

**OFFICE OF THE PUBLIC
ADVOCATE**

**ANNUAL REPORT
2007-08**



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30 September 2008

The Hon Michael Atkinson MP
Attorney-General
45 Pirie Street
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Dear Mr Attorney

I have the honour to present to you the fourteenth 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 2007 to 30 June 2008. During this period, John Harley, the second Public Advocate retired after 9 years in the position and Margaret Farr, the Assistant Public Advocate acted in the role for 8 months until my appointment in July 2008. This is their report and I am very grateful to them and to the staff of the Office of the Public Advocate for their achievements prior to my appointment.

This period represents our third year under your portfolio.

Yours faithfully

Dr John Brayley
PUBLIC ADVOCATE

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Assistant Public Advocate's Report

I am pleased to provide an overview of the operations of Office of the Public Advocate for the 2007 2008 financial year.

This year was characterised by sadness and anticipation:

- Sadness because of the resignation of John Harley whose charisma, sense of humour and professional ethics had supported many many staff through his 9 years in office.
- Anticipation because of the long awaited appointment of the third Public Advocate, Dr John Brayley to whom staff fondly refer as “John the Third” (following his predecessors John Dawes and John Harley). John took up the position soon after the end of the financial year and his commitment to the rights of individuals who have decision making disabilities is already well recognised.

Whilst there was a lengthy gap between leaders and this can destabilise a service, I am pleased to say that we were able to maintain focus on the core responsibilities of the organisation and hand over a functional service to the new Public Advocate. I am appreciative of the hard work and support of all 25 people who contributed to the activities of the OPA during 2007-2008. In particular, I acknowledge the assistance of Ms Elly Kirk and Ms Trish Bull who provided leadership and support to their professional and administrative colleagues.

United Nations Convention on the Rights of Persons with Disabilities

The United Nations Convention on the Rights of Persons with Disabilities sets an international benchmark for legislative, policy and program imperatives when considering the rights and needs of people living with disabilities, including for those who have some form of mental incapacity. The Australian government is a signatory to this Convention. This office was asked about our compliance with the Convention some time ago. At first glance we might say that the Guardianship Board, the Office of the Public Advocate and the principles, the provisions of the *Guardianship and Administration Act 1993* and their implementation are in keeping with the Convention. However, over the past few years there have been a number of public discussions and review recommendations which suggest that we can do a lot better.

Below are some of the areas that could and should be addressed in the future.

Article 12 of the Convention on equal recognition before the law states:

“1. States Parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law.

2. States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.

3. States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.

4. States Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law. Such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person's circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body. The safeguards shall be proportional to the degree to which such measures affect the person's rights and interests.

5. Subject to the provisions of this article, States Parties shall take all appropriate and effective measures to ensure the equal right of persons with disabilities to own or inherit property, to control their own financial affairs and to have equal access to bank loans, mortgages and other forms of financial credit, and shall ensure that persons with disabilities are not arbitrarily deprived of their property.

Article 13 of the Convention on access to justice states:

"1. States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.

In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff. "

Advocacy and legal representation in Guardianship Board hearings

The **Guardianship Board** of South Australia is responsible for determining whether the rights and freedoms of people with disabilities should be in some way restricted through the application of orders under the *Mental Health Act 1993* and the *Guardianship and Administration Act 1993*. The Board is bound by the principles of both acts to only make orders that are justifiable in law and least restrictive in nature. The Board is an independent body and, at first glance, its functions are clearly in keeping with article 12 of the Convention. It acts as an appellant body reviewing treatment impositions made by clinicians and its own decisions are subject to appeal.

In the case of appeals, the subject of the application is afforded legal counsel to advocate their perspective in court. However there is no automatic advocacy or legal representation at the point when orders are made. Whilst the Board is obligated to protect the legal autonomy of such individuals, the subject of the application is often at a distinct disadvantage, struggling to understand the proceedings and to express his or her views in an articulate manner. They are often the only person in the hearing who disagrees with the proposal and therefore there are no natural allies to speak on their behalf. Advocacy may be provided upon the request of the subject, legal representation at a cost to the client. Sadly, although promoted in the Mental Health

Act, the Office of the Public lacks the resources to provide a robust system of advocacy for all those who may need it.

