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30 September 1996

The Hon Dr Michael Armitage MP  
Minister for Health,  
Minister for Aboriginal Affairs  
PO Box 3141  
Rundle Mall,  
**ADELAIDE SA 5000**

Dear Dr Armitage

I have much pleasure in forwarding to you the second Annual Report of the Public Advocate. This report covers the period from 1 July 1995 to 30 June 1996. This report, unlike the one presented to you last year, the inaugural year with the new *Guardianship and Administration Act 1993* proclaimed on the 6 March 1995, covers a full year of work by the Public Advocate and staff of the Office of the Public Advocate.

It has been a rewarding and challenging year as we have worked to improve our operations under the Act, develop a better understanding of guardianship and establish a higher profile for the legislation and its benefits for both the general public and members of the medical and other health professions. I have also been very concerned about the growth in the appointment of the Public Advocate as *guardian of last resort*. More will be said about this in the report.

I would like to extend my appreciation to the members of my staff. All have worked very hard to ensure timely advice and assistance to people who phone or personally visit the OPA, usually when a crisis has occurred within their family.

I would also like to thank all of those people, in an ever widening circle in our state, who have assisted the OPA during the year. The assistance has all been directed towards meeting the requirements of the *Guardianship and Administration Act 1993* and the *Mental Health Act 1993* and the benefits which can flow for people with mental incapacity and their carers.

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**JOHN DAWES**  
**PUBLIC ADVOCATE**



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## **TERMINOLOGY**

**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/s (the guardian/s) 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*.

**ENDURING POWER OF GUARDIANSHIP** is a legal document which 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. 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.

**ADMINISTRATION** is a way of legally appointing a responsible person to make financial/property and certain 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 or friend, or an organisation the authority to make decisions regarding financial matters.

**ENDURING POWER OF ATTORNEY** is different to Enduring Power of Guardianship. Enduring Power of Attorney is a legal document which 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. The Office of the Public Advocate is aware of, and on occasion has acted, in instances where impropriety on the part of the enduring attorney is evident. Some people have lost their homes and all financial security due to the unscrupulous dealings of the attorneys they have appointed. This form of abuse is of great concern.

**BOARD ORDER** refers to the official legal determination of the Guardianship Board.

**THE PROTECTED PERSON** is the person for whom a Board Order has been made.

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

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

**APPEAL** rights exist against all Board Orders. Some Orders require seeking leave (permission) to appeal, others have an appeal process as of right. Appeals against Guardianship Board Orders are made to the Administrative Appeals Court, a division of the District Court.

**MENTAL INCAPACITY** is defined in the *Guardianship and Administration Act 1993* as meaning 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.

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## **PUBLIC ADVOCATE'S REPORT**

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Since 1 July 1995 there have been a number of significant achievements for the Office of the Public Advocate.

Staff, in attempting to meet the requirements of the *Guardianship and Administration Act 1993* and *Mental Health Act 1993*, have had to be imaginative and flexible as they have all been challenged by very complex and entrenched situations, often involving conflict and moral and ethical issues surrounding many people with mental incapacity.

Significant issues include the widening definition of 'mental incapacity', guardianship, sterilisation, and the alarming incidence of abuse, neglect and exploitation by family and community members against people who have reduced mental capacity.

Evolving changes in family and societal norms continue to result in an increasing number of people who have reduced mental capacity living independently or in supported accommodation in the community. As this trend continues there is less occurrence of organisations making decisions for large groups of people. This decision making process is now conducted wherever possible on a one to one basis, preferably with the involvement of families. Where there are no family members, friends or other suitable persons available, the Public Advocate may be appointed as guardian to make necessary decisions on behalf of an adult who has mental incapacity.

It is very clear that the number of guardianship appointments to the Public Advocate outstrip the capacity of the Office to deal as effectively with the associated responsibilities as it should. Over the period of this report, the Guardianship Board has appointed the Public Advocate guardian for 112 people. This reflects the high number of vulnerable people in our community where State involvement in substitute decision making has been deemed by the

Board as warranted. All indications are that this concerning trend will continue.

Sometimes these appointments are appropriate. However, there have been occasions where the Public Advocate has been appointed guardian in an effort to create situational change. Where services are not available or appear to be unsatisfactory, appointing a guardian to 'solve the problem' is rarely the appropriate response.

A continuing issue is the appointment of the Public Advocate as guardian purely for the purpose of applying for Section 32 powers from the Guardianship Board. Section 32 powers provide a guardian with the ability to authorise the use of physical compulsion in every day care and medical treatment or the restraint or detention of a person to a specified place. The Public Advocate's involvement in matters being dealt with adequately by service providers results in little, if any, added benefit to the client.

Section 32 powers require the service providers to be committed to treating the client and being prepared to use force; for example, to involve the police or ambulance service in ensuring the client is presented for his or her treatment. Where the Public Advocate has been appointed guardian for medical consent purposes and has sought and been granted Section 32(c) powers relating to treatment; for example, to ensure a female client receives her regular injection of Depo Provera for contraceptive purposes, hospital staff still have to use force to hold the person down while the injection is given. This is not pleasant work and most distressing to the person concerned.

Other influential trends to impact upon OPA's work include projections from the Australian Bureau of Statistics (1994) that the population of both men and women aged 65 years or over is expected to grow substantially over the next 30 years. Proportions of the state's population in the 65, 75 and 85 and over age groups will

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remain above the average Australian levels to 2021.

With this in mind, there is an obvious need for all of us to become more aware and self reliant in planning for the future. Completing advance directives is one way to achieve this. The *Enduring Power of Guardianship: A 'Do It Yourself' Kit*, whilst essentially a product of the Office of the Public Advocate, was produced collaboratively with the Legal Services Commission of South Australia, Information SA and the Department of Environment and Natural Resources-Lands Titles Office.

Enduring Power of Guardianship allows you (if you are over 18) to appoint a person/s to make personal decisions, such as medical and lifestyle decisions, on your behalf should you lose the ability to make your own decisions in the future.

This new community legal resource is designed to complement the *Enduring Power of Attorney: A 'Do It Yourself' Kit* which deals with financial decisions.

Another significant event was the Fourth National Guardianship and Administration Conference held in Adelaide on 18-20 October 1995. This conference was jointly hosted by the Office of the Public Advocate, the Guardianship Board and Public Trustee. Over 120 people attended, including a number of interstate visitors and a representative from New Zealand. This highly commended conference was again an example of the way in which the Office of the Public Advocate works collaboratively with other agencies to achieve desired outcomes.

The Public Advocate is currently supported by the Assistant Public Advocate, 2.8 FTE professional officers, 1.5 FTE education unit staff and 3 FTE clerical officers. It is only through the dedication of the staff to the clients they service, that the achievements outlined in this report came to fruition and the challenging issues which are identified were followed through.

**John Dawes**  
**PUBLIC ADVOCATE**

The Attorney-General launched the new kit at a seminar for guardians held in May during Law Week. These events reflect only a small proportion of the outcomes achieved by the Office of the Public Advocate since 1 July 1995.

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## **LEGISLATIVE AUTHORITY**

The Office of the Public Advocate takes its legislative authority from the *Guardianship and Administration Act 1993* and the *Mental Health Act 1993*. These laws came into effect at proclamation on 6 March 1995. Other legislation which is relevant to the work of the Office of the Public Advocate includes:

### **COMMONWEALTH**

*Human Rights and Equal Opportunity Commission Act 1986*

*Family Law Act 1975*

### **STATE**

*Criminal Law Consolidation Act 1935*

*Disability Services Act 1993*

*Freedom of Information Act 1991*

*Powers of Attorney and Agency Act 1984*

*Aged and Infirm Person's Property Act 1919*

*Supported Residential Facilities Act 1992*

*Child Protection Act 1993*

*Consent to Medical Treatment and Palliative Care Act 1995.*

## **PUBLIC ADVOCATE**

Mr Maurice John Dawes (called John)  
BA, Dip Soc Stud, Dip Crim (Melb)  
GAICD, FAIM.

## **ACCOUNTABILITY**

The Public Advocate is an independent statutory official.

The Office of the Public Advocate is a program of the Minister for Health, currently Dr Michael Armitage, Minister for Health and Aboriginal Affairs. The responsible funding body is the South Australian Health Commission via the Disability Services Office.

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

Under this Act, the Office of the Public Advocate is required to submit an annual report on the year's activities to the responsible Minister by the 30 September. The Public Advocate declares that for the period of this report, no7 ssue of warrant under the *Guardianship and Administration Act 1993*, Section 24(2) has been sought by the Public Advocate.

## **TWO SEPARATE AGENCIES**

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**The Office of the Public Advocate (OPA)** is independent of the Guardianship Board. The OPA provides information and advice pertaining to guardianship and mental health law, undertakes investigations and accepts appointment as *guardian of last resort* by the Guardianship Board when no-one else is suitable or willing to be appointed in this role. Advocacy is an intrinsic component of the work of the OPA.

**The Guardianship Board** conducts hearings and determines whether a person's right to make decisions for himself or herself should be taken away because mental incapacity is affecting the person's ability to make safe and considered decisions or because others are placing the person's interests secondary to their own leaving the person at risk of abuse, neglect and/or exploitation. The Board also reviews orders which have previously been made.

