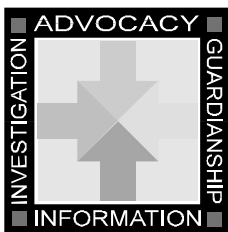


**PUBLIC ADVOCATE'S
ANNUAL REPORT**

1999-2000



**SIXTH REPORT ON THE ACTIVITIES OF THE OFFICE
OF THE PUBLIC ADVOCATE (OPA)**



Prepared by Angela Andary and Stephanie Lewis
September 2000

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28 September 2000

The Honourable Dean Brown MP
Minister for Human Services
45 Pirie Street
ADELAIDE SA 5000

Dear Minister

I have the honour to present to you the sixth Annual Report of the Public Advocate, as required by the provisions of Section 24 of the *Guardianship and Administration Act 1993*.

This report covers the period from 1 July 1999 until 30 June 2000.

Yours faithfully

John Harley

John Harley
PUBLIC ADVOCATE

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Public Advocate's report

When preparing an Annual Report it gives one the opportunity to withdraw from the daily pressures of work and take stock of what has been achieved in the past year. I can say that I am pleased with the result. It is inherent in the nature of our work that there is always more that we could have done and can do but have been limited by time and resources. I try not to be too discouraged or downcast by this but to look at our successes and our incremental progress in areas of concern which have been with our society for many years and unfortunately will be with us for many more.

Before 1993 there was no Office of the Public Advocate. We have made great strides since then and I am thankful that we are resourced to the extent we are. One only has to look at the huge unmet or inappropriately met needs of the mentally disabled to realise that our office is well off compared with some of our clients and consumer groups.

Additional resources

I therefore thank the South Australian Government and particularly the Minister for Human Services, the Hon Dean Brown MP, and the Minister for the Ageing and Disability Services, the Hon Robert Lawson, QC, MLC, for their assistance during the year. Although our work encompasses activities with the mentally ill, our funding emanates from the Disability Services Office. Mental Health Services make no contribution to this. Notwithstanding the many demands on its purse, the Disability Services Office has provided our office with:

- an additional guardian/investigator/advocate until 30 June 2001;
- an officer to handle the revocation of redundant or inappropriate orders for a period of six months;
- a custom made software system to record our activities together with new hardware to replace our outdated equipment; and
- funding to physically separate our office from the Guardianship Board so that it will be more apparent that the OPA is an independent body and not part of the respective activities of the Board, Mental Health Services or the Disability Services Office.

Information system

The new Client Management Engine information system has revolutionised the way in which we operate and is leading to greater efficiencies in terms of client management, recording of information and keeping of statistics. I now provide a 24 hour emergency service for both the Board and my office. I am now able to have at my home a laptop computer that gives me up-to-date information on all clients under my guardianship so that I can make informed and appropriate decisions for them without the need to carry with me the original hard copy files.

Never did I think that I would say it, but new information technology is really wonderful. I thank the Disability Services Office, and particularly Mr David Menzies, for his initiative and Ms Lesley Boulton, who was appointed for four months to develop and install the Client Management Engine.

Guardianship and Administration Act amendments

Amendments to the Guardianship and Administration Act 1993 came into effect on 23 December 1999. In summary the changes are:

- authorised witnesses to the execution of an Enduring Power of Guardianship no longer include ministers of religion but now include notaries public, commissioners for taking affidavits and justices of the peace;
- for the purposes of Section 59 a health professional now includes physiotherapists, chiropractors and chiropodists who may be authorised to give treatment pursuant to Section 59(b);
- the Public Advocate can now appoint an advisory committee to assist him or her in the performance of his or her functions;
- the Public Advocate can now delegate his or her guardianships to persons other than public servants; and
- the form of the Enduring Power of Guardianship has been altered to now enable the grantor and grantee to appear separately before different authorised witnesses.

Staff

There have been a number of major changes to our staff. They are:

- Ms Rennie Gay resigned shortly after the end of the 1999-2000 year as Assistant Public Advocate to become Manager Community Services with Mission Australia. Rennie had been with OPA since its foundation and brought great charm, a caring and loving nature, an energy and patience to a position which was difficult to manage in that it required

a balance between administrative and professional duties – something that was not always easy to achieve;

- Ms Lisa Huber left us just after the end of the 1999-2000 year for the Executive Services Branch of the Department of Human Services. She had been our Education Officer since the OPA began and to her we are very grateful for the quality of the educational materials she helped to produce. Her knowledge of the legislation with which we deal was extensive and exacting; and
- Ms Angela Clarke, Ms Gina Testa, Mr John Collins and Mrs Jenni Wright-Baldock joined us during the year. Ms Melissa Griffiths commenced at the OPA early in the 2000-01 year. In their respective roles they are outstanding and I acknowledge their contribution to supporting me.

I also record my thanks to the continuing staff members Mr Paul Green, Ms Yvette Gray, Ms Anita Micallef, Ms Angela Andary and Ms Stephanie Lewis and express the same remarks as I have made about the new staff members.

Students, both law and social science, play an important role in my office. We have been delighted with the various ones who have passed through our portals. I am particularly pleased with my law graduates who undertake considerable research for me which I could not possibly do given the constraints on my time.

Staff numbers have not increased during the year except for the temporary addition of the 1.5 positions to alleviate the stress on the existing three guardians/investigators/advocates.

Numbers of guardianships

We have been able to reduce the number of guardianships by dedicating one officer to reviewing all existing orders, by emphasising to the Guardianship Board that we are the guardian of last resort and by encouraging family members or friends of the protected person to accept this responsibility. As a result we now have 140 guardianships as against 220 last December. This has allowed us to look particularly at standards for guardianships so that the quality of them is improved. I am pleased that we were able to finalise them and include them at the end of this Annual Report. However, whilst the number of guardianships has reduced, those continuing and new orders tend to require a much greater input by the guardian.

Advance directives

My abiding concern is the ignorance by most people of their ability to execute an Enduring Power of Guardianship. Most seem to know about wills, about half of them know about Enduring Powers of Attorney and a minuscule proportion know about Enduring Powers of Guardianship. Regrettably, this ignorance extends to carers, care providers, legal practitioners, medical practitioners, trustee companies and service providers. Indeed, this year I saw two expensive publications issue from the Department of Human Services which entreated the ageing population to do everything from superannuation, physical exercise, hobbies and medical check ups but not a word about considering making advance directives, be they wills, Enduring Powers of Attorney, Enduring Powers of Guardianship, Medical Powers of Attorney or Anticipatory Directions. If

these documents are going to be of any help in our ageing community to keep people out of the Guardianship Board, much more money needs to be spent on their promotion than my office is able to provide. It needs a commitment by Government to promote advance directives by means of a widespread advertising campaign. At present the Department of Human Services do not see this as a priority, that is if they see it as an issue at all.

Educational materials

My office looks with envy at some of the educational material published by our interstate counterparts. Whilst the content of our brochures, pamphlets and information sheets is excellent, the quality of production is poor and the extent of it is very restricted. For example I would seek to publish booklets to aid private guardians and liaison persons as to their respective powers and duties. The people navigating the guardianship and administration system are usually very ignorant of it and are most apprehensive. I would like to help make it a much easier and more friendly experience for them by providing easily absorbable educational materials.

Systemic issues

Some of the matters of a systemic nature still requiring my attention are:

- the lack of appropriate facilities for adolescents and young adults with a mental disorder but in particular young females;
- the lack of facilities and programs for brain injured people with violent behaviour;
- the lack of assistance and advocacy for mental health consumers at hearings before the Guardianship

Board where applications are made for Community Treatment Orders and Continuing Detention Orders;

- the need for more appropriate programs and the lack of residential and respite care for the intellectually disabled;
- the quality and nature of care management programs for people subject to detention orders;
- the number of people with a mental disorder who do not receive a case management service;
- the cost of administration of a protected person's estate (sometimes, politically incorrectly, described as "a tax on lunacy");
- the number of people with a dual diagnosis who do not receive the range of treatment options they require;
- the inadequacy of the consent to medical treatment legislation which results in the substitute decision makers being unable to consent to palliative care; and
- the failure of the mental health system to satisfactorily monitor compliance with Community Treatment Orders.