Does this represent procedural fairness in the eyes of the law? The Review of the mental health legislation of South Australia advocated for the development of a legal scheme which would support individuals attending hearings about Continuing Detention Orders and Community Treatment Orders. Such a scheme would assist in redressing the inherent imbalance of power which exists in our current system.

Provisions for appealing decisions of guardians

The **Public Advocate**, once appointed, has autonomy in decision making with no requirement to account to an external body for its decisions. A dissatisfied customer can ask the Board to remove the Public Advocate's authority as guardian but there is no external mechanism available in law to specifically address dissatisfaction with a decision. In New South Wales this has been rectified by making the Public Guardian's decisions appealable. Several other states are advocating for similar reforms. Amending the South Australian Guardianship and Administration Act to provide for external scrutiny of decisions would better reflect the sentiments in Article 12.

Independent third person scheme

At a broader level, people with mental incapacity are often at a significant disadvantage when confronted with a law and order or justice issues. Specialist legislation recognising incapacity to form the intent to offend (S269 of the Criminal Law Consolidation Act) has allowed a more humane approach to the mentally ill offender. However because of the lack of resources to appropriately respond to aftercare needs of individuals, they may spend substantially more time in custody than their mentally competent counterparts who have committed a similar offence. Mentally incapacitated victims of crime who have limited capacity to tell their stories are particularly disadvantaged in law because they are not "good witnesses".

Several years ago, work was undertaken to promote the establishment of an ***independent third person scheme*** similar to the Victorian Public Advocate's program. The core of the program is to make available volunteers who can support a mentally incapacitated person who is being interviewed by police or in court, the object being to ensure wherever possible that the victim, witness or offender understands what is being asked and the interviewer understands the communication limitations of the person. Whilst the witness support program run by Victims of Crime would encounter some such individuals, some would be out of the scope for this program.

Article 16 of the Convention on Freedom from exploitation, violence and abuse in part states:

"2. States Parties shall also take all appropriate measures to prevent all forms of exploitation, violence and abuse by ensuring, inter alia, appropriate forms of gender- and age-sensitive assistance and support for persons with disabilities and their families and caregivers, including through the provision of information and education on how to

avoid, recognize and report instances of exploitation, violence and abuse. States Parties shall ensure that protection services are age-, gender- and disability-sensitive.

3. In order to prevent the occurrence of all forms of exploitation, violence and abuse, States Parties shall ensure that all facilities and programmes designed to serve persons with disabilities are effectively monitored by independent authorities.”

Prevention and amelioration of abuse of vulnerable adults

Abuse prevention: The Commonwealth government is leading the way in promoting a “no tolerance” approach to abuse and neglect within funded aged residential and HACC funded community programs. In South Australia, the Department of Families and Communities has funded an elder abuse prevention initiative through the Office on the Ageing. This initiative is coordinated by the Aged Rights Advocacy Service and a number of partner organisations will share in the responsibility of improving our information and intervention strategies around elder abuse.

Investigative powers: The Guardianship Board and the Office of the Public Advocate are safety nets for those older people who have a recognised mental incapacity and are no longer able to protect themselves from abuse, exploitation and neglect. However some matters do not warrant the intervention of the Guardianship Board or police action but do warrant someone with authority investigating allegations about the safety and wellbeing of a vulnerable adult. It is believed that the Office of the Public Advocate would be well placed to assist in the assessment of such matters provided that the legal authority was available to do this.

Alliance for Prevention of Elder Abuse: The Office of the Public Advocate, the Legal Services Commission, Public Trustee and SA Police join with the Aged Rights Advocacy Service to form the Alliance for Prevention of Elder Abuse. This is an allegiance of interested parties who have a common goal of education for parties who may see and prevent abuse. It is also a network for cross agency referral when a solution is required for someone who is allegedly a victim of abuse. The group has no ongoing funding but this year was recognised by the Office on the Ageing as a vehicle for reform and granted one off funding for a part time project officer. We hope that through Justice and the Attorney General’s Department the work of this group may receive further recognition and support.