## **PURPOSE**

The Office of the Public Advocate has as its primary goal *the promotion and protection of the rights and interests of people with reduced mental capacity and, where appropriate, their carers.*

For many people in South Australia, the ability to make independent decisions on matters affecting their own lives may be impaired by:

- Intellectual Disability
- Dementia, eg Alzheimers
- Severe mental illness
- Acquired brain injury
- Other conditions that may result in a person being unable to communicate his or her wishes in any way.

The Office of the Public Advocate believes:

- That decisions made on behalf of a person with reduced mental capacity should be as close as practicable to the decision that would have been made had the person retained his/her full capacity.
- Recognising people's potential and capacities should be the focus, not their incapacity or condition.
- Arrangements made by family and friends to provide quality care and protection (when needed) should be respected and promoted, particularly when it increases independence and enhances a person's potential.
- The decisions made on behalf of a person should be the least restrictive of freedom and personal choice, and take into account the person's present wishes.

## **LOCATION**

The Office of the Public Advocate is located at:



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Level 8, ABC Building  
85 North East Road  
COLLINSWOOD SA 5081

Phone: (08) 8269 7575  
Fax: (08) 8269 7490  
Toll Free: 1800 066 969

## **GENERAL FUNCTIONS**

Section 21 of the *Guardianship and Administration Act 1993* states:

21 (1) The functions of the Public Advocate are:-

(a) to keep under review, within both the public and the private sector, all programmes designed to meet the needs of mentally incapacitated persons;

(b) to identify any areas of unmet needs, or inappropriately met needs, of mentally incapacitated persons and to recommend to the Minister the development of programmes for meeting those needs or the improvement of existing programmes;

(c) to speak for and promote the rights and interests of any class of mentally incapacitated persons or of mentally incapacitated persons generally;

(d) to speak for and negotiate on behalf of any mentally incapacitated person in the resolution of any problem faced by that person arising out of his or her mental incapacity;

(f) to give advice on the powers that may be exercised under this Act in relation to mentally incapacitated persons, on the operation of this Act generally, and on appropriate alternatives to taking action under this Act;

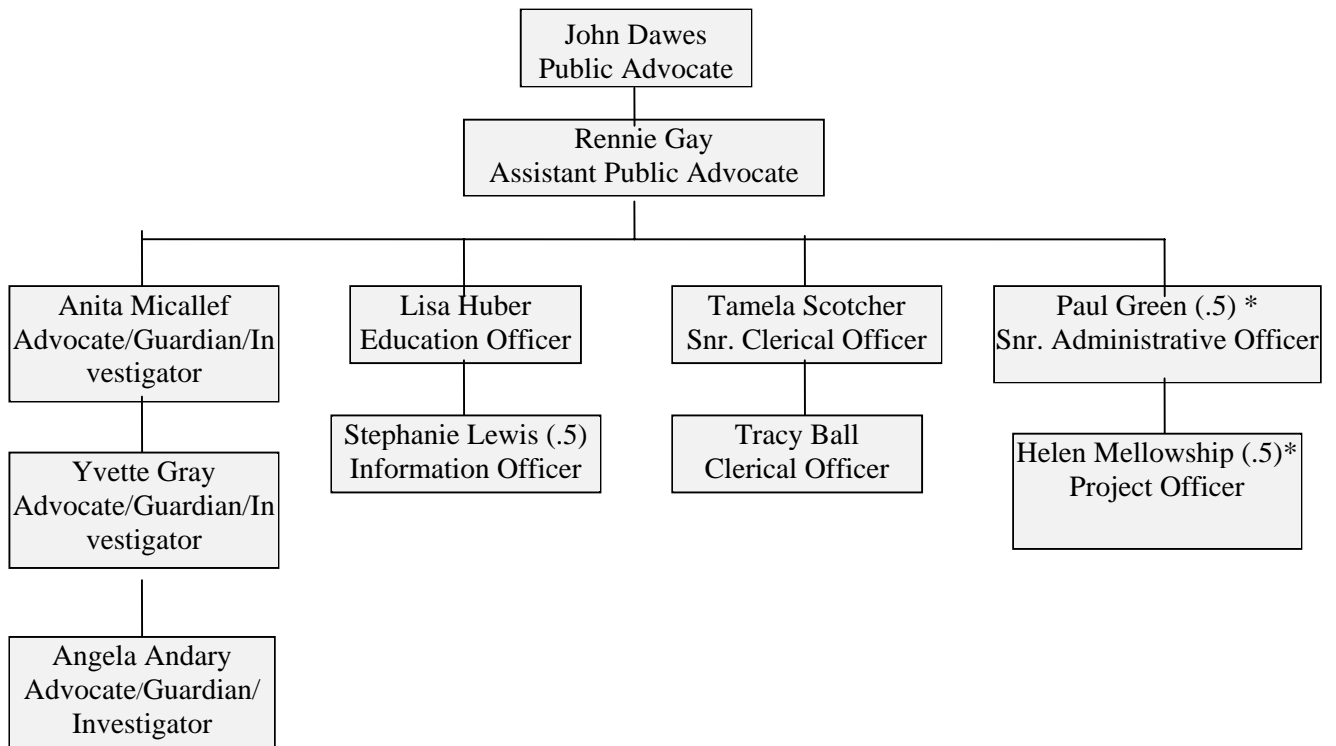
(g) to monitor the administration of this Act and, if he or she thinks fit, make recommendations to the Minister for legislative change;

(h) to perform such other functions as are assigned to the Public Advocate by or under this Act or any other Act.

21 (2) In performing his or her functions the Public Advocate is not subject to the control or direction of the Minister.

(e) to give support to and promote the interests of carers of mentally incapacitated persons;

**ORGANISATIONAL STRUCTURE OF THE OFFICE OF THE PUBLIC ADVOCATE**  
(as at 30 June 1996)

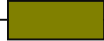


\* Staff in this stream have been shared with the Guardianship Board since proclamation. The OPA has found this to be an unsatisfactory arrangement and negotiations continue to finalise a more appropriate arrangement.

Photo & names

From left to right: (back) Angela Andary, Renni <sup>10</sup>, Todd Geisler, Stephanie Lewis, Lisa Huber  
(front) Tamela Scotcher, Paul Green, Anita Micallef  
(absent) Yvette Gray, Helen Mellowship, Tracy Ball

**SOME 1995-96 HIGHLIGHTS**



Evaluation comments from the 1995 Guardianship and Administration Conference

**“...Academic speakers of high calibre providing ‘cutting-edge’ themes...”**

**“...networking that was broadened to include other organisations...”**

**“Thanks to all of you in SA - a great conference!”**

**“...excellent venue”**

**“Prof. Ian Cox and Max Charlesworth were exemplary as plenary speakers...thought provoking...stimulating”**

**“...too many quality presentations to choose from!!”**

**“Keep format except involve more consumers”**

**“opportunities for Interjurisdictional meetings very worthwhile...”**

**“...They have helped me you know immensely... and ... I’m just really pleased to think that there’s somebody there that can help people like me, you know with my sister...”.**

Caller to 5AA radio discussing her contact with the Office of the Public Advocate with a prominent SA politician special guest.

**Achievements of special note . . .**

- The Office of the Public Advocate, Public Trustee and the Guardianship Board co-hosted the **Fourth National Guardianship and Administration Conference** in Adelaide, October 18-20.
- Production and distribution of the *Enduring Power of Guardianship and Other Future Plans* and *Consent to Medical Treatment for Persons with Reduced Mental Capacity* pamphlets.
- The writing and coordination in producing the *Enduring Power of Guardianship: A ‘Do It Yourself’ Kit*, launched by the Attorney-General, the Hon. Trevor Griffin MLC.
- **Guardianship Advice in Rundle Mall**, for Law Week. A cooperative venture with Public Trustee.
- **‘Making Decisions For Others’** - a seminar for community members, who are formally (ie private guardians) and informally, making decisions for people who have reduced mental capacity. Attended by over 80 people and opened by the Attorney-General.
- Multiple media interviews by the Public Advocate on the issue of sterilisation.
- First issue of the **Public Advocate’s Newsletter** distributed to 700 agencies and individuals.
- Information mail-out to all General Practitioners.

**PROGRAM STRUCTURE AND SERVICES**

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**The Office of the Public Advocate (OPA) is established under the *Guardianship and Administration Act 1993*. The OPA also has responsibilities under the *Mental Health Act 1993*. The OPA's core programs are:**

### ***Guardianship***

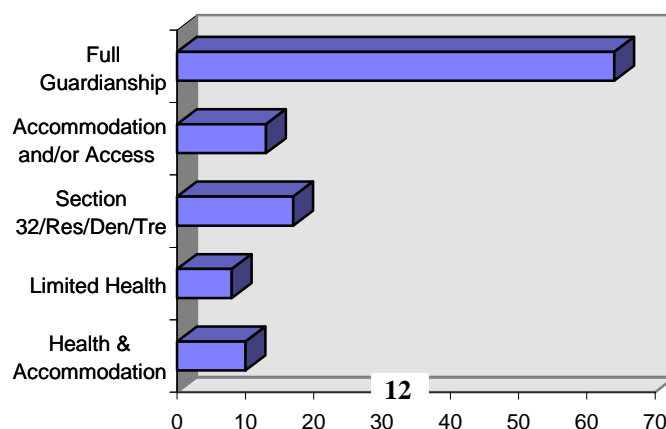
The Public Advocate is obliged by law to accept responsibility for guardianship when the Guardianship Board appoints the Public Advocate as guardian for an adult who has a mental incapacity. In the period July 1995 - June 1996 the OPA was appointed guardian on behalf of 112 people. This represents an average of approximately 10 appointments per month.

