

OFFICE OF THE PUBLIC ADVOCATE



ANNUAL REPORT 1997-98

30 September 1998

The Honourable Dean Brown MP
Minister for Human Services
PO Box 65
Rundle Mall
ADELAIDE SA 5000

Dear Mr Brown

I have much pleasure in forwarding to you the fourth Annual Report of the Public Advocate, as required under Section 24 of the *Guardianship and Administration Act 1993*. This report covers the period from 1 July 1997 until 30 June 1998. The fourth Annual Report summarises the work of the office during this period and reflects on some of the issues and trends that have been observed.

As you will see, the office has been most productive during this period.

Yours sincerely

DR JOHN DAWES
PUBLIC ADVOCATE

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PUBLIC ADVOCATE'S REPORT

This is the fourth Annual Report of the Office of the Public Advocate (OPA). It will also be my last report, as I have decided to complete my period of office upon the expiry of my term on 7 October 1998. This report then provides an opportunity for me to reflect upon the work of my office during the past five years. I have been very honoured to have been South Australia's first Public Advocate, to establish the office, select staff and define our roles within the parameters of the *Guardianship and Administration Act 1993*. I will take with me many fond memories of the people that my colleagues and I have been privileged to meet and serve.

Public education

During the year, my staff have continued to provide community education sessions and provide information to people during office hours, Monday to Friday, through our public education program. In my last Annual Report I reported that the OPA's Web site was created. I am pleased to report that we have maintained our site, regularly reviewed the information provided, and have been greatly encouraged by the use made of our site and the very positive responses we have received. The Web site was developed to augment the way in which information is made available to people and complements our pamphlets. The public education program provided by the OPA is an important aspect of our work as it provides information to members of the public and service providers on the protective measures provided by the *Guardianship and Administration Act 1993* and the *Mental Health Act 1993*.

This program also enables advice to be given which is consistent with the principles announced in Section 5 of the *Guardianship and Administration Act 1993*, especially that any decision made or any order sought should be the least restrictive possible, consistent with the wellbeing of the person. The number of enquiry calls has increased during the last reporting year going from 3229 in the 1996-97 year to 3539 in the 1997-98 financial year.

In reflecting on these calls, many are received from people who are distressed, sometimes very angry and are caught within conflictual family relationships. We do our best to assist these people, sometimes undertaking an investigation of their behalf and on rare occasions becoming applicants to the Guardianship Board for orders. Other callers are seeking basic information about advance directives or the protective orders available under the *Guardianship and Administration Act 1993*. We deal with their questions, often forwarding pamphlets to them and sometimes referring them to other agencies and services. Other calls reflect the pressures upon people working in agencies. They call with questions which should in the first place be directed to their own supervising officers. These questions suggest to us that people are so busy and services so stretched that supervisors are not supervising or staff believe that questions to supervisors will not be properly addressed. We think that these calls are often inappropriately addressed to the OPA. Other questions reflect a basic lack of knowledge about community resources. These questioners are tying up scarce resources. The OPA Enquiry Service is staffed by a very small number of people who would otherwise be acting as guardians, investigators or educators.

The Public Advocate as guardian

During the 1997-98 financial year, the appointment of the Public Advocate by the Guardianship Board as guardian of last resort has continued steadily. There were 79 new appointments, bringing the total number of guardianship cases managed by the OPA, as at 30 June 1998, to 204. Because of this large number of appointments, we have had to determine priorities for our attention to these matters. I would recommend that the government review the legislation enabling the Public Advocate to be appointed as guardian of last resort. It is my view that the Public Advocate is frequently appointed guardian where other alternatives exist.

Indeed, the Public Advocate has been appointed guardian where family members could take this responsibility and have informally continued to exercise the responsibility even though the Public Advocate has been appointed and the role of the stipendiary guardian explained. This has occurred because service providers and families have not contacted the Public Advocate when decisions have been required even though a guardianship plan has been developed which involves contact and discussions with service providers. These occasions provide clear evidence in my view that I have been inappropriately appointed.

I also question whether in the late 1990s it necessary to have the Public Advocate appointed guardian for persons cared for in institutions operated by the government or by incorporated bodies where funding is primarily provided by the government. These organisations have been exempted from the provisions of the *Supported Residential Facilities Act 1992*, which is a public statement that such institutions are regarded as operating humanely and properly. Sometimes the Public Advocate is appointed guardian for persons resident in such facilities. These appointments are to make decisions about accommodation and consent to medical and dental treatment. With an amendment to the legislation it would be possible for a member of the institution's staff to be appointed guardian to make such decisions. Critics might argue that this places too much authority in the hands of institutional staff. My response to this is that I believe that the community cannot afford the luxury of public officials making decisions for people who are properly cared for in these institutions.

The small number of staff allocated to the OPA and the large number of appointments means that some people for whom the Public Advocate is appointed guardian are never seen by the Public Advocate or his staff, and it is impossible to get to know these people and to be actively involved in making decisions about their care. Our lack of capacity to manage the large number of appointments means, in effect, I am appointed guardian not of *last resort* but guardian *just in case*. It impacts on our ability to account for our work to the Guardianship Board through the provision of annual reports, through establishing and maintaining contact with service providers and most importantly of all, bearing in mind Section 5 of the *Guardianship and Administration Act 1993*, of creating, nurturing and maintaining contact with protected persons. The equivalent of 2.8fte staff have been involved in the guardianship program over the last financial year, but one of these positions, the temporary contractual PSO1 position, ceased to be available on 30 June 1998. I encourage the government to have a further look at the legislation as it provides for adult guardianship. Either the legislation needs amendment to narrow the scope of

appointing the Public Advocate as guardian, which is consistent with the government's policy of a smaller public sector, or the office needs to be appropriately resourced. The present situation is most unsatisfactory.

A first step in this process would be to commission an empirical study of guardianship examining practices since the *Guardianship and Administration Act 1993* was proclaimed. This study would identify the presenting problems which led to the application, the age of the person subject to application, the disability, how much effort had been made to try and resolve matters informally and why a guardian was appointed and whether the guardian actually made decisions for the protected person. The study would attempt to identify patterns which might assist the legislature with advice about how to make the Act more focussed. The study might examine the issue of whether the justice administered by the Guardianship Board is too 'popular and accessible' (Carney and Tait, 1994) and whether the cost of accessing the Board might be increased. Perhaps the most important way the 'cost' might be increased is for the Board to set higher standards of evidence in relation to mental incapacity. It is suggested that two medical reports from independent practitioners should be the minimum. Perhaps one of the reports should be from a specialist in an appropriate discipline related to the disability.

The Public Advocate as investigator

During the year, discussions took place with the Guardianship Board in an effort to clarify referrals to the Public Advocate for investigation. An agreement was reached which included prioritising investigation referrals. There are now three priority areas for investigation. The first is when the Guardianship Board believes that the potential protected person is under undue influence from another person. The second is when the people involved cannot be relied upon to produce all of the relevant information in an objective and unbiased manner. The third area is when the application to the Guardianship Board is for consent to sterilisation.

I have enjoyed my five year term as South Australia's first Public Advocate. As I depart, I would like to extend my appreciation to my staff, who are a small team of dedicated workers. They have worked hard to provide a consistently high level of service to a large and diverse group of people with a mental incapacity in South Australia. The achievements of the OPA over the last financial year, as detailed in this Annual Report, as well as over the past five years, are a testament to their commitment. Working as Public Advocate has also given me the opportunity to meet and serve some remarkable people, and I will take many fond memories with me. I wish my successor and the staff at the OPA all the best in future years.

DR JOHN DAWES
PUBLIC ADVOCATE



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STATEMENT OF PURPOSE

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' Disease;
- 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 OPA 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.

ACCOUNTABILITY

The OPA is a program of the Minister for Human Services, Mr Dean Brown. Funding is received through the Disability Services Office of the Department of Human Services. 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.

The Public Advocate is required to submit an Annual Report on the year's activities to the Minister for Human Services by 30 September of each year.

The Public Advocate declares that for the period of this report, no issue of warrant under Section 24(2) of the *Guardianship and Administration Act 1993* has been sought by the Public Advocate.

LEGISLATIVE AUTHORITY

The OPA 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.

LEGISLATIVE PRINCIPLES

In carrying out its work, the OPA follows the principles in Section 5 of the *Guardianship and Administration Act 1993*. This section states:

Where a guardian appointed under this Act, an administrator, the Public Advocate, the Board or any court or other person, body or authority makes any decision or order in relation to a person or a person's estate pursuant to this Act or pursuant to powers conferred by or under this Act-

- (a) consideration (and this will be the paramount consideration) must be given to what would, in the opinion of the decision maker, be the wishes of the person in the matter if he or she were not mentally incapacitated, but only so far as there is reasonably ascertainable evidence on which to base such an opinion; and*
- (b) the present wishes of the person should, unless it is not possible or reasonably practicable to do so, be sought in respect of the matter and consideration must be given to those wishes; and*
- (c) consideration must, in the case of the making or affirming of a guardianship or administration order, be given to the adequacy of existing informal arrangements for the care of the person or the management of his or her financial affairs and to the desirability of not disturbing those arrangements; and*
- (d) the decision or order made must be the one that is the least restrictive of the person's rights and personal autonomy as is consistent with his or her proper care and protection.*

PHILOSOPHY

In addition to the legislative principles, the OPA believes:

- All people are presumed to be capable of looking after their own health, safety and welfare and managing their own affairs until proven otherwise;
- Recognising people's potential and capacities should be the focus, not their incapacity or condition;
- Guardianship Board orders are a last resort and should only ever be considered when other less restrictive alternatives cannot be found;
- People with a mental incapacity should be encouraged to make their own decisions where ever possible and continue to participate as much as possible in community life;
- Arrangements made by family and friends to provide quality care and protection (when needed), when it increases independence and enhances a person's lifestyle and potential, should be respected and promoted;
- People should be protected from abuse, neglect and exploitation; and where abuse, exploitation and neglect are occurring, we will act quickly to investigate allegations and collaborate with available services to facilitate changes where necessary.

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LEGISLATIVE FUNCTIONS

Guardianship and Administration Act 1993

21. General functions of Public Advocate

(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;

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

(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.

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

28. Investigations by Public Advocate

(1) The Public Advocate must, if the Board so directs after an application has been lodged with the Board for an order under this Part, investigate the affairs of the person the subject of the application.

29. Guardianship Orders

(4) The Public Advocate may be appointed as the guardian, or one of the guardians, of the person, but only if the Board considers that no other order under this section would be appropriate.

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STAFFING

PUBLIC ADVOCATE

Dr John Dawes

ASSISTANT PUBLIC ADVOCATE

Ms Rennie Gay (July 1997 - February 1998)

Ms Patricia Muncey (April 1998 - June 1998)

GUARDIANSHIP UNIT

Ms Yvette Gray (0.8fte)

Ms Gina Testa (contractual position)

INVESTIGATION UNIT

Ms Anita Micallef

Ms Angela Andary (0.8fte)

EDUCATION UNIT

Education Officer

Ms Lisa Huber

Information Officer

Ms Stephanie Lewis (0.6fte)

ADMINISTRATIVE UNIT

Senior Project and Financial Systems Officer

Mr Paul Green

Senior Clerical Officer

Ms Tamela Scotcher

Clerical Officer

Mr Todd Geisler

Clerical Trainee

Ms Ann Beattie (July 1997 - October 1997 - subsidised training position)

STUDENT SOCIAL WORKERS

Ms Christine Krajacic

Ms Ali Lamshed

TEMPORARY STAFF

During the 1997-98 financial year the OPA has required the services of temporary clerical staff for 35 days.



