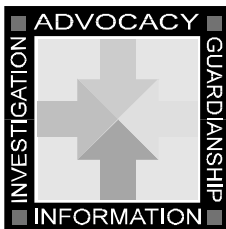


**OFFICE OF THE PUBLIC ADVOCATE**

**ANNUAL REPORT  
2001-02**





Prepared by Stephanie Lewis  
September 2002

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27 September 2002

The Honourable Stephanie Key MP  
Minister for Social Justice  
407 Marion Road  
PLYMPTON SA 5038

Dear Minister

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

This report covers the period from 1 July 2001 to 30 June 2002.

Yours faithfully

John Harley  
PUBLIC ADVOCATE

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# *Public Advocate's report*

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## **Independence of the Office**

This is the fourth Public Advocate's report I have written since my appointment in January 1998. When I began, I formulated in my mind's eye a plan of how I would like to see the Office of the Public Advocate develop. In some respects I have been able to effect changes and improvements and in others we have stood still. It is hard to take new initiatives when there is no additional funding and, as a consequence, no suitably trained staff to put them into effect.

Apart from normal cost-of-living adjustments, my Office has never received any increased funds until this year. This increase enabled the Enquiry Officer position to be increased from 0.7 FTE to 1.00 FTE, as the Department of Human Services felt it was more appropriate for my Office to handle enquiries about advance directives in the *Consent to Medical Treatment and Palliative Care Act 1995* in lieu of the DHS itself. It seemed to me to be a logical marrying together of the work that both agencies were undertaking.

However, this has not helped us to meet the ever-increasing burden of managing the approximately 225 guardianship, advocacy and investigation matters that are current at any one time in a responsible and efficient manner. Not only has the number of guardianships increased, but they are also becoming more complex and difficult cases for us to manage. Hence, the time and stress factors are increasing in addition to the pure numbers.

Two years ago we did receive funding for twelve months for an additional guardian. This followed a Coronial Court finding that we were not resourced adequately to fulfil our role as guardian. Once the Coronial Court findings retreated into the dusty pages of history so did our extra funding. Disappointingly our client's needs have not gone the same way.

The funds we receive are directed by the Department of Human Services through its Social Justice and Country Division (formerly known as Country and Disability Services Division). If one were cynical it could be thought that my Office was not a Departmental priority because, if we were adequately resourced, our advocacy role could potentially result in embarrassment for the Department in its business of providing services to those with a mental incapacity. However, I am not cynical, and I know the Department would like to be more generous to us than they are. But there could be that perception and, as a result, there is a clear conflict of interest between my role as an advocate and mendicant to the Department as the provider of funds. For that primary reason I have sought the transfer of my Office to the Attorney-General's Department and it is hoped that this will be effected before the end of the 2002-03 financial year.

As a further indication to the public of the independence of my Office, I have been endeavouring to have my premises physically located separately from the Guardianship Board but, for the sake of

convenience, still remaining in close proximity. It was agreed by the Department some two years ago that we would move to Level 7 of the ABC Building, but delay has resulted from lack of funds to do so. I am hopeful that the move may occur so that it is quite clear to users of our services that we are an independent advocacy service for consumers and carers and not part of the administrative structure of the Board or the Department.

### **Privacy legislation**

Whenever radical new social legislation comes onto the statute books my experience is that those affected seem to take an extreme position on the effect it will have on them and their activities. This is exactly what has happened with the new *Privacy Act 1988* (Cth).

It has long been a complaint of family and carers that there is inadequate communication by clinicians regarding the nature of the illness, symptoms, prognosis, and effect of medication on people with a mental illness. This complaint was examined in the Burdekin Report and found to have credence. The Report emphasised that families and carers are primary carers and must be seen as an integral part of the treating team.

There has been a sub-committee within Mental Health Services, of which I am a member, which has produced a report entitled *Achieving a Balance*. It emphasises the need to balance privacy considerations against the need for family and carers to be provided with medical information to enable them to participate as part of the treating team. To do so they must have relevant information on the client's medical

condition. The draft report is still not published, as it is waiting for endorsement by the Department of Human Services.

However, in the meantime, we are continuing to encounter many extreme cases of refusals by medical practitioners and hospitals to disclose medical information to families under the guise of the Privacy Act precluding them from doing so. The following are some examples that my Office has become aware of:

- a public hospital repeatedly refusing to provide a person holding a valid Enduring Power of Guardianship with any medical information on a client, necessitating the person to seek the services of a solicitor and later my Office to demand the information;
- a mother with an intellectually disabled son aged in his 30s took him to see his regular GP, who refused to provide the mother, his full time carer, with any further information on his health, notwithstanding that the practitioner had known the family for many years;
- a wife whose husband had recently had a stroke was refused any information on his health or prognosis, as he was unable to authorise the public hospital to do so. The couple was married, and had co-habited for many years;
- a former wife telephoned a psychiatric hospital to ascertain if her detained ex-husband was safe for their eleven year old daughter to have an access visit. The hospital refused to give out any information but suggested the child ring so that they could inform her.

The sooner the Mental Health Services and the Privacy Commissioner commence professional and community education on the actual effect of the Privacy Act and other legislation on releasing medical information, the better.

### **Mandatory detention of refugees**

It is recorded later in this report, that in my capacity as guardian for an Afghani refugee, I applied to the Supreme Court for an injunction to restrain the Department of Immigration and Multicultural and Indigenous Affairs from returning the client to Woomera where I considered his health and safety would be at risk due to his serious mental illness. The outcome was that, on the morning the case was due to be fully argued in court, a bridging visa was eventually issued by the Minister to enable the client to be released into a community placement.

This was the first time I had ever had any dealing with the Department on behalf of a client. I consider it appropriate that I record here my thanks to Mr Jamie Watts of Cowell Clarke, Solicitors, and Mr Michael Manetta, Barrister-at-Law, for acting for me on a pro bono basis to enable me to take the necessary steps to ensure that my client received appropriate care for his illness in the face of a complete lack of care or concern for the welfare of this man and obfuscation by the Department. I have referred their conduct to the Commonwealth Ombudsman to investigate as I am of the opinion that they deliberately misused the administrative system of the *Migration Act 1958* (Cth) to frustrate my efforts to ensure the protected person received proper medical attention.

### **Justice Support Program**

A brief history of the development of this initiative is outlined later in this report. The proposed Justice Support Program is for the development and maintenance of a statewide network of justice support persons who would provide assistance and support at police interviews for people with a mental or intellectual impairment who are involved in the criminal justice system as witnesses, victims or suspects. The proposal to establish a Justice Support Program is one that my Office has been involved with since its inception and one that we wholeheartedly support.

It is disappointing that this initiative has at this stage foundered but it is hoped that if the Attorney-General's Department does not fund it, then the Department of Human Services, through its Social Justice and Country Services Division, will see that this is an important step to ensure that the rights of people with a mental incapacity are properly protected.

### **Sexual abuse of intellectually disabled children**

As a result of a request from Parent Advocacy Inc, my Office became involved with a group of parents whose intellectually disabled children had believed to have been sexually abused by an employee of the children's school. In partnership with Parent Advocacy we have counselled the parents and advocated for them and their children to receive appropriate counselling services from the school administrators and to lobby the SA Police Department to pursue the perpetrator. The exercise has demonstrated to us that:

- there were inadequate safeguards to

screen prospective employees of the school;

- the school authorities failed to notify the parents of the abused children in a timely fashion;
- the statutory safeguards for the protection of children proved to be ineffective; and
- the school was funded by the State Government which failed to ensure that the school was implementing the child protection laws.

It is pleasing that the government has now initiated an enquiry into the adequacy of the child protection laws. However, our continuing concern is that the enquiry does not extend to looking at laws to protect intellectually disabled adults. We have requested the Minister for Social Justice to examine this area.

#### **Cross agency collaboration**

A striking feature of this year's work has been the guardians' involvement in cross agency and sector care planning designed to deliver tailored services to people with dual or multiple disabilities. It is pleasing to note a greater willingness on the part of providers to operate within this framework.

#### **Other systemic issues**

It still concerns me that the following

matters remain outstanding from my previous Annual Reports:

- the lack of appropriate facilities for adolescents and young adults with a mental disorder, but in particular young females;
- the lack of facilities and programs for brain injured people with violent behaviour;
- the lack of an appropriate range of alternative community based facilities for people with a mental illness;
- the need for more appropriate programs and the lack of residential and respite care for intellectually disabled people.

#### **Conclusion**

I wish to record my grateful thanks to my staff, without whose support I could not function. Some of their tasks are extremely difficult and one would be a fool if it were thought that the stress created did not seriously impact on their health and wellbeing, not only during office hours, but in their own time as well. However, our duty to our clients requires that we exercise all of our energy to achieve the best outcome for them. All of my staff exhaust their energy to that end, and I greatly appreciate that.

**John Harley**

**PUBLIC ADVOCATE**



# *Role, structure, legislation*

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## **Legislative authority**

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

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

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

## **Functions and objectives**

The OPA has a number of key legislative functions:

- to act as guardian of last resort when appointed by the Guardianship Board;
- to investigate matters where a person who has a mental incapacity is at risk of abuse, exploitation or neglect (including self neglect);
- to provide advice and information about the GAA and MHA in a variety of formats;

- to take an interest in the programs being offered to meet the needs of people with mental incapacity;
- to undertake systemic advocacy to identify and act on areas of unmet or inappropriately met needs of people with mental incapacity;
- to provide some individual advocacy services through our education, investigation and guardianship work, to speak for and negotiate on behalf of mentally incapacitated persons;
- to support and promote the interests of carers of people who have a mental incapacity;
- the Public Advocate can make recommendations to the Minister for legislative and operational change.