There are many varied circumstances which lead to the appointment of the Public Advocate as guardian. The principles of the legislation require that a guardian only be appointed to make **necessary** personal and lifestyle decisions on behalf of the person with mental incapacity.

The nature of guardianship frequently puts a guardian in conflict with family members who disagree with decisions being made on behalf of their loved one. Certain family members may be resentful towards others who they consider have greater influence in the guardian's decision making. A guardian is often involved in prolonged or difficult negotiations with family, carers, health professionals, psychiatric services and other service providers in attempting to make decisions according to the principles of the legislation.

The Public Advocate continues to carry unacceptably high guardianship caseloads, with implications for the responsiveness and benefits to the individuals concerned. In a number of cases, more active case management would provide a less restrictive option to the appointment of a guardian. However, high workloads result in the OPA staff being less able to advocate on behalf of their clients to pursue other options and then prepare the necessary reports to return the case to the Guardianship Board for review.

### **Breakdown of Guardianship Types**



### ***Investigation***



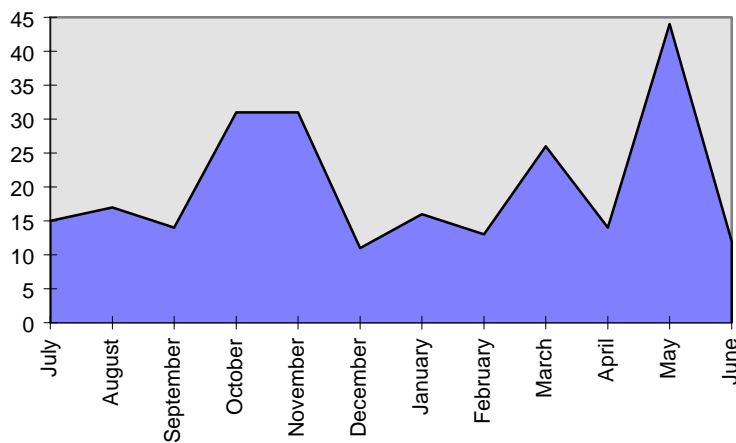
The OPA conducts investigations and prepares reports for the Guardianship Board. These investigations aim to provide accurate and comprehensive information to the Board to assist it make appropriate decisions regarding applications before it.

Investigations may be conducted as a response to an enquiry to the OPA, the need for investigation may be identified prior to a Board hearing, or arise as an outcome of a Board hearing.

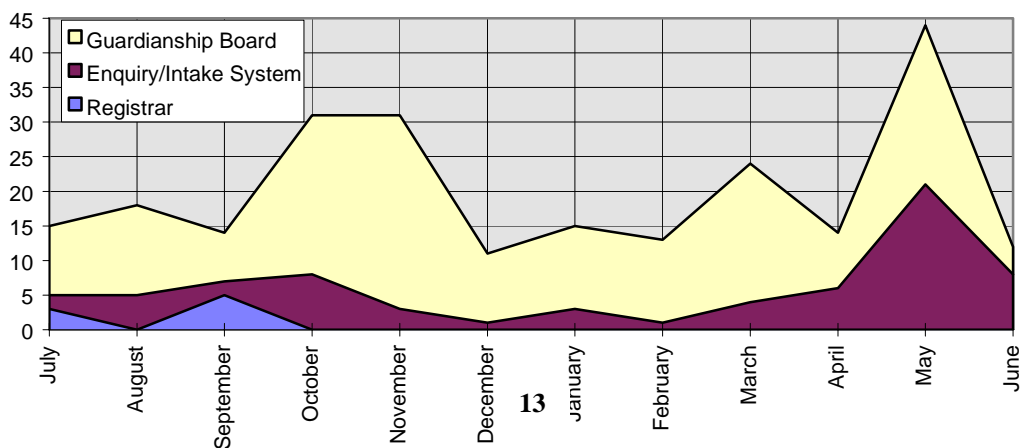
It is the nature of the jurisdiction that potential protected persons are often unable to represent themselves or even express their wishes, or indeed, lack the insight necessary to understand their own circumstances. For these reasons a factual report by the Public Advocate assists the subject of the application by ensuring that all relevant information is placed before the Board.

In the period July 1995 - June 1996, the OPA has undertaken 244 investigations.

### ***Total Investigations 1995-96***



### ***Investigation Referral Type***



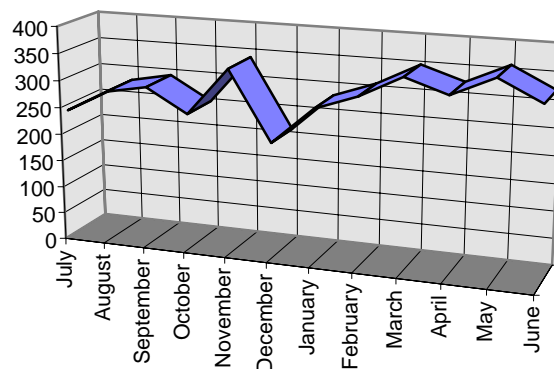
### ***Enquiries***

The Public Advocate provides a specific consultancy service to service providers and consumers regarding particular problems or concerns to do with the wellbeing of someone with reduced mental capacity. The OPA can provide advice and information relating to the

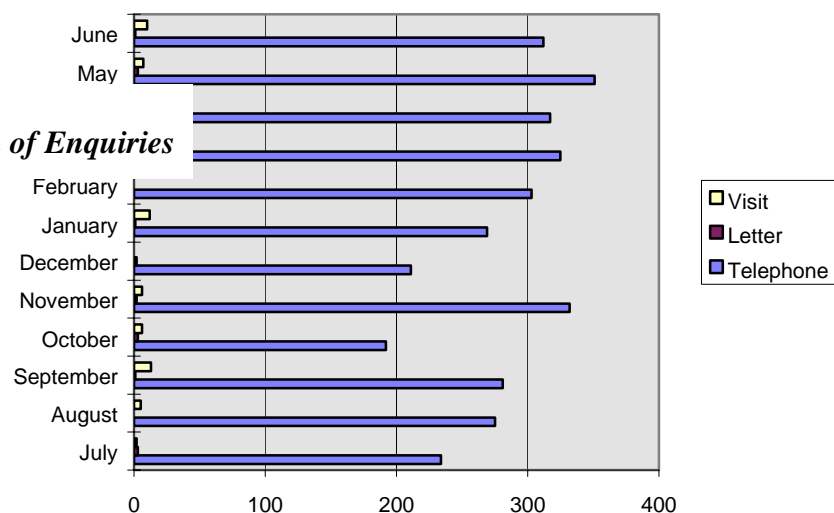
way that guardianship and mental health laws may be of benefit, or where appropriate, seek alternative options to the need for Board orders. Currently five staff share the enquiry duty which is a major component of the work of the OPA. Enquiries have continued to be of a complex nature and therefore require a high level of skill, knowledge and experience by the staff on duty. Before being referred to an enquiry officer, calls are screened by the OPA clerical staff. In addition many calls are transferred from the Guardianship Board where an enquirer has specific information or advice needs. During the period of this report the OPA has provided a 24 hour emergency enquiry service. This arrangement is currently under review by the Public Advocate. The OPA staff believe this service adds little value to the outcomes achieved through the management of crisis situations by those people directly involved and responsible for ensuring a duty of care to the clients concerned. In cases where the OPA has been contacted, there has been little added value in providing yet another level of intervention and additional workload on service providers attempting to negotiate the 'system' in a time of urgency.

In the period July 1995- June 1996, the OPA has undertaken 3570 enquiries. This is an average of 297.5 per month or 74 per week. When further follow up is required the enquiry officer may open a file in order to maintain any consequent documentation.

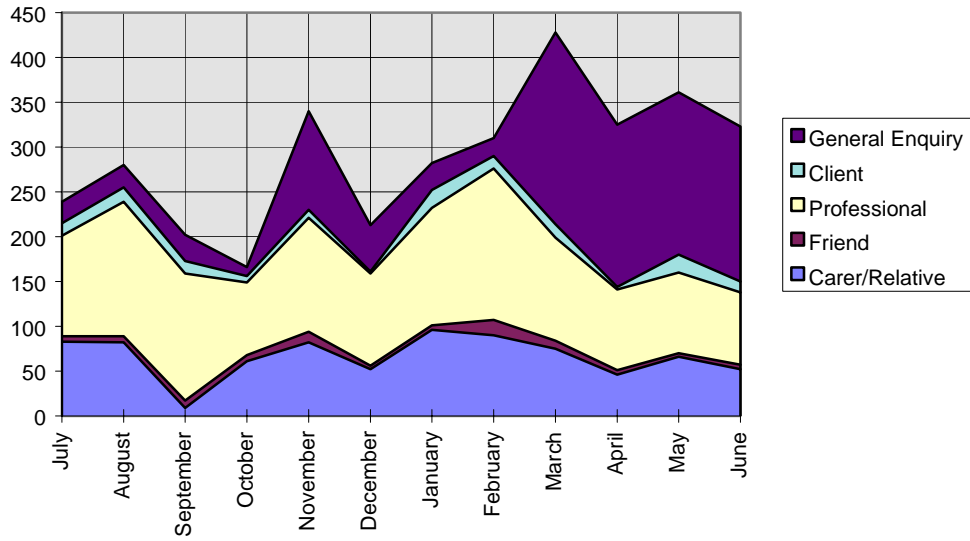
### ***Total Number of Enquiries 1995-96***