PUBLIC ADVOCATE

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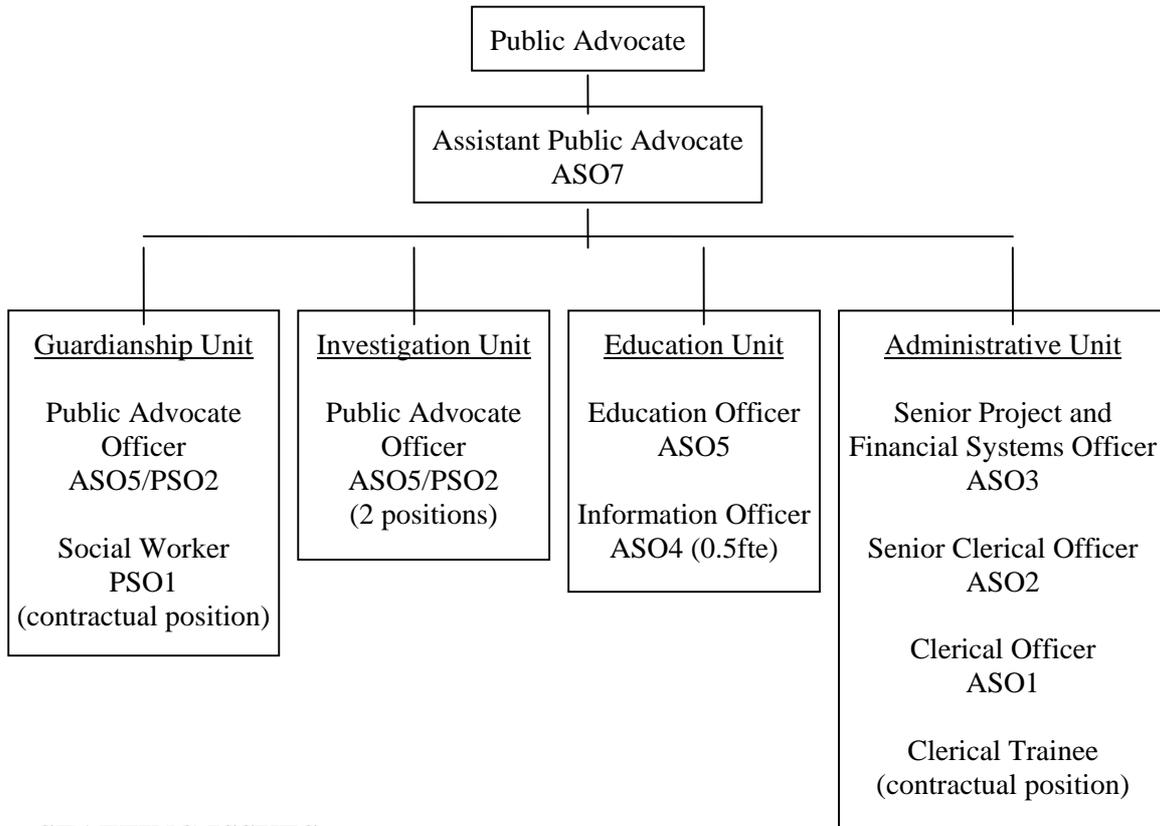
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STAFF OF THE OFFICE OF THE PUBLIC ADVOCATE

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ORGANISATIONAL STRUCTURE
(as at 30 June 1998)



STAFFING ISSUES

The OPA has continued to operate with 9.5fte permanent staff positions. During 1997-98, this was supplemented by the assistance of two temporary staff members.

Until October 1997, Ms Ann Beattie worked at the OPA for a year on a subsidised clerical training position, involving attendance at TAFE two days per week. Ann was an important contributor to the work of the Clerical Unit. At the end of her contract, unfortunately there was not a position at the OPA for Ann and we were thus unable to offer her any further work. Ann subsequently secured employment within the private sector.

Ms Gina Testa worked at the OPA from July 1997 until June 1998 as a social worker in the Guardianship Unit. Her main role was to assist other staff in the management of the large number of guardianship appointments. Due to a lack of resources, the OPA was unable to extend Gina's contractual position any longer. During her time at the OPA, Gina made a significant contribution to the organisation, both on a professional and a personal level, and all staff miss her enormously.

During 1997-98, the only change in the OPA's permanent staff was the position of Assistant Public Advocate. In February 1998, Ms Rennie Gay took twelve months leave to work as a Board member at the Guardianship Board. The new Assistant Public Advocate, Ms Patricia Muncey, commenced in April.

GUARDIANSHIP

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THE OBJECTIVE OF THE OPA GUARDIANSHIP UNIT IS TO ...

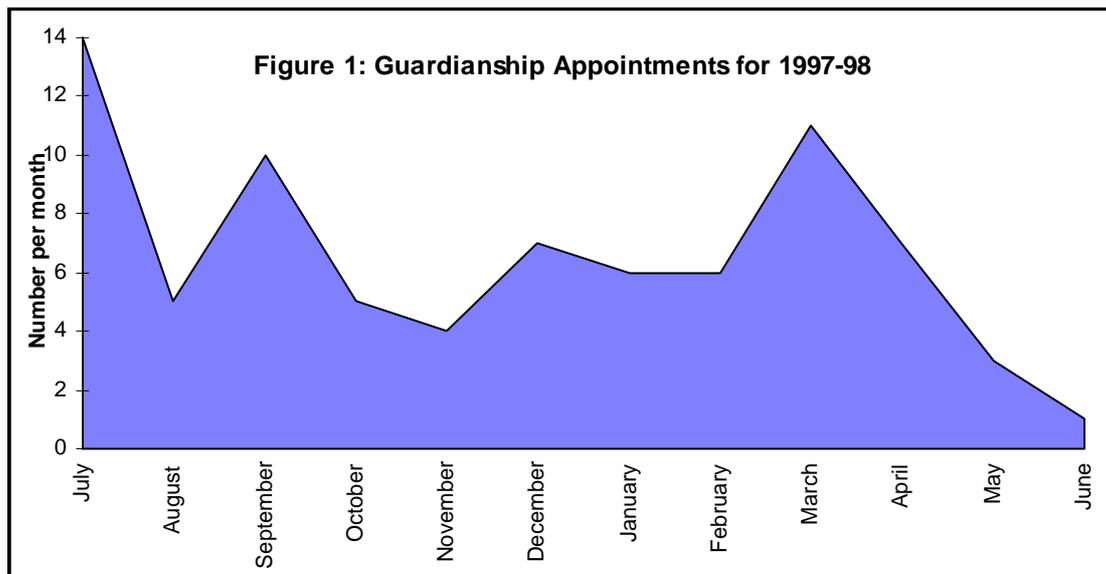
Act as guardian for those persons with a mental incapacity who are, in the opinion of the Guardianship Board, in need of care and protection and for whom no other suitable guardian can be found.

GUARDIANSHIP APPOINTMENTS FOR 1997-98

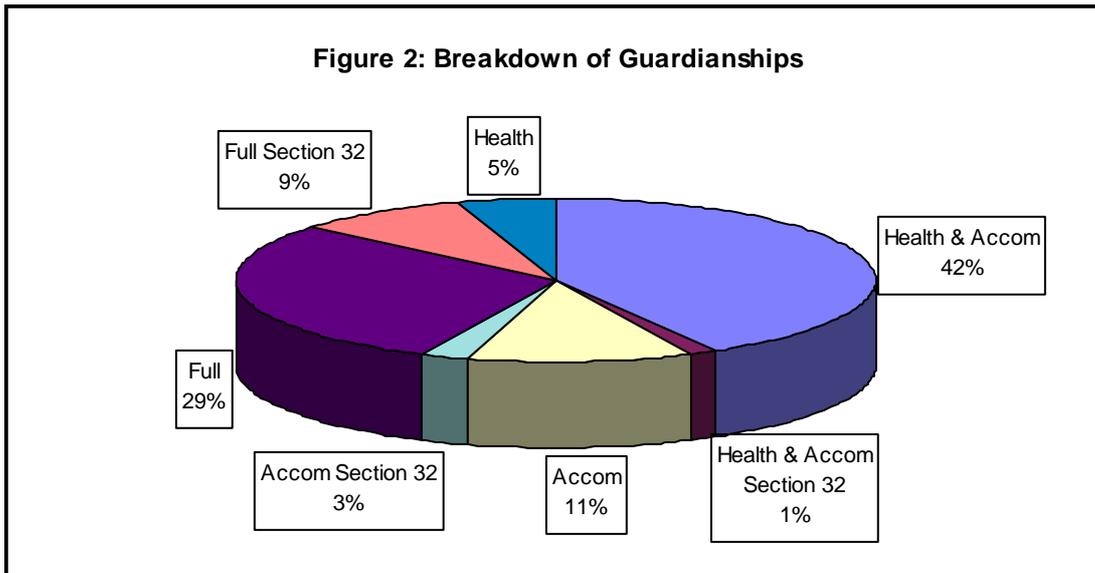
Under Section 29(4) of the *Guardianship and Administration Act 1993*, the Guardianship Board can appoint the Public Advocate as guardian of a person with a mental incapacity. This occurs in situations where a guardian is needed and there is no other appropriate person to be appointed.

Guardianship involves a person taking on the responsibility to make necessary personal and/or medical decisions on behalf of a person with a mental incapacity. The role of the guardian is to be the substitute legal decision maker on matters relating to the person. A guardian does not become the person's case manager, nor organiser of care. The guardian is the person who accepts, or refuses, proposed care and management plans on behalf of the person for whom the appointment has been made. The guardian is often involved in difficult and prolonged negotiations with family members, carers and various service providers in attempting to make decisions in line with the principles of the *Guardianship and Administration Act 1993*. The nature of guardianship frequently puts a guardian in conflict with family members who disagree with decisions being made on behalf of their loved ones.

In the period July 1997 to June 1998, there were 79 new appointments of the OPA as guardian for persons with a mental incapacity in South Australia. These new guardianship appointments were received month by month in the following numbers:



The breakdown of these new guardianship appointments into types is as follows:



These 79 new appointments brings the total number of appointments of the OPA as guardian since proclamation of the new legislation (6 March 1995) to 311. Of these 311 appointments, 107 guardianships have now been revoked; as of 30 June 1998, the OPA was guardian for 204 adults with a mental incapacity in South Australia.

Guardianship Unit staffing

During the period July 1997 to June 1998, the Guardianship Unit comprised 1.8fte dedicated staff, as well as approximately half of the work time of both the Public Advocate and the Assistant Public Advocate. This amounts to the equivalent of 2.8fte staff dedicated to guardianship work. This means that the number of guardianships is unrealistically high for the number of staff available.

Over this last financial year, a priority system for guardianship cases was developed, to ensure that the highest priority cases are allocated for a full service, and the guardianship staff make decisions about the remaining cases on a needs basis. Given the rising number of guardianships, the staffing ratio can lead to unacceptable risks for people under guardianship. For example, in some instances OPA staff are making decisions about people they have not seen because we do not have the staffing level necessary to be able to visit all clients.

Over the last few years, the OPA has developed an introductory letter to applicants and/or case managers in cases where the OPA has been appointed as guardian. This letter describes the functions of guardianship in relation to the order made. A copy of the principles of the *Guardianship and Administration Act 1993* is attached and, where appropriate, the nature of consent for medical decisions explained and/or information about Section 32 powers provided. In this letter, the case manager is asked to provide the OPA with a management plan for the person. The OPA then relies on this information to make effective guardianship decisions.