## **Relationship to other agencies**

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

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

## Organisation

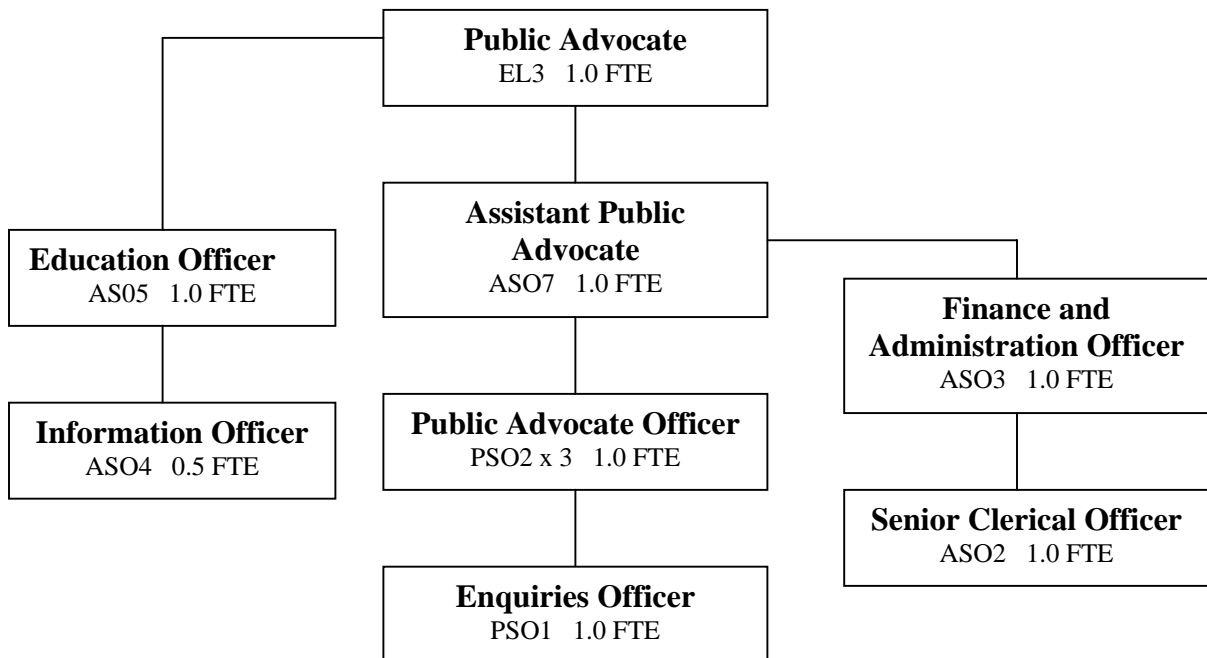
The Public Advocate is an independent statutory official.

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

## Staffing

- The funded positions as at 30 June 2002 are reflected in the organisational chart below.
- Staff changes throughout the year are described in Appendix 1 on page 44.
- Staff profile as at 30 June 2002 is listed in Appendix 2 on page 45.
- Sick and family carer leave is listed in Appendix 3 on page 46.
- Workforce diversity is described in Appendix 4 on page 47.

### Organisational chart – Funded positions As at 30 June 2002



# Mission and values

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## Our clients

The OPA has three main client groups:

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

## Mental incapacity

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

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

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

## Mission statement

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

## Vision

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

We will achieve this by:

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

## Values

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

- The people, with whom we are involved, deserve to be treated with courtesy, dignity and respect.
- We work in partnership with others, to achieve the best possible outcomes for our clients.
- We encourage and support creative, innovative thinking and ideas, including measured risk taking within an environment that values learning and dynamic problem solving.

- We will act with integrity and professionalism in all our dealings.
- We are accountable for our decisions and actions, and give particular attention to ethical and human rights principles, in accord with United Nations declarations and Australian Governments' standards.
- We see our role as a privilege, and recognise the importance of a skilled and cohesive team in making a meaningful contribution to the welfare of those vulnerable people with a mental incapacity.

### **Legislative principles**

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

- *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.*

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

- *The present wishes of the person 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.*

This principle ensures that the views of the person with the mental incapacity are taken into account in any decisions made about their life.

- *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 the desirability of not disturbing those arrangements.*

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

- *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.*

This principle ensures that out of all the alternatives available, the one to be chosen is the one that places the fewest limits on the person's quality of life.

## *Some 2001-02 highlights*

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The OPA was appointed guardian of last resort for 113 people during the financial year.

*See page 20*

New Position Papers about sterilisation issues and the role of the OPA in Guardian ad litem/Next Friend cases were produced.

*See page 31*

The OPA conducted 195 investigations, including 114 made prior to a Guardianship Board hearing.

*See page 27*

The OPA continued its involvement as a member of the Alliance for the Prevention of Elder Abuse.

*See page 33*

OPA conducted 51 education sessions in metropolitan and country areas, reaching a total of 1229 people.

*See page 30*

Increased recurrent budget funding was received to support a full time Enquiry Officer position.

*See page 35*

Improved statistical reporting meant better quality data to assist us in all areas of our work.

*See page 39*

Agreement was reached to purchase financial services from IDSC.

*See page 43*

## *Key outcomes*

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The Office of the Public Advocate has four key service areas. During 2001-02, funding and reporting is according to these four key areas:

- **Advocacy**
  - **Guardianship**
    - **Investigation**
      - **Community education**

The following pages detail the objectives, resources and outcomes in each of these areas. The **Enquiry Service** is reported on separately, but is integral to all of OPA's work in the above outcome areas.



# Advocacy

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

## **Objectives**

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

## Resources

The Public Advocate personally undertook most systems advocacy work. See the Public Advocate's Report on page 4 for more information. Advocacy is also inherent in much of the work done by staff at the OPA and staff takes on various matters as they arise. The role of the guardians includes increasing amounts of advocacy and mediation as the complexity of guardianship appointments made to the OPA increases.

## Outcomes

### *Individual advocacy cases*

The office was involved in 36 individual client advocacy matters, 23 of which were opened this year.

### *Representation on external committees*

Staff of the OPA was active within the following external committees during 2001-02:

- Australian Guardianship and Administration Committee;
- Interagency working party comprising the Public Trustee, the Guardianship Board and the OPA;
- Change of Portfolio Working Party – proposal to move OPA to the Attorney-General's Department;
- Alliance for the Prevention of Elder Abuse;
- Child Protection Review;
- Intellectual Disability Services Council Ethics Committee;
- Intellectual Disability Services Council Legal Committee;

- Towards Normalisation Working Party – proposal to establish a Justice Support Person Program;
- Acting Chairman, State Council, Australian Institute of Administrative Law;
- Deputy Chair, Public Sector Lawyer's Committee, Law Society of SA;
- Law Week Committee;
- Country Sub-Committee, Law Week Committee;
- Magistrates Court Diversionary Program;
- Implementation Working Group for the Detention of Patients under the *Mental Health Act 1993*;
- Mental Health Privacy Committee;
- Mental Health Implementation Reference Group;
- Mental Impairment Implementation Reference Committee;
- Western mental health consumers and carers forum.

### **Russell House**

Russell House is a supported residential care facility providing supported accommodation for people with a mental illness in Glenelg. The OPA was one of two advocacy agencies, which, with a delegation of residents, was involved in lobbying the Department of Human Services for ongoing funding to ensure that the facility would be able to stay open.



### **Justice Support Program**

People with a mental or intellectual impairment who are involved in the criminal justice system as witnesses, victims or suspects are always at a distinct disadvantage because of their disability. It has been proposed that there be developed and maintained a statewide network of justice support persons who would provide assistance and support at police interviews.

In 1991, the then Court Services Department commissioned a study into the way in which the courts system and court processes dealt with people with intellectual disability involved with the criminal justice system. The study also examined the interactions of people with intellectual disability with other parts of the justice system, including police and correctional services. The resulting report, which made over thirty recommendations for improving the relationship between the criminal justice system and people with intellectual disability, drew attention to significant deficiencies in the criminal justice system as it affects people with intellectual disability, principally because it makes no allowance for the effects of the disability.

In 1993, the Attorney-General established a committee to review the findings and recommendations of the report. The Committee consisted of representatives from across the legal, criminal justice and disability fields. In June 1995 the *Towards Normalisation* report was published, which made a number of recommendations for reform of the criminal justice system as it affects people with intellectual disability. Some of the recommendations required legislative reform and funding.

Recommendation 3 of the report was that a scheme similar to the Victorian Independent Third Person Service be established in South Australia. This scheme would assist people with an intellectual disability who are involved in the criminal justice system and who are to be interviewed by the police as witnesses, victims or offenders, by providing assistance and support during the police interview. It also recommended that the right to a support person should be statutory, as is the right to an interpreter if a person has language difficulties. In 1996 a Cabinet submission was approved for the drafting of a Bill to implement the recommendations of the report, including Recommendation 3. A Bill was drafted but never enacted because of resource issues.