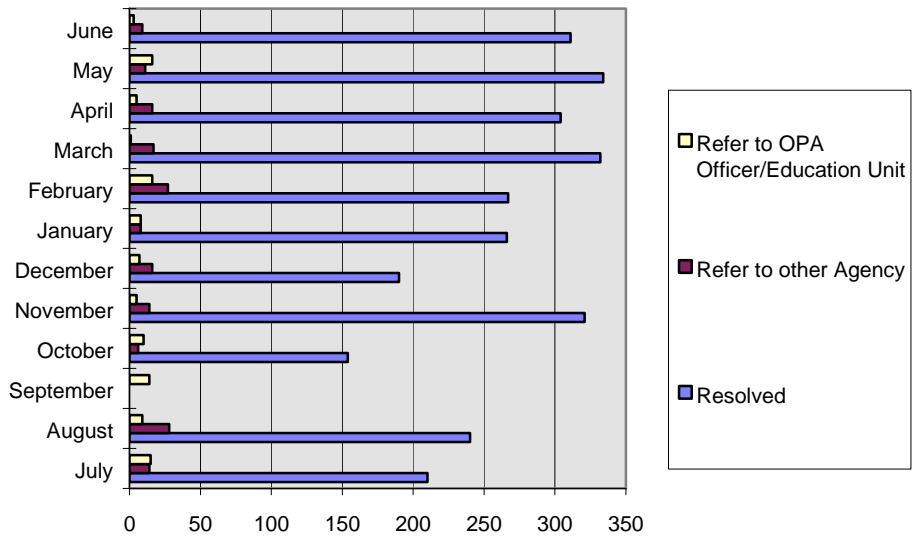
### ***Breakdown of Enquiries***



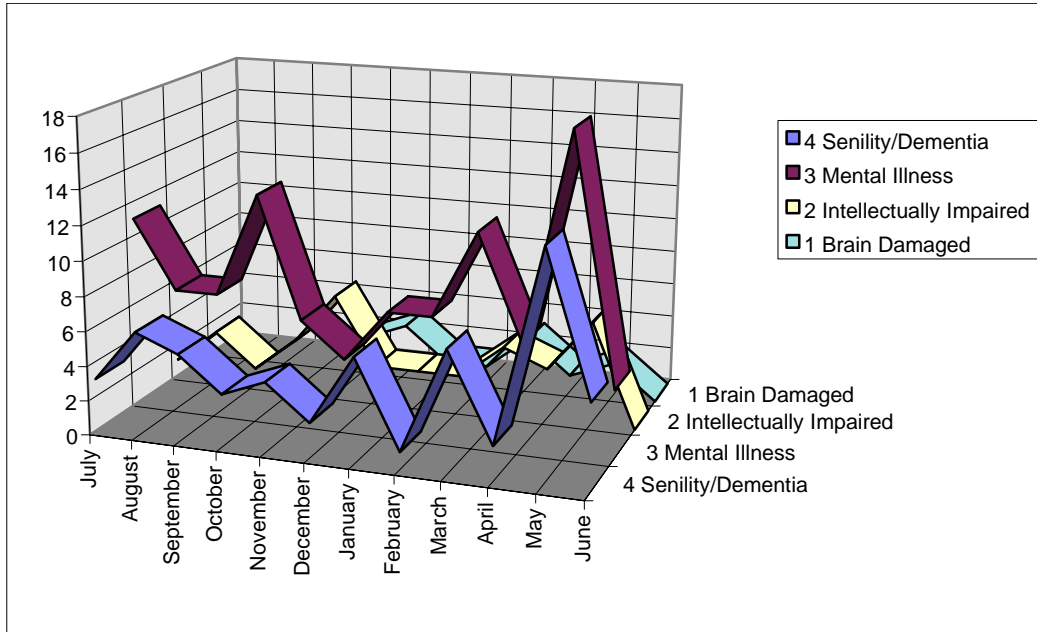
### ***Caller Type***



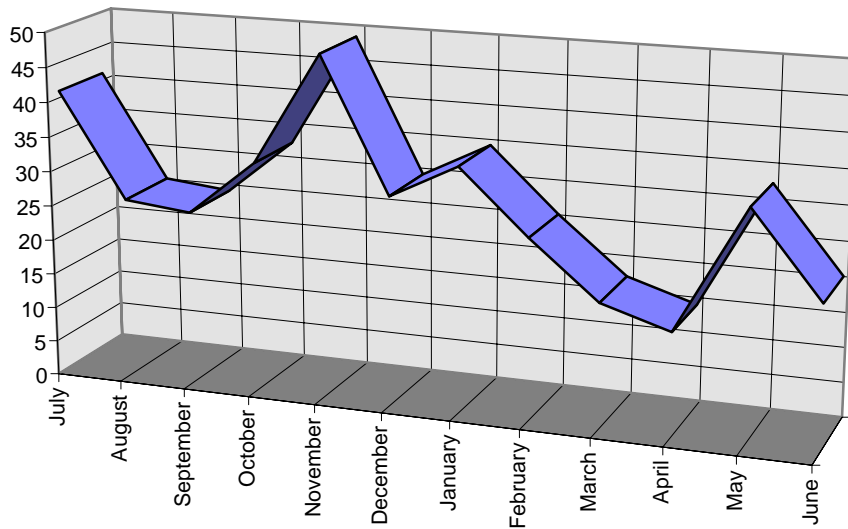
**Outcome of Enquiries**



**Enquiries - Disability Breakdown 1995-96**



**Number of Files Opened for 1995-96**



**Advocacy**

Advocacy is an intrinsic component of all core programs of the OPA’s work. Both individual and systemic advocacy work has been undertaken by all officers working in each of the core



programs. For example, the OPA undertook to encourage the Guardianship Board to produce the Statements of Appeal Rights for people affected by Board Orders, to ensure that people were informed of their rights regarding appeals against Board Orders. The OPA was concerned that the resultant forms, a legislative requirement, only became available 15 months after proclamation.

The Public Advocate is frequently approached to be involved in advisory groups and management committees. Many of these meetings provide the opportunity to promote systemic advocacy issues. The resources available to the Public Advocate restrict the amount of participation in such groups. However the Public Advocate's involvement includes:

- Prospect Council Reference Group - *Supported Residential Facilities Act 1992*. The objectives of this group included recognising and protecting the rights of residents, setting out the responsibilities and level of accountability of service providers, and ensuring information enabling informed choice is available to residents, through the administration and enforcement of the Act in the Prospect area.
- Towards Normalisation Committee. This committee, established by the Attorney-General in 1993, was chaired by Judge C R Lee. The role of the committee was to advise the Attorney-General on the problems faced by people with a mental incapacity (intellectual disability) in dealing with the criminal justice system. A report was produced entitled *Towards Normalisation: People with Intellectual Disability involved in the South Australian Criminal Justice System*.

The Public Advocate has continued his involvement in considering the establishment of an Independent Third Person Program and maintained a working relationship with the project officer concerned.

- Working Party on Mandatory Reporting of Abuse of Adults with Disabilities. This group produced a report recommending that reporting of all suspected abuse, neglect and exploitation of adults with a disability be mandatory for all service agencies providing residential or other services for adults with a disability. The report, which also makes another 30 recommendations, is currently with the Minister for Health.
- Sterilisation of People with Intellectual Disability. IDSC, in developing a draft issues paper, sought consultation with the Public Advocate about key issues and information as to the outcomes of sterilisation applications lodged with the Guardianship Board since proclamation.

## ***Education***

The Public Advocate has established an education unit to promote a greater awareness and understanding of the issues and legal implications of guardianship, administration and mental health treatment amongst key professionals, service providers and in a broader context, within

the general community. The unit is comprised of the Education Officer (1.0 FTE) and from the 29 January 1996, an Information Officer (0.5 FTE).

**The aim of the OPA Education Unit is to...**

Provide advice and information regarding the powers that may be exercised under the *Guardianship and Administration Act 1993* and the *Mental Health Act 1993*.

**1995-96 Education Unit Performance Indicators**

There are three groups of activities undertaken by the Education Unit:

1. Provision of information sessions
2. Planned education activities
3. Additional activities and responsibilities.

**1. Information sessions provided**

In the period from July 1995 - June 1996, the Education Unit has provided 76 information sessions. Direct contact was made with 2092 people, with an average of 28 contacts per session. Seven sessions were provided in country locations to a total of 298 people.

Target Group	No. of sessions 94-95	No. of sessions 95-96	No. of contacts 94-95	No. of contacts 95-96
Professional/ Service providers	24	36	1130 - av. 47 contacts per sess.	1033 - av. 29 contacts per sess.
Carers/consumers	23	33	471 - av. 20 contacts per sess.	761 - av. 23 contacts per sess.
Country sessions	6	7	215 - av. 35 contacts per sess.	298 - av. 43 contacts per sess.
<b>TOTALS</b>	<b>53</b>	<b>76</b>	<b>1816</b>	<b>2092</b>

**The OPA provides educative services to a wide range of service providers including:**

Disability sector, SAMHS, multicultural sector, financial counsellors, Justices of the Peace, local councils, hostel owners, key nursing organisations, country lawyers, aged care sector, etc.