ISSUES ARISING OUT OF GUARDIANSHIP

Least restrictive alternative: the OPA as guardian of last resort

Section 5(c) of the *Guardianship and Administration Act 1993* provides that the adequacy of existing informal arrangements must be considered prior to the making of a guardianship or administration order. Section 5(d) provides that any order made must be the one that is least restrictive of a person's rights and personal autonomy as is consistent with his or her proper care and protection. OPA staff now review all guardianship applications where the OPA is the nominated guardian. Staff discuss the application with the applicant and look at whether an application for guardianship is the least restrictive alternative in the particular case. As a result of these discussions, the OPA has been able to develop alternatives with many applicants that are less restrictive than a Guardianship Order. Ideally, it would be desirable for the OPA to undertake this type of pre-hearing advocacy for all guardianship applications received by the Guardianship Board. However, with the current level of staff, this is not possible. OPA staff working on the OPA Enquiry Service also spend a lot of time discussing least restrictive alternatives to guardianship. Although we know that many unnecessary applications for guardianship are prevented by this process, we are unable to quantify this.

The OPA has been concerned at the increasing number of applications where the OPA or a private individual is nominated as guardian for the purposes of advocacy or in case an order may be needed at a later date. In a climate of shrinking resources, there has been a movement towards using a Guardianship Order as another means of attempting to obtain services for a client. Sometimes obtaining a Guardianship Order makes the difference between a client receiving or not receiving a service. The OPA believes that this is an inappropriate use of a Guardianship Order, as it is contrary to the principles of the *Guardianship and Administration Act 1993*. On a practical note, even if it were within the principles of the legislation, the OPA simply does not have the level of staffing to do this.

Substitute decision making not case management

As previously stated, decreasing resources mean that it is difficult for many clients who need a case management service to be eligible for one. Due to increasing demand, case management agencies are having to prioritise their services, and many potential protected persons or protected persons are not able to access the case management service that they need. Due to declining resources, the OPA believes that there is a tendency to close case management files earlier than might be desirable simply to cope with the workload. For example, protected persons who are placed in supervised accommodation may find that their case management service is ceased after they have been in this accommodation for a few months and are thought to have stabilised. Often this stability is temporary, or they change residence again, and the need for a case manager resurfaces. In these situations it is extremely difficult to re-establish the case management service. It is extremely difficult to be a person's substitute decision maker in cases where there is no case manager or family to assist the person in their daily living. Therefore, the OPA has been vigilant in the need to distinguish between the need for a service and the need for a decision maker.

Full and limited guardianship orders

Section 31 of the *Guardianship and Administration Act 1993* states that:

A person appointed as a guardian under this Part has and may exercise, subject to the terms of the Board's order, all the powers a guardian has at law or in equity.

This definition is broad, and, for the last few years, the OPA has been attempting to clarify the nature and extent of full guardianship.

There are some well defined areas for limited guardianship and these limitations are frequently imposed by the Guardianship Board in accordance with the *Guardianship and Administration Act 1993*. Section 5(d) of this Act provides that any order made must be the one that is least restrictive of a person's rights and personal autonomy as is consistent with his or her proper care and protection. Section 29(1) states that a full guardianship order should only be made in situations where a limited guardianship order would not be appropriate. Section 29(2) of the Act defines a limited guardianship order as '*an order by which the Board specifies the particular aspects of the protected person's care and welfare that are to be the responsibility of the appointed guardian or guardians.*' Figure 2, on page 14, details the breakdown of new guardianship appointments to the OPA for 1997-98. Of the 79 new guardianship appointments made by the Guardianship Board to the OPA in this last financial year, 38% were full appointments and 62% were limited to a specific area or areas. As Figure 2 shows, by far the majority of these limited guardianship appointments were for accommodation and health care. Limited guardianship orders have also been made with respect to access, family contact, day to day care, counselling and travel.

There are some clearly defined common law exceptions to the power of full guardianship. For example, a guardian cannot prevent a person from marrying, or intercept his or her mail. The OPA is attempting to define in practical terms exactly what areas a full guardianship order may cover.



At the OPA Staff Development Day. The Public Advocate, Dr John Dawes, and the Adelaide Central Mission's Rev Dr Geoff Scott discussing how to provide a professional service with limited resources

EXAMPLES OF GUARDIANSHIPS - SOME CASE STUDIES

The following case studies illustrate the range of work and the complexity of issues involved when the OPA undertakes its role as guardian of people with a mental incapacity in South Australia.

Guardianship and the Family Court

Soula is a 32 year old woman of Greek origin, living with various friends and relatives. She has two children, both living with their father, due to the perception of health and welfare workers that she was unable to offer a stable and safe environment for the children. Their father has not allowed any contact between the children and their mother for two years, fearing she may harm them in some way. Soula has a mental illness which she denies, and suffers from diabetes, which she manages reasonable well when her mental health is good.

On application to the Guardianship Board by Soula's mental health team, the OPA was made full guardian for Soula, the Public Trustee was made her financial administrator and a Community Treatment Order was made. This combination of orders allowed Soula to be adequately treated for her mental illness, with her guardian directing that she reside in her new South Australian Housing Trust flat, regularly attend the day centre and keep appointments with her local doctor to monitor her diabetes.

Soula flourished once her life settled and her diabetes became stable. She began thinking of her son Con and daughter Kirsty, living away from her for some time, and asked the guardian if anything could be done to have them back with her.

As a protected person under the care of the Guardianship Board, Soula was deemed unable to instruct a lawyer herself, but her guardian has the authority to instruct a lawyer on her behalf by following the legislative principles of the *Guardianship and Administration Act 1993*, in relation to considering her expressed wishes, the desirability of changing existing arrangements and taking the least restrictive approach to the matter. After carefully listening to her wishes, the guardian relayed these to her lawyer, who initiated proceedings in the Family Court for contact and residence.

Much negotiation between the lawyers for the father and Soula followed, with her guardian constantly talking to Soula and instructing the lawyer accordingly. Through Soula's lawyer, the Family Court was asked to consider an application for the children to have a 'separate representative', a lawyer to represent their own position in relation to seeing their mother.

At the next Family Court hearing the representative was appointed and explained that the children wished to see their mother. Both mother and children were initially apprehensive about the first contact, but as these contacts continued, it became apparent that Soula's relationship with the children was a positive one, and although it will take time, both parents are now considering a joint arrangement for the care of the children, much to the relief and joy of Soula and her children.

Risky decisions and Section 32 powers

Approximately a year ago the OPA was appointed by the Guardianship Board as guardian to make accommodation and health decisions for an elderly man living by himself at 'the Port'. Mr S had a long history of alcohol abuse, and as a result, had developed an alcohol related brain injury that severely affected his ability to make decisions that were advantageous to his health and general wellbeing.

The guardian first met Mr S while he was an inpatient at a large general hospital, where he had been treated for dehydration and inflammation of the pancreas, common ailments amongst heavy drinkers. This was one of several admissions for similar illnesses over an extended period of time. The treating team felt that Mr S's health was at risk by allowing him to return home, and asked the guardian to authorise a move to a hostel, where he would receive good care. The guardian spoke with Mr S at length about his wish to return home and his fear of being 'locked up in a home'. He had always lived alone, having never married and had made a living as a shearer and general station hand. He was a very independent and proud man, receiving the support of a neighbour and a cousin, who had arranged Meals on Wheels and did his laundry. His expressed wish was to return home, and he spoke candidly of his drinking, of his hard life, and of his acceptance of dying alone in his house one day.

The guardian weighed up the risks and benefits related to the two choices presented - to return home would be a comfort to Mr S, but his physical health would continue to deteriorate. If a hostel was chosen, he would have to be taken against his wishes, and probably sedated to achieve this goal. He would be safe and well cared for, but would be very unhappy as he had always chosen to live a free and easy life. The guardian decided to let Mr S go home.

Since first sending Mr S home, he has had more admissions to hospital. These admissions were becoming more frequent and his general condition deteriorating markedly. His carers were also reporting increasing difficulty in getting him to eat and drink, and on the most recent admission he was underweight, malnourished and dehydrated. His balance was very poor and he was falling almost daily. At a meeting that included Mr S, the hospital staff, carers and the guardian, the decision was made to move Mr S to supervised accommodation, even though he insisted that he could still manage at home. The degree of risk had become too great. The guardian saw that the balance between following Mr S's wishes and taking the least restrictive approach, and considering his proper care and protection, had shifted in favour of protective measures. Given his increased level of infirmity, Mr S now needed to move to a nursing home.

Not surprisingly, Mr S complained long and loud about this and swore he would not go, but would return home instead. The guardian had no choice but to apply to the Guardianship Board for Section 32 powers. When granted, these powers allowed the guardian to override Mr S's expressed wishes and forcibly move him to a secure nursing home. His neighbour and cousin continue to visit him, and he continues to hatch plans to leave 'the home' one day.

Guardianship and placement

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INVESTIGATION

THE OBJECTIVES OF THE OPA INVESTIGATION UNIT ARE TO ...

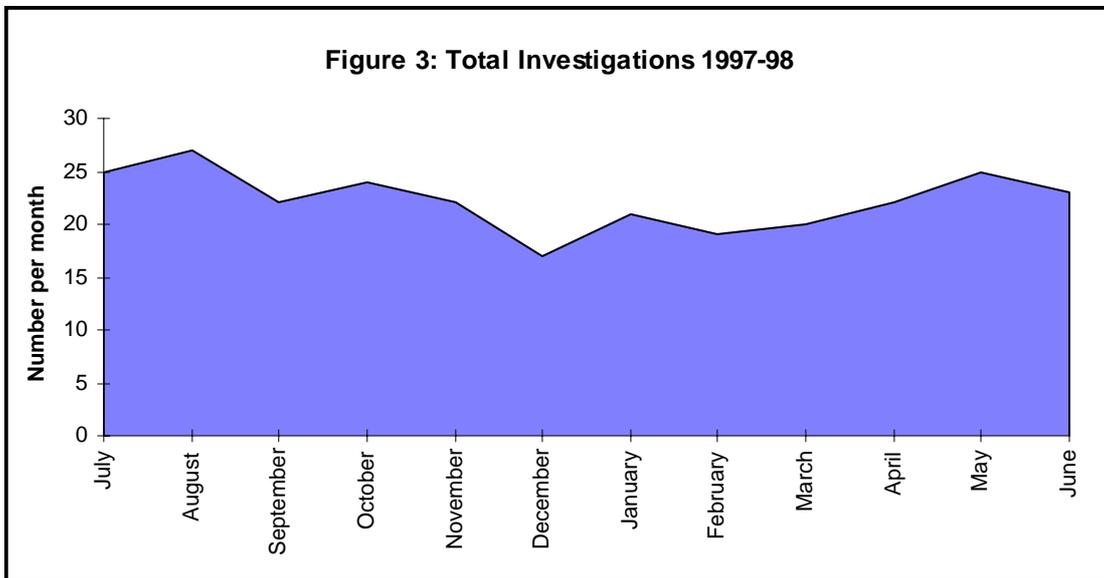
Respond to the Guardianship Board's need for information by providing timely, factual, accurate and objective reports.

Speak for and support persons with a mental incapacity by reporting on situations that infringe upon their rights and interests.

Under Section 28(1) of the *Guardianship and Administration Act 1993*, the Guardianship Board can direct the OPA to undertake investigations. The vast majority of investigations are received by the OPA in this way. The remaining investigations undertaken by the OPA are conducted as a response to calls received from the general public and service providers through the OPA Enquiry Service. For details about the types of investigations undertaken, see the section *Issues and advocacy arising out of investigation* on the next page.

INVESTIGATIONS FOR 1997-98

In the period July 1997 to June 1998, the OPA has undertaken 267 investigations. This represents a 37% increase in overall productivity from last year's figure of 169 investigations. These investigations were undertaken month by month in the following numbers:



Investigation Unit staffing

During the period July 1997 to June 1998, the Investigation Unit comprised 1.8fte dedicated staff, as well as an approximately 0.3fte contribution from the Public Advocate and the Assistant Public Advocate. This amounts to the equivalent of 2.1fte staff dedicated to investigation work.

