has brought about the most significant changes for the Office. The transition to the Commonwealth NDIS has seen an acceleration in the already persistent increasing demand for the Office's services; an increase in the complexity of work; and the introduction of the NDIS Quality and Safeguards Commission in WA in 2020 which has brought reform including new consent practices regarding restrictive practices.

The Royal Commission into Aged Care Quality and Safety was established in October 2018, with the final report tabled in Parliament on 1 March 2021. Reforms within the aged care sector continue to be rolled out following the Royal Commission, impacting the work of the Office of the Public Advocate with regard to represented persons in aged care.

Meeting Demand for Services

The Office of the Public Advocate has experienced persistent increasing demand for its statutory services of advocacy and investigation and guardian of last resort for more than a decade. Demand for these services has been exacerbated by WA's transition to the Commonwealth National Disability Insurance Scheme (NDIS) since 2017/18.

This trend continued in 2022/23 with the total number of investigations carried out increasing from 2,505 in 2021/22 to 2,746 in 2022/23, an increase of 10 per cent. The number of new matters for investigation referred to the Office by the State Administrative Tribunal increased from 2,059 in 2021/22 to 2,281 in 2022/23, an increase of 11 per cent.

The Office experienced 737 new appointments as guardian of last resort in 2022/23, bringing the total number of people under the Public Advocate's guardianship at 30 June 2023 to 3,551, compared to 3,115 at 30 June 2022.

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 NDIS can also present challenges. These factors have led to numerous new applications being made to the State Administrative Tribunal 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 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, which saw changes to consent processes for the use of restrictive practices for people receiving NDIS funding. The reform has resulted in an increase in applications to the State Administrative Tribunal for the appointment of a guardian with this function, and an increase in appointments of the Public Advocate as guardian.

In 2021 an independent review of the impact of the National Disability Insurance Scheme (NDIS) on the work of the Office was undertaken by a consulting firm, which found that the demand for the Office of the Public Advocate's statutory services is accelerating, with the Office experiencing critical workload issues. In addition, the review identified that a new Customer Relationship Management (CRM) System is required to replace the Office's existing information technology (IT) case management system.

The Office secured \$4.321 million in funding through the Digital Capability Fund for 2023/24. Work to progress the procurement and implementation of a new Customer Relationship Management (CRM) IT system significantly progressed in 2022/23, with the Office expecting to go out to market for a new system in 2023/24.

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, also continue to be significant factors contributing to the ongoing increasing demand for the Office's services.

Of the 3,351 people for whom the Public Advocate was guardian at 30 June 2023, 1,241 (37 per cent) were 65 years of age or older. Of these, 750 people (60 per cent) had dementia.

In 2022/23, 45 per cent of the 2,281 new matters referred for investigation by the State Administrative Tribunal involved a person with dementia.

According to Dementia Australia¹⁷ it is estimated there are more than 400,000 people living with all forms of dementia in Australia. This figure is expected to double to 800,000 by 2058.

Mental illness accounted for the largest proportion (32 per cent) of all adults for whom the Public Advocate was appointed guardian at 30 June 2023, closely followed by intellectual disability, which accounted for 28 per cent of the appointments.

Due to the ongoing impact of the NDIS and the growing prevalence of mental illness, intellectual disability and dementia within the population, it appears likely that the Office will continue to experience growth in demand for its services.

¹⁷ Prevalence Data - Key Facts & Statistics updated April 2023. Dementia Australia.
Dementia prevalence in in Australia - Figure 2.5 updated Feb 2023. Australian Institute of Health and Welfare.

Elder Abuse

According to State Government estimates, elder abuse affects one in six older Western Australians.

Over the past 12 months, new guardianship orders appointing the Public Advocate, where elder abuse was alleged, were made for 71 represented persons.

Led by the Department of Communities, consultation for *'An Age-friendly WA: State Seniors Strategy 2023-2033'* ended in August 2022 and the strategy was launched in April 2023. This 10-year strategy supports older Western Australians and identifies four key pillars of change; thriving physically, mentally and spiritually; safe and friendly communities; staying connected and engaged; and having views that are heard.

In addition, the WA Elder Abuse Strategy, Implementation Framework was developed collaboratively with Communities, the Department and the Office of the Public Advocate, along with WA Police, the WA Department of Health and the Alliance for the Prevention of Elder Abuse (WA).

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 hosted an online World Elder Abuse Awareness Day (WEAAD) community seminar on 15 June 2022.

In line with the State Seniors Strategy, 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 2022/23 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 2019/20	Actual 2020/21	Actual 2021/22	Target 2022/23	Actual 2022/23	Comment on significant variation
<p>Percentage of guardians of last resort allocated in one day</p> <p>This indicator measures the timeliness of the Public Advocate in allocating a guardian to a represented person in order to make decisions on their behalf and protect them from neglect, abuse or exploitation. A guardian is appointed only when considered necessary and when there is no one else suitable or available to take on the role.</p>	96%	78%	91%	95%	91%	No significant variation.

Key efficiency indicator	Actual 2019/20	Actual 2020/21	Actual 2021/22	Target 2022/23	Actual 2022/23	Comment on significant variation
<p>Average cost of providing advocacy and guardianship services</p> <p>This indicator measures the average cost per case of providing advocacy and guardianship services on behalf of people with decision-making disabilities.</p>	\$1,560	\$1,573	\$1,665	\$1,694	\$1,752	No significant variation.

Notes to the Key Performance Indicators

Key effectiveness indicator	Description
Guardian of last resort allocated in one day.	<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
Average cost per case of providing advocacy and guardianship services.	<p>This indicator is calculated by dividing the total cost of providing advocacy, guardianship and administration services by the number of advocacy and guardianship services provided. The information for this indicator 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

HR Services	\$26,599
Advertising & Promotion	\$47,695
TOTAL	\$74,297

The increase in advertising expenditure relates to the Office's expanded recruitment process in 2022/23.

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 2022/23 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 2022/23, including:

Corruption and Crime Commission Act 2003

Electoral Act 1907

Equal Opportunity Act 1984

Financial Management Act 2006

Freedom of Information Act 1992

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

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 eight languages other than English)
- Enduring Power of Guardianship (also available in eight languages other than English)
- Planning for the Future (also available in eight 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?
- A friend or family member is my guardian – how does it work?
- The Public Advocate is my guardian – how does it work?
- I have a guardian – how do treatment decisions work?
- Who can make a treatment decision?
- What is the Office of the Public Advocate?
- What is the difference between OPA and the PT?
- How to give feedback and make a complaint
- Hard words – Easy Read Glossary

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 plain English flyer)
- 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 2022/23 – 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 2,746 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 737 adults with a decision-making disability
- made decisions for the people we were guardian for, which was 3,351 people on 30 June 2023
- held 21 information sessions about what the Office does and how to help protect people with a decision-making disability
- helped 4,518 people who contacted the Office's advisory service for information
- had 97 staff positions (at 30 June 2023), and spent \$13,768 million 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 (NDIS) 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**