In 2001, the Towards Normalisation working party was re-established (of which the Public Advocate was a member) to consider the recommendation of the Operational Review of the Mental Impairment Provisions of the *Criminal Law Consolidation Act 1935 (SA)*. This recommendation referred to three recommendations of the 1995 *Towards Normalisation* report and supported their implementation. One of those recommendations related to the Independent Third Person Program, which the working party has re-named the Justice Support Person Program.

The working party also recommended that the definition contained in the *Towards Normalisation* report, and in the subsequent draft bill, be widened to include people with a mental or intellectual impairment which affects their capacity to understand the types of questions or statements likely to be made during a police interview. The new definition, 'A person who because of a mental or intellectual impairment is likely to be unable, without assistance, to understand the types of questions or statements that are addressed to persons during interview', was endorsed by the Mental Impairment Implementation Reference Committee in July 2002.

A bid for resources was submitted by the Attorney-General's Department in 2001 to establish a Justice Support Person Program within the Office of the Public Advocate, but this bid was unsuccessful. If resources became available, the program would be staffed by volunteers who are trained to provide assistance and support to the target group during police interviews. The volunteers would be expected to have some experience in working with people with a disability. It is anticipated that the program would require resources of approximately \$300,000 per annum.

Two options for the establishment of the program have been canvassed. The first is to establish the program initially in two regions, one metropolitan and one rural, and evaluate it after a period of twelve months. An advisory group would monitor the program and identify issues and solutions. If the evaluation of the program were positive, the program would then be established statewide. The second option is the immediate establishment of a statewide program, with an evaluation after twelve months of operation. This option would require extra once-off resources to allow for statewide consultation, selection of volunteers and planning.

The Independent Third Person program in Victoria was established in 1988, and an evaluation of the program in 1995 stated that: *'The benefits of the program have been substantial with interviewees, police, service providers and Independent Third Persons involved in this study generally believing that a role is being served in protecting the rights of a group of people who are often vulnerable and intimidated by the police.'*

In NSW, a major report into the provision of disability services recommended that: *'The Government should fund a statewide network of trained support people to assist people with intellectual disabilities in police interviews and in court.'*

It is clear that the establishment of a Justice Support Program in SA is in line with developments in other states, and would be an important step to ensure that the rights of people with a mental incapacity are properly protected.

### Advocacy through guardianship

In February 2002 the OPA was contacted by medical staff at Glenside Hospital regarding an eighteen year old Afghani detainee who was a patient there. The young man had been diagnosed with a severe Post Traumatic Stress Disorder, and had been detained under the *Mental Health Act 1993*, as he was suicidal and psychotic as a result of depression.

The young man reported that as a result of cultural and religious persecution in Afghanistan, the majority of his family had been killed. He arrived in Australia alone after a perilous journey undertaken with, among others, a group of unaccompanied minors also seeking asylum. At the time of his admission to Glenside Hospital he had been a detainee at the Woomera Detention Centre for approximately twelve months. The young man's earlier application for a temporary protection visa had been refused, and his appeal to the Refugee Appeal Tribunal had been rejected.

Hospital medical staff feared for the young man's safety if he was returned to Woomera. They were of the view that effective treatment could not be provided within the detention centre and believed that the general environment would be detrimental to his mental health. They made an application to the Guardianship Board, which, after hearing the evidence, appointed the Public Advocate as his guardian. The guardian directed that the protected person live in the community with a named person and receive such care and treatment as required.

In an unusual role for this office, the Public Advocate applied to the Supreme Court for an injunction against the Department for Immigration and Multicultural and Indigenous Affairs, restraining them from preventing or hindering the enforcement of the guardian's directions. This was to ensure that the decisions of the guardian were not interfered with, so as to protect the continuing well being of the protected person. In response, the Minister applied to have the injunction set aside, arguing that the Public Advocate's powers under state legislation were over-ridden by federal legislation. The full argument was never heard, however, as on the morning of the hearing, the Minister granted a bridging visa to the protected person until such time as his further appeal to the Federal Court was heard.

Since the granting of the temporary protection visa, the OPA has worked with a range of community service providers and voluntary groups to ensure the best possible care and support for the protected person. Despite the most difficult of circumstances, including no government financial support of any kind, he has been accommodated in the community with two other young refugees, is attending a TAFE College four days per week and is enjoying the company of an increasing circle of friends. His mental health remains extremely fragile, but guardianship has ensured that he continues to receive appropriate treatment through the mental health system.



# Guardianship

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

## **Objectives**

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

## What is guardianship?

A guardian is someone who has been appointed by the Guardianship Board (under Section 29 of the *Guardianship and Administration Act 1993*) to make decisions on behalf of some other person, who, because of a mental incapacity, is unable to do this for him or herself. The Public Advocate is appointed as 'guardian of last resort' where no other suitable private guardian exists.

Guardianship is the authority that may be exercised and the protection that may be afforded by a guardian in relation to personal life decisions for the protected person. Personal life decisions are all matters, except financial affairs and legal affairs that can affect a person's health, welfare or lifestyle.

## Resources

One off funding for an additional guardian was not carried forward this year. This additional position was carried by the OPA to the end of 2001 and then replaced by a contract 0.7 FTE PSO1 for the remainder of the year. Guardianship cases were split into 'intensive/continuity' cases and 'monitoring' cases in January 2002 to reflect the difference between the proactive and monitoring roles performed by a guardian. The PSO1 position oversees the monitoring caseload, which accounts for approximately one third of active guardianships. Monitoring cases now receive regular attention and guardians are participating more actively in agency and inter-agency case planning for protected persons under intensive guardianship.

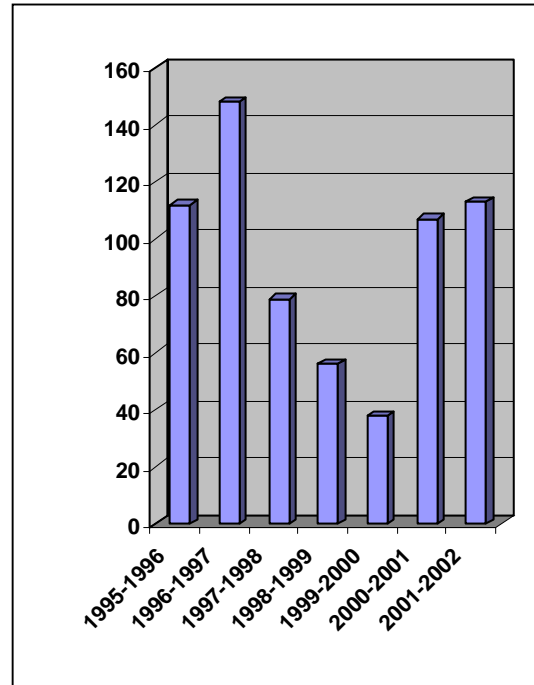
## Outcomes

### *Guardian of Last Resort*

During 2001-02, the OPA provided guardianship services on behalf of 272

people. There were 113 new guardianship appointments during this period. As the following graph indicates, the number of new guardianship appointments in the last financial year has remained high.

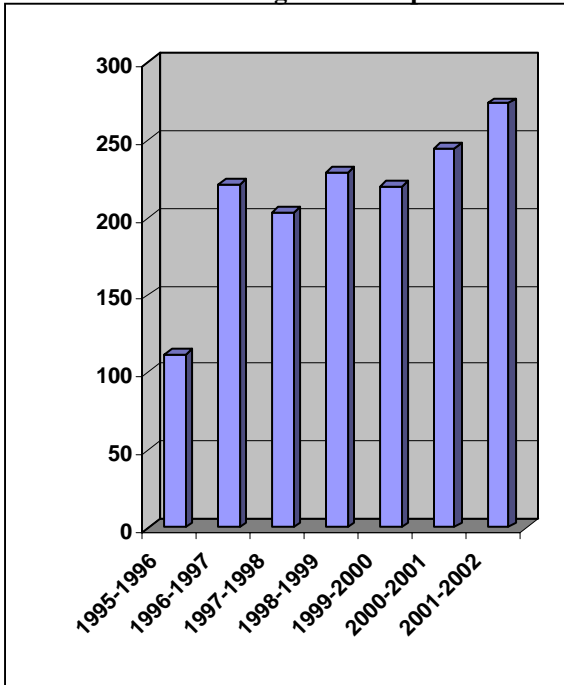
New guardianship appointments



Trends in new guardianship appointments throughout the history of the OPA have been 'roller coaster' in nature. It is now believed that these numbers will be the norm and that the dip in numbers during the middle period of the OPA's history related to issues in the Guardianship Board during this period.