Most of these matters appeared in my last Annual Report and, whilst some work has been done to address them, they remain outstanding.

John Harley

John Harley
PUBLIC ADVOCATE

Role, structure, legislation

Legislative authority

The Office of the Public Advocate (OPA) takes its legislative authority from the *Guardianship and Administration Act 1993* (GAA) and the *Mental Health Act 1993* (MHA).

The OPA is also bound to comply with legislation which relates to the management and accountability requirements of Government, including:

- *Equal Opportunity Act 1984*;
- *Occupational Health, Safety and Welfare Act 1986*;
- *Public Sector Management Act 1995*;
- *Sex Discrimination Act 1984*;
- *Workers Rehabilitation and Compensation Act 1986*.

Functions and objectives

The Office of the Public Advocate has a number of key legislative functions:

- to act as guardian of last resort when appointed by the Guardianship Board;
- to investigate matters where a person who has a mental incapacity is at risk of abuse, exploitation or neglect (including self neglect);
- to provide advice and information about the GAA and MHA in a variety of formats;
- to take an interest in the programs being offered to meet the needs of people with mental incapacity;
- to undertake systemic advocacy to identify and act on areas of unmet or inappropriately met needs of people with mental incapacity;
- to provide some individual advocacy services through our education, investigation and guardianship work,

to speak for and negotiate on behalf of mentally incapacitated persons;

- to support and promote the interests of carers of people who have a mental incapacity;
- the Public Advocate can make recommendations to the Minister for legislative and operational change.

Mission

To fulfil our statutory responsibility to promote and protect the rights and interests of people with a mental incapacity through the provision of adult guardianship, information, individual and systemic advocacy, and investigation services.

Vision

To enhance the quality of life whilst safeguarding the health and well being of those people in our community who are vulnerable to self neglect, abuse or exploitation.

We will achieve this by:

- ✓ Working to increase the quality of the OPA's adult guardianships across South Australia, commensurate with available resources.
- ✓ Fostering strong partnerships with service providers and the community to enhance the lives and potential of the OPA's clients.
- ✓ Identifying key areas of unmet or inappropriately met needs of mentally incapacitated persons and taking action for improvement.

Values

The staff of the OPA is committed to the following values:

- ✓ All people we deal with, including ourselves, deserve to be treated with courtesy, dignity and respect.
- ✓ As leaders in our field we will act with integrity and professionalism in all our dealings.
- ✓ We encourage and support creative, innovative thinking and ideas, including measured risk taking within an environment that values learning and dynamic problem solving.
- ✓ We work in partnership with others, wherever possible, to achieve the best possible outcomes for our clients.
- ✓ We are accountable for our decisions and actions, and give particular attention to ethical and human rights principles, in accord with UN declarations and Australian Governments' standards.
- ✓ We see our role as a privilege, and recognise the importance of a skilled and cohesive team in making a meaningful contribution to the welfare of those vulnerable people with a mental incapacity.

Our clients

The Office of the Public Advocate has three main client groups:

- People with a mental incapacity;
- Family/carers and friends of people with a mental incapacity;
- Individuals and organisations with an interest in issues arising from a mental incapacity.

Mental incapacity

The *Guardianship and Administration Act 1993* defines mental incapacity as:

'...the inability of a person to look after his or her own health, safety or welfare or to manage his or her own affairs, as a result of -

- (a) any damage to, or any illness, disorder, imperfect or delayed development, impairment or deterioration, of the brain or mind; or*
- (b) any physical illness or condition that renders the person unable to communicate his or her intentions or wishes in any manner whatsoever.'*

Relationship to other agencies

The Office of the Public Advocate is a unit of the Disability Services Office, within the Country and Disability Services Division of the SA Department of Human Services and as such, fulfils its financial and performance accountability requirements under the Minister for Human Services annual reporting processes.

Under the *Guardianship and Administration Act 1993*, the Office of the Public Advocate is also required to submit an Annual Report on its operations to the responsible Minister.

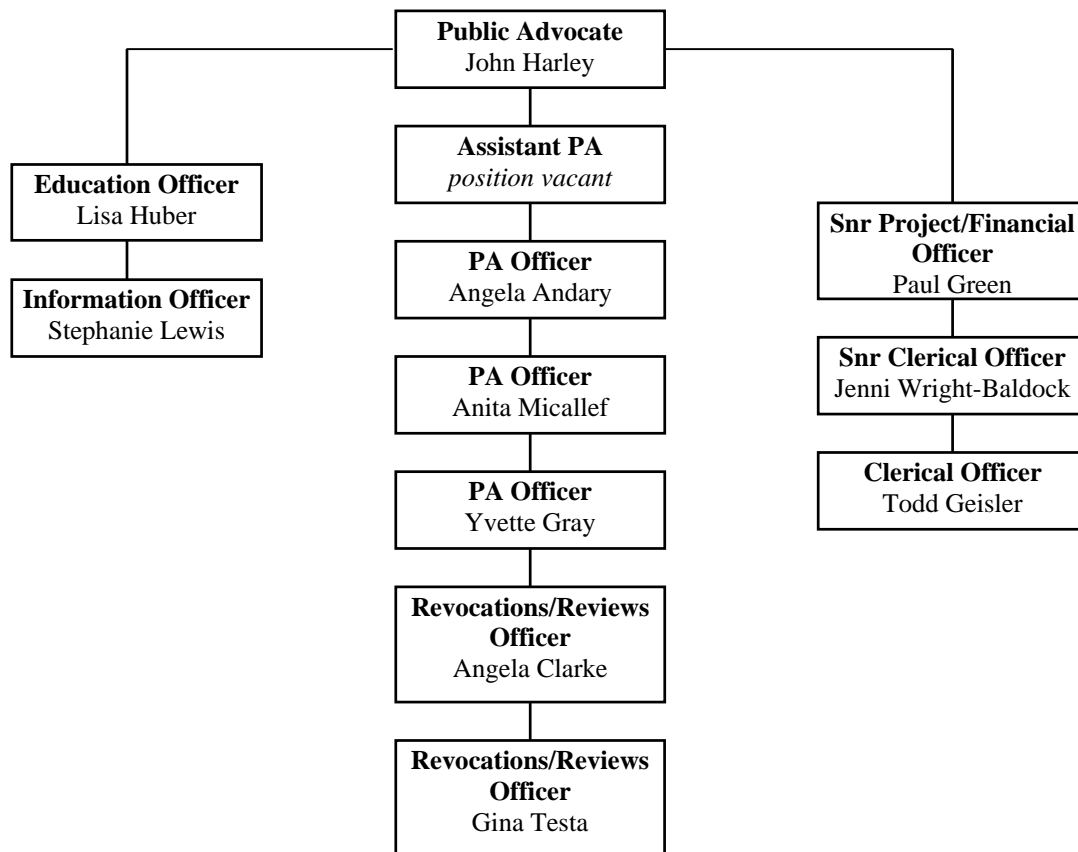
Organisation

The Public Advocate is an independent statutory official.

The Public Advocate may raise with the Minister and the Attorney-General any concerns that he may have in relation to the performance of his functions under the *Guardianship and Administration Act 1993* or any other Act.

Organisational chart

As at 30 June 2000



Staffing changes during 1999-2000

Assistant Public Advocate

Ms Rennie Gay commenced 12 months leave on 13 December 1999.

Public Advocate Officers

Ms Yvette Gray returned to the OPA on 10 January 2000.

Ms Angela Clarke commenced work at the OPA on 4 August 1999 on a contractual basis.

Ms Gina Testa commenced work at the OPA on a contractual basis on 20 March 2000.