ISSUES AND ADVOCACY ARISING OUT OF INVESTIGATION

Priority areas for investigation

In May 1998, staff from the OPA and the Guardianship Board met to discuss investigation referrals to the OPA. Because the number of potential referrals always outstrips the OPA's capacity to undertake them, we agreed to prioritise the referrals into the following areas:

Undue influence

This area relates to when the Guardianship Board believes that the potential protected person is under undue influence from someone else, be it a family member, friend or professional person. This may include a situation where the potential protected person says that they want to live with someone and the Guardianship Board suspects that this is not their free choice. This area of investigation is particularly important because when someone has a mental incapacity there can be a fine line between free choice and undue influence.

Financial abuse and family conflict

This area relates to when the people involved cannot be relied upon to produce all of the relevant information in an objective and unbiased manner. This may involve financial disputes and family conflict. For example, in one situation, a daughter wanted to become her mother's administrator but there were some ill defined concerns raised by others regarding the alleged mismanagement of her mother's financial affairs. The OPA needed to investigate this matter, to determine whether it was appropriate for the daughter to be administrator, because if there was no substance to the allegations, she would be the most appropriate person.

In these two types of referrals the Guardianship Board outlines the particular areas they wish the OPA to investigate. The OPA then talks with all relevant people prior to the hearing and prepares a report for the Board outlining the circumstances, information related to the allegations and recommendations for action. These investigations can be complex and time consuming, taking between about five and twenty hours of staff time per investigation.

Sterilisation

Sterilisation applications are the third category of investigation in the Office of the Public Advocate/Guardianship Board agreement. In South Australia, both the Family Court and the Guardianship Board have jurisdiction to hear applications for sterilisation of a person with a mental incapacity. During 1997-98, there were four applications for sterilisation to the Guardianship Board. Investigations relating to sterilisation applications are complex and need thorough and comprehensive reports. Section 61(2) of the *Guardianship and Administration Act 1993* states that the Guardianship Board can only consent to a sterilisation in specific circumstances. For this reason, the OPA fully investigates and assesses all of the available alternatives in the particular case. A sterilisation investigation usually takes a minimum of thirty hours of staff time. The issues that the OPA takes into account in conducting a sterilisation investigation are discussed in the case study starting on page 23.

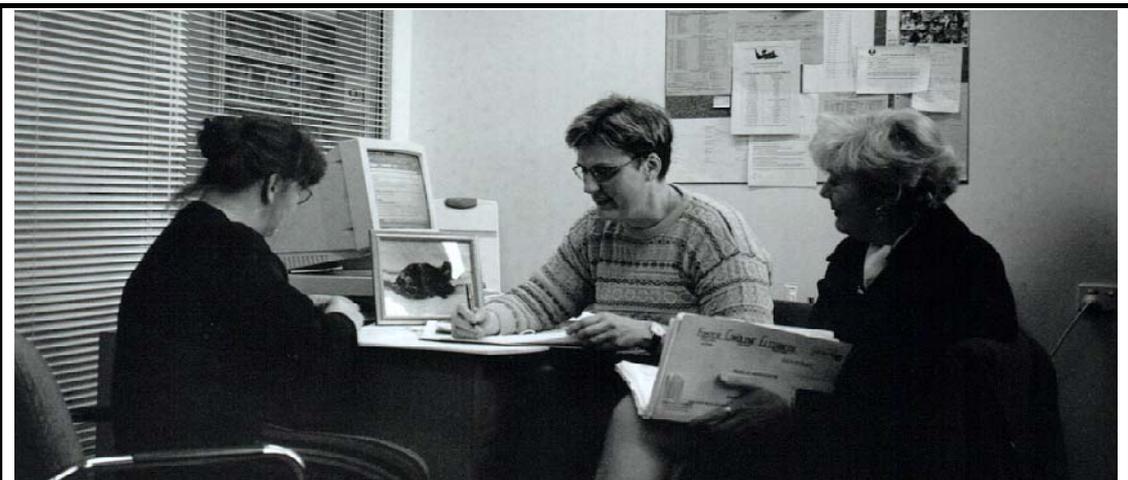
Advocacy

One of the other main areas of investigation work undertaken by the OPA is advocacy. This involves pre-hearing advocacy, where the OPA reviews all guardianship applications when it is the nominated guardian, advocacy of a more general nature and systemic advocacy. The Guardianship Board may refer a matter to the OPA when they believe that the person needs an advocate. For example, situations where a person with a mental incapacity needs a case manager but is being refused a service. Many people need an advocate but not necessarily a guardian. Referrals for advocacy also come from family, friends and a wide range of professionals through the OPA Enquiry Service. Again, due to limited staffing, the OPA has to stringently prioritise these referrals. The OPA also works closely with other advocacy agencies.

Guardian ad litem

The OPA Investigation Unit is receiving increasing numbers of referrals from the Family, Supreme and Youth Courts for the OPA to be a 'Next Friend', 'Guardian ad Litem' or an advocate for a person before the court who has reduced mental capacity. This occurs when the judge believes that the person needs an advocate to instruct the court on their behalf. The OPA was involved in eight of these matters during the 1997-98 financial year. This is an extra function taken on by the OPA and, again, the capacity to deal with referrals is limited. However, the OPA believes that, in the interests of justice and equity for people with a mental incapacity, it is a vital role. A court of law is a very difficult and formal process for a person with a mental incapacity, and the presence of an advocate means that their wishes can be clearly articulated and expressed.

The OPA Investigation Unit also follows up or investigates issues at a systems level. A service provider contacted the OPA with an enquiry about whether a person with dementia could consent to sexual intercourse. This raised important issues, on the one hand, about aged persons and sexuality, and on the other, about a person's right not to have sex unless they have consented to it or are able to consent to it. This is an example of one of the issues that the OPA will be following up over the coming year.



At an OPA Investigation Unit case allocation meeting - from left to right: OPA investigator, Ms Angela Andary; Assistant Public Advocate, Ms Patricia Muncey; OPA Investigator, Ms Anita Micallef

EXAMPLES OF INVESTIGATIONS - SOME CASE STUDIES

The following case studies illustrate the nature and complexity of investigations undertaken by the OPA under the *Guardianship and Administration Act 1993* on behalf of people with a mental incapacity in South Australia.

Fact versus fiction: the importance of establishing the truth

The OPA was directed by the Guardianship Board under Section 28 of the *Guardianship and Administration Act 1993* to provide a report on the circumstances surrounding the receipt of an application from an aged care service provider for guardianship and administration in relation to Mr F. Mr F was a frail eighty year old man with a progressive dementia, living with his son in a house in an inner south eastern suburb of Adelaide. Mr F's son was his main carer, and was supported by some domiciliary care and home nursing services. The trigger for the referral from the Guardianship Board to the OPA for an investigation was that the Board had also received a letter from Mr F's son, which outlined his objections to the application, which he felt was both unnecessary and vexatious.

When the OPA investigator looked into the circumstances surrounding the service provider's application to the Guardianship Board, she found that there were no real grounds for either the Guardianship Order or the Administration Order. It turned out that much of the evidence presented in the application was factually incorrect. The service provider had only recently taken over the management of this case from a colleague, and had accepted some major false assumptions without independently examining their basis. It appeared that there were a series of allegations on the file, that had been made eighteen months previously by a neighbour when Mr F's son moved in to care for his father. At this time, Mr F changed his will so that the house would be left to his son. Investigations revealed that the neighbour was a property developer who had been befriending Mr F in the hope that she would be able to purchase his house for a reduced price once his dementia had deteriorated further.

When gathering information for the application to the Guardianship Board, the service provider had used the application to the Guardianship Board as a first course of action, rather than as a last resort, and had failed to take into account the principles of the *Guardianship and Administration Act 1993*. The approach used was that of the service provider's own perception of 'best interests', rather than that of substituted judgement. Not once had the views of Mr F been sought, nor had the adequacy of the existing informal arrangements for his care been considered. The service provider had not once spoken to Mr F's son, and had ignored the views of Mr F's general practitioner, who had known the family for over fifteen years. In this case, the Guardianship Board dismissed the application for both orders at the hearing. This case clearly shows the importance of careful consideration and planning prior to making an application to the Guardianship Board.

Sterilisation: pursuing the least restrictive option

The OPA was required to provide a report on the proposed sterilisation of Janet, a thirteen year old girl with a severe intellectual disability. The application was made by Janet's general practitioner, who was the doctor intending to perform the

procedure. Janet's mother, Rachel, a sole parent, cared for Janet, who attended a special school and had recently started menstruating. It appeared in this case that the main reason for the application was that there were many social taboos affecting Rachel's ability to successfully handle Janet's menstruation. While she accessed some services from Options Co-ordination, menstruation presented what appeared to be another burden of care.

Before consenting to a treatment or procedure resulting in sterilisation, the Guardianship Board must consider the legislative provisions contained in Section 61(2) of the *Guardianship and Administration Act 1993*, and the OPA investigation report must address these provisions in detail. It was clear that Janet would never acquire the capacity to give her own consent and that the sterilisation was not for therapeutic reasons. Part of the OPA investigation report must address what other options are available, as sterilisation is seen in the legislation as a last resort. In this case, the contraceptive pill was not an option because of difficulty in taking oral medications, and inter-uterine devices are often not suitable because they often require ongoing gynaecological checks for efficacy, which is often difficult for women who find such examinations stressful. Depo Provera can be an option in such cases, but the research is still inconclusive about its use in young women.

At the Guardianship Board hearing, the OPA advocated for an assessment of Janet's ability to undertake a menstrual management program. The Board agreed, as evidence indicated that Janet may respond well to such a program, which was an option that had yet to be trialed. In this case, the Guardianship Board did not consent to the procedure as the requirements of Section 61(2) were not met, and to date, Janet has been successful in her own menstrual management.

Guardianship Board: how wide is the net?

The Guardianship Board received an application from a family in relation to an eighteen year old woman, Ms K. It was alleged in the application that Ms K had an eating disorder which was affecting her ability to conduct her own life. Ms K was living independently of her family and studying at University. She had a female partner, of whom Ms K's deeply religious family disapproved.

The OPA took an enquiry call from Ms K, who was extremely distressed after receiving notification of the forthcoming Guardianship Board hearing. She believed that her family were making the application in order to gain control of her life, to choose her friends and ensure that she behaved in a way that was acceptable to them.

The OPA decided to undertake an investigation to look at the circumstances surrounding the application. Investigations revealed that the only medical evidence attached to the application was outdated, from four years ago. It stated that, at that time, Ms K did in fact have an eating disorder, but the psychiatrist had not seen Ms K since that time. The OPA investigator wrote to the Guardianship Board requesting that they dismiss the matter as there was insufficient medical evidence to support the application, and arguing that sensitive matters such as this are best dealt with in other ways than through the Board. The Board, however, felt that they had a

responsibility to the family to allow them time to locate some current medical evidence, and therefore adjourned the hearing for eight weeks.

During this time, Ms K was subjected to numerous letters from the Guardianship Board outlining the process that the Board was undertaking. She was emphatic in her view that the Board had no right to hear the matter.

While the OPA sympathised with the family, we strongly advocated on behalf of Ms K for this matter to be dismissed. At the subsequent hearing, the case was dismissed. Our concern is that any family who does not approve of the way in which their children are conducting their lives could make an application to the Guardianship Board. The OPA believes that there must be current medical evidence of a mental incapacity before an application is even accepted by the Guardianship Board to prevent such infringements of a person's civil liberties.