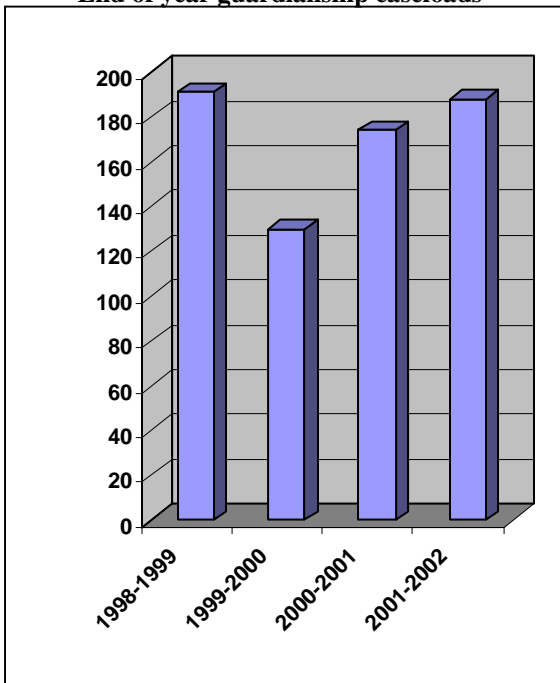
The number of active guardianship cases managed by the office in each year has steadily risen over OPA's lifetime. This year we managed 272 cases under the *Guardianship and Administration Act 1993*. A further 15 cases listed as active on 30 June 2001 were subsequently closed or revoked and backdated to a date in the 2000-01 financial year. The graph on the next page clearly shows this steady rise in active guardianship cases.

**Number of active guardianship cases**



End of year active caseloads under the *Guardianship and Administration Act 1993* have fluctuated. This year it was 188. The following graph illustrates the guardianship caseload carried by the OPA at the end of the financial year.

**End of year guardianship caseloads**



### **Monitoring caseload**

There are sixty or so cases at any one time in this category. These are cases where the protected person is under the guardianship of the Public Advocate, but who do not require constant attention with regard to decision making on their behalf. It may be that in the early stages of a Guardianship Order, a guardian is required to perform many duties. However once a protected person is settled in their accommodation and appropriately cared for in the community, little decision making may be required on that person's behalf and so they are handed over to the officer responsible for monitoring such cases.

Many protected persons cared for under the monitoring system require a period of time to ensure their rights are continually being met through informal arrangements before revocation of the Guardianship Order may be recommended.

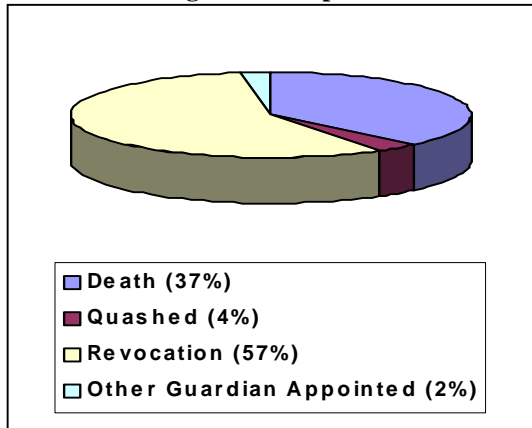
The monitoring officer will deal with less complex matters. However, if the case becomes highly active again, and complex guardianship decisions are required, then it will be referred back to the Guardianship Team.

In addition to the formal Guardianship Board review process outlined in the *Guardianship and Administration Act 1993*, an informal review process was begun in April 2002. This ensures that all protected persons under the auspices of the monitoring officer are visited and assessed, and a review report written, every three to six months.

### Guardianship case closures

Most guardianship cases were closed either because the Guardianship Board revoked the order or because the protected person died. A small percentage of Guardianship Orders were quashed on appeal by the District Court. Several other cases were closed when another guardian, ordinarily a family member or friend, was appointed instead of the OPA.

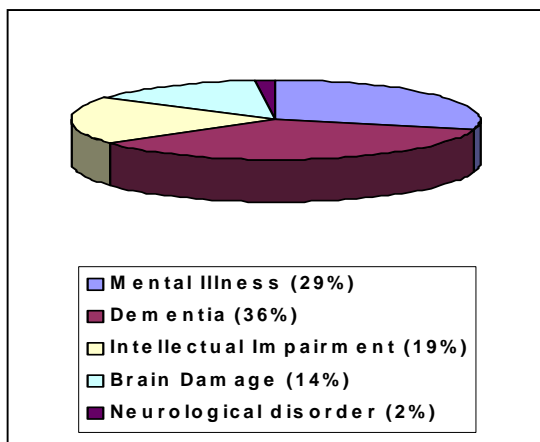
Reason for guardianship case closures



### Disability profile of guardianships

Dementia continues to be the largest single cause of mental incapacity amongst the OPA's guardianship cases. The following chart illustrates the disability profile of the end of year guardianship caseload.

Disability profile of guardianship cases



### Guardian ad litem/Next friend

The OPA has continued to provide a service to women whose children have been removed from their care as a result of the mothers' mental incapacity/inability to provide adequate care for their children. These mothers are deemed not able to effectively instruct a lawyer in court proceedings. The OPA is appointed either Guardian ad litem in the Youth Court or Next Friend in the Family Court to instruct the lawyer on the mother's behalf.

There were nine cases open this year, three being new matters. Several of the others had had little recent contact and were therefore closed. All matters of this nature are now closed.

One of the key roles played is the demystification of mental illness for other sectors and highlighting the capacity of some mentally ill mothers to return to the mothering role. One such woman experienced reunification with her two children as a result of collaborative work between the OPA, Department of Family and Youth Services, Mental Health Services and Anglicare.

## Report on the OPA's Guardianship Survey

During 2001-02, a Social Work student conducted a survey of the OPA's guardianship cases, in order to provide some answers about whom the OPA's guardianship clients were and what value the guardianship orders made to their lives. The report collected demographic and decision making data about the 107 new guardianship appointments made during the 2000-01 financial year.

Some of the results of this study were as follows:

- 53.3% of clients were male;
- ages ranged between 19 to 93 years, with 46.7% aged over 70;
- mental incapacity was as a result of dementia or brain damage in half (54) of the cases; in addition, 19 of the 26 cases identified as having dual disability had dementia and/or brain damage as a component;
- 92% of applications cited accommodation decisions as a reason for requesting an order, and 71% highlighted health care issues;
- 67% of applicants sought guardianship to assist in the development of a service provision framework, and 58% of applicants sought guardianship to contain or restrict a person's actions;
- 37% of applications resulting in OPA guardianship originated from acute care hospitals, with 58% of these coming from the Royal Adelaide Hospital (which is 21.5% of all applications resulting in OPA appointment);
- full guardianship orders were made in 56 cases (17 with Section 32 powers) and limited guardianship orders were made in 51 cases (two with Section 32 powers);
- 57% of the cases had an identified service provider, whereas 39% had no service providers;
- in 21 % of cases, no guardian decisions had been made by the time of data collection (which was at least five months into the period of guardianship);
- in 46% of the cases, one to three major guardianship decisions had been made in the five to seventeen months since the order was made, whereas in 4% of the cases, over fifteen decisions had been made;
- the file reviews suggest that, for older clients, guardians are making few decisions and mainly act as authority figures to place protected persons into accommodation, seemingly against their wishes;
- the file reviews also indicate that few of the older clients receive extensive involvement unless family conflict is a feature;
- it is clear that quality guardianship requires an holistic approach, with the object of maximising positive outcomes for protected people;
- the best work appears to be done where the guardian adopts an advocacy role in a manner consistent with the principles of the *Guardianship and Administration Act 1993*.



### **Highlighting ongoing collaborative work with initial applicant**

An application was made by a social worker in a public hospital for the appointment of the Public Advocate as guardian for a 41 year old man suffering from a mental incapacity as a result of life-long abuse of alcohol. The role of the guardian was to approve appropriate accommodation and make decisions about health care.

The accommodation had to be secure to contain the client. The social worker and the guardian were in agreement about placement and the social worker transferred the client to the chosen facility. The role of the social worker usually ends once the guardian assumes statutory responsibility for the client in the community, and contact between social worker and client ceases.

The client had been in residence for approximately seven months when more suitable accommodation was located for him in the country. The client agreed to the move and arrangements were made for his transfer. Problems developed prior to the transfer and the guardian sought assistance from the social worker, who had a better knowledge of the client's background and temperament than the guardian did. The response from the social worker was immediate and thoughtful. He devised innovative strategies to assist the client, including a successful application for funding to trial the new accommodation prior to permanency. The social worker accompanied the client to the new premises and stayed with him for some hours to help him acclimatise.

In the following months the social worker liaised with the client's family interstate and was again successful in obtaining funds to allow the client to fly to visit his ailing mother. This support was in recognition of the client's abstinence from alcohol for the past eight months and his continued attendance at AA meetings.

The social worker's input with the client who had not been an inpatient in the hospital for eighteen months has been of enormous benefit to the client. Without his involvement the client may well have required readmission to hospital.

The worker's willingness to see beyond the lines of demarcation between himself and the guardian has strengthened the relationship between the hospital and the Office of the Public Advocate. In addition, the worker's efforts have resulted in outstanding progress for the client.

## **Guardianship to facilitate the wishes of a client**

The OPA was appointed guardian of an elderly man with dementia for the purpose of ascertaining if it was suitable for him to be repatriated to United Kingdom, his country of birth. The man had immigrated to Australia forty six years ago with his wife, who had died several years ago. There were no children or family in Australia, and the man had, for some years, expressed a wish to return to live in the UK where he has two surviving brothers, a sister and various nephews and nieces. His relatives often communicated with him in the form of letters, gifts and telephone calls.