Information Officer

Ms Stephanie Lewis returned from maternity leave on 3 August 1999.

Administrative staff

Mrs Jenni Wright-Baldock commenced work at the OPA on 11 October 1999.

Mr Todd Geisler was redeployed from the OPA on 11 January 2000.

Other staff

The OPA was fortunate to have the services of several other staff working on temporary placements at the OPA during 1999-2000:

Mr John Collins commenced work on 4 March 2000 as Administrative Projects Officer.

Ms Lesley Boulton commenced work as IT Project Manager on 27 March 2000.

Principles

In all aspects of its work with clients, the OPA is bound and guided by the principles contained in Section 5 of the *Guardianship and Administration Act 1993*. These are:

- ✓ Decisions made must reflect, as much as possible, what the wishes of the person would have been had he or she not become mentally incapacitated (to the extent that this can reasonably be determined).

(Note: This is often called the substituted judgement principle which is philosophically different from the principle that promotes decision making for people in their best interests.)

- ✓ The present wishes of the person must be sought, if these can be ascertained.

- ✓ Where there are adequate existing informal arrangements for the treatment, management and care of the person, these should not be disturbed.

(Note: This principle allows and encourages families, friends and/or community networks to take responsibility for the person's health and welfare without unnecessary government intervention.)

- ✓ Any decision or order made should be the least restrictive of the person's rights and personal autonomy whilst being consistent with his or her proper care and protection.

The principles in practice

Joint guardianship as an empowering experience

Alice is a young Aboriginal woman who has experienced over a hundred placements through Family and Youth

Services. She has an extensive forensic history and has had multiple admissions to Glenside Hospital. Just as Alice turned eighteen, an application was made to the Guardianship Board. Alice was perceived as having a poor prognosis and it was considered that a stay in one of the long term units at Glenside was the most likely outcome for her. At the time of the hearing Alice had been staying with a host Aboriginal family. This family expressed that they were willing to have Alice live with them when she was on leave from the hospital. They were also willing to link in with community organisations to help Alice stay out of hospital.

The female host parent and the OPA were appointed as joint guardians. During the first month, the OPA worked with the family and other professionals who had been involved with Alice to develop a plan that would provide Alice with the best possible chance of staying out of hospital. The OPA introduced the host family to the mechanics of the bureaucracies they would be involved with and supported them in their negotiations with these organisations for the next six months. These organisations included the hospital system, community mental health services, FAYS, the Police and the court system.

As a result of the OPA's work with the host family, they felt empowered to take on the role of guardian, and the OPA recommended that the male host parent become joint guardian with his wife and that the OPA withdraw. The Guardianship Board approved this.

The family has since been in touch with the OPA. They said that Alice has not

been in any trouble with the police, that she has glasses and is currently learning how to read, which is doing wonders for her self confidence. They have reported that Alice has not been hospitalised for the past ten months. She is preparing to move into a Housing Trust house close to the family. She will then be more independent while also having a sense of belonging to a family.

Informal medical consent and issues of risk

Ken loved to party hard. He enjoyed the good life, lots of parties, friends, drugs and many sexual partners. At age 28 he was found unconscious in his car. Tests at the hospital showed a chronic immune deficiency, chest infection and multiple IV needle puncture marks.

On regaining consciousness, Ken told the doctors that he was diagnosed as HIV positive eight years ago, and that although treatment for his AIDS had been prescribed, he constantly forgot to take the twice daily medication and often went for days, even weeks, without it.

As his illness progressed, he returned to the family home, where a doting brother and sister insisted that Ken make his own health decisions, even though it was now obvious that he was suffering from an AIDS related dementia and associated mental incapacity. They invoked their powers under Section 59 of the *Guardianship and Administration Act 1993* that authorises family members to make medical consent decisions, and they followed Ken's wishes for no treatment.

The brother and sister persisted in this approach even though Ken's father and

senior medical specialists were strongly recommending hospitalisation, intravenous antibiotics for chest, bladder and skin infections and an immediate start on antiretroviral medications to slow the AIDS related deterioration. Ken's chances of survival were hopeful only if immediate treatment was initiated.

Ken, his family members, his local doctor and staff from the OPA and the hospital met in an effort to informally resolve the impasse regarding treatment choices and the real risk to Ken's life. This was unsuccessful and an emergency application was lodged with the Guardianship Board for the appointment of a guardian with special powers under Section 32 of the Act to enforce hospital admission and treatment. Considering the tension between family members, the Public Advocate was appointed as Ken's guardian to authorise hospital treatment.

A year later Ken is alive, living with his family with the support of the specialised services for those with AIDS. His physical health improved; he has been free of infections for some time and has a more stable life than when he lived to 'party'. His father has gradually come to terms with Ken's past lifestyle and both are working on developing a positive adult relationship.

Preserving informal arrangements and upholding a person's express wishes

Daisy is an 82 year old single woman who resides in her own home. She has, over a long period of time, received assistance from her friend and neighbour. As her needs have increased, the neighbour also increased the level of

care required. Daisy had limited contact with her family and so appointed her neighbour and his wife as her Enduring Power of Attorney and also made them beneficiaries of her will. At the time the OPA became involved, the neighbour and his wife were providing a very high level of care that included meals, cleaning, washing, gardening and outings. However, the increased workload did create some stress, so they approached an aged care service provider for some assistance.

At about this time, Daisy's family became increasingly concerned over the degree of help that the neighbour and his wife were providing. In particular, they expressed concern about the amount of money that had been spent on Daisy to improve her quality of life. Questions were also raised about the motives of the neighbours. As a result of the family's concerns, an application was made to the Guardianship Board. The aged care service provider supported this application.

The OPA investigated the matter and found that the neighbour had acted appropriately, and more importantly, had provided care that had enabled Daisy to continue living in her own home. The family believed that she would be best served in some form of supported accommodation.

While Daisy did have a mild dementia, it was felt that she had mental capacity at the time of the signing of the Enduring Power of Attorney. The investigating officer wrote a lengthy report to the Guardianship Board stressing the importance of preserving informal arrangements. The Public Advocate was subsequently appointed Guardian to

make decisions about where Daisy should live, and the Board upheld the Enduring Power of Attorney, thus confirming Daisy's express wishes to have her friend and neighbour make financial decisions for her.

Marriage and dementia - who should decide?

A home care package coordinator made an application for guardianship. The service provider was concerned for his client who had been discussing marriage to a man she had known for only a little while. The concerns that were raised were the suitability of the husband to be, the implications of the family law if she married, and the competence of the client to make an informed decision regarding marriage.

The OPA investigated the matter and found that the woman was competent to make this decision, and that she did want to marry this man. She was found to be aware of the financial implications and people who had known her for many years reported that she was happier than ever before. The investigation recommended that guardianship was not appropriate and the Guardianship Board dismissed the application.

Some 1999-2000 highlights

- ✓ Development of a set of standards for guardianship to provide the means whereby people under guardianship and other stake holders can understand what to expect about how guardianship decisions will be made by staff.

See page 34

- ✓ Implementation of a new Client Management Engine information system, which is expected to provide improved reporting, analysis and faster data retrieval for staff.

See page 26

- ✓ Advocacy work relating to amendments to the *Guardianship and Administration Act 1993*.

See page 14

- ✓ 4649 'hits' to the OPA Web site – an increase of 184% from the previous financial year.

See page 22

- ✓ Production of a new information booklet for service providers working in the aged care sector.

See page 22

- ✓ Establishment of a designated Enquiry Officer position to ensure that information provided to the public is consistent and accurate.

See page 24

Achievements and initiatives

The Office of the Public Advocate has four key service areas. During 1999-2000, funding and reporting is according to these four key areas:

- **Advocacy;**
- **Guardianship;**
- **Investigation;**
- **Community education.**

The following pages detail the objectives, resources and outcomes in each of these areas, as well as for the **Enquiry Service**, which is part of the OPA's community education role.