The OPA is committed to promoting equitable access to consumers who may find negotiating the various systems to access accurate information about the legislation difficult. Contacts included:

Private industry care providers, carers of people who have dementia, relatives and friends of people who have reduced mental capacity, private guardians, enduring guardians, carers of people who have a mental illness, etc.

The OPA's ability to adequately resource country regions is limited. The provision of country information sessions needs to be given a higher priority in 1996-97.

Country areas visited:	
1994-95	1995-96
Whyalla	Clare
Port Augusta	Wudinna
Wudinna	Fleurieu Peninsula
Berri	Murray Bridge x2
Maitland	Rural counsellors
Mount Gambier	Walleroo

70.5 % of the target groups identified for 1995-96 education strategic plan were met, or met in part, through the enquiry service and/or information and education activities.

Target groups identified for 1995-96	Target groups identified for 1996-97
Consumers/carers	Consumers/carers
Accountants	Local government
Lawyers	Self help groups
Banks/credit unions	Private health insurers eg Mutual Community
Financial counsellors	Real estate agents
Aboriginal health	Land brokers
Social Security	TAFE courses
Real estate institute	AIDS Council
Land brokers	Gay and Lesbian groups
Nursing peak bodies	Consider aboriginal needs
Nursing homes	RAA
Hostels/boarding houses	Hostels/boarding houses
Trustee companies	Nursing peak bodies
Private health companies	NESB Groups
Tertiary institutions	Tertiary students
Australian Psychology Society	Nursing homes
NESB Groups	Hospitals

## 2. Planned education activities

1994-95 First Annual Report from the Public Advocate submitted to the Minister of Health by 30 September 1995 - consequently tabled in Parliament.

One hundred and twenty people from interstate and New Zealand attended a well organised and highly commended national conference in Adelaide.

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Pamphlets titled *Enduring Power of Guardianship and Other Future Plans* and *Consent to Medical and Dental Treatment for Persons with Reduced Mental Capacity* were completed in March 1996 and distributed to hundreds of key agencies and individuals.

*Enduring Power of Guardianship: A 'Do It Yourself' Kit* completed and printed in May 1996. Launched by the Attorney-General. 3 key contributors:

- OPA
- Information SA
- Legal Services Commission

An ASO4, part-time, 12 month contract Information Officer position was created for the Education Unit. Stephanie Lewis began 29 January 1996. The Information Officer has produced the first OPA newsletter and updated a number of the OPA information pamphlets.

The successful 'Making Decisions For Others' community seminar was opened by the Attorney General. 80 people attended. Evaluation was very positive.

Funding grant obtained from the Law Foundation for seminar costs.

Projected - \$1478.60

Actual - \$1454.17

Mail-out to 2840 General Practitioners in South Australia to update knowledge of the consent laws for people who have reduced mental capacity.

### **Evaluation comments from participants attending the 'Making Decisions For Others' community seminar, 16 May 1996.**

"... Discussion about *substituted judgement* vs *best interests* and advance directives was most useful."

"It was terrific to see private guardians represented on the discussion panel..."

"The information folder is an excellent resource for people who are considering accepting appointment as guardian."

"...Diversity of questions was thought provoking."

"John Dawes' visual aids were most entertaining!! (ie the 2 'thinking hats')"

"It put things into place and allowed issues to be worked through..."

"Useful to understand the difference between Enduring Power of Attorney and Enduring Power of Guardianship."

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Photo of EPG Kit Launch

At the launch of the *Enduring Power of Guardianship: A 'Do It Yourself' Kit*, held during Law Week, 15 May, 1996.

From left, The Hon. Attorney-General Trevor Griffin MLC, writer Lisa Huber, Education Officer and John Dawes, Public Advocate.

### 3. Additional activities

- Written responses to external agencies on matters relating to the legislation. Approximately 22 responses including SA Voluntary Euthanasia Society, Elder Protection Program, Legal Services Commission and South Australian Health Commission.
- Orientation program facilitation.
- Staff development facilitation.
- Enquiry duty.
- Production of a referral list of lawyers who specialise in adult guardianship matters.
- Revision of a document from the OPA (Victoria) entitled *Before you Lodge an Application for Guardianship or Administration at the Guardianship Board* for distribution to people considering applying to the Board.
- Streamlining the office's method of recording information about Administrative Appeals Court (AAC) appeals.
- Beginning to research new technology for the office for the purposes of information dissemination and research.
- Beginning development of adequate information relating to sterilisation and prescribed treatment.

#### Committee/Group responsibilities

- Advocacy Course Advisory Group auspiced by Disability Action Inc.
- Elder Protection Program Advisory Group
- Guaranteed Care Project Committee
- Law Week Committee
- Welfare Rights Centre SA Inc. Management Council

**Activity Priorities for the Education Unit - July 1996 - June 1997 will include:**

1. Update and rewrite a number of OPA pamphlets.
2. Produce new pamphlets on sterilisation, advocacy/rights and appeals process.
3. Translation of Consent to Medical and Dental Treatment, the OPA and Enduring Power Guardianship pamphlets into 10 other languages.
4. Facilitate 'Menstrual Management' discussion meeting with key external agencies.
5. Research the possibility of an OPA Student Prize.
6. Conduct research for the production of an educational video.
7. Promote the *Enduring Power of Guardianship: 'Do It Yourself' Kits*.
8. Develop an educator's kit (ie train the trainer concept).
9. Involvement in 1997 Law week activities.
10. Assist in facilitating a seminar about children of mentally ill parents.
11. Facilitate guardianship seminars in country regions.
12. Production and distribution of biannual newsletter.
13. Information technology and resource management for the OPA.

**LIFE IS ABOUT MAKING DECISIONS**

Who would make your decisions if you could not make them due to illness or accident?

**PLAN NOW!** In addition to having an **Enduring Power of Attorney** for financial matters, you should also consider having an **Enduring Power of Guardianship** for health and lifestyle decisions. Together these two powers constitute a *Living Will!*

**Enduring Power of Guardianship** allows you (if you are over 18) to appoint a person(s) to make *personal* decisions on your behalf, should you lose the ability to make your own decisions in the future.

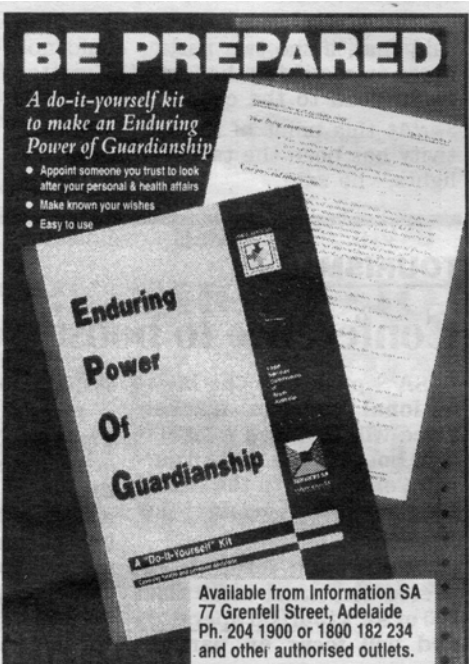
For further information seek legal advice or contact the Office of the Public Advocate, telephone 269 7575.

0135323ALL24/7 C1170996

**BE PREPARED**

*A do-it-yourself kit to make an Enduring Power of Guardianship*

- Appoint someone you trust to look after your personal & health affairs
- Make known your wishes
- Easy to use



Available from Information SA  
77 Grenfell Street, Adelaide  
Ph. 204 1900 or 1800 182 234  
and other authorised outlets.

24 JUL 1996 CITY MESSENGER P8

This advertisement promoting the *Enduring Power of Guardianship: A 'Do It Yourself' Kit* was placed in 11 Messenger group papers in July 1996. Promotion of the OPA resources is an important part of the Education Unit's work.

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**THE FOURTH NATIONAL GUARDIANSHIP AND ADMINISTRATION  
CONFERENCE - A SUMMARY OF EVENTS**

The 4th National Guardianship and Administration Conference was held on the 18-20 October 1995, at the Terrace Inter-Continental, Adelaide.

The conference was jointly hosted by the Public Advocate, the Public Trustee and the Guardianship Board. This 'first' for South Australia attracted 140 registrants from all states of Australia and representation from the Public Trustee in New Zealand.

Past conferences emphasised to a greater extent the legal topics with respect to mental incapacity. The 1995 Adelaide conference aimed to broaden this perspective to encompass other factors which have a bearing on the issues affecting workers, clients and their families.

The theme for the conference was: *'Making the Net-work - Working together to achieve effective client outcomes'*.

John Dawes, Public Advocate, commenced the conference week with the delivery of the Barton Pope Lecture at Norwood Town Hall on Monday 16 October. His paper was entitled *'Tolerate the Difference'* and focussed on the need for communities to become more tolerant of people with serious mental illnesses.

The conference was officially opened by the Attorney-General, Hon. Trevor Griffin, at the welcome cocktail reception, on the Wednesday evening, 18 October. This event was a highly successful start to the conference with 120 people in attendance.