Staff at the nursing home in which he lived had often heard the man say that he would like to return to the UK to live. However they felt they could not make the decision to assist the man to return to live in the UK, because of his mental incapacity, so applied to the Guardianship Board for a Guardianship Order. The Board appointed the Public Advocate as the man's guardian. The role of the guardian was to ascertain the man's capacity to cope with returning to the UK and to assess the suitability of nursing homes. A written report was received from the man's doctor supporting the move and giving a medical clearance for him to both travel and cope with the move.

The guardian wanted to ensure that the conditions in the UK were as good as or better than the ones he was experiencing here in Adelaide. The guardian set about ascertaining (1) if the UK would accept his repatriation; (2) his pension and health care entitlements in the UK; (3) if his physical and mental health would cope with returning home; and (4) the travel arrangements needed to facilitated his return trip.

The guardian liaised with the British High Commission, Public Trustee, and the man's family in England. The first task was obtaining a UK passport. The man's brother found a nursing home placement in their hometown in the north of the country. The guardian then liaised with the Manager of the nursing home and the Public Trustee about payment of the fees. Organising travel arrangements took some time, and staff at the travel agency were very helpful. The Public Trustee organised for the tickets to be paid. The man travelled first class, as the seating in this area was more comfortable, and managed to get a direct flight from Adelaide to London. A connecting flight was then made from London to Manchester where the man's brother met him. The Director of Nursing from the nursing home in Adelaide had nominated herself to accompany the man on the trip, doing so in her own time.

It has been reported back to the OPA that the reunion at Manchester Airport between the man and his family was very emotional and that he has since settled comfortably into the nursing home.



# Investigation

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

## **Objectives**

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

## Resources

For the first part of the financial year, the screening and investigation role was shared amongst guardians. In February 2002, however, the OPA returned to one officer having prime responsibility for these activities. This enables a consistent approach and closer liaison with the Guardianship Board.

## Outcomes

A total of 195 investigations were conducted in the last financial year. The following are the types of investigations undertaken by the OPA:

### Section 28 investigations.

These are investigations that are requested by the Guardianship Board under this section of the *Guardianship and Administration Act 1993*. This means that a comprehensive report was prepared at the direction of the Guardianship Board to assist them in their decision making.

***There were 38 investigations requested under Section 28.***

### Section 21 investigations

These are investigations that are undertaken as a result of an external request to the Office. They can include matters that relate to the *Guardianship and Administration Act 1993* or the *Mental Health Act 1993*.

***There were eleven investigations made under Section 21.***

### Pre-hearing screenings and investigations

These are matters where an application has been made to the Guardianship Board and the OPA is nominated as the guardian. The OPA undertakes some preliminary screening to determine the appropriateness of orders sought and/or

the availability of an alternative guardian.

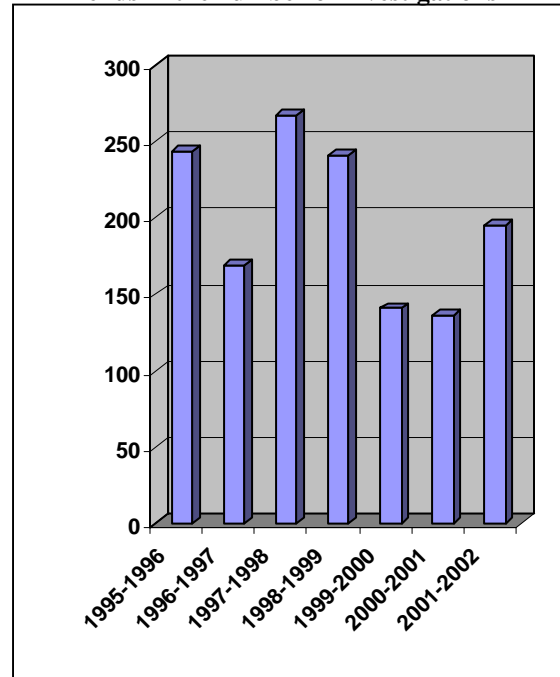
***There were 114 investigations made prior to a Guardianship Board hearing.***

### Sterilisation investigations

These are investigations undertaken when the Guardianship Board has received an application for a sterilisation. All of these matters are referred to the OPA for a thorough report investigating the circumstances surrounding the application.

***There were two sterilisation investigations undertaken.***

Trends in the number of investigations



### **Challenging existing arrangements**

Those who lodge applications at the Guardianship Board do so with varying motivations and interests. Family members or service providers request the making of new orders to instigate protective arrangements for vulnerable members of the community, however a number of the applications made are aimed at overriding existing formal arrangements.

These latter applications are often made in an atmosphere of unresolved family conflict. They are referred to the OPA for investigation of the need to override the existing arrangements and to establish whom, if anyone should be appointed as a substitute decision maker in the areas of lifestyle or financial matters.

Concern for elderly, frail parents led to an application to the Board, asking that the existing Enduring Power of Attorney and Enduring Power of Guardianship documents be overridden and replaced with Board orders with similar powers. The applicant, residing interstate, was unhappy with the decision for her parents to move away from her and believed that this was not their wish, but they did so under duress and because of their reduced mental capacity.

She alleged an old family friend was engaging in financial opportunism and emotional cruelty, along with an assumption that the EPA and EPG were signed while her parents were not competent to do so.

The OPA investigated this matter by firstly obtaining a current specialist medical report. This clearly indicated that both parents had mental capacity and on interview, they indicated a wish to reside in Adelaide over chilly Canberra. They described ongoing disputes with their daughters and feeling pressured to spend some of their retirement funds on them while still alive. They described their old friend as supportive and having their interests at heart. Past medical reports also demonstrated mental competence at the time of making the advance directives.

All this was reported to the Board, who reviewed the medical reports and decided that they did not have jurisdiction to hear the application, as both subjects of the application were able to make their own informed decisions. This outcome did not satisfy the aggrieved applicant, who continues to believe that her parents have chosen badly and need protection from those who may try to take advantage of them.



# Community education

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*Empowering individuals, service providers and the community through the promotion of advance directives and the principles and practicalities of the legislation.*

## **Objectives**

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

## Resources

During 2001-02, a part time Education Officer only was employed to undertake the tasks associated with education and information. The Information Officer was on maternity leave during the whole period of this report, and monies for this position were diverted to the guardianship program.

## Outcomes

To fulfil our responsibilities in the provision of education and information, the OPA responds actively to requests from organisations and individuals and participates in a range of activities.

### *Education sessions*

In total, 1299 individuals received advice and information through 51 education sessions conducted by the OPA. There are three main audience categories used by the OPA, and these are outlined below.

### **Metropolitan service providers**

Talks to service providers in the metropolitan area are up slightly from last year. A total of 741 service providers attended 36 education sessions provided in the metropolitan area. While the number of education sessions conducted in 2001-02 was smaller than in 2000-01, the attendances were higher, reflecting the push that this office has made towards larger group numbers.

Most of the talks that are now given to service providers are on specific issues that have arisen from the legislation. For example, in the last Annual Report

we reported on the Restraint Position Paper that the OPA has developed in conjunction with service providers in the aged care sector. The release of this paper has resulted in the OPA providing advice and consultation on this issue to a variety of aged care facilities, including speaking at a large conference for nursing home directors. A copy of the Restraint Position Paper is now available from the office.

The OPA was also asked to provide advice and information on the *Mental Health Act 1993* to nurses in emergency departments of general hospitals. A pilot project was undertaken by the mental health services to look at the training of emergency department nurses to deal with the increased number of patients who present at casualty with mental health problems. The OPA was involved in a number of training days on the specifics of the legislation as they relate to this client group.

### **Comparative data for education sessions to metropolitan service providers**

Year	Sessions	Audience
1997-98	44	828
1998-99	52	1552
1999-2000	33	1440
2000-01	42	* 613
2001-02	36	* 741

\* The trend in recent years has been to provide more specialised education sessions on specific issues for targeted audiences.

### **Metropolitan carers and consumers**

These talks focus on the promotion of advance directives and general guardianship and administration issues. This year only nine education

sessions were given to carers and consumers, however the number of participants reached was 295. This reflects the tendency to talk to larger gatherings, including members of service clubs such as Probus.

**Comparative data for education sessions to metropolitan carers and consumers**

Year	Sessions	Audience
1997-98	39	934
1998-99	14	615
1999-2000	10	337
2000-01	19	596
2001-02	9	295

### **Country talks and activities**

The figures for 2001-02 represent the commitment to providing a service to country areas. A total of 263 people attended six talks given by this office. We are finding that requests from the country are on the increase, and while there is a commitment to providing this service, the resources are limited to allow for the time that it takes to travel to some of the outlying regions. Despite this, future country trips are planned, particularly those that involve inter-agency collaboration, such as the Alliance for the Prevention of Elder Abuse.

**Comparative data for education sessions given in county areas**

Year	Sessions	Audience
1997-98	14	246
1998-99	5	173
1999-2000	3	75
2000-01	14	372
2001-02	6	263

## ***Publications***

### **Community pamphlets**

The final touches are being put to the Fact Sheets that will replace the coloured trifold pamphlets providing information about the state guardianship and mental health legislation. These Fact Sheets have been rewritten in more user-friendly language, and reflect our commitment to ensure that our written material reaches a wide audience. The most significant changes have been made to the appeals brochures. All appeals brochures are now in very easy to read language with simple flow charts to indicate how a person can appeal. Subject to funding being available to print the new Fact Sheets, they should be launched in the next financial year.