Advocacy

Responding to requests for assistance and support for persons with a mental incapacity and their carers at both an individual and systems level.

Objectives

- ✓ To investigate community complaints or concerns that a person with a mental incapacity may be at risk of abuse, neglect or exploitation.
- ✓ To identify and promote the interests of people with a mental incapacity to Government and in forums and enquiries concerned with the development and implementation of public policy.
- ✓ To speak for and negotiate on behalf of mentally incapacitated persons.
- ✓ To support and promote the interests of carers of people with a mental incapacity.
- ✓ To make recommendations to the Minister for legislative and operational change.

Resources

The Public Advocate personally undertook most systems advocacy work. However, advocacy is inherent in much of the work done by staff at the OPA. The OPA does not have the resources for individual advocacy work but staff take on various matters as they arise.

Outcomes

Representation on external committees

Staff of the OPA was involved with the following external committees during 1999-2000:

- Magistrates Court Diversionary Program, including the committee to evaluate the effectiveness of this program;
- Alliance for the Prevention of Elder Abuse;
- Legal Committee of IDSC;
- State Council of the Australian Institute of Administrative Law;
- Working Group into the Needs of the Violent Brain Injured;
- Interjurisdictional Committee;
- Law Week Committee, Country Sub-Committee;
- Interagency working party comprising the Public Trustee, the Guardianship Board and the OPA.

Submissions

The Office of the Public Advocate made submissions to:

- The Attorney General on amendments to the *District Court Act 1991* and *Guardianship and Administration Act 1993*;
- Working party to determine clients with high need within the Department for Human Services;

- Consultants conducting the clinical review of the mental health services;
- The Criminal Law Consolidation Act Mental Impairment provisions;
- The Privacy Commissioner regarding the registration of Administration Orders by creditor reporting agencies;
- The South Australian Police Force on the protocols for the apprehension of people suspected of having a mental illness.

Coronial inquest

The Public Advocate has also been involved in a coronial inquiry into the death of a young Aboriginal man who died while under guardianship.

The OPA has a continuing commitment to attending future coronial inquests that relate to people in our client group.

Guardianship

The provision of guardianship services when appointment of a guardian is considered necessary, and there is no one else suitable or available to take on that role.

Objectives

- ✓ To provide a quality adult guardianship service across South Australia, commensurate with resources.
- ✓ To ensure that, wherever possible, substitute decisions made by a guardian preserve the personal autonomy of that person.
- ✓ To ensure that Board orders are the least restrictive of the protected person's welfare and are relevant and necessary to the development and maintenance of their health and safety.

Resources

During 1999-2000 there were five staff members who contributed to duties associated with guardianship. However, at no point were there five people working in that unit at any one time.

Usually there were three full time staff members, with one person dedicated to the review and revocation of all guardianship files. New contracted staff members back filled positions when existing staff members were on leave.

Outcomes

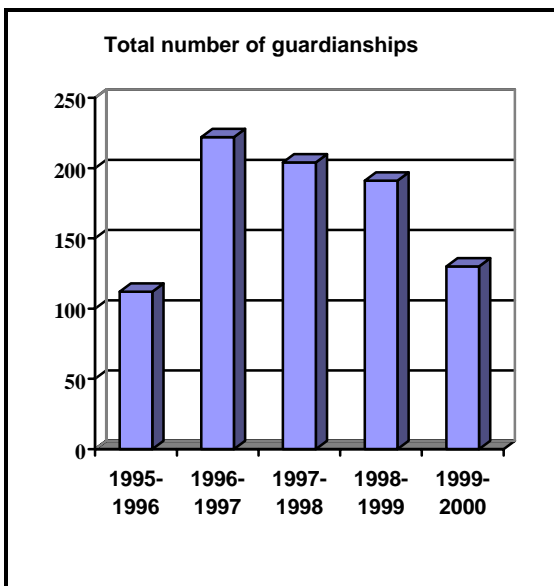
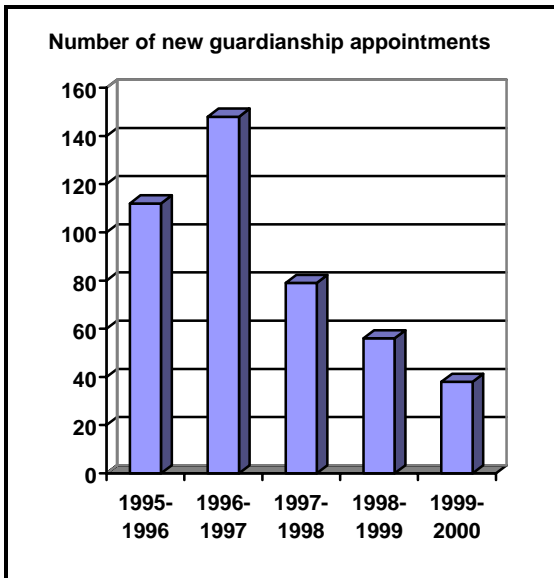
Guardian of Last Resort

During 1999-2000, the Office of the Public Advocate provided guardianship services on behalf of 220 people. There were 38 new appointments during this period. As at 30 June 2000, the OPA was guardian for 130 people.

Additional resources were dedicated to guardianship responsibilities in the 1999-2000 financial year. While at the commencement of the year, the OPA was guardian for 220 people, by the end of the twelve month period this figure had reduced considerably. The OPA achieved this reduction in numbers by undertaking a review of all guardianship files and by requesting the Guardianship Board to revoke those cases where input from a guardian was no longer required.

The total number of cases revoked was 98. Of these 98 cases, the majority required investigation of the current needs of the protected person and the preparation of reports for the Guardianship Board.

The remaining cases represent those orders that were self executing (where no formal request is made of the Board to revoke, but the orders are time limited) or where the protected person has died.



While the numbers of new guardianship appointments is declining, there is an increase in the complexity of cases that the OPA is dealing with. This trend is in line with the legislation, which promotes the maintenance of informal arrangements. The appointment of the Public Advocate as guardian is made only when all other avenues have been exhausted. This usually means that cases for which the OPA has responsibility are complex, with long standing problems and where a variety

of methods have been tried and seen to have failed. These cases require a combination of highly skilled responses from the OPA, including negotiation and mediation expertise, the ability to engender cooperation from other agencies and a broad knowledge of disability services as well as legislative knowledge of other jurisdictions, which may have an impact on people with disabilities.

Development of Guardianship Standards

The Public Advocate delegates his authority for substitute decision making on behalf of protected persons under his guardianship to members of the OPA guardianship team and expects that all decisions made by staff will protect and promote the welfare and interests of protected persons.

Given the significant authority that a Guardianship Order can bestow on the guardian and the potentially intrusive role of a guardian into that person's affairs, it was considered that a set of standards was essential. Standards provide the means whereby people under guardianship and others involved in their care can gain some understanding of how guardianship decisions will be made by team members. Other important reasons for developing the standards include the need to provide a clear statement to staff as to the required level of service and to provide a means by which the level and quality of service provided by the OPA could be benchmarked and progressively improved.

The draft Guardianship Standards were distributed for comment at the OPA forum on Adult Guardianship in June

2000. The standards were finalised after incorporating the comments from a range of stakeholders, including service providers and individuals with an interest or experience in this area.

A copy of the Guardianship Standards is contained at the back of this Annual Report – see page 34. These standards also comply with the National Standards that are being developed as part of the work of the nation wide Interjurisdictional Committee on Guardianship and Administration, which comprises representatives from all of the Australian states and territories.

Guardian ad litem/Next Friend

The OPA is often called upon to provide advocacy and support to women whose children have been removed from their care as a result of the mother's mental incapacity/inability to provide adequate care for her children. These mothers are deemed not able to effectively instruct a lawyer in court proceedings. The OPA is appointed either Guardian ad litem in the Youth Court or Next Friend in the Family Court to instruct the lawyer on the mother's behalf. The OPA has advocated on behalf of six women in the last financial year. Four of these women had a mental illness and two had an intellectual impairment.