Detention: the need to consider the wider picture

A concerned friend of Mr R, a detained patient at Glenside Hospital, contacted the OPA Enquiry Service to enquire about appeal procedures and to request assistance in mounting an appeal. Following further enquiries, it became clear to the Enquiry Officer that the detention order had been made under unusual circumstances, and so the matter was referred to the OPA Investigation Unit. Investigations indicated that Mr R had presented himself at a country hospital for 'time out' as a way of coping with significant social pressures. The hospital accepted him as a 'bona fide' patient, but detained him on the third day following admission, although there appeared to be no change in his presentation. He was then transported to Glenside Hospital without knowledge as to why he had been detained, how long he would have to stay, or being able to attend to pressing matters at home. Mr R could not arrange for payment of his rent, consequently his under age daughter became homeless. The social pressures which precipitated his voluntary admission to hospital had become more pressing and unmanageable as a result of his detention.

The OPA investigator assisted Mr R in submitting an appeal to Guardianship Board against his detention. At the same time, the OPA investigator began negotiations with the hospital treating team, providing background information and exploring alternatives to treatment and management which did not require detention in hospital. It was explained to the hospital staff that Mr R had a right to be informed about the reasons for his detention and to be consulted about treatment and other options which could be appropriate in his case.

Four days after the initial referral was made to the OPA, the detention order was revoked by the hospital and therefore the matter did not proceed to appeal. Mr R was linked with community based services, a case manager was appointed, and he was then able to attend to accommodation and family issues with additional support from mental health services.

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EDUCATION

THE OBJECTIVE OF THE OPA EDUCATION UNIT IS TO ...

Provide advice and information regarding the *Guardianship and Administration Act 1993*, the *Mental Health Act 1993*, the operation of these Acts, and related issues.

IT IS THE PRIMARY RESPONSIBILITY OF THE OPA EDUCATION UNIT TO ...

Contribute to ensuring that there will be 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, amongst the general community.

It is a responsibility of other OPA staff to also contribute to this awareness and understanding.

The OPA Education Unit strives to provide a responsive service to meet the needs of staff and the information requirements of external agencies and organisations. In addition, the Education Unit aims to improve access for individual consumers seeking the type of information which the OPA provides. During the 1997-98 period, the Education Unit comprised 1.6fte staff, assisted by the clerical and professional peer support of other OPA staff.

The work of the Education Unit has expanded and can be divided into three categories:

- provision of education sessions,
- education materials development,
- external consultation requests.



Education Officer, Lisa Huber, presenting an education session to a group of service providers

PROVISION OF EDUCATION SESSIONS

In the 1997-98 period a total of 97 education sessions were provided. This increase of 24 sessions represents a 23% increase in overall productivity from last year. There were a total of 2008 individual attendees, an increase of 119 from last year.

Target group	Sessions 94-95	Sessions 95-96	Sessions 96-97	Sessions 97-98	Contacts 94-95	Contacts 95-96	Contacts 96-97	Contacts 97-98
Country	6	7	5	14	215	298	163	246
Carer/ Consumer	23	33	35	39	421	761	662	934
Service Provider	24	36	33	44	1130	1133	1064	828
TOTAL	53	76	73	97	1816	2092	1889	2008

Country program

The 1997-98 Education Unit Strategic Plan emphasised the need to provide better access to information for service providers, carers and consumers in country and rural areas.

The OPA Education Unit provided fourteen information sessions in country areas in 1997-98. This represents a 64% increase in productivity in this area from last year's figure of five sessions. There were a total of 246 individual attendees, an increase of 63 from last year.

Areas visited included Port Broughton, Port Pirie, Murray Bridge, Streaky Bay, Berri and the Riverland, Angaston and the Barossa Valley, Cleve, Whyalla, Port Augusta, Wallaroo and Mount Gambier.

Carer/consumer program

During 1997-98, the OPA continued to meet the numerous demands for attendance as a guest speaker at groups of carers and consumers.

The OPA Education Unit provided 39 information sessions for carers and consumers in 1997-98. This represents a 10.5% increase in productivity in this area from last year's figure of 35 sessions. There were a total of 934 individual attendees, an increase of 272 from last year, which may reflect the decision of the Education Unit to require numbers greater than ten in order to conduct a session. (This year's figures show an average of 24 persons per session compared with an average of nineteen per session last year.)

Carers and consumers benefiting included Alzheimers' Association carer groups, regional carer networks, Probus and Legacy clubs, Parent Advocacy and other parent groups, church and seniors groups.

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Service provider program

The 1997-98 Education Unit Strategic Plan emphasised the need to improve the access of available information on guardianship and mental health legislation to service providers and professionals in metropolitan areas. Whilst the OPA is not responsible for workers who lack an understanding of the legislation relevant to their work, deficits had been identified and further effort was made to encourage the use of our education services. Generally, we believe there is a growing awareness of the need for service providers to 'own' and use the legislation appropriately in their work.

The OPA Education Unit provided 44 information sessions for service providers in 1997-98. This represents a 25% increase in productivity in this area from last year's figure of 33 sessions. There were a total of 828 individual attendees, a decrease of 205 from last year, which reflects the changing nature of information provision in this area to smaller groups, allowing more intense learning and sharing of specific case management issues. (This year's figures show an average of nineteen persons per session compared with an average of 32 per session last year.)

Organisations benefiting included Julia Farr Services, RDNS, SA Police, hospital and nursing home staff, TAFE, Options Co-ordination, social work, nursing and medical students, SA Mental Health Services, Family Planning Association, credit union staff, Aboriginal Home Care Program, Adelaide Central Mission and Disability Action.

Evaluation comments from participants attending OPA education sessions:

“easy to understand ... diagram was really good”

“well presented session ... questions answered very competently”

“I was very impressed ... things have not been explained in so much detail before”

“minefield of information given clearly and concisely”

“set out in a way which was comprehensible to all ... informative and well paced”

“well presented ... overheads and case studies useful”

“I know where to go when I have a problem that may fit this category for resolution/advice ... it was definitely aimed at the group”

“it gave me the full picture ... valuable session ... well presented”

“very relevant to questions always asked ... well presented ... case studies good”

“in depth information presented by breaking down components in an easy and understandable way”

“thank you for providing a much needed information session”

EDUCATION MATERIALS DEVELOPMENT

One of the main ways the OPA disseminates information about the guardianship and mental health legislation is through its education materials. The most important achievements during the 1997-98 financial year in this area have included:

Pamphlets

- Production of the OPA Community Pamphlet No 15, *What to expect at a Guardianship Board hearing*, to compensate for the loss of the current Guardianship Board application form's guide which is not part of the Board's new *Guardianship and Administration application form* (see next page). There was significant evidence to suggest applicants were not using the guide but did however refer to the series of coloured pamphlets produced by the OPA.
- Production of the OPA Community Pamphlet No 16, *Consumer Grievance Policy*, which details how make a complaint about an aspect of the OPA's work.
- Translation of the following pamphlets into Greek, Italian and Vietnamese:
 - *What is a Guardianship Order?*
 - *What is an Administration Order?*
 - *What is the Guardianship Board?*
 - *Advice to applicants: Guardianship and Administration Act 1993*
 - *Enduring guardianship and other future plans*
- Ongoing pamphlet maintenance, involving revision and updating of the existing pamphlets and organising reprinting of new stocks.
- Uploading the new and updated community pamphlets onto the OPA Web site, DIRC's Common Ground Bulletin Board and MALSSANET.

Regular publications

- The 1996-97 Annual Report was compiled, printed and distributed, with very positive feedback received.
- Two editions of the bi-annual Public Advocate Newsletter (No 4 in December 1997 and No 5 in June 1998) were compiled, and 1200 copies of each were printed and distributed. The OPA mailing list now comprises some 900 agencies.

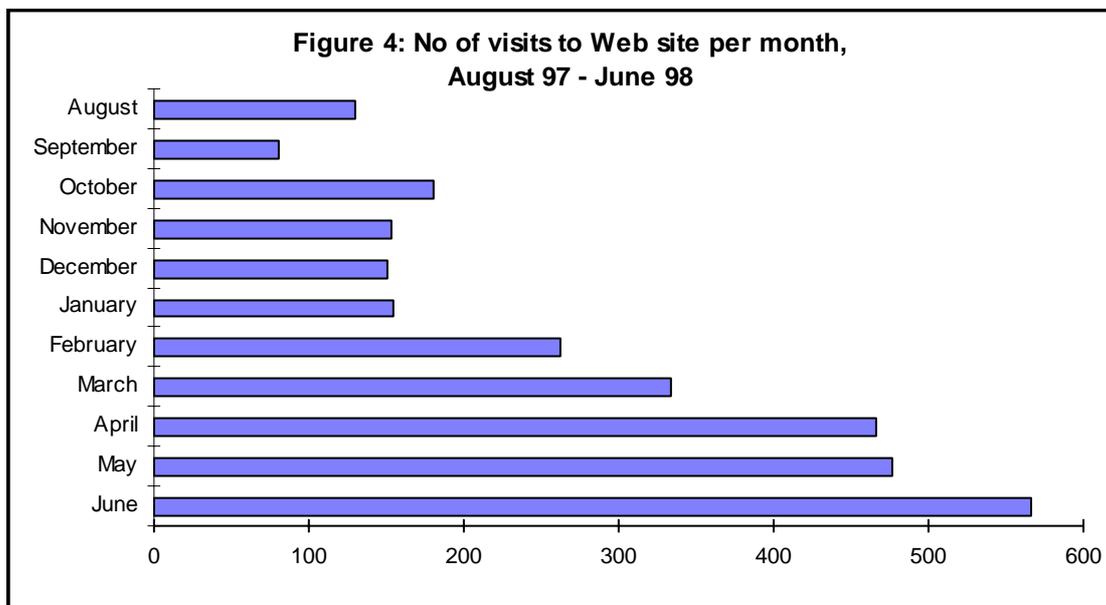
Other information resources

- A training package relating to the *Guardianship and Administration Act 1993* was produced. The package comprises a talk outline and series of overheads that is available upon request to carer education course facilitators, particularly those at the Alzheimers' Association, as well as to other carer support groups.
- A document entitled *Guidelines to assist in determining a person's competence to make advance directives* was prepared by the OPA for distribution to key organisations and those eligible as authorised witnesses. Organisations involved in consultation during the production of this document have included the Royal Australian College of General Practitioners, the Legal Services Commission of SA, the Australian Society for Geriatric Medicine (SA Division), the University of Adelaide (Department of Psychiatry, Department of Medical Ethics and Health Science Division), the Flinders University (School of Medicine), and the Law Society of SA. See pages 40-42 for more information.

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- A new information sheet entitled *Applying for Section 32 powers* was produced, which describes when these powers may be necessary and how a guardian or enduring guardian can apply for them. This information sheet was mailed directly to 112 agencies with an explanatory covering letter with the June 1998 Newsletter.
 - The *OPA Orientation Manual* was overhauled, to update and reduce the orientation content for new staff.
 - Assistance was provided by the OPA to the Guardianship Board in the development of the new *Guardianship and Administration application form*. This application demands a clearer case from applicants as to why Board orders are required and how the orders will be of benefit to the person concerned. It is anticipated that the work put into this project will have an ongoing educative influence on potential applicants to the Board. The application will soon be trialed by the Board.