The Conference enabled members of the Interjurisdictional Committee to meet to continue important work relating to interstate recognition of state legislation regarding guardianship and administration of protected persons, and to consider national strategies to foster continuity and consistency in the application of the laws in this area.

The main conference program commenced on Thursday with the first plenary speaker, Professor Ian Cox delivering his paper titled *'Championing the Citizen'*. This presentation provided thought provoking strategies to include consumer involvement in our work. The remainder of the day's program included presentation of interstate case studies and special issues groups.

Friday began with Emeritus Professor Max Charlesworth presenting his plenary session paper entitled *'Making Decisions for Others: From Paternalism to Autonomy'*. Professor Charlesworth is the author of several books on philosophy, religion and ethics.

The remaining program consisted of a number of excellent concurrent papers presented by interstate colleagues, invited professionals, external agency service providers and consumers.

A number of matters will be further developed as a result of the conference.

Evaluation of the conference was positive and complimentary in all aspects.

**EXCERPTS FROM THE  
FOURTH NATIONAL  
GUARDIANSHIP AND  
ADMINISTRATION  
CONFERENCE PAPERS  
PRESENTED IN  
ADELAIDE.**

“...there is no doubt that the principle of patient autonomy and informed decision making is here to stay even if a great deal more needs to be done to give it practical expression.”

From ‘*Making Decisions For Others: From Paternalism to Autonomy*’ by Emeritus Professor Max Charlesworth.

“There seem to be some key points in the work of Boards and Tribunals where the principles of natural justice and privacy are most difficult to balance or most likely to collide....”

From ‘*Natural Justice and Privacy Principles: Strange Bedfellows?*’ by Dr Meg Montague, Vic.

“Legislative action is required to achieve a uniform test of competence for all EPAs (Enduring Power of Attorney) and to implement uniform and consistent EPA laws throughout Australia and to provide Boards with enabling legislation for determining the donor’s capacity.”

From ‘*Evaluating the Donor’s Competence at the Time of Signing an Enduring Power of Attorney*’ by Robert Smith, Vic.

“The effective administration of client property, assets and finances involves more than mere financial planning...”

From ‘*The New South Wales Experience - How to Make the Net Work Better*’ by Mark Robinson, NSW.

“Every step of the way to ascertain productivity requires a strong visionary leadership of community service and everyday practice must be related to this for any citizen centred result...The danger to interpret all citizen needs according to your own values must always be present and be guarded against”.

From ‘*Championing The Citizen*’ by Assoc. Professor Ian Cox, SA.

“By creating a statutory right for relatives or friends to be consulted and to make decisions, it ensures that the members of the person’s support network are not bypassed in the decision-making process.”

From the *Queensland Law Reform Commission* Report, 1995.

“A government social worker, whom I hadn’t met, rang to ask me if she could call that day to speak to me. I said, okay, not thinking as...I had become used to my house resembling Grand Central Station.”

From ‘*Guaranteed Care - the Missing Ingredient for Successful Community Living*’ by Ms Bev Freeling, Parent Carer, SA.

“...The Public Guardian’s active involvement in treatment decisions at the end of life, comes as quite a surprise to many Directors of Nursing and General Practitioners working in Nursing Homes...”

From ‘*End of Life Decisions*’ by Dr Giles Yates, NSW.

“...He (Pollard, 1989) is also highly critical of what he calls deceitful academic research, which ignores one side of an argument and presents only one picture for discussion...an approach that provides information selectively...”. From ‘*Euthanasia and the Disabled Neonate - The Debate Continues*’ by Hugh Carter, Qld.



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**SITUATIONS AND ISSUES OF CONCERN TO THE OFFICE OF THE PUBLIC ADVOCATE**

**A victim of excessive force?**

The OPA was approached by Mr C, who alleged that the Police had used excessive force in restraining Mr VEF when taking him from the Community Health Centre to Glenside Hospital. Mr VEF's parents were also very concerned and his father visited the Public Advocate to make known his concerns.

On the advice, and with the assistance of the Public Advocate Officer, a letter of complaint was made to the Police Complaints Authority. The incident was consequently investigated by the Authority.

It appears staff at the health centre called the Police as Mr VEF was behaving in such a way as to pose a danger to himself and others. On arrival of the Police, the situation escalated and the police force used to restrain Mr VEF was possibly excessive, because it included striking him with batons and kicking him in the face. Because of the unusually high level of force used, the Police Complaints Authority forwarded the file to the Director

Director of Public Prosecutions for advice on whether or not it would be appropriate to charge the officers concerned with assault.

The outcome of the investigation lead to the following conclusion: *...a conviction against the officers is unlikely. It is clear from the statements of all concerned, including Mr VEF and those sympathetic to him, that at least he was threatening, aggressive, and was resisting detention until he was forcibly restrained. Most go further to say he was actively putting up a fight. It is also relevant that he was attempting to escalate the level of the struggle, by seeking to arm himself with a police baton.*

This was the only complaint received during the period of this report, of the excessive use of force by members of the SA Police. It is important to record that the OPA staff have found the work of the Police, when asked to assist with patients and persons with mental incapacity, to be conducted with care and humanity.

**The appeals process**

The Public Advocate, pursuant to Section 21 of the *Guardianship and Administration Act 1993*, had cause to inform the Minister of Health and the Attorney-General about a particular case which was a complex matter involving human rights and the potential misuse of public funds through excessive litigation in the Administrative Appeals Court.

The issues raised with the Ministers related to legal representation for SAMHS

clinicians in matters before the Guardianship Board and in appeals against decisions of the Board. The Public Advocate's action will contribute to the development of a policy in SAMHS for determining criteria for appeals and at the same time safeguard and promote the rights of individuals whose health status may be placed at risk through lengthy legal proceedings.

**Outcomes of Sterilisation Applications**

Sterilisation and termination of pregnancy are prescribed medical treatments under the *Guardianship and Administrative Act 1993*. Section 61(2) and (3) of this Act detail the criteria that must be met before the Guardianship Board can consent to these treatments. For a person under 18 years, where sterilisation is sought, both the Guardianship Board and the Family Court have the power to provide or refuse consent.

This table represents the number of sterilisation applications decided by the Board since proclamation of the current legislation.

	Age	Sex	Month/Year of application	Reasons given for application	Procedure sought	Outcome and date of decision as at 30 June 96
1	37	F	Feb. 96	Menstrual Management/contraception	Total Hysterectomy	adjourned 7/4/94 New application Feb 96, hearing pending
2	37	F	Dec. 95	Menorrhagia	Vaginal Hysterectomy	Sterilisation proceeded with consent of person concerned
3	12	F	Oct. 94	Menstrual Management	Hysterectomy	Consent given by Board 5/5/95
4	15	F	Mar. 94	Menstrual Management/contraception	Abdominal Hysterectomy	adjourned 21/7/94 adjourned hearing pending
5	25	M	Nov. 94	Sexuality Issues	Vasectomy	Dismissed by Board 20/1/95
6	12	F	Sept. 94	Menstrual Management	Vaginal Hysterectomy	Consent given by Board 24/2/95
7	39	F	Oct. 95	Menorrhagia	total Abdominal Hysterectomy	Board determined can give own consent 7/2/96
8	20	F	July 95	Menstrual Management	Abdominal Hysterectomy (ovaries conserved)	Consent given by Board 5/1/96
9	30	F	June 95	Uterine Fibroids	Total Abdominal Hysterectomy	Consent given by Board 2/11/95
10	44	F	Mar. 96	Removal of fibroid uterus	Abdominal Hysterectomy (ovaries conserved)	Consent given by Board 6/6/96

The management of sexuality and fertility can pose particular concerns for some people who have a mental incapacity and their carers. Issues such as menstrual management, unwanted pregnancy, inappropriate sexual behaviour and the possibility of sexual abuse or exploitation elicit a range of emotive and practical responses from all involved. These responses are generally shaped by a person's own experiences and levels of comfort regarding sexuality and personal sexual experience.

It is important in this issue that a clear distinction is made between offering support for the person's independence and seeking control of behaviour or circumstances.

### Guardianship and rural South Australia

Early in 1996, the Guardianship Board appointed the Public Advocate guardian of

last resort for Mrs O. Mrs O is in her early eighties and has dementia, although she

remains physically quite active. The applicant for guardianship was a member of the Aged Care Assessment Team in the town where Mrs O lived. An assessment determined that Mrs O may benefit from dementia care hostel accommodation in a nearby country town. The Public Advocate's role as guardian was limited to health care and accommodation. A bed became available in the local dementia care hostel and after inspection by a Public Advocate Officer, approval was given for the shift.

Difficulty arose when the time came to move Mrs O to the hostel. Her local carers and Mrs O's general practitioner would not cooperate and assist in moving Mrs O to more appropriate accommodation. The impact of the lack of cooperation and willingness to follow the

guardian's choice is that Mrs O has missed out on the vacancy and her quality of life is diminished. Instead of being kept active and stimulated by a range of activities, she is left to lie in bed for most of her day.

Staff of the local Aged Care Assessment Team believed that they should not move Mrs O because of their need to preserve their working relationship with her general practitioner, who was objecting to the move.

This case raises the difficulties of ensuring that the person with the mental incapacity has his or her rights observed, especially when the person lives in rural SA. In this case the Public Advocate has decided to refer the matter back to the Guardianship Board for a directions hearing.