Investigation

To investigate the circumstances of people referred to the Office of the Public Advocate by other services, the Guardianship Board and by members of the public and to initiate protective action as appropriate.

Objectives

- ✓ To investigate and identify the circumstances and needs of people with a mental incapacity who are the subject of an application to the Guardianship Board and to ensure that their interests are represented at hearings before the Guardianship Board.
- ✓ To ensure that the appointment of a Guardian or Administrator is made only when there is no alternative solution to the presenting problem.
- ✓ To investigate matters where a person with a mental incapacity is at risk of abuse, exploitation or neglect (including self neglect).

Resources

During 1999-2000, there were no designated staff members who could take on investigations. The three staff members who are responsible for guardianship would take on investigation matters only if they were Section 28 requests from the Board or if their workload permitted.

Outcomes

In the 1999-2000 period, the OPA conducted 141 investigations pursuant to the *Guardianship and Administration Act 1993*. This figure is down 100 from the previous financial year.

	Investigations
1995-96	244
1996-97	169
1997-98	267
1998-99	241
1999-2000	141

The reduced numbers are due to a decision by the OPA to only prepare those reports that were requested by the Guardianship Board under Section 28 of the *Guardianship and Administration Act 1993*. There was no designated staff to take on investigations. All requests for investigations were screened for their merit and attended to only if there were adequate resources. This policy decision was conveyed to the Guardianship Board.

Investigations under Section 28

Of the 141 investigations, ten were conducted pursuant to Section 28 of the *Guardianship and Administration Act 1993*. This means that a comprehensive report was prepared at the direction of the Guardianship Board to assist them in their decision making.

The matters that were investigated usually involved:

- allegations of abuse including financial and emotional;
- allegations of undue influence or duress;
- matters where it was alleged that an advance directive, such as an Enduring Power of Attorney or Enduring Power of Guardianship, was not being managed appropriately;
- sterilisation matters.

Sterilisation investigations

Of the ten Section 28 reports, four were prepared as a result of sterilisation applications to the Board. Under the *Guardianship and Administration Act 1993*, the approval of the Guardianship Board is required before a sterilisation procedure can be carried out.

In one matter, the Board found that there were other alternatives to a full abdominal hysterectomy and gave consent for other contraceptive methods to be tried. In another matter, the Board gave consent to a tubal ligation on the grounds that it was therapeutically necessary. In the third matter, the Board found that the person could provide their own consent and the application was withdrawn. In the last matter, the application was withdrawn as it was considered that there were other alternatives.

The OPA has also been part of a working party that has developed sterilisation protocols for workers within the disability field.

Other investigations

The remaining 131 investigations were those undertaken by the OPA that did not necessarily require a report to the Guardianship Board. The time taken to complete these matters is significantly less than that of a Section 28 request. In some of these cases, the OPA prepares a report, while in other cases, an OPA officer will make a number of telephone calls. Often these matters involve cases that are coming before the Board where the OPA is nominated as guardian or where no guardian has been nominated. The OPA makes some preliminary investigations prior to the hearing to ensure that the OPA is appointed as a last resort and that all other interested parties are considered as potential guardians.

Community education

Fostering strong partnerships with service providers and the community to enhance the lives and potential of the OPA's clients.

Objectives

- ✓ To facilitate and conduct education sessions and forums in both metropolitan and country locations on a diverse range of issues relating to mental incapacity and the law.
- ✓ To continue to provide written responses to external agencies and individuals, where requests for the OPA's input on issues relating to mental incapacity are made.
- ✓ To continue to actively participate in interagency forums and committees where the terms of reference meet the OPA's strategic directions.
- ✓ To continue to provide regular updated online information on the OPA as well as written resources.
- ✓ To make selected pamphlets available in other languages.

Resources

The OPA has a full time Education Officer and a half time Information Officer. The Information Officer returned from maternity leave in August 1999 and worked 0.4fte for the remainder of the financial year. The Education Officer was transferred to the guardianship program to assist with work in this area for three months in early 2000 without being replaced.

Outcomes

Education Sessions

Public forum

The OPA ran one public information forum during the 1999-2000 period. On Wednesday 29 June, a forum focussing on adult guardianship was held at the Adelaide Central Mission. At the forum, legislative changes to Enduring Powers of Guardianship were discussed, the new public guardianship standards were tabled for comment, and John Harley, the Public Advocate, introduced Ian Shephard, the new President of the Guardianship Board. Approximately sixty people attended the forum.

Service providers

Education sessions to service providers require the OPA education staff to provide complex information and guidance on issues relating to mental incapacity, mental illness, consent, adult guardianship and making applications to the Guardianship Board. Workers are generally keen to develop a greater awareness and understanding of how they can use the legislation in an effective and appropriate way.

Total number of sessions to service providers in 1999-2000: 33 Total audience: 1440
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	Sessions	Audience
1997-98	44	828
1998-99	52	1552
1999-2000	33	1440

Carers/consumers

These talks usually focus on advance directives and general guardianship and administration issues.

Total number of education sessions to carers/consumers in 1999-2000: 10 Total audience: 337
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	Sessions	Audience
1997-98	39	934
1998-99	14	615
1999-2000	10	337

Country

Talks in country areas are generally to a mixed audience of service providers and carers/consumers, and usually cover both the guardianship and administration systems and mental health.

Total number of education sessions in country areas in 1999-2000: 3 Total audience: 75

	Sessions	Audience
1997-98	14	246
1998-99	5	173
1999-2000	3	75

OPA Web site

The text of the OPA Web site, at <http://www.opa.sa.gov.au>, was continually updated and maintained during the 1999-2000 period. The site contains many of the OPA's publications, as well as a range of other information. Several new resources and the OPA Annual Report were added to the site for the first time in 1999-2000. As the following chart clearly shows, statistics indicate that usage of our Web site remains high and is continually increasing.

	Total 'hits' to the OPA Web site
1997-98	1192
1998-99	2521
1999-2000	4649

Publications

Community pamphlets

The OPA produces 16 coloured trifold pamphlets, which provide information about the GAA and MHA. Just under 60,000 community pamphlets were printed during 1999-2000, with approximately 45,000 of these being distributed during this period.

Information sheets

During this period, education staff rewrote and revised our information handouts into a series of four coloured A4 information sheets:

- No 1 - Guidelines to assist in determining a person's competence to make advance directives;
- No 2 - Before lodging an application at the Guardianship Board;
- No 3 - Presenting an application at the Guardianship Board;
- No 4 - Applying to the Guardianship Board for Section 32 powers.

Aged care information booklet

During 1999-2000, education staff completed a booklet for service providers in the aged care sector. This booklet contains information about making decisions for others in financial, medical and personal areas, and answers many of the common questions asked by callers to our enquiry service. The booklet was completed in May 2000, when 2000 copies were printed. We had to reprint this booklet almost immediately, due to the high demand for copies.

Enduring Power of Guardianship: A Do It Yourself Kit

A revised second edition of this kit was produced in December 1999, incorporating the legislative changes made by the *Guardianship and Administration (Miscellaneous) Amendment Act 1999*. Education staff worked jointly with staff from the Legal Services Commission, Information SA and the Lands Titles Office to complete this project.

Public Advocate Newsletter

Two editions of the bi-annual Public Advocate Newsletter were produced, in July 1999 and January 2000. 1200 copies of the newsletter were printed and distributed, including approximately 850 posted directly to agencies and individuals on our mailing list. The current edition of the newsletter is also available on the OPA Web site.

Staff resource folder

Education staff compiled a resource folder for existing and new OPA staff and students on placement containing the relevant UN declarations and Australian Governments' standards. These documents provide the ethical and human rights principles that guide our work.

Translation of publications into community languages

During the 1999-2000 year, the OPA continued its attempts to translate more of its resources into community languages by pursuing several possible avenues of funding. To date, we have not been successful in attracting extra resources. We have a continuing commitment to this area of work.