### **Position Papers**

Two new Position Papers, one about sterilisation issues and the other about the role of the OPA in Guardian ad litem/Next Friend cases in the Family and Youth Courts, were produced during the 2001-02 year.

### ***Enduring Power of Guardianship: A Do-it-yourself kit revision***

The OPA, in conjunction with the Legal Services Commission, revised the *Enduring Power of Guardianship: A Do-it-yourself Kit*. The changes were not significant but do reflect the continuing wisdom we accumulate when providing education sessions or talking with clients on specific issues around this document.

### **2000-01 Annual Report**

During the 2001-02 period, the 2000-01 Annual Report was produced, printed and distributed. The OPA printed 1000 copies of the Annual



Report, with 500 mailed out during the year. The Annual Report was also handed out during the Public Advocate's late afternoon party in April 2002, where the Minister for Social Justice, the Hon Stephanie Key MP, spoke to approximately 100 invited guests.

***Consultative activities***

The OPA conducted thirty consultative activities during the financial year. Some of these activities are requests for written material from external organisations and individuals, and others involve representation on committees or task forces. Some of these latter activities have been:

- Alliance for the Prevention of Elder Abuse (see feature on next page);
- Law Week Committee (see next column);
- Child Protection Review (see next column).

The OPA also continues to provide advice and information to other agencies on their policies, particularly those that have reference to either the *Guardianship and Administration Act 1993* or the *Mental Health Act 1993*. For example, the OPA was involved with the SA Ambulance Service over their recognition of advance directives for health care decisions.

**Total number of consultative activities**

Year	Activities
1997-98	78
1998-99	81
1999-2000	65
2000-01	41
2001-02	30

**Contribution to Law Week**

The OPA was actively involved in Law Week during May 2002, as part of the committee that co-ordinated the opening event and conducted Speaker's Corner in Victoria Square. The idea of a Speaker's Corner was to actively encourage community participation and to encourage discussion and debate on a variety of topics. The event was well attended each day. In addition, the OPA has been involved in the Country Sub-Committee of the Law Week Committee. This was to encourage country people to take advantage of what Law Week had to offer, as many of the events are held in regional areas.

**Child Protection Review**

The Child Protection Review was initiated by the Labor government and headed by Robyn Layton QC. The OPA was involved in a focus group on accountability and review for children. While this office is primarily involved with adults, there are issues that arise involving children, which this office does provide systems advocacy on. An excellent example of this is the work the Public Advocate has done in raising the issue of intellectually disabled children who were sexually abused at school.

## **Alliance for the Prevention of Elder Abuse**

The abuse of elderly people is more and more a matter for public discussion and concern. Until recently, elder abuse was not openly discussed nor even acknowledged. Today there is justifiable public outrage when such incidents are reported and a growing commitment amongst communities and agencies in both the government and non-government sector to work towards addressing these problems.

A study conducted by the Aged Rights Advocacy Service last year reports that financial abuse is a significant issue for our community. People who already have a means of access to the alleged victim's assets and estate most commonly perpetrate this abuse. Often the means of access can be key cards or banks cards, but it is also through documents such as the Enduring Power of Attorney.

A number of agencies have formed an alliance to raise community and business awareness, and assist older people to recognise and report financial abuse. The alliance comprises the OPA, Public Trustee, Aged Rights Advocacy Service, Legal Services Commission and the South Australian Police. The alliance has been a very successful example of inter-agency collaboration. Each agency has, as part of its brief, the protection of vulnerable people. However, each agency was, in the past, doing this in a fragmented and ad hoc way. The combination of the agencies has meant that their special area of expertise is now available to groups, forums and organisations in a co-ordinated and comprehensive manner.

The alliance meets monthly, and has been involved in a number of small projects as well as a series of forums in country and metropolitan regions. The small projects have involved liaising with banking institutions on how they can detect and deal with possible financial abuse with the elderly. The forums, which have been conducted in various regions, have proved extremely successful in raising awareness and providing an opportunity for people to have their questions answered. In the forums the alliance has targeted specific groups such as Justices of the Peace, who are the main witnesses to documents such as the Enduring Power of Attorney. The Enduring Power of Attorney is an important document, and one that the OPA promotes, however if it is not executed properly, then it can be open to various forms of financial abuse.

The OPA will continue to be involved in this alliance and more country forums are planned for the next financial year. We believe that there is opportunity for collaborative efforts like this one to operate in many areas of health and welfare.



# Enquiry service

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*To provide advice and information to service providers and the general community about the state guardianship and mental health legislation and related matters.*

## **Objectives**

- To inform the general public and service providers about advance directives, informal arrangements, and appropriate use of the *Guardianship and Administration Act 1993*, the *Mental Health Act 1993* and the *Consent to Medical Treatment and Palliative Care Act 1995*.
- To disseminate information on the role and functions of the OPA.
- To promote the least restrictive alternatives in the resolution of issues relating to persons with a mental incapacity.
- To promote awareness of how to prepare comprehensive and carefully considered applications for the Guardianship Board.
- To provide appropriate referrals to other agencies as required.

## Resources

At the beginning of this financial year, the OPA had a dedicated Enquiry Officer who took calls from 10am to 1pm each day. The Enquiry Officer position was founded on a 0.7 FTE basis, but the hours were extended to full time throughout 2001-02. Ongoing DHS funding for a full time position was secured from 1 November 2001.

Restructuring of workloads saw the enquiries shared amongst members of the intake team on a trial basis. This trial continues into the next financial year.

Late in 2001-02, the OPA stopped advertising the 10am to 1pm service, preferring instead to offer a 24 hour response time to calls, with provision for urgent responses.

In February 2002, a duty officer scheme was introduced to back up the enquiry service and to ensure that an OPA officer was available during office hours to respond to walk-in enquiries and calls about clients.

In addition, the OPA also offers an emergency contact that is available 24 hours, seven days per week. A representative of the OPA carries a pager to respond to urgent matters on behalf of the OPA and the Guardianship Board. This is an emergency service only, and provides urgent information and advice about guardianship issues, urgent decisions in relation to people under guardianship, and the negotiation of emergency interim Board orders with the Guardianship Board President.

## Outcomes

During the financial year, the OPA received 3642 enquiry calls.

### Total numbers of enquiry calls

Year	Total enquiries
1995-96	3570
1996-97	3229
1997-98	3539
1998-99	3744
1999-2000	3063
2000-01	3229
2001-02	3642

Enquiries have been handled in a variety of ways over the lifetime of the OPA. Similarly, recording systems have varied. Documentation requirements in the past two years should enable more opportunity for trending analysis in this area.

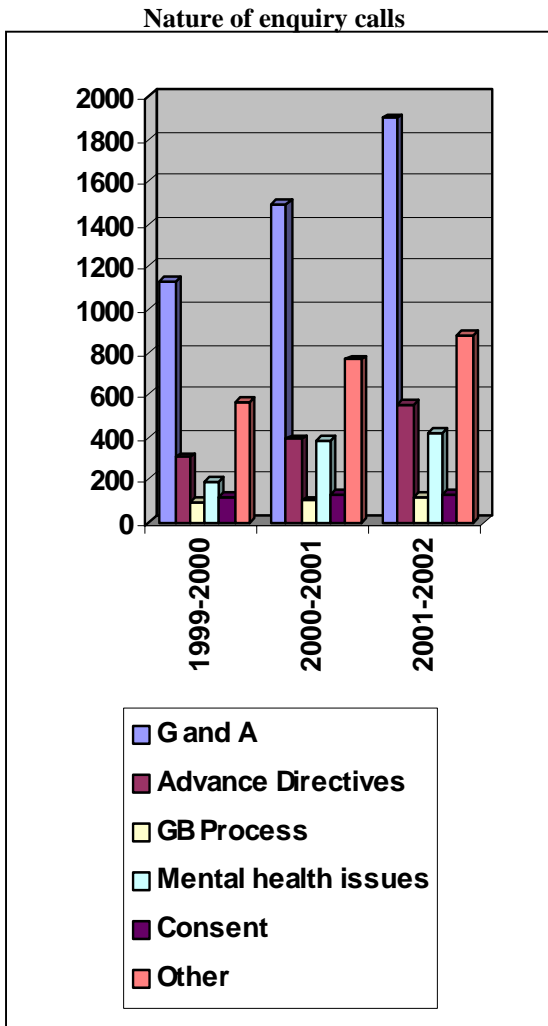
Enquiries for education assistance are now primarily directed to the Education Officer and no longer form part of the enquiry statistics. This accounts for the change in the numbers in this category below.