### When it's difficult to swallow

Early in 1996 a senior specialist medical practitioner approached the Public Advocate over what was perceived to be a potential violation of patients' rights where patients have the condition called dysphagia. Dysphagia is where the action of swallowing is either difficult to perform or in which the swallowed material is held up in its passage into the stomach. The concern was that such patients are not able to experiment with the textures of the food they eat because of the risk of choking and the resultant blocking of oxygen supply to the brain potentially leading to death. The hospital concerned had implemented new procedures after a patient had choked and the State Coroner had been critical of the hospital's practice. The question proposed by the medical officer was whether the new procedures were too restrictive of patient rights.

The Public Advocate considered both sides of the situation, that is, the hospital's views and new procedures, and the concern expressed on behalf of patients.

The Public Advocate sought legal advice which confirmed that the hospital has a duty of care to its patients and if a staff member fails to properly supervise a patient's eating who has dysphagia, or assists the patient to eat the wrong food and the patient chokes, then the hospital could be regarded as failing in its duty of care towards its patient.

In light of this advice, the Public Advocate considered that the hospital's new procedures accurately reflected the duty of care when responsible for a patient's safety and wellbeing.

### Mental health issues

The OPA maintains a close working relationship with many staff, parents and carers who work within or rely upon the mental health services of this state. A number of concerns have been raised by those in this sector who are attempting to deal with a community that has been

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under-prepared for the effects of de-institutionalisation and the consequent issues for clients, families and others.

The following provides an overview of the types of issues raised with the OPA by those in the mental health sector:

“The new ward ‘The Grove’ was opened as a result of political pressure. However there is more to a service than providing a bed, there must be a multi-disciplinary team that goes with it. The Grove was opened without consultation with management. Resources that were already stretched have been stretched even further. Because there is no designated intake team on this ‘new’ ward, patients are often released too early and without follow up discharge plans.”

“When people are moved from ward to ward, it appears it is not on the basis of this being done for a reason, but rather to make a bed free. The whole focus seems to be about making beds free!”

“Glenside is always at capacity these days. When people are discharged, there are few community services to follow them up.”

It has been reported that a particular Community Care team now has a waiting list for people who are discharged from hospital. This could be a dangerous scenario as people when they leave a psychiatric hospital may be very vulnerable. If there is inadequate follow up for some time, the result is often another admission to hospital. The OPA recognises and promotes the obligation for those making discharge plans to give consideration to the need for compulsory Community Treatment Orders as a possible tool to lessen the revolving door situation, where patients remain in the community only a short time before being re-admitted.

“Glenside Hospital appears to be getting more people who have a dual or multiple diagnosis, for whom no other agency will accept responsibility.” As other agencies narrow their client criteria, claiming funding shortfalls as the rationale, a growing number of people are without appropriate services.

There is also great concern for the 16-18 year old clients of Glenside for whom it seems, no-one assumes responsibility. It does not seem appropriate that a 16 year old be in an adult psychiatric system. How should FACS and CAMHS be involved? With many of these youths there are complex family dynamics and systems to negotiate. Glenside Hospital does not have the resources to provide this type of service.

### When the 'label' doesn't fit the service

The OPA recognises that in some cases there is a need for secure supervised placement for people who are not in the criminal or the mental health systems but for whom a period of 'safe keeping' is required to quell an existing conflict or disruption. There is little option for people who fail to meet specified service criteria to seek such 'asylum'. The following excerpt is from a letter to the OPA, from a parent/carer:

*Our son (\*Brian) was involved in a car accident nearly eight and a half years ago. This accident left him with brain damage to his frontal lobe. He spent many months at Julia Farr Centre before coming home to us...my husband and I supported our son. His friends stopped seeing him as they were unable to accept the change in Brian.*

*Brian had numerous workers...mostly young and neither experienced nor skilled in handling someone with the behavioural problems Brian has from his brain damage. Giving Brian more 'rights' without proper support sometimes makes him more vulnerable. We have needed to call upon the police a number of times when Brian's behaviour has become unmanageable for us. Most times this has resulted in Brian being sent to Glenside. This only gives us up to 24 hours respite as Glenside refuses to keep him there any longer saying he is brain injured, not mentally ill.*

*Brian has been allocated a case manager from Adelaide, however, as we live in a country centre his case manager has been hard to contact...this has led to Brian becoming rebellious.*

*I have now taken over case management work for Brian...at present he is quite stable...my main concern is who can look after Brian full time as we have had enough and need time out.*

(\* Name changed to protect identity)

Sometimes appropriate and needed services are simply not available in the community. In such cases, the guardian and/or the case manager necessarily takes on the role of advocate.

### On a positive note!

Sometimes the work of the OPA does make a difference.

*I have worked with...(the OPA officers) in relation to various matters that have come before the Guardianship Board or the Administrative Appeals Court. In each case, I have been tremendously impressed with the professionalism of each (officer). I have some inkling of the difficulties that you work under, in terms of the amount of your workload and the fact that everyone is still coming to ... (legislative changes).*

*I have particularly valued the the Public Advocate can viewpoint to the cases that Court and you can raise*

Extract from a letter sent by a lawyer in private practice to the OPA providing feedback about the important work of the OPA officers.

*terms with the fact that the Officers of bring an independent come before the Board or matters of general*

*importance in the context of particular individuals. Your role in this respect is different from that of the legal advocate, who is bound to act on instructions. Furthermore lawyers find it difficult to overcome their training and experience, which teaches them to confine evidence and produce submissions of very narrow relevance. Please keep up the good work.*

### OUR CLIENTS

The following scenario is a conglomerate of the types of issues that may affect a person living in the community who has diminished mental capacity, and the type of situation that may require the appointment of the Public Advocate as guardian of last resort.

*Mona is a 76 year old woman who lives in a run down house, 2 km outside a small hills township. Her home has no electricity or gas connected. She allows many of her animals including her dog, 7 cats, chickens and ferret to roam within the house and consequently animal excrement is throughout the house and up the walls. Mona has lived this way for many years.*

*Mona walks to the local hotel every day and is very fit. Residents organised a daily meal for her at the hotel, however this arrangement fell down partly due the fact Mona did not always turn up and partly because the smell arising from her urinary incontinence drove away other customers. She is well known in the local community as a character of the area. Mona has a progressive dementia and locals are concerned about Mona's inability to care for herself. Locals have reported witnessing Mona toileting in her yard. Mona has been known to flush her underwear down the toilet and this has led to plumbing problems.*

*Mona sees nothing wrong with the way she lives and it is thought that her diminished mental capacity genuinely prevents her from recognising her plight. A local community worker applied for guardianship and the Guardianship Board appointed the Public Advocate to make decisions about accommodation and health care on behalf of Mona.*

#### GUARDIANSHIP IS NOT A SIMPLE ANSWER TO COMPLEX SITUATIONS.

A guardian must make decisions according to the principles of the legislation. The following type of questions would need to be asked:

- Is there any justification for imposing services upon Mona if she does not agree to them?
- Is the concept of human dignity relevant here if Mona herself is unaware of it and if so, in what way?
- Does the community have a right to set minimum standards about how its members live?
- Although the guardian must give paramount consideration to what the wishes of the person would be if she could express them in a considered way, it is also relevant that the realities of incontinence and dementia may restrict her ability to recognise or change her level of discomfort, so that one cannot assume that if she were able to clearly see her situation now, she would continue to choose that lifestyle.
- At what point is a guardian justified in interfering with Mona's life?

Sometimes there is a tension between acting as a substitute decision maker whilst many service providers act according to their client's best interests.

Acknowledgment: Barbara Carter, Community Guardian Program. Victoria.

The following excerpt is from a letter from a community member who has experienced the current mental health system. This is his story...

*Just over 12 months ago, I was confronted by a psychiatric nurse and medical officer, who I have never met, at my mother's house. They made several distorted and untrue claims about me that had been gathered from second hand reports. I was subsequently certified, manhandled by two policemen and strapped down in an ambulance by two ambulance officers.*

*I was in no way uncooperative or physically resistant. I was cool, calm and civil. I was taken to Glenside Hospital against my will, given a powerful injection designed to last a month and imprisoned in a lock-up detention centre.*

*I subsequently appealed to the Guardianship Board as soon as possible and I believe because of the controversial grounds on which I was certified, the detention order was lifted before the appeal was tested. After 13 days I was released without medication.*

*However, another psychiatrist from the mental health services independently sought a 12 month compulsory treatment order from the Guardianship Board. The evidence given at the Board hearing was distorted, full of ill-conceived misconceptions, generalisations and lies. It included reports from my medical records when I was 19, some 24 years ago! The psychiatrist had only seen me for five minutes two years previously and therefore had no contemporary knowledge of me. During the hearing I was given only a few minutes to refute the hour-long misrepresentations made about me, without representation.*

*(At this stage an officer for the Public Advocate became involved and was most concerned at the lack of evidence supporting the need for compulsory mental health treatment being imposed upon this man.)*

*At the hearing, the Board granted the psychiatrist's request. Because of what I considered to be a gross inaccuracy of reporting and a denial of natural justice, I decided to appeal the decision. (The OPA officer continued her involvement in assisting this man to negotiate this process.)*

*After approximately 11 'trials' and 60 hours of examination where extensive documentation of every detail of my case was presented, the Administrative Appeals Court judges decided that I did not receive natural justice and that the accusations against me were not based on reliable evidence but hearsay and biased opinion.*