1998-99 Annual Report

During the 1999-2000 period, the 1998-99 Annual Report was produced, printed and distributed. The OPA printed 1200 copies of the Annual Report, with 850 of these mailed out with the January 2000 newsletter. The Annual Report is also available on the OPA Web site.

Palliative care conference paper

The Education Officer wrote and presented a paper entitled *Advance directives: making sense of the options – a South Australian perspective* at the fifth Australian Palliative Care Conference in Brisbane in October 1999.

Education Activities

The OPA completed 65 education activities in 1999-2000. This area of work comprises requests from external organisations and individuals, consultation and advocacy work relating to education. These activities draw on the expertise of the OPA staff in the areas of mental incapacity, mental illness, issues relating to consent and advance directives. Examples of education activities include:

- preparation of written material for inclusion in newsletters, directories and other external publications;
- contribution to written material by other agencies;
- consultation in policy development, particularly in areas of consent and mental incapacity or illness;
- radio and newspaper interviews.

	Activities
1997-98	78
1998-99	81
1999-2000	65

Enquiry service

To provide advice and information regarding the Guardianship and Administration Act 1993, the Mental Health Act 1993, the operation of the Guardianship Board and related issues to professionals, service providers and the general community.

Objective

- ✓ To continue to provide a quality general enquiry service by using trained staff to give advice, information and guidance to callers on matters relating to the *Guardianship and Administration Act 1993*, the *Mental Health Act 1993* and associated issues.

Resources

During 1999-2000, the enquiry service was initially shared between the OPA professional staff, with clerical officers screening calls to determine the nature of the enquiry and whether or not it could be handled in the first instance at that level.

As a consequence of some restructuring within the OPA, a part time Enquiry Officer position was established. The creation of this new position ensured that information provided to the public was consistent and accurate. It also freed up professional and clerical staff to attend to their other duties. An experienced member of the guardianship team initially filled this position.

Outcomes

During 1999-2000, the OPA received 3063 enquiry calls.

	Total enquiries
1995-96	3570
1996-97	3229
1997-98	3539
1998-99	3744
1999-2000	3063

The number of enquiry calls has fallen slightly in the last year. However, as in other areas of the OPA's work, the complexity of concerns and actions is increasing.

Some examples of enquiries

- A man telephoned the OPA to say that he had an Enduring Power of Guardianship for his wife and needed to place her in a secure dementia unit. However, his wife was not willing to enter this unit. The OPA advised that he would need to request Section 32 powers from the Guardianship Board. (Section 32 powers give the guardian the authority to use such force as may be reasonably necessary for the purpose of ensuring the proper medical treatment and day to day care and well being of the person).

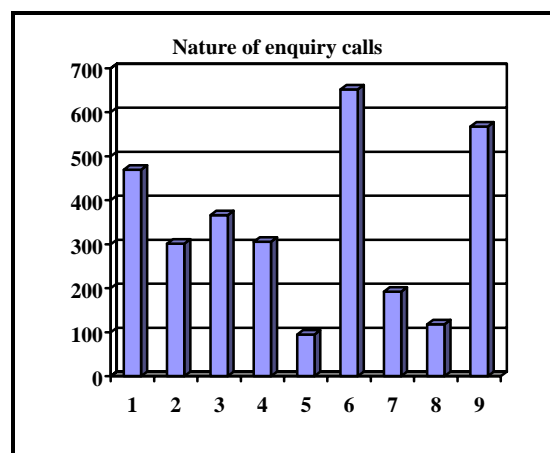
The OPA also advised the caller to send a certified copy of the Enduring Power of Guardianship to the Board for validation, and make a request in writing for the Section 32 powers.

- A woman telephoned the OPA to say that her husband had suffered a stroke some years ago and as a result was cognitively impaired. She had been providing care in their home to him, but was now exhausted. Aged care services had been involved and they believed that the man should be placed in supported accommodation. The OPA advised that an Aged Care Assessment Team should again assess the man for the level of care required. We also recommended that the woman seek some respite care for her husband as a matter of urgency and offered to follow up the matter with the aged care services.
- A Social Worker telephoned the OPA to say that a young man on a Continuing Detention Order at Glenside Hospital had been given trial leave for the day. While on leave he entered a car yard and bought a car. The man cannot drive and the car needs a great deal of work on it. The Social Worker was querying what steps could be taken to redress the situation. The OPA recommended that an Administration Order be applied for so that an Administrator could be appointed to take up financial and legal matters on behalf of the young man.

Nature of enquiry calls

The nature of enquiries received by the OPA can be divided into nine main groupings:

1. Potential Administration issue: 469
2. Potential Guardianship issue: 301
3. Potential Guardianship and Administration issues: 366
4. Advance directives: 306
5. Guardianship Board process: 95
6. Information/Education: 652 *
7. Mental health issues: 192
8. Consent to treatment issues: 118
9. Other calls: 567



- * The largest category of enquiry calls received by the OPA is requests for education and information. This year, this category is particularly large, as it includes all the requests from service providers throughout the state for copies of the new aged care information booklet. The OPA also posts out large numbers of its community pamphlets through the Enquiry Service.

Administrative and human resource functions

Review of administrative functions

The OPA held a planning day in 1999-2000 in order to focus on providing the best possible services from its limited resources.

One outcome was an approach to the Department of Human Services for assistance in reviewing administrative functions. A project officer with a background in human resources and general business was then provided.

Outcomes from this project during the latter part of the year have been:

- A review of structures and budgets resulting in additional resources being provided for the 2000-01 year.
- A review of administrative policies and work practices.
- The implementation of the new practices and education for all staff.
- Preparation of a Performance Management model for implementation in the 2000-01 financial year.
- A submission for funding for new accommodation for the OPA to improve the public's perception of the OPA's independence from the Guardianship Board as well as improving the functionality of the OPA.

Much of this work continues.

Strategic planning

In April, the OPA commenced its strategic planning process, which culminated in the development of its business plan for the year 2000-01. This plan will be reviewed next year and form the basis for a three year Strategic Plan. The OPA plans to involve key stakeholders in the development of its three year plan.

Account payment performance

The OPA's policy is for all accounts to be paid within one week of receiving them.

The account is paid when the next processing run is done each Wednesday. Accounts are processed by Intellectual Disability Services Council (IDSC) Finance Section. When a cheque is generated, IDSC sends the cheque to the vendor who has created the invoice. The OPA believes this system meets its policy objective approximately 90% of the time. Occasional delays due to a backlog at IDSC have resulted in the OPA's performance in this area to be affected on some occasions.

Computing systems and Year 2000 compliance

The OPA successfully met its Y2K obligations through the assistance of the Department of Human Services (DHS) Information Services.

A subsequent submission for upgrading the Client Management Engine was approved and funding support was

provided for software and an implementation project manager.

System needs input by all staff was followed with extensive staff training. New hardware was also provided by DHS. This will allow for improvements in client service and improved statistical information and analysis of cases.

The new information system is expected to provide improved reporting, analysis and faster data retrieval for staff.

Consultancies

There were two consultancy services purchased by the OPA in the 1999-2000 financial year:

- SERA Consulting was paid a total of \$5,371 for staff counselling services and the facilitation of planning strategies.
- Sue Hemmings was paid \$325 for the development of position profiling and specifications.

Equal opportunity

The OPA promotes a workplace environment in which the *Equal Opportunity Act 1984* and the *Sex Discrimination Act 1984* are fully supported. The OPA adheres to the policies and procedures of the SA Department of Human Services regarding equal opportunity.

In particular, staff of the OPA is committed to providing a flexible work environment that takes into account family commitments.

Freedom of information

The following information is published as a requirement of Section 9 of the *Freedom of Information Act 1991*.

Structure and functions of the agency – (s9 (2)(a))

A description of the structure and functions of the Office of the Public Advocate as required under s9 (2)(a) is set out elsewhere in this Annual Report.