Web site

- The OPA Web site was finalised, and the site launched on 31 July 1997 at the Ngarpartji Multimedia Centre. Approximately sixty people attended. The address of the OPA Web site is <http://www.opa.sa.gov.au>. The site contains information about the OPA and the Guardianship Board, advance directives such as Enduring Powers of Guardianship and Enduring Powers of Attorney, and consent for medical and dental treatment where a person has a mental incapacity. The site also includes some useful case studies which illustrate when an application to the Guardianship Board may be appropriate, and links to the text of the guardianship and mental health legislation and local related sites. Regular updates were made to the site, including uploading the two newsletters and adding the new community pamphlets. Regular statistics were obtained about the usage of the site, which has been large and increasing, as can be seen on the following graph:



<http://www.opa.sa.gov.au>

LIST OF PAMPHLETS AND RESOURCES

The following pamphlets and other resources, providing information about the *Guardianship and Administration Act 1993*, the *Mental Health Act 1993* and related issues, are available from the OPA:

Pamphlets

- No 1 - What is a Guardianship Order?
- No 2 - What is an Administration Order?
- No 3 - What is the Guardianship Board?
- No 4 - Treatment Orders under the *Mental Health Act 1993*
- No 5 - Detention Orders under the *Mental Health Act 1993*
- No 6 - Advice to applicants: *Mental Health Act 1993*
- No 7 - Advice to applicants: *Guardianship and Administration Act 1993*
- No 8 - Where to go: information, advocacy and complaints services for persons with reduced mental capacity and their carers
- No 9 - Enduring guardianship and other future plans
- No 10 - What is the Office of the Public Advocate?
- No 11 - Appeals against detention orders made by doctors and psychiatrists
- No 12 - Appeals against decisions or orders made by the Guardianship Board
- No 13 - Consent to medical and dental treatment for persons with reduced mental capacity
- No 14 - Prescribed medical and psychiatric treatment
- No 15 - What to expect at a Guardianship Board hearing
- No 16 - Consumer Grievance Policy

Regular publications

- *Public Advocate Newsletter* (bi-annual: June and December)
- *Public Advocate Annual Report* (annual)

Other information resources

- Enduring Power of Guardianship: A 'Do-it-yourself' Kit (including promotional brochures)
- Guidelines to assist in determining a person's competence to make advance directives
- Information sheet - Adult guardianship: making decisions for others
- Information sheet - Applying for Section 32 powers
- Information sheet - Before lodging an application for guardianship or administration at the Guardianship Board
- Information summary - *Guardianship and Administration Act 1993* (Guardianship Board orders, Enduring Power of Guardianship, Enduring Power of Attorney)
- Sterilisation information sheet
- Student pack
- Training package about the *Guardianship and Administration Act 1993*

Web site address

- <http://www.opa.sa.gov.au>

EXTERNAL INFORMATION REQUESTS, CONSULTATION AND ADVOCACY

The Education Unit has also made a significant contribution to the OPA in the area of responding to external requests for information, consultation or advocacy arising from increased contact with external agencies, organisations and individuals. This continuing trend assists to raise the profile of the office and demonstrates others' view of the OPA as an organisation of developing expertise. It also provides a strategic way of encouraging wider ownership of the legislation through the support of other agencies who want to include the guardianship and mental health legislation within their procedural and policy documents. However, on the other hand, this service sets up an expectation that such consultation with service providers is readily available and an appropriate role for OPA staff. But, as in our other programs, the OPA's capacity in this area is limited.

The OPA Education Unit has undertaken 78 external requests for information, consultation or advocacy in the 1997-98 period. This represents a 38% increase in productivity from last year's figure of 48 responses to requests. Examples include:

- Preparation of written editorial and articles for various organisations' newsletters;
- Policy development work relevant to the *Mental Health Act 1993* for the West Torrens Mental Health Service;
- Orientation of a number of 4th year student social worker groups on placement at various human service agencies regarding the OPA and the Guardianship Board;
- Input into a draft policy on issues of mental competence for Julia Farr Services;
- Provision of South Australian data and information concerning sterilisation for the Queensland Office for Families;
- Distribution of a Guardianship Board opinion concerning HIV and privacy issues to relevant agencies and units;
- Consultation with the Housing Trust to discuss mental illness issues and housing;
- Review draft of an updated publication for the Royal Australian College of GPs;
- Consultation with the Pregnancy Advisory Service concerning the application process to the Guardianship Board for a termination of pregnancy;
- Preparation of a number of letters seeking a Crown Law opinion on relevant issues and points of law;
- Participation in a multi-agency meeting, held at the OPA for Yarrow Place, to consider the issue of sexual assault for people who cannot consent to medical examination;
- Preparation of advertising material to promote the Enduring Power of Attorney (EPA) and Enduring Power of Guardianship (EPG) kits;
- Development of an education response for South Australian Police (Western region) regarding the use and enforcement of Section 32 powers;
- Participation in a consultative workshop for the Nurses Board of SA concerning issues of restraint and medication;
- Feedback given on a draft policy about consent for Centacare Catholic Services;
- Comments provided for a statement of consumer rights and responsibilities for the Human Rights Working Party (mental illness);
- Response provided to the SAHC on issues relevant to victims of crime;
- Provision of information for a national database concerning mental health and rural persons.

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FUTURE DIRECTIONS FOR THE EDUCATION UNIT

The Education Unit is pleased with its efforts this year. Evaluation conducted at education sessions has been both favourable and encouraging. The session content and delivery met the expectations and needs of those attending 98-100% of the time. Many comments from the country areas visited strongly urged us to maintain the links now established in these regions. The unit has also been excited about the encouraging figures indicating the usefulness of the new Web site to service providers and the community. The Education Unit believes that the significant increase in productivity regarding all education activities for the 1997-98 period reflects that of the entire office as it struggles to meet the increasing demands placed upon it for services. As the demand for more information occurs, the financial costs of producing necessary resources also rises. Translation costs, printing and photocopying materials have all had an impact upon the budget of this small office. The unit will continue in its efforts to strengthen co-operative links with other agencies in promoting the work of the OPA, and to assist in increasing the standard of applications received by the Guardianship Board. It is a primary aim of the unit to increase awareness amongst service providers to consider the appropriate utilisation and availability of resources when making applications to the Board.

Education Unit changes for 1998-1999

The OPA Education Unit is currently restructuring its role in light of Stephanie Lewis' impending maternity leave. The funds from Stephanie's position will be used to boost the guardianship function of the office, which has been significantly depleted with the loss of the contractual PSO-1 position (held by Gina Testa) and the experience and knowledge that John Dawes will take with him. The restructure involves collapsing the Information Officer and Education Officer positions into one position, thereby restricting the scope of the OPA's education efforts for up to twelve months whilst Ms Lewis is on leave. As a consequence, it will no longer be possible to meet the demand for education sessions as we have done up until now, and the number of sessions will be reduced significantly, by three quarters, from 97 (last year) to approximately 22 sessions (one per fortnight). A series of information forums will be held to partially substitute for the remaining requests which we cannot meet. So far, three forums have been planned for the period October 1998 to June 1999:

Wednesday 18 November 1998

Mental competence and adult guardianship

Wednesday 24 February 1999

Human rights and mental health legislation

Wednesday 12 May 1999

The review of the *Guardianship and Administration Act 1993*
- relevant changes and issues

These will all be morning sessions (ie 9.15am - 11.45am), held in the city at Way Hall, Adelaide Central Mission, Pitt Street. They will be informative whilst encouraging interaction between speakers and participants. Further details will be included in a 'special edition' September Public Advocate Newsletter.

Planning the first series of information forums is just one component of the Education Unit's short term strategic plan for the next three months, ie July to September 1998. This time will also be spent putting into place other changes necessary to facilitate the restructure of the unit. The September Public Advocate Newsletter will outline the strategies and changes to the OPA. Additional work undertaken during this time will be to finalise the mental capacity project, consider the development of a private guardian newsletter, co-ordinate the production of the 1997-98 Annual Report and update the OPA Web site and other electronic sites. The unit will also make a significant contribution to the enquiry service.

Planning for the period October 1998 to June 1999 has also occurred. The combined education position will take responsibility for tasks including the bi-annual newsletter, pamphlet maintenance, the education program including further information forum planning, some resource management, some technology and research work and contribution to the enquiry service.

As the number of information sessions will be limited during this period, the OPA will only consider requests for additional education sessions where the following criteria for this service is met.

Carer/consumer talks:

- groups larger than forty;
- content relevant to the target audience;
- no service provider involved who could conduct the session using the OPA training package about the *Guardianship and Administration Act 1993*;
- preferably within working hours.

Service provider talks:

- groups larger than fifteen - wherever possible organisers to network and encourage wider participation from affiliated services;
- an indication that staff will have some understanding of the legislation;
- organisers to arrange venues and required equipment.

Country talks:

- groups larger than twenty;
- can be a mix of consumers/service providers;
- key service providers willing to assist in organising venues and promoting the talks;
- content to cover both mental health and guardianship law;
- willingness of organisers to work around a tight schedule.

Where requests can be met, a letter confirming all details is required from the person making the arrangements.

Re-evaluation of the Education Unit will again occur upon the return to work of Stephanie Lewis. In the meantime, the staff of the OPA wish her, husband Peter and baby all the very best.

ENQUIRIES

THE OBJECTIVES OF THE OPA ENQUIRY SERVICE ARE TO ...

Inform the general public and service providers about guardianship and administration, alternatives to guardianship, the Office of the Public Advocate, and the Guardianship Board and its orders.

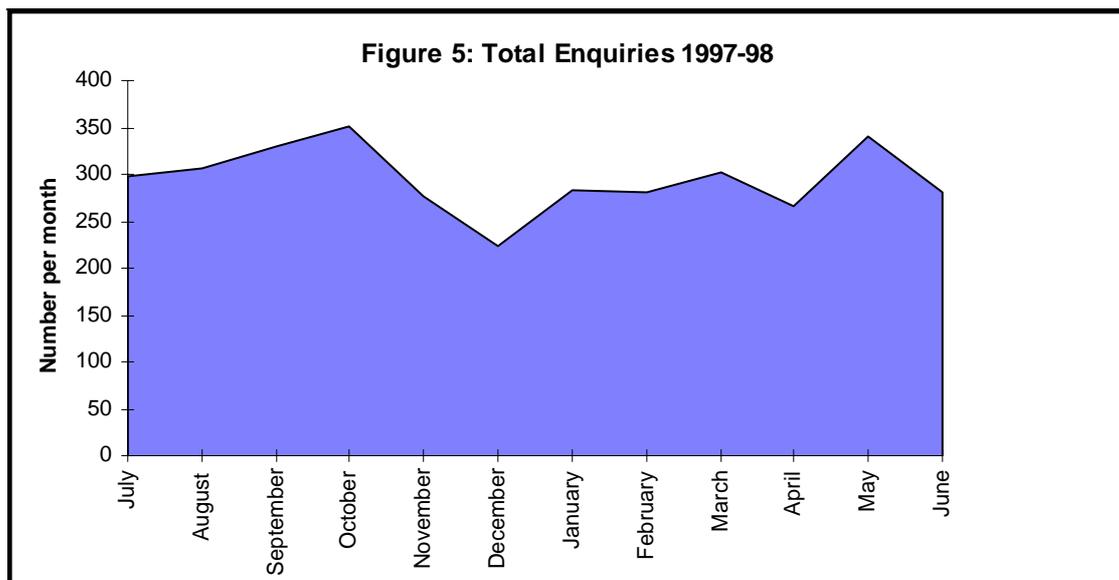
Promote the utilisation of the least restrictive alternative in the resolution of problems relating to persons with a mental incapacity.

Increase the proportion of applications to the Guardianship Board which are appropriate and comprehensive.

ENQUIRIES FOR 1997-98

During the period July 1997 to June 1998, the OPA Enquiry Service operated from 9am until 5pm, Mondays to Fridays. Running the service at this level involves the equivalent of 1.6fte staff. As the OPA does not have any dedicated Enquiry Service staff, staff have been pulled from the Guardianship, Investigation and Education Units, meaning that work on the Enquiry Service has been at the expense of work in guardianship, investigation and education. But, in order to maintain the Enquiry Service at this level, the OPA has also been required to use staff from the Clerical Unit, who have attempted to deal with complex enquiries whilst attending to their other duties.