Community Visitors Scheme:

Vulnerable adults living in residential or community accommodation or in hospitals are often at a disadvantage in terms of understanding their rights and having a voice to advocate for their needs. The Victorian Public Advocate recently celebrated the 22nd birthday of its Community Visitors Scheme. This program is not an inspectorate or complaints management scheme. Rather it seeks to monitor the wellbeing of individuals and advocate for their rights. Independent volunteers provide feedback to the Public Advocate on systems issues. South Australia is the only state that does not have such a scheme. Such a scheme would fit with the state’s strategic objective of community capacity building.

Articles 19 and 25 on living independently and being included in the community and health are also of great significance to the work of this office and of services working for people with mental incapacity.

Delays in discharge from acute health sector:

Each year the Public Advocate has reported on concerns about the timely availability of accommodation and support for people with high support needs. This year is no different. In particular, lack of access to community housing and specialised support for some clients with cognitive deficits has seen them languishing in acute hospital settings for lengthy periods. This situation is not ideal for customers of the health system who cannot access inpatient care because of bed “blockage” and is certainly not ideal for individuals whose need for hospital care has long since passed. It is disturbing to find that a chief driver of applications to the Guardianship Board is to engage strong advocacy for service access which otherwise might not be forthcoming. The staff of the Office of the Public Advocate often struggle with the notion of queue jumping on behalf of our clients.

It has been noted in previous reports that for those clients who are able to access flexible support packages, have their own accommodation and, even better, have access to private means, it is much easier to take their place in the community.

Several client groups who seem particularly marginalised warrant ongoing advocacy from this office.

Individuals with AIDS and cognitive incapacity

In recent years the Public Advocate has acted as guardian for a small number of people with the Acquired Immune Deficiency Syndrome (AIDS) who did not have mental capacity. Some have had a pre-existing disability and then developed a HIV infection, while others have developed dementia secondary to the effect of the HIV virus. With modern drug treatments, this occurs late in the course of the illness. The Department of Families and Communities Exceptional Needs Unit and the Department of Health have worked together to provide housing and support services to this population group. The future challenge will be to plan and fund a range of step down, respite and well supported residential options for this group, so that they can receive the care that they need, in a dignified way, during a period that for some will be in the latter phase of their illness. This way predictable care needs will be catered for, and special responses to each person’s situation will not be necessary.

Prisoners and Forensic clients with mental incapacity

Prison to the community is not an easy transition for any individual but is more difficult for those who are suffering some form of mental incapacity to which their offending history is linked. The Department of Correctional Services has a well established Through Care program for prisoners exiting the system and Forensic Services has a community mental health care which monitors licensees on their release. However accessing the appropriate accommodation and support for those in need of intensive community follow up remains difficult. In some cases, the offending history acts as a barrier to accessing mental health and disability services even though these

may be the best and preferred options. Even with long lead times to allow release in a planned manner, several guardianship clients have had programs cobbled together at the last minute as if a service was reacting to a crisis rather than a well recognised situation. Similarly the pathway out of James Nash House and its associated programs is blocked when transition planning is not effective. This in turn disadvantages those mentally ill prisoners who need access to these services. We hope that the transition planning can be improved in the future.

Aboriginal clients with acquired brain injury, congenital disorders or mental illness

We have been guardian for a small number of young aboriginal clients who have cognitive impairment related to foetal alcohol syndrome. We have been advised that there are a number of young people living in remote areas who have similar difficulties, may require similar assistance to those under guardianship but for whom finding appropriate solutions is difficult. Supporting these young people represents a challenge to local service providers as does providing culturally appropriate guardianship.

We have had several people under guardianship who have acquired cognitive incapacity due to substance misuse. We have also had several older aboriginal men and women with significant medical issues where their compliance with treatment regimes has presented challenges in the delivery of life sustaining treatment.. Some reside in rural and remote areas.

The establishment of a **community guardians' program** which enables the Public Advocate to delegate guardianship roles to locally based and culturally appropriate individuals may be more effective than existing OPA staff making decisions for some of these clients. However the Public Advocate should still have a role in working alongside key stakeholders to explore his role in advocating for better accommodation and support. The community guardian's scheme is used in Victoria and has been recently introduced in Western Australia. New South Wales is currently investigating its usefulness in their jurisdiction.

The OPA has been challenged by decision making in all of these matters and has valued the input of those individuals, both aboriginal and non aboriginal who have been committed to finding the best possible solutions for these clients.