Effect of agency's function on members of the public - (s9 (2)(b))

The nature of the OPA's work leads to:

- involvement in family/care provider dynamics;
- consultation with government and non-government service providers;
- advice to the public about the provisions of the legislation;
- increased networks for people who have reduced mental capacity and their carers.

Arrangements for public participation in policy formulation - (s9 (2)(c))

The public can participate in agency policy development through the enquiry service and through the provision of feedback and comment at public forums facilitated by the OPA and mentioned elsewhere in this report.

Descriptions of the kinds of documents held by the agency – (s9 (2)(d))

- The OPA Annual Reports - 1994-95 to 1998-99.
- Files relating to investigation and the care of protected persons.
- Administrative files relating to the business operations of the OPA.
- A series of printed resources, including the OPA community pamphlets and information sheets explaining the various orders made by the Guardianship Board and other provisions of the Acts. A list of these brochures is available from the OPA.

Access arrangements, procedures, and points of contact - (s9 (2)(e) & (f))

It is best to discuss an application with the agency prior to lodging a request. Ringing the OPA on (08) 8269 7575 before submitting an application can often help clarify which documents to request. The OPA can provide applicants with an application form.

While FOI aims to provide access to the maximum amount of information possible, a number of exemptions are necessary to ensure that other people's privacy is not unduly invaded, for example documents that would lead to an unreasonable disclosure of another person's affairs.

Amending personal records

Under FOI you may apply to have documents corrected if they are incomplete, incorrect, misleading or out of date. The OPA received one new application under the *Freedom of Information Act 1991* during 1999-2000.

The application was responded to within 45 days. Fees were waived due to financial disadvantage.

The OPA initially withheld the requested information as it was felt to require an unreasonable diversion of the OPA's limited resources.

However, the Ombudsman undertook an external review of the OPA's determination. As a result, all files were made available to the applicants. Due to the conflict in this case, temporary security staff was employed to enable this to occur.

This experience together with the OPA review of administrative functions led to

a review of the OPA's FOI processes. This resulted in the creation of a complying policy, work practices, forms and education sessions for all staff.

All FOI applications can be directed to the FOI Coordinator at:
Office of the Public Advocate
Level 8, ABC Building
85 North East Road
Collinswood SA 5081

Occupational health and safety

The OPA is committed to the policies and best practice principles of the SA Department of Human Services in relation to the occupational health and safety of the working environment.

Attention has been given this year to the training of management and staff representatives in occupational health and safety, the legislation, the formation of committees and regular feedback to staff at fortnightly staff meetings.

Strategies were adopted to reduce the work pressures that resulted in a compensation claim in 1998-99 that carried over into this year. For that injury, a total of 27 weeks of work was lost at a cost of \$18,427.

There were two incident reports made in the 1999-2000 period. Neither of these incidents resulted in a Workcover claim.

Overseas travel

The Public Advocate travelled overseas during 1999-2000 to Singapore to attend the Fourth International Conference of Public Trustees and Public Guardians at a total cost of \$2,572.

Staff development and training

An increased commitment to staff development during the 1999-2000 financial year saw expenditure increased to a total amount of \$11,011.

In carrying out their legislative responsibilities, the OPA staff identifies key areas to pursue in their professional development. All the OPA staff is encouraged to attend a professional development program or course annually. A budget is reserved for this purpose each financial year.

The range of activities funded by the OPA for staff development in 1999-2000 was:

- Australian Institute of Public Administration *Shaping the Public Sector* seminar;
- International Conference of Public Trustees and Public Guardians;
- *Intellectual Disability and the Law* conference;
- Certificate in Management and Organisational Leadership;
- *Ethics and Accountability* seminar;
- *Home Sweet Home 2000* conference;
- *Attachment in the Early Years* seminar;
- *Leading and Managing* seminar;
- GST training;
- Occupational health and safety training for representatives and managers;
- Certificate IV in Assessment and Workplace Training;
- Council on the Ageing seminar;
- Computing training courses;
- Business Writing Skills;
- Law Society seminar *Public Sector Lawyers*;
- HIDC Influential Leadership;
- National Palliative Care Conference.

Employment issues

Public Sector Management Act employees by stream, level, appointment type and gender									
STREAM	Ongoing			Contract			Total		
	M	F	Total	M	F	Total	M	F	Total
Administrative									
ASO1	1		1				1		1
ASO2		1	1					1	1
ASO3	1		1				1		1
ASO4		1	1					1	1
ASO5		1	1					1	1
ASO6									
ASO7		1	1					1	1
Total	2	4	6				2	4	6
Professional									
PSO1					2	2		2	2
PSO2		3	3					3	3
Total		3	3		2	2		5	5
Executives									
EL1				1		1	1		1
Total				1		1	1		1
Total all streams	2	7	9	1	2	3	3	9	12

Leave management - OPA sick leave			
Financial year	Total days leave	FTE	Average days leave
1999-2000	34.5	10.16	3.4
1998-99	47.5	9.5	5

Financial report

The Office of the Public Advocate operates as part of the Disability Services Office (DSO), a division of the SA Department of Human Services.

The financial operations of the OPA are consolidated into and reported with the financial statements of the DSO. These financial statements are audited annually as part of the audit of the DSO and are reported in the Department of Human Services Country and Disability Services Division Annual Report.

After due consideration of the requirements of Treasurer's Instruction 19 Relating to Financial Reporting, and Statement of Accounting Concepts (SAC) 1, *Definition of the Reporting Entity*, the OPA has determined that it is unlikely that there will be any users dependent on general purpose financial reports as a basis for decision making. The relationship with the OPA's sole financial stakeholder (the DSO) is such that it can command specific purpose reports.

Further, the OPA considers that the cost of providing detailed general purpose financial reports in accordance with generally accepted accounting principles far outweighs any benefit that may be derived by users.

Accordingly, as prescribed in SAC 1, the OPA has decided that there is no requirement to produce such reports.

This Annual Report has been prepared principally to satisfy the reporting requirements under Section 24 of the *Guardianship and Administration Act 1993*. This provision carries no requirement to furnish financial information of any kind.

On this basis, full general purpose financial reports are not provided as part of this Annual Report. The OPA's financial report is therefore provided in the form of the following budget summary:

Budget summary			
Description	1999-2000 Actuals	1999-2000 Budget	Variations from Budget
Salaries and Wages	542,631	538,106	4,525
Administration Expenses	51,828	32,817	19,011
Building/Accommodation	69,378	67,200	2,178
Equipment/Vehicles	22,924	18,300	4,624
Other Goods and Services	25,465	16,600	8,865
Revenue	- 441		- 441
Total	711,785	673,023	38,762

Variations explanatory statement

The financial report indicates that the OPA exceeded its budget by the amount of \$39,203. Explanations for major expenditure variations are as follows:

- **Salaries and Wages**
This additional expenditure was due to workload levels which required additional agency support during the year, despite the OPA seeking cost free resources in administrative projects and leaving positions temporarily vacant for as long as possible. This reflects the fact that basic establishment staffing levels are insufficient to meet current workload requirements.
- **Equipment/Vehicles**
The grant provided for the implementation of the new CME information system was not sufficient to meet additional computer hardware requirements.
- **Other Goods and Services**
Greater community awareness resulted in increased printing and distribution costs for all of the OPA publications. In addition, an unplanned Human Resources consultancy added considerably to staff development expenditure.

Detailed expenditure report

The following table provides a detailed breakdown of expenditures incurred in 1999-2000.