During the last financial year, the OPA responded to 3539 enquiries. This represents a 9% increase in overall productivity from last year's figure of 3229 enquiries. This meant that the OPA received approximately 295 calls per month, 68 per week, or 14 per day. These calls were received, month by month, in the following numbers:

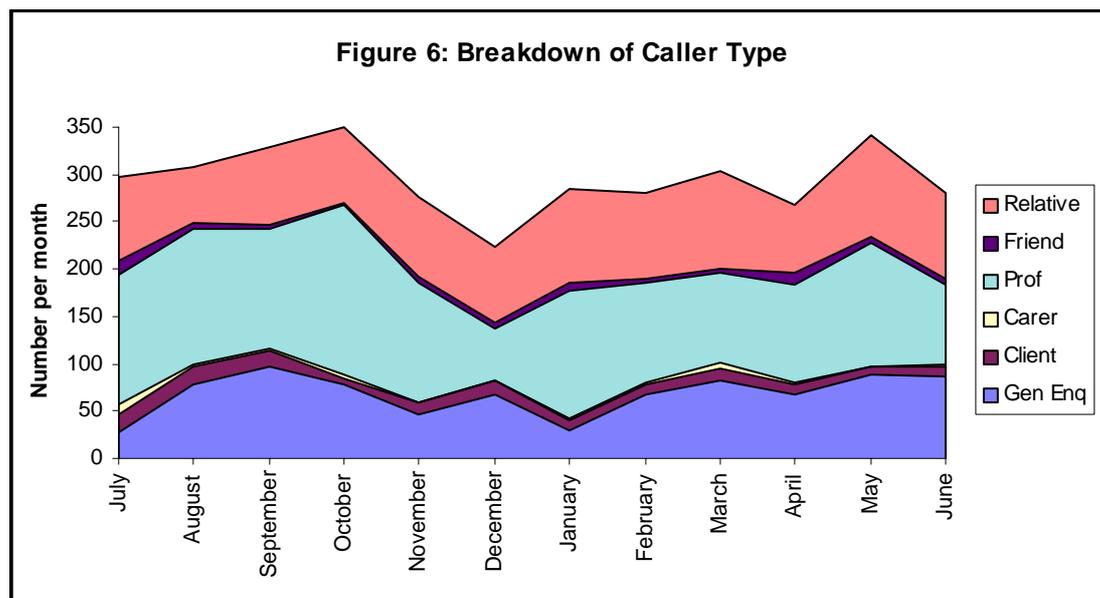


Type of caller

Calls to the OPA Enquiry Service are received from all types of people. Although not providing legal advice, the OPA has clearly established itself as a source of specialist information in a complex and specific area of law and practice. Staff answer detailed enquiries from senior staff in both the private and public sector, as well as from direct service practitioners. Officers filter enquiries relating to guardianship applications and, in many cases, can prevent unnecessary applications or help tailor suitable applications so that the least restrictive order is applied for. Some enquiries are simple and can be dealt with by sending one of the many information brochures prepared by the OPA Education Unit. Some enquiries would be more appropriately dealt with by staff from the agency that is calling and these agencies need to improve their supervisory and information systems. To date OPA staff have been generous in discussing these issues where they perhaps would have been more appropriately dealt with internally by the enquiring agency.

OPA staff also spend a significant amount of time on enquiries with families of potential protected persons or the potential protected persons themselves. These people have few other options for this information other than the OPA.

The types of callers to the OPA Enquiry Service were as follows:



Nature of enquiries

The majority of enquiries received through the OPA Enquiry Service are over the telephone. This amounts to approximately 97% of enquiries received. Of the remaining 3%, 2% were walk in enquiries and 1% were mail or email requests.

The types of calls received by the OPA Enquiry Service include the following:

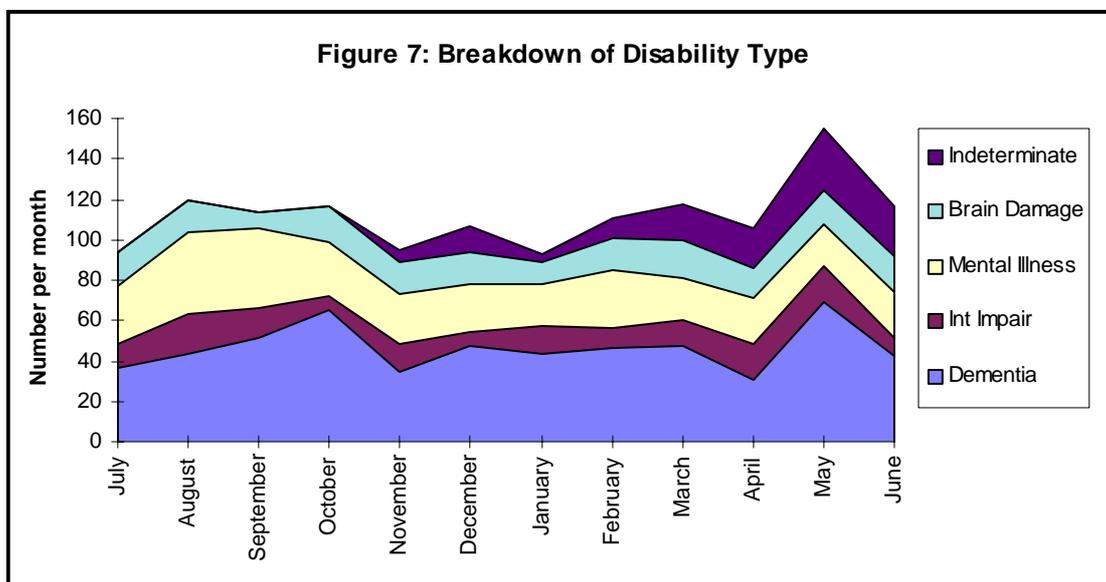
- The husband of a woman detained in Glenside Hospital under the *Mental Health Act 1993* wants information about detention orders and the appeals process.

- A social worker from a large metropolitan hospital rings to enquire about the need for Guardianship Board orders in relation to an elderly female patient who will soon be discharged to a nursing home. The patient has a son and a daughter who disagree about the proposed nursing home placement.
- The mother of an intellectually disabled woman rings up, enquiring how she should go about organising someone else to manage her daughter's financial affairs, as she is ill and unable to continue managing them informally by herself.
- A lawyer rings asking about the process for obtaining Guardianship Board consent for the sale of a house belonging to his client and her husband who has dementia.
- A gentleman who has recently signed over an Enduring Power of Attorney rings to enquire whether he needs to execute an Enduring Power of Guardianship or Medical Power of Attorney as well.
- The Director of Nursing of an aged care facility in a large regional South Australian town requests information about who can provide substitute medical consent for a resident with no close family who has recently suffered a stroke.

Type of disability

Calls to the OPA Enquiry Service relate to all types of mental incapacity, reflecting the breadth of this definition in the *Guardianship and Administration Act 1993*.

The types of disability enquired about are as follows:



The vast majority of enquiries received through the OPA Enquiry Service were resolved at the time of the call. This amounts to approximately 96% of enquiries received. Of the remaining 4%, approximately 2% were referred to the OPA Education Unit, approximately 1% referred to the OPA Investigation Unit and approximately 1% referred to the OPA Guardianship Unit.



ISSUES

WORK WITH OTHER AGENCIES

For a small office, the OPA has made a significant contribution to external organisations and activities. Some examples of our work are as follows:

Review of the *Guardianship and Administration Act 1993*

The Public Advocate has been a member of the review committee established by the then Minister of Health, Dr Michael Armitage, to review the *Guardianship and Administration Act 1993*. The committee's final report is now with the Minister of Human Services, Mr Dean Brown.

National Law Week

The Education Officer continued the OPA's active involvement in National Law Week in her role as Chair of the Country Sub-group and as a representative on the core and main Law Week Committees. The Education Officer's work for the Country Sub-group was assisted by representatives from the Offenders Aid and Rehabilitation Service, Courts Administration Authority and the Australian Red Cross. This year the group was successful in encouraging greater participation in Law Week from regional and rural areas of South Australia, including Murray Bridge, the Barossa, Whyalla, Mount Gambier, Port Lincoln and the Riverland. Activities held in these areas were community focussed and included local radio and newspaper activities, school 'mock trials' and debates, seminars on various legal issues and free legal advice sessions.

Advocacy training program

The Education Officer has been actively involved in the continued development of the Advocacy Training Program auspiced by Disability Action, along with Aged Rights Advocacy Service, Disability Complaints Service and TAFE. The SA Accreditation and Recognition Council has accredited the course as the first nationally recognised training program in advocacy in Australia. The OPA has contributed throughout the process, particularly in the development of curriculum, and to the content and style of the learning packages for the training program. The program has been developed for, and by, people who work as advocates for a number of different population groups, to provide a consistent approach to advocacy education across South Australia. National and international interest suggests that we will soon see the program being conducted more widely in the near future.

Training package about the *Guardianship and Administration Act 1993*

Funding constraints have meant that the OPA will no longer be able to meet the demand for education sessions as we have done up until now, and the number of sessions provided will be reduced significantly. To provide one alternative to an OPA 'guest speaker', the Education Officer and Information Officer produced a training package relating to the *Guardianship and Administration Act 1993*. The package comprises a talk outline and series of overheads that is available upon request to carer education course facilitators, particularly those at the Alzheimers' Association, as well as to other carer support groups. A 'train the trainer' style session was conducted at the Alzheimers' Association for group facilitators.

Independent Third Person Scheme

The Public Advocate has been a member of a group to advise Government about the establishment of an Independent Third Person scheme. Work is progressing on a proposal, now called Justice Support Person, which will, if accepted, provide for an independent person to be available to assist persons who may come to Police notice and be found to have mental impairment.

Conference and seminar presentations and workshop participation

Australian Association of Professional and Applied Ethics National Conference

In September 1997, Yvette Gray, OPA Guardian, presented a paper entitled *Ethical considerations in the provision of life saving/prolonging treatment* at the Australian Association of Professional and Applied Ethics National Conference in Melbourne.

AASW Duty of Care Seminar

Staff of the OPA co-ran a seminar about duty of care for mental health and welfare social workers as part of their AASW Education Program.

Community Visitors Program Forum

OPA staff participated in this forum, auspiced by the Supported Residential Facilities Unit of the South Australian Health Commission, discussing the viability of establishing a Community Visitors Program in South Australia.

Human Rights Working Party Workshop

The OPA was represented in a consultative workshop designed to examine the implications of the *Statement of consumer's rights and responsibilities* and implementation issues. This Working Party comprised consumers, advocates and service providers working in the mental health area.

LAAMS Conference

In April 1998, staff of the OPA presented a paper by the Public Advocate, entitled *Planning for your future: making your wishes known*, at the 'Understanding dementia' seminar presented by the LAAMS (Legal and Accounting Management Seminars) Group of Companies, aimed at professionals working in these areas.

South Australian Housing Trust Forum

In November 1997, OPA staff were involved in a forum run by the South Australian Housing Trust relating to the management of difficult residents.

Supervision of social work students

During the period of this report, social work staff of the OPA have supervised two students from the Flinders University of South Australia School of Social Administration and Social Work in their field education placements.

External information requests, consultation and advocacy

In the 1997-98 period, the OPA undertook 78 external requests for information, consultation and advocacy from external agencies, organisations and individuals. For more details and examples of the type of work done, see page 32.

THE QUESTION OF COMPETENCE

As a society we are witnessing a progressive, albeit slow, shift from paternalistic and protective thinking to an emerging awareness of the right to self determination. This is particularly reflected within case law where successful legal claims have arisen from situations where the doctrine of informed consent has not been upheld (for example, *Rogers v Whitaker* (1991) 67 ALJR 47). Such events highlight the importance of the 'partnership' between professionals and those they serve to establish an equilibrium of power between those with the knowledge, and those who wish to know. The desire of consumers to take greater control over their decision making is evident in the emergence of legally binding advance directives.