### Comparison of enquiries

Enquiry category	2000-01	2001-02
1. Potential Administration issue	892	1118
2. Potential Guardianship issue	603	755
3. Advance directives	391	554
4. Guardianship Board process	104	116
5. Information/ Education	467	210
6. Mental health issues	380	411
7. Consent to treatment issues	129	129
8. Other calls	703	860

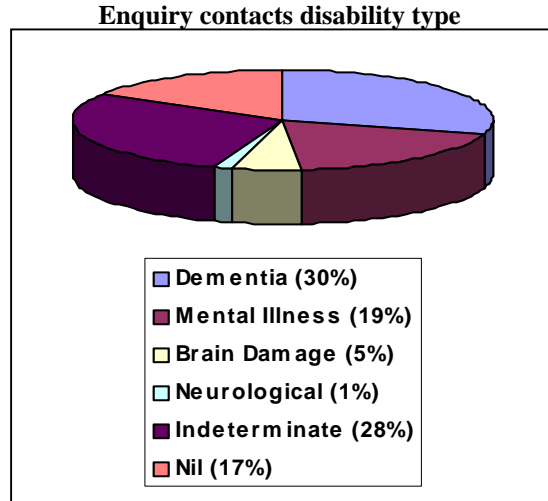
**Nature of enquiry calls**

Enquiries remain a significant part of the OPA’s work. There was a 13% increase in enquiry calls in 2001-02 compared to the previous financial year. Enquiries about guardianship and administration issues, advance directives and calls relating to other matters have increased over the three year period. These other matters might include calls about family violence, family law matters, domestic violence, alleged financial abuse, and informal arrangements. The following chart demonstrates the changing profile of enquiry calls to the OPA over the last three years.



Most contact with the OPA occurs via the telephone, with approximately two walk-in enquiries per week.

The disability groups that people ring the OPA about are represented on the following chart.



**Trends towards formalisation**

The OPA has noted a growing expectation that people with mental incapacity need legal guardians and administrators in place to make decisions. Some aged care residential services are requiring these arrangements before accepting a resident. Health services, banks and utility services appear increasingly reluctant to release information or act on the request of another party, seemingly quoting ‘privacy’ as the source of concern. The OPA attempts to promote a balanced view on these matters, drawing callers’ attention to the principles of the *Guardianship and Administration Act 1993*, which support continuation of informal arrangements where possible.

### Some examples of enquiries

- A man telephoned the OPA to ask about the law relating to consent, as his twenty year old intellectually impaired daughter was in hospital with a respiratory infection. Because of his daughter's intellectual impairment, she had not been able to make out an Enduring Power of Guardianship or Medical Power of Attorney. The Enquiry Officer advised the caller that, under Section 59 of the *Guardianship and Administration Act 1993*, he and his wife, as parents, could provide substitute medical consent on behalf of their daughter.
- A woman telephoned the OPA regarding a Guardianship Board hearing where her sister was appointed as guardian for accommodation and health care decisions for their mother. The caller indicated that she comes from a large extended family and that her siblings live throughout the state and interstate. She was unhappy about her sister's appointment, and indicated that she was in receipt of a new medical report stating that her mother still has her mental capacity. The Enquiry Officer asked if the report was produced at the Board hearing and was told no. The Enquiry Officer explained that the caller should forward the report to the Guardianship Board, along with a written request for a review of the matter, addressed to the Registrar, outlining the reasons for the review. The Guardianship Board can conduct a review of an order if there is some new information or a change in circumstances. In this situation, a review would provide a more appropriate avenue to an appeal against the order in the District Court, where new information may not be allowed.
- A social worker from a small country hospital rang the OPA to ask about the process of obtaining Guardianship Board consent for the sale of property. His client, an elderly gentleman, recently had a stroke, and has been in hospital since. He is unable to return to independent living, so there is no likelihood that he will be able to return home. He has no family, and has never made out an Enduring Power of Attorney. The gentleman has been assessed by ACAT and was recently offered a place in the local aged care facility. However, he needs the proceeds of the sale of his house to pay the accommodation bond, but no longer has the mental capacity to sign the legal documentation. The Enquiry Officer advised the social worker about the need for an Administration Order and the specific requirements the Guardianship Board has in relation to consent to the sale of real property.

# *Administrative and human resources*

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## **Key administrative issues**

- The OPA was partially successful in its bid for new resources with the Disability Services Office committing an additional 0.3 FTE PSO1 funding to support OPA's Enquiry Service. This additional resource is in part to allow the OPA to take over responsibility for answering enquiries about the *Consent to Medical Treatment and Palliative Care Act 1995*, in particular, about advance directives.
- The OPA continues to request funding for an additional 1FTE PSO2 position to assist with our guardian/investigation/advocate functions.
- The OPA met its budget target despite carrying an additional unfunded position for the first six months of the year.
- The OPA continues to request a change in accommodation to Level 7 of the ABC Building, believing that this will improve conditions for the public, the staff of OPA and the Guardianship Board, and achieve the appropriate physical separation between the two organisations.
- Administrative staffing in the office was restructured at the end of the financial year, resulting in increased ASO2 resources and purchasing of finance support functions from IDSC.
- Towards the end of the year, negotiations commenced for the transfer of the OPA to the portfolio of the Attorney General.

## **Strategic planning**

The OPA held a planning day in August 2001 and decided that a three year planning cycle should be adopted from 2002. Work is ongoing to ensure compliance with the DHS service excellence framework and strategic directions.

Key strategic outcomes identified for the OPA are:

- that the 'community' is informed and empowered on issues surrounding mental incapacity;
- quality guardianship for those South Australians who require it;
- that those people who have a mental incapacity are able to maximise their potential;
- that OPA business is conducted within a framework of sound management principles and practice.

In 2001-02, the OPA has focussed on improving information, documentation and evidence in:

- redrafting community information sheets and development of position papers;
- upgrading internal data reporting to inform OPA staff about their work;
- developing an audit tool for internal auditing against guardianship standards.

The OPA did not begin to address some of its priorities for action this year, because of the level of direct service commitment required by management and staff. These were:

- development of a manual for private guardians;

- proposal for an advisory committee;
- proposal for the delegation of guardianships;
- individual development plans for all staff.

These remain priorities for next year.

### Account payment performance

The OPA's policy is for all accounts to be paid within one week of receiving them. Accounts are processed by Intellectual Disability Services Council (IDSC) Finance Section. As the following chart shows, all of OPA's accounts during the 2001-02 financial year were paid by the due date.

Account payment performance – OPA accounts paid by the due date

Number of accounts paid by due date	385
Percentage of accounts paid by due date (by number)	100
Value in \$A of accounts paid by due date	\$294,600
Percentage of accounts paid by due date (by value)	100

### Computing systems

The CME database has now been in operation for two financial years. During this year additional reports have been created to provide improved information for staff work in their practice and for management purposes. Some system modifications are now required to streamline the system.

### Consultancies

There were no external consultancies during the 2001-02 financial year.

### Contractual arrangements

During this financial year, the OPA was not involved in any reportable contractual arrangements.

### Disability Action Plans

The organisation does not have a specific action plan. However, the OPA is a statutory body specifically set up to further the interests of people with mental incapacity. Its target population is people with mental incapacity and their carers. Representatives of the OPA have participated in a range of committees and fora seeking to influence South Australia's approach to disability issues.

The OPA's literature is directed towards informing the public and people with a disability about matters pertaining to the *Guardianship and Administration Act 1993* and the *Mental Health Act 1993*. This year we have been reviewing the information provided by OPA in order to improve its accessibility to people with mental incapacity. Consumer views have been sought to ensure that literature is more appropriately tailored.

### Energy Efficiency Action Plan Reports

The OPA currently does not have an action plan. The OPA is a tenant of the ABC and is in part governed by landlord practices. Electricity costs have been allocated on a changing formula over the past two years (floor space/ percentage basis/real cost to landlord). Hence the OPA has experienced a 391% increase in charges this year (2000-01 \$1,648 to 2001-02 \$8,093). There are no identifiable practice changes within the office to account for this.

Vehicle lease and operating costs were marginally less this year (\$7,278 as opposed to \$7,599 in 2000-01). However, expenditure on taxis has increased by 51% (\$3,321 compared with \$2,197 in 2000-01). Factors



affecting energy utilisation here, are the loss of access to a vehicle managed by the Guardianship Board, management policy encouraging greater community based face to face contact with agency clients and service providers and increasing work volume.

### **Equal opportunity programs**

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

In particular, the OPA is committed to providing a flexible work environment that takes into account family commitments. This includes providing opportunities for part time employment, job sharing and opportunities to work from home on specific duties. Half of OPA employees are employed on a part time basis and most administrative and professional positions are advertised as full time/part time/job share opportunities when they become vacant.

The OPA has involved itself in government traineeship programs in past years, but was unable to accept a trainee this year due to changes and instability in OPA administrative personnel.

### **Fraud**

There were no instances of fraud during the 2001-02 financial year.

### **Human resources development**

Training and development expenditure during 2001-02 was \$1,862 (0.26% of budget). In addition, other resources have supported learning opportunities for staff through provision of paid leave

for study purposes (approximately 50 hours leave) and backfilling of staff working temporarily in other agencies (incurring additional costs for temporary staffing and advertising).

Administrative staff has been the main beneficiaries of training and development opportunities this year with the permanent ASO2 staff member working in a promotional position in another agency throughout the year and the ASO3 being granted regular study leave to undertake subjects in a Bachelor of Accounting course.

The pursuit of professional development opportunities is encouraged with the minimum expectation that each staff member access one course or learning activity annually. This year, learning opportunities for professional staff has been overshadowed by staff workloads and staff changes. The main opportunities enjoyed have been through conference and workshop attendance.

Below is a list of some of the activities attended by staff this year:

- Guardianship and Administration National Conference (2 staff);
- Job Preparation Skills (1 staff);
- Australian Association of Professional and Applied Ethics National Conference (1 staff);
- Introduction to PowerPoint (3 staff).