*I am shocked that the medical professionals in such important positions of trust, responsible for such sensitive information regarding the public, can have such a low regard for the truth in their gathering of information and rely upon inaccurate and biased hearsay when making an important diagnosis. In this instance, they have concocted events to justify their opinions and have shown little regard for the point of view and explanation of the person under question.*

*I am particularly worried that the 'system' allows a psychiatric nurse to make false, distorted and inaccurate accusations about a person he has had no recent contact with, to then relay these falsehoods as genuine fact to a medical officer who then uses the Mental Health Act to essentially legally abduct an innocent person and incarcerate them and give them powerful neuroleptic drug injections, against their will, based on unproven accusations.*


*The Appeals Court showed that these accusations were fabricated, distorted with an extremely prejudiced interpretation of events...there was no provision for the accused person to defend himself and no provision to test the veracity of the accusations.*

*I believe this is an area the government needs to look at very carefully and amend the Mental Health Act to disallow this serious abuse of human rights. I was put through 60 hours of serious traumatic emotional turmoil and I believe that if in fact someone **did** have a psychiatric problem, this sort of treatment would have pushed them over the edge.*


### **REVIEW OF THE GUARDIANSHIP AND ADMINISTRATION ACT 1993**

Since the proclamation of the *Guardianship and Administration Act 1993* and the *Mental Health Act 1993* on 6 March 1995, the Office of the Public Advocate has received a number

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of suggestions about possible amendments from a variety of people and agencies. The Public Advocate has a role mandated in the *Guardianship and Administration Act 1993* Section 21(1)(g) 'to monitor the administration of this Act and, if he or she thinks fit, make recommendations to the Minister for legislative change'. A number of suggestions have been made for changes to the legislation and these have been forwarded to the Minister for Health. Given that the Act expires on the third anniversary of the commencement of its operation, 6 March 1998, the Government will need to consider what steps are needed to ensure the continued operation of the legislation and whether amendments are necessary.





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## CORPORATE ISSUES

### **RESOURCE MANAGEMENT**

Continued under-resourcing of the Office of the Public Advocate undermines the ability of staff to fulfil the legislative responsibilities of the *Guardianship and Administrative Act 1993* and *Mental Health Act 1993*. Due, in part, to the clearly under-estimated number of guardianship appointments to the Public Advocate, the office has had to constantly reassess and prioritise workloads and introduce waiting lists for requests to undertake work both from the Board and from the community. In addition, the quality of guardianship involvement is often compromised, as is at times the standard of work produced for the Guardianship Board.

Whilst a number of requests are made for the OPA to provide input into external agencies and community activities, the ability for the OPA to assist is restricted. This inability to provide an adequate response, particularly regarding important systemic issues remains a source of frustration for staff.

The Public Advocate raised his concerns about the increasing community demands upon the OPA and the issue of adequate resourcing during the year with the Minister of Health.

### **ADMINISTRATIVE SERVICES**

The Office of the Public Advocate Administrative Services Team is responsible for the planning and provision of much of the everyday office management and administration requirements.

Responsibilities include management of client and office files, ordering of office supplies, enquiry/reception service, physical resource management, word processing and direct support to individual staff.

Administrative Service Staff:

**Ms Leonie O'Malley** - Senior Clerical Officer/Enquiry Officer ASO2, 1.0 FTE  
Ms O'Malley commenced 12 months leave on 4 March 1996.

**Ms Tracy Ball** - Administration Officer ASO1, 1.0 FTE  
Ms Ball commenced 6 months leave on 28 June 1996.

**Ms Tamela Scotcher** commenced 9 month contract with the OPA as ASO2, 1.0 FTE, 3 June 1996.

**Mr Paul Green** Senior Administrative Officer ASO3, 1.0 FTE shared position with the Guardianship Board. Paul currently provides 50% of his time to the Office of the Public Advocate.

**Ms Helen Mellowship** - Project Officer ASO3, 1.0 FTE shared position with the Board.  
Ms Mellowship commenced 6 months leave on 21 March 1996.

During this financial year the Office of the Public Advocate has required the services of temporary clerical staff for 65.5 days.

### **INFORMATION TECHNOLOGY**

The OPA purchased equipment in June 1996 to establish an information and resource centre for the office. This equipment included a computer and modem, colour printer and scanner. The Information Officer has information and resource management as part of her role. The OPA looks forward to an exciting year discovering the benefits of this new technology to our work.

### **HUMAN RESOURCE DEVELOPMENT**

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The complex nature of the Office of the Public Advocate's work requires staff to equip themselves with the skills and knowledge necessary to produce high quality work and meaningful outcomes. Staff have benefited from 5 inservice development programs and additional programs attended on an individual needs basis.

A total of \$4,696 was spent on staff development. The focus for most staff this year was training and updating skills in the application of computer technology and in seeking external professional supervision.

The Office of the Public Advocate has found great difficulty in maintaining a planned staff development program because of the time constraints on staff due to workload and client need.

### ***EQUAL EMPLOYMENT OPPORTUNITY***

The Office of the Public Advocate adheres to the policy and procedures of the South Australian Health Commission regarding Equal Opportunity. Staff of the Office employ the principles of the South Australian Health Commission Circular No 64, *Guidelines for Ethical Conduct*.

### ***OCCUPATIONAL HEALTH AND SAFETY***

The Office of the Public Advocate is committed to the policies and best practice principles of the South Australian Health Commission, in relation to the occupational health and safety of the working environment. The Office of the Public Advocate recognises that a safe, hazard free workplace, and the well-being of staff, impacts on the quality of service provided to the community.

There have been no workplace incidents of injury for the OPA staff during this financial year. The Office of the Public Advocate has a qualified First Aid Officer and a representative on the 'Eighth Floor' Occupational Health and Safety Committee.

### ***STATISTICAL ANALYSIS AND REPORTING***

The use of computer software and a streamlined enquiry/intake system has resulted in the production of statistical case management information and outcome analysis for the Office of the Public Advocate.

Administrative staff are assisting the Public Advocate in the development of new data collection and analysis software for the Office.

### ***ENVIRONMENT AND CONSERVATION***

The Office of the Public Advocate staff are committed to the use of recycled paper and the reduction of energy use and physical resources where appropriate. Maintaining confidentiality is given paramount consideration.

### ***FREEDOM OF INFORMATION***

There have been no applications to the OPA under the Freedom of Information Act.

### ***FINANCIAL REPORT***

**OFFICE OF THE PUBLIC ADVOCATE FINANCE AND FTE REPORT**  
**FOR THE 1995-96 FINANCIAL YEAR**

Description	Actual 95/96 (\$)	Estimate 96/97 (\$)	FTE's 95/96	FTE'S 96/97
Salaries, Wages And Allowances	430,224	475,400	9.5	9.5
Telephone	13,528	14,000		
Purchase Of Computer Equipment	7,039	6,000		
Purchase Of Office Equipment	3,358	4,000		
General Expenses	103,874	110,000		
<b>Total =</b>	<b>\$558,023</b>	<b>\$609,400</b>	<b>9.5</b>	<b>9.5</b>

The above figures (actual 1995-96) are from 1 July 1995 to 30 June 1996. All accounting policies adhere to SA Health Commission standards and are reported to the Disability Services Office within the Health Commission on a monthly and annual basis.

Long service leave liability for the OPA is \$138,286.

Some of the staff employed at the Office of the Public Advocate are members of the State Superannuation Fund of SA. During the financial year, employer contributions were paid into the fund. The Office of the Public Advocate's contribution was \$30,433 for the financial year. The Office of the Public Advocate also paid \$40,024 for the 8% Super Guarantee Fund. These contributions are included in the Salaries, Wages and Allowances figure in the above table.

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**THE OPA PUBLICATIONS AND RESOURCES**

The OPA Education Unit continues to update and revamp the information pamphlets produced by the OPA. The following is the current listing of available pamphlets as at 30 June 1996:

- No 1 What is a Guardianship Order?
- No 2 What is an Administration Order?
- No 3 What is the Guardianship Board?
- No 4 What is a Treatment Order? (*Mental Health Act 1993*).
- No 5 Detention and Continuing Detention Orders (*Mental Health Act 1993*).
- No 6 Advice to (guardian or relative) applicants (*Mental Health Act 1993*).
- No 7 Advice to (relative or friend) applicants (*Guardianship and Administration Act 1993*).
- No 8 What are the responsibilities of a professional applicant?
- No 9 Enduring guardianship and other future plans.
- No 10 What is the role of the Public Advocate? (professional interest).
- No 11 The Office of the Public Advocate tri-fold pamphlet (consumer interest).
- No 12 Information summary
  - Guardianship Board Orders
  - Enduring Power of Guardianship
  - Enduring Power of Attorney.
- No 13 Consent to medical and dental treatment for persons with reduced mental capacity.

The OPA has developed a number of Information Sheets. These are:

- *Making Decisions for Others - Adult Guardianship.*
  - *Before Lodging an Application for Guardianship or Administration at the Guardianship Board.*
  - *Referral list of lawyers practising in the area of guardianship.*
- Consent to Medical and Dental Treatment - a flowchart.*

Published resources

*Enduring Power of Guardianship: A 'Do It Yourself' Kit.*  
(Including promotional brochures).

*'Tolerate the Difference',*  
a paper by John Dawes,  
delivered at the  
Barton Pope Lecture  
October, 1995.