The Organisation performance

Whilst the OPA improved its performance in the number of guardianship closures during this reporting period, the end of year caseload was again larger than at the beginning of the reporting period. During the coming year the OPA will again attempt some additional initiatives:-

- Considering a restructure of resources to further focus short term work in one team
- Reducing time between orders being made /allocation of a guardian and one off decision making (results to be monitored by file audit in 2008-2009)

- Reducing length of guardianship orders (current average length of guardianship = 2.2yrs, median length =1.6yrs)
- Increasing use of standardised communication strategies between the OPA and interested parties a the time of new orders
- Increasing use of decision making planning to focus activities on core responsibilities
- Feasibility study of community guardians scheme in South Australia
- Further work on accessible management reports from the database.
- Supporting staff

I would like to take this opportunity to thank the staff of the Attorney General's Department for their advice and support during my period as Acting Public Advocate.

Margaret Farr

Assistant Public Advocate

Acting Public Advocate (November 2007 - July 2008)

John Harley

John Harley held the position of Public Advocate for nine years. Prior to this appointment, John practiced extensively in law and held a range of positions befitting his professional, personal and spiritual attributes. Amongst these roles were part time Chairman of the Guardianship Board, President of the Law Society and President of the Autism Association. He is a life member of the Palliative Care Council and was the founding president of the Human Rights Coalition and Notaries Society in SA.

On his appointment as Public Advocate, John sought to improve community awareness of the issues faced by individuals and families affected by mental illness and mental incapacity. He also endeavoured to promote a better understanding of the relevant laws and the associated roles of the Guardianship Board and the Office of the Public Advocate (OPA) in responding to the rights and needs of individuals affected by mental incapacity. He was an active participant in the education activities of his own office and contributed to programs of other organisations visiting most parts of South Australia in this capacity.

John established links with courts and legal bodies and provided the resources of the OPA to certain clients who could not instruct their legal representatives due to their mental incapacities. He also provided consultation and advice to the courts on individual matters and sat on a number of committees across the justice, health and community services portfolios promoting improved inter sectoral coordination.

John has been a strong advocate for law reform in the area of mental health and advance directives and was an active member of several committees involved in the review of existing legislation and proposals for new legislation. John continues to participate in a voluntary capacity in work towards these reforms.

In order to emphasise the independence of his office and address public confusion about the roles of the Guardianship Board and the Office of the Public Advocate, John argued for physical separation of the two organisations. Similarly, he sought and achieved a transfer from the then Department of Human Services to the Attorney General's Department because he believed that his office sat more appropriately in the justice portfolio.

John's commitment to human rights was demonstrated in his work with detainees who had mental health problems, his advocacy for prisoners with mental health problems and his repeated calls for improved accommodation and support services for adults with high support needs.

John's biggest disappointment was that he had to leave his position without achieving the establishment of a robust community visitors' scheme in this state, a vision which has had widespread support amongst local advocates and service providers and is in existence in some form in other states. The OPA will continue to pursue this gap.

On behalf of all who have received your help and worked with you, thankyou John.

Role, structure, legislation

Functions

The Public Advocate was established under Division 3 of the *Guardianship and Administration Act 1993*.

The general legislative functions defined under Section 21 of the Act are-

“21—General functions of Public Advocate

- (1) The functions of the Public Advocate are—
 - (a) to keep under review, within both the public and the private sector, all programmes designed to meet the needs of mentally incapacitated persons;
 - (b) to identify any areas of unmet needs, or inappropriately met needs, of mentally incapacitated persons and to recommend to the Minister the development of programmes for meeting those needs or the improvement of existing programmes;
 - (c) to speak for and promote the rights and interests of any class of mentally incapacitated persons or of mentally incapacitated persons generally;
 - (d) to speak for and negotiate on behalf of any mentally incapacitated person in the resolution of any problem faced by that person arising out of his or her mental incapacity;
 - (e) to give support to and promote the interests of carers of mentally incapacitated persons;

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

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

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

- (3) The annual report furnished by the Public Advocate under this Act must include a summary of any matters raised by the Public Advocate under subsection (1).

The key other legislated functions include:

- 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);

In addition the Office of the Public Advocate:

- Provides advice and information about the Guardianship and Administration Act 1993, the Mental health Act 1993 and the Consent to Medical Treatment and Palliative Care Act 1995 in a variety of formats

Legislative authority

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

OPA is also bound to comply with legislation that 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*.