### **Leadership and management development**

The OPA employs one Executive EL3, one Assistant Public Advocate ASO7 and one Education Officer ASO5 (in a staff of 8.9 FTE) all of whom have responsibilities for staff management and strategic directions. The Public Advocate participates in executive fora

on a regular basis. Formal leadership or management training has not been undertaken by any of the parties in the past year.

### **Occupational health, safety and injury management**

The OPA is guided by the policies and best practice principles of the SA Department of Human Services in relation to occupational health and safety and injury management. Practical assistance is provided by the DHS on request, and OPA uses the Department's Workplace Health and Safety Division when required.

The OPA has had a joint OHS Committee with the Guardianship Board but is in the process of setting up a separate committee. OHS matters are also discussed in all OPA staff meetings. The OPA has commenced use of the latest DHS worksite inspection checklist as the tool for regular site assessments.

During the 2001-02 financial year, there was one incident report of a worksite injury. This resulted in less than one day's work lost.

### **Overseas travel**

There was no overseas travel by staff of the OPA during 2001-02.

# *Freedom of information*

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

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

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

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

The nature of the OPA's work leads to:

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

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

The public can participate in agency policy development through the enquiry service and through the provision of feedback and comment at public forums facilitated by the OPA and mentioned elsewhere in this report. The OPA also consults target groups on specific matters.

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

- OPA Annual Reports - 1994-95 to 2001-02.
- Files relating to investigation and the care of protected persons.

- Administrative files relating to the business operations of the OPA.
- A series of printed resources, including the OPA community pamphlets and information sheets explaining the various orders made by the Guardianship Board and other provisions of the Acts. A list of these publications is on page 48.

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

The OPA provides information on the FOI application process when contacted.

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

## *Amending personal records*

Under FOI, an individual may apply to have documents corrected if they are incomplete, incorrect, misleading or out of date.

## *FOI requests 2001-02*

OPA received no requests under FOI this year.

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

# *Financial summary*

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The Office of the Public Advocate operates as part of the Social Justice and Country Division of the SA Department of Human Services. The financial operations of the OPA are consolidated into and reported with the financial statements of the SJ&CD and auditing occurs annually as part of that Division's audit process. The OPA's financial performance is reported in the Department of Human Services Social Justice and Country Division's Annual Report.

For this reason, full general purpose financial reports are not provided as part of this Annual Report. The chart below provides an expenditure summary for the OPA for 2001-02. In May 2002, the OPA negotiated for all of its financial functions to be managed by IDSC.

## **Salaries and Wages**

Expenditure on professional staff exceeded the budget allocation as an unfunded 1.0 FTE PSO2 position was carried for six months and a 0.3 FTE PSO1 for four months. A budget variation from November 2001 met the costs of the PSO1 but the PSO2 contract ceased. Underspending in administrative salaries and wages occurred due to reduced hours of work, leave without pay and delays in recharges by DHS for the Assistant Public Advocate's costs (approximately \$20,000 owing).

## **Other costs**

Whilst expenditure in most areas was held under budget, rental, electricity and cleaning costs payable to the ABC could not be controlled and rose by 28% this financial year (\$63,342 compared with \$49,477 in 2000-01).

<b>Office of the Public Advocate expenditure summary for 2001-02</b>			
<b>Description</b>	<b>Actual</b>	<b>Budget</b>	<b>Variation</b>
<b>Salaries and Wages</b>	<b>582,508</b>	<b>587,523</b>	<b>(5,015)</b>
<b>Goods and Services</b>	<b>140,699</b>	<b>147,704</b>	<b>(7,005)</b>
<b>Assets</b>	<b>5,567</b>	<b>1,500</b>	<b>4,067</b>
<b>Revenue</b>	<b>(215)</b>		<b>(215)</b>
<b>GST Recoverable</b>	<b>(300)</b>		<b>-300</b>
<b>Total Net Expenses</b>	<b>728,259</b>	<b>736,727</b>	<b>(8,468)</b>

## Appendix 1

## Staff changes

### Public Advocate and Assistant Public Advocate

- Mr John Harley and Ms Margaret Farr continued in contract positions throughout the 2001-02 period.

### Public Advocate Officers and Enquiry Officer

- Ms Anita Micallef, Ms Yvette Gray and Ms Suzanne Bull are the three permanently employed Public Advocate Officers.
- Ms Karen Carnegie, Enquiry Officer, has been under continuous contract during the year and has acted as a delegated guardian for some of this period.
- Ms Cynthia Manners left the OPA in December 2001.
- Ms Mary Allstrom joined the OPA in January 2002.

### Education Officer

- Ms Angela Andary is the permanent Education Officer. She worked on a 0.8 FTE basis during 2001-02.

### Information Officer

- Ms Stephanie Lewis was on unpaid maternity leave during the whole period of this report.

### Administrative staff

- Mr Paul Green, Administration and Finance Officer, is a permanent member of OPA and was granted twelve months unpaid leave from the end of this year to pursue an alternative career.
- Ms Jenni Wright, Senior Clerical Officer, was seconded to the Duke of Edinburgh Awards in Australia for the entire reporting period.
- Ms Donna Summers and Ms Stephanie Evans filled the position of Senior Clerical Officer in Jenni's absence.
- Ms Stephanie Evans has now taken up some of the functions performed by Mr Paul Green.

### Student placements

The OPA was fortunate to have the assistance of five students during this year:

- Ms Milenka Vaskova-Safripaldis, Social Work student;
- Ms Des Parker, Social Work student;
- Ms Leatha Henry, Law student;
- Ms Anneleise Van Deth, Law student;
- Mr Stewart Thelning, Social Work student.

## Appendix 2

## Staff profile

Public Sector Management Act employees by stream, level, appointment type and gender as at 30 June 2002									
Stream	Ongoing			Contract			Total		
	M	F	Total	M	F	Total	M	F	Total
<b>Administrative</b>									
ASO1									
ASO2		1	1		1	1		1	1
ASO3	1		1				1		1
ASO4									
ASO5		1	1					1	1
ASO6									
ASO7					1	1		1	1
<b>Total</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>0</b>	<b>2</b>	<b>2</b>	<b>1</b>	<b>3</b>	<b>4</b>
<b>Professional</b>									
PSO1					1	1		1	1
PSO2		3	3		1	1		4	4
<b>Total</b>	<b>0</b>	<b>3</b>	<b>3</b>	<b>0</b>	<b>2</b>	<b>2</b>	<b>0</b>	<b>5</b>	<b>5</b>
<b>Executive</b>									
EL3				1		1	1		1
<b>Total</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>1</b>	<b>1</b>	<b>0</b>	<b>1</b>
<b>Total all streams</b>	<b>1</b>	<b>5</b>	<b>6</b>	<b>1</b>	<b>4</b>	<b>5</b>	<b>2</b>	<b>8</b>	<b>10</b>

## Appendix 3

## Leave management

OPA sick leave as at 30 June 2002			
Financial year	Total days leave	FTE	Average days leave
2001-02	41.6	8.9	4.7
2000-01	39.9	8.7	4.6
1999-2000	34.5	10.16	3.4

OPA family carer leave as at 30 June 2002			
Financial year	Total days leave	FTE	Average days leave
2001-02	2	8.9	0.2

## Appendix 4

## Workforce diversity

Gender as at 30 June 2002	Total Employees	Female	%	Self identification as Indigenous	Employees with a permanent disability	Family related work place policies
Executives	1	0	0	0	0	0
Senior Managers	1	1	100	0	0	0
Middle Managers	1	1	100	0	0	0
First Line Supervisors	1	0	0	0	0	0
Other Administrative	1	1	100	0	0	0
Other Professional	5	5	100	0	0	0

Cultural diversity as at 30 June 2002	Country of birth Australia	Other country of birth	English is main language spoken at home
Executives	1	0	1
Senior Managers	1	0	1
Middle Managers	0	1	1
First Line Supervisors	1	0	1
Other Administrative	0	1	1
Other Professional	4	1	5

Age groups as at 30 June 2002	Male	Female	Total	% of all employees	% of Australian workforce	% of Australian population
15-19					8	7.0
20-24					11.4	7.1
25-29					11.9	7.5
30-34					11.9	7.5
35-39		2	2	20	11.8	7.6
40-44	1	2	3	30	12.3	7.6
45-49		1	1	10	11.5	7.0
50-54		2	2	20	9.9	6.6
55-59	1	1	2	20	6.7	5.1
60-64					3.1	4.1
65+					1.6	12.5

The OPA provides an important source of learning opportunities for students in law, social work and other disciplines and provided opportunities for several students with disabilities this year.



# *List of OPA publications*

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## **COMMUNITY 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

## **INFORMATION SHEETS**

- No 1 - Guidelines to assist in determining a person's competence to make advance directives
- No 2 - Before lodging an application at the Guardianship Board
- No 3 - Presenting an application at the Guardianship Board
- No 4 - Applying to the Guardianship Board for Section 32 powers
- No 5 - Informal arrangements for people with a mental incapacity

## **POSITION PAPERS**

- Guardian ad litem/Next Friend
- Restraint
- Sterilisation

## **OTHER RESOURCES**

- OPA Grievance policy
- An information booklet for the aged care sector
- Training package about the *Guardianship and Administration Act 1993*
- *Public Advocate Newsletter* (occasional)
- *Public Advocate Annual Report* (annual)

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