A report of the British Medical Association and the Law Society (1995) suggests that doctors and lawyers have common responsibilities to ensure the protection of people who are incapable of deciding matters for themselves and to promote the choices of those who can and should regulate their own lives. The careful assessment of whether individuals have or lack capacity in regards to certain areas of life is essential to the protection of their rights. A fundamental issue then is the determination of whether a person has the mental competence to decide various matters for himself or herself. Of parallel importance is the determination of a person's mental competence to make advance directives. In South Australia, relevant legal advance directives are:

- Enduring Power of Attorney (*Power of Attorney and Agency Act 1984*),
- Enduring Power of Guardianship (*Guardianship and Administration Act 1993*),
- Medical Power of Attorney and Anticipatory Direction (*Consent to Medical Treatment and Palliative Care Act 1995*).

The issue of determining mental competence is one that is increasingly being raised within state courts and tribunals (for example, the Guardianship Board). Professionals and other key community members are becoming increasingly involved in giving their opinion regarding such matters. The OPA is aware of an increasing number of cases where a person, whose mental competence is clearly questionable, has been unduly influenced and coerced to sign a document which he or she does not fully understand. The ramifications of ignorantly handing over the kind of unmonitored authority contained in an Enduring Power of Attorney, for example, can be catastrophic for the person as far as loss of major assets and future financial security goes.

To raise awareness of the issues in this area, the OPA has developed the document *Guidelines to assist in determining a person's competence to make advance directives*. Contributors who provided input into the development of these guidelines include the Royal Australian College of General Practitioners, the Legal Services Commission of SA, the University of Adelaide (Department of Psychiatry, Department of Medical Ethics, and Health Science Division), the Flinders University (School of Medicine), the Australian Society for Geriatric Medicine (SA Division) and the Law Society of SA. Medical officers, lawyers, justices of the peace, commissioned police officers, psychologists, directors of aged care facilities and financial organisations are some of the groups who would benefit from having ready access to this document in their day to day responsibilities. The OPA will be distributing this new resource as widely as possible.

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GUIDELINES TO ASSIST IN DETERMINING A PERSON'S COMPETENCE TO MAKE ADVANCE DIRECTIVES

*FOR USE BY LEGAL AND HEALTH PROFESSIONALS IN ADVISING PEOPLE INTENDING TO MAKE
ADVANCE DIRECTIVES, AND FOR PEOPLE AUTHORISED TO WITNESS ADVANCE DIRECTIVES.*

What is an advance directive?

An advance directive is any written statement that expresses a person's wishes and/or directions in advance should mental capacity* (competence) be lost in the future. In South Australia there are a number of legally recognised advance directives. Currently these are:

- A Will - which only applies once the person who makes it, dies.

The following are sometimes referred to as 'Living Wills' (ie expressed wishes and/or directions which are activated to make decisions for a person who is incapacitated, but alive):

- Enduring Power of Attorney (*Power of Attorney and Agency Act 1984*),
- Enduring Power of Guardianship (*Guardianship and Administration Act 1993*),
- Medical Power of Attorney, and
- Anticipatory Direction (*Consent to Medical Treatment and Palliative Care Act 1995*).

What is an Enduring Power of Attorney (EPA)?

This document allows a person to appoint someone they know and trust to make important decisions about **financial, property and related legal matters**. This authority can be activated straight away or only if and when the person who makes it loses mental competence. (Contact a lawyer or the Legal Services Commission, telephone (08) 8205 0111, for more information).

What is an Enduring Power of Guardianship (EPG)?

This document allows a person to appoint someone they know and trust to make important **personal decisions such as choice of accommodation, relationships with others, holidays and all medical treatment** decisions, should mental competence be lost in the future. (Contact a lawyer, the Legal Services Commission, or the Office of the Public Advocate, telephone (08) 8269 7575, for more information).

What is a Medical Power of Attorney (MPA) and an Anticipatory Direction (AD)?

A Medical Agent is appointed under a Medical Power of Attorney to make **medical treatment** decisions for a person should he or she become unable to make these decisions for themselves. An Anticipatory Direction does not require the appointment of a 'proxy' or substitute person. It provides a way to record a person's wishes and directions about **end of life** decisions which must be acted upon by those providing care. (Contact the Legal Services Commission or the Public Information Unit, South Australian Health Commission, telephone (08) 8226 6436, for more information).

***FOR AN ADVANCE DIRECTIVE TO BE LEGALLY VALID, THE PERSON MAKING IT MUST
BE MENTALLY COMPETENT TO UNDERSTAND THE NATURE AND INTENTION OF THE
DOCUMENT. HE OR SHE MUST ALSO UNDERSTAND THE CONSEQUENCES OF
COMPLETING AND SIGNING THE DOCUMENT, AND MUST DO SO WITHOUT ANY
COERCION, PRESSURE, OR INFLUENCE BY OTHERS.***

** 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.

GUIDELINES TO ASSIST IN DETERMINING A PERSON'S COMPETENCE TO MAKE ADVANCE DIRECTIVES

THE PURPOSE OF THESE GUIDELINES IS TO ENSURE THAT ONLY MENTALLY COMPETENT PERSONS MAKE ADVANCE DIRECTIVES.

Principle: It is not sufficient for a person making an advance directive to just be able to sign the document with the understanding that it 'appoints X to look after your affairs'.

The person making the advance directive must understand the nature and effect of what he or she is signing.

FINANCIAL DECISIONS (eg Wills, EPA)	PERSONAL DECISIONS (eg Wills, EPG)	MEDICAL DECISIONS (eg EPG, MPA, AD)
When making an advance directive for <u>financial</u> decisions, the person must:	When making an advance directive for <u>personal</u> decisions, the person must:	When making an advance directive for <u>medical</u> decisions, the person must:
know the nature and extent of his/her estate and finances;	understand that under an EPG he/she is authorising someone else to have authority over all personal affairs (including medical treatment), subject to any directions imposed;	know that the authority is limited to issues of medical and dental treatment, and that it does not extend to acts of euthanasia;
understand that an EPA gives the attorney complete authority to deal with his/her estate and finances in the same way that he/she can personally do now;	be able in an EPG to clearly express any restrictions or specific instructions relating to areas of personal decision making (eg personal care, accommodation, activities);	know that directions given must be carried out according to his or her instructions, (however, some anticipated services may not be available at the time);
know that in an EPA he/she may direct someone else (the attorney) to act in a particular way and that the authority can be revoked at any time whilst he/she is competent;	when giving instructions/directions, understand what might happen if particular decisions are made or not made by the person given authority to make personal decisions on his/her behalf;	if appointing an agent/proxy, that the extent of this person's authority will be determined by the directions given in the document (some limits apply);
understand that the authority is activated without any formal procedure when he/she becomes incompetent. If revocation is sought once incompetent, only the Guardianship Board and the Supreme Court have jurisdiction;	know that the person he or she is appointing under an EPG must be guided as guardian by the principles of the <i>Guardianship and Administration Act 1993</i> (principles available from the OPA);	that the authority of an EPG and MPA can relate to all medical treatment decisions, whilst the Anticipatory Direction relates only to end of life/palliative care decisions;
appreciate the very high level of trust he/she is placing on the person appointed as attorney under an EPA, and understand that the attorney is not monitored in any way. If the attorney is failing in his or her responsibilities, this is usually dealt with only after the fact, by the Guardianship Board or a Supreme Court investigation.	know that whilst competent he or she can revoke the Will/EPG at any time. If he/she becomes incompetent, he/she cannot revoke a Will and an EPG can only be revoked with the approval of the Guardianship Board.	know that a medical agent's authority can be revoked at any time whilst competent, otherwise revocation must be sought from the Supreme Court.

Things to consider when using these guidelines

- A person is presumed competent unless proven otherwise; mental incapacity is task/function specific, not global.
- Personal autonomy demands respect for an individual's determination of his or her own interests.
- Comprehension should be verified by asking the person to give explanations in his or her own words.
- It is important that wherever possible people giving advance directives are able to express their views and give directions unencumbered by the presence of any other interested persons (family etc) in the room.
- Where a person's competence to make an advance directive remains questionable, further professional assessment of mental capacity at the time of administration of this test and when making advance directives is required.



CORPORATE ISSUES

EQUAL EMPLOYMENT OPPORTUNITY

The OPA adheres to the policies and procedures of the South Australian Department of Human Services regarding equal opportunity. Staff of the OPA employ the principles of the South Australian Health Commission Circular No 64, *Guidelines for Ethical Conduct*.

OCCUPATIONAL HEALTH AND SAFETY

The OPA is committed to the policies and best practice principles of the South Australian Department of Human Services in relation to the occupational health and safety of the working environment. The OPA recognises that a safe hazard free workplace, and the wellbeing of staff, impacts on the quality of service provided to the community.

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

FREEDOM OF INFORMATION

There was one application to the OPA under the *Freedom of Information Act 1991* during the 1997-98 financial year.

STAFF DEVELOPMENT AND TRAINING

The complex nature of the work of the OPA requires staff to equip themselves with the skills and knowledge necessary to produce high quality work and meaningful outcomes. A total of \$2750 was spent on staff development during the 1997-98 financial year. The range of activities undertaken by OPA staff members include:

- Australian Association of Professional and Applied Ethics National Conference, September 1997;
- 'Basic counselling skills' - training course run by the Centre of Personal Education;
- 'Legal resources on the World Wide Web' - Internet training course run by the University of Adelaide Law School;
- 'Pivotal and ethical issues in mental health, the law and corrections', Australian and New Zealand Association of Psychiatry, Psychology and Law Seventeenth Annual Congress, November 1997;
- Second International Conference on Social Work in Health and Mental Health, January 1998;
- 'Social work influencing outcomes', Australian Association of Social Workers Twenty Fifth National Conference, September 1997;
- 'The ageing mind and brain' seminar, June 1998;
- 'Understanding dementia' seminar, LAAMS (Legal and Accounting Management Seminars) Group of Companies, April 1998.

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FINANCIAL REPORT

OFFICE OF THE PUBLIC ADVOCATE EXPENDITURE FOR THE 1997-98 FINANCIAL YEAR

Description	Actual	Estimate	FTEs	FTEs
	1997-98	1998-99	1997-98	Estimate 1998-99
Salaries, Wages and Allowances	531,454	525,000	9.4	9.4
Telephone	14,972	16,000		
Purchase of Computer Equipment	6,867	3,500		
Purchase of Office Equipment	941	7,000		
General Expenses	140,310	117,803		
Total	694,544	669,303*	9.4	9.4

The OPA commenced the 1997-98 financial year with a surplus of \$32,183.

The OPA's strategic plan was to put some of the \$32,183 into extra Public Advocate Officer staff to help with the many guardianship appointments and increased demand for investigations.

Approval for a temporary contractual PSO1 position was gained for six months, meeting the workload in the guardianship and investigation areas.

The OPA used most of its budget on salaries in this financial year, deciding to limit other recurrent spending. Two of the Public Advocate Officers worked part time for the financial year, enabling the office to put 0.4fte funds toward the temporary contractual PSO1 position.

Due to the temporary contractual PSO1 position being extended to the end of the 1997-98 financial year, which was necessary, and the Fringe Benefits Tax invoices, one from the 1996-97 financial year and the other from the 1997-98 financial year, the OPA's actual expenditure was \$17,800 over budget.

*** Actual budget figures were not known for the 1998-99 financial year at the time of preparing the Annual Report.**



GLOSSARY

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.

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.

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.

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.

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 or friend, or an organisation, the authority to make decisions regarding financial matters.

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 Guardianship 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 Guardianship 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.