Organisation of the agency

The Public Advocate is an independent statutory official accountable to the South Australian Parliament. The Public Advocate is not subject to the control or direction of the Minister. The Public Advocate is supported by a team of public servants.

Relationship to other agencies

The Office of the Public Advocate was funded by the Attorney General's Department 2007-2008.

The funded staff positions of the Office of the Public Advocate as at 30 June 2008 are reflected in the organisational chart in the Employment and Human Resources section.

Mission, vision and values

Our clients

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

- People with a mental incapacity;
- Family, carers and friends of people with a mental incapacity;
- Individuals and organisations who have 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.”*

Principles of the Guardianship and Administration Act

The OPA practices in accordance with the *Principles of the Guardianship and Administration Act 1993*. The OPA promotes these principles in guiding the practices of other organisations that work with people whose lives are affected by mental incapacity.

The principles are as follows:

“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 judgment principle. This is not making decisions in the best interests of people. It requires decision makers to put themselves “in the shoes of the person”.

- *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 people with mental incapacity are taken into account in any decisions made.

- *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 health and welfare of people with mental incapacity 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 that is chosen places the fewest limits on the person's autonomy.

Mission statement

To fulfil our statutory responsibility which is 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 statement

A community which promotes the autonomy, health, wellbeing and participation of those whose lives are affected by mental incapacity whilst protecting them from abuse, exploitation and neglect by self and others.

Objectives

1. Working to increase the quality of adult guardianship services across South Australia.
2. Fostering strong partnerships with service providers and the community to enhance the lives and potential of OPA's client

group.

3. Identifying key areas of unmet, or inappropriately met needs of mentally incapacitated persons and taking action to improve their circumstances.
4. Providing leadership in the application of the Principles of the Act to the circumstances of people living with mental incapacities.

Values

The staff of the Office of the Public Advocate 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 mental incapacity.

Some 2007-08 highlights

Human resources:

- Resignation of the Public Advocate
- Managing the orientation and/or ongoing support of 21 full time and part time staff members who make up our staff complement
- Confirmation of ongoing funding into 2007-08 and beyond for 2 professional officer positions previously provided on a temporary basis to assist the OPA in dealing with its workload, confirming our staffing at 14.7 Full Time Equivalent staff
- Continuation of trial of senior guardian position to support the guardianship team and
- Consolidation of other team members into a community liaison and information service team performing non guardianship functions as well as supporting the guardianship team in short term and monitoring work.

Managing the work:

- Revocation Project:- using an additional temporary employee to review cases contributed to 151 guardianship file closures
 - Closures up by 65% when compared with previous financial year
 - returning to a rate of 25% of active cases closing during the financial year (c/w 19.% in previous year)
- Managing 202 new guardianship cases
- Managing 603 active guardianship cases
- Screening 218 applications for guardianship in which the Public Advocate was nominated as potential guardian
- Conducting 38 investigations under the direction of the Guardianship Board
- Involvement in 50 individual advocacy matters

Services to the Community:

- Providing information and consultancy advice to a large number of service providers and members of the community covering approximately 4,500 known issues, 75% of which related to guardianship and administration orders, advance directives and mental health issues
- Conducting 50 education sessions for members of the community and service providers
- Distributing approximately 200 private guardian manuals to newly appointed private guardians

Contributions to law and service reforms:

- Contributing to prevention of the abuse of older South Australians
 - Kick Start Initiatives funded via the Department of Family Services, Office for the Ageing and coordinated by the Aged Rights Advocacy Service
 - Membership of the Alliance for the Prevention of Elder Abuse
- Making submissions regarding
 - Proposed amendments to the Guardianship and Administration Act 1993 (Attorney General)
 - Mental Health Bill 2008 and associated implementation issues (Attorney General)
 - Advance Directives Review (Advance Directives Review Committee)
 - Inquiry into the Office of the Public Trustee (Statutory Authorities Review Committee)
 - Older People and the Law (House of Representatives Standing Committee on Legal and Constitutional Affairs)

Key outcomes

The Office of the Public Advocate has four key service areas. During 2007-08, 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

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

State Government Targets:

2. Improving Wellbeing
5