Detailed expenditure report			
Salaries and Wages	Salaries	542,631	542,631
Administration Expenses	Workers Compensation & Rehabilitation	3,472	
	Postal	9,197	
	Printing	14,943	
	Stationery	2,659	
	Advertising	671	
	Travel	6,578	
	Staff Development	10,664	
	Publications & References	3,644	51,828
	Building/Accommodation	Rent	49,333
Cleaning		2,266	
Electricity		1,800	
Telecommunications		15,979	69,378
Equipment/Vehicles	Computer Costs	8,641	
	Equipment	3,747	
	Motor Vehicles	10,536	22,924
Other Goods and Services		25,465	25,465
Revenue		- 441	- 441
Total		711,785	711,785

Glossary

Administration is a way of legally appointing a responsible person to make financial, property and related legal decisions on behalf of a person who cannot make these decisions in a considered way because of reduced mental capacity. An Administration Order is made by the Guardianship Board and gives a person, such as a family member, friend, or an organisation, the authority to make decisions regarding financial matters.

Appeal rights exist against all Guardianship Board orders. Some orders require leave (permission) to appeal; others have an appeal process as of right. Appeals against Guardianship Board orders are made to the Administrative and Disciplinary Division of the District Court.

Board order refers to the official legal determination of the Guardianship Board.

Enduring Power of Attorney is a legal document that a person makes when he or she has mental capacity, to appoint someone trusted to make all, or some, financial decisions should capacity diminish in the future. This arrangement is made by private citizens and does not involve the Guardianship Board.

Enduring Power of Guardianship is different from an Enduring Power of Attorney. Enduring Power of Guardianship is a legal document that a person makes when he or she has mental capacity, to appoint someone trusted to make health and lifestyle decisions should capacity be lost in the future. Like Enduring Power of Attorney, this arrangement is made by private citizens and does not involve the Guardianship Board. Enduring Guardianship provides the means to alert others to your personal wishes when you can no longer speak for yourself.

Guardianship is a way of legally appointing a substitute decision maker for someone who cannot make all, or some, personal decisions due to reduced mental capacity. A Guardianship Order is made by the Guardianship Board and gives a person (the guardian) the authority to make decisions in health and/or lifestyle matters. Where it is necessary to appoint a guardian, and there is no family member or friend suitable or willing to be appointed, the Board will appoint the Public Advocate as guardian of last resort.

Interested parties refers to any person who has a personal or professional interest in the outcome of an application to the Guardianship Board.

Mental incapacity is defined in the *Guardianship and Administration Act 1993* as:

'...the inability of a person to look after his or her own health, safety or welfare or to manage his or her own affairs, as a result of-

(a) any damage to, or any illness, disorder, imperfect or delayed development, impairment or deterioration, of the brain or mind; or

(b) any physical illness or condition that renders the person unable to communicate his or her intentions or wishes in any manner whatsoever.'

Protected person is the person for whom a Board order has been made.

Review refers to the Guardianship Board's capacity to reassess a prior decision in the event that new information or a change in circumstances becomes evident.

Guardianship Standards

These OPA Guardianship Standards provide the means whereby people under guardianship and other stakeholders can understand what to expect about how guardianship decisions will be made by the OPA staff.

1.0 The first Guardianship Standard is to provide information.

In providing information, the Office of the Public Advocate (OPA) will meet the following standards.

- 1.1 The delegated OPA guardian will forward information or contact the person under guardianship (where appropriate), the applicant and significant others, about the appointment and the role of the Public Advocate as guardian. This will happen within one week of allocation to the delegated OPA Officer.
- 1.2 The Office of the Public Advocate will ensure that information is made available about:
 - the role of the Public Advocate as guardian;
 - the principles of the *Guardianship and Administration Act 1993*;
 - information about substitute consent to medical or dental treatment;
 - the Public Advocate's decision making powers in relation to a person;
 - how a person can make a complaint or have a decision reviewed, including internal grievance procedures and FOI requests;

This information will be provided by the delegated Officer and, where appropriate, will be provided in pamphlet form.

2.0 The second Guardianship Standard is to seek views.

In seeking views, staff making guardianship decisions will meet the following standards.

- 2.1 Seek, and take into account, the views of the person when making major guardianship decisions. The Officer may do this during a visit, by talking on the telephone with the person, or by arranging for an independent representative to seek the person's views.
- 2.2 Seek the reasons for, and take account of, the protected person's objections to a proposed course of action. Before taking a decision against the person's wishes the Officer will evaluate the suitability of other less restrictive alternatives that meet the person's needs.
- 2.3 Seek and evaluate the views of significant people involved with the person when making major guardianship decisions.

- 2.4 Seek and consider the recommendations of health care professionals and other service providers involved with the person when making major guardianship decisions.
- 2.5 Visit the person within one month of the Guardianship Order being made, if that order will last for three months or more, or as soon as possible if the order is made for a shorter period of time. Further visits and contact will occur, as necessary, to assist the guardian in supporting and promoting the person's welfare and interests throughout guardianship.

3.0 The third Guardianship Standard is to record information.

In recording information, staff making guardianship decisions will meet the following standards.

- 3.1 Record consents, medical or other, including any time frames or conditions in the person's case notes.
- 3.2 Record the significant details of all contacts made, and decisions taken, in relation to the guardianship of the person.
- 3.3 Record the reasons for those decisions identified as decisions for ratification by the Public Advocate. Ensure that the reasons for the decision/s are well documented including the key facts, relevant views and the delegated Officer's reasoning.
- 3.4 Keep statistical data on all guardianship decisions; on contacts made with the person who is the subject of the order and other interested parties.
- 3.5 Ensure that all information about clients is kept private and confidential.

4.0 The fourth Guardianship Standard is to make decisions.

In making decisions relating to a Guardianship Order, staff will meet the following standards.

- 4.1 Be familiar with the details of the current Guardianship Order when exercising the authority of the Public Advocate.
- 4.2 Make decisions only within the authorities included in the current Guardianship Order.
- 4.3 Treat as urgent matters that involve a threat to the person's safety, where the person is at risk of becoming homeless, or where there is a danger to the person's health and well being, or where the person poses a threat to others.
- 4.4 Make decisions in line with the OPA policies relating to guardianship, and in accordance with the principles of the *Guardianship and Administration Act 1993* and the *Mental Health Act 1993*.
- 4.5 Take into consideration any specific cultural or religious matters relating to the person when making decisions.
- 4.6 Within one month of the Officer receiving the order, work with key people towards the development of a Guardianship Plan for the person.

- 4.7 Respond to requests for consent to medical and dental treatment as soon as practicable.
- 4.8 Review each file at least every six months. This review will be conducted with the Officer's supervisor.
- 4.9 Seek directions from the Guardianship Board under Section 74 of the Act where:
- there is strong and persistent opposition to a guardianship decision over a long period of time;
 - the guardian believes an interested person has the right to express irreconcilable dissatisfaction with a guardian's decision and formal objection to the Board is warranted;
 - where there is conflict between relatives/significant others which the guardian cannot reconcile;
 - this approach is the last resort in an attempt to reach a definitive decision in a highly complex or controversial matter.

5.0 The fifth Guardianship Standard is to participate in Guardianship Reviews.

When participating in Guardianship Reviews, staff will meet the following standards.

- 5.1 Wherever possible, visit the person who is the subject of the review to ensure that their health and welfare needs are being met.
- 5.2 Request a review of the current Guardianship Orders if the guardian believes that the current orders are no longer promoting or safeguarding the interests of the person.
- 5.3 Recommend the making of further Guardianship Orders with particular functions and time limitations, only if there is evidence that the person currently needs decisions made for them in those areas.
- 5.4 Provide a written report concerning a Guardianship Review hearing to the Guardianship Board at least five days prior to the hearing (where possible).

6.0 The sixth Guardianship Standard is professional development.

To ensure ongoing professional development, staff making guardianship decisions will meet the following standards.

- 6.1 Attend weekly guardianship team meetings to discuss guardianship cases, allocation of guardianship files, monitoring of case load management and to discuss any other matters relating to guardianship.
- 6.2 Staff to have access to appropriate supervision and relevant policies that relate to their work.
- 6.3 Attend a minimum of twenty hours a year of continuing education on guardianship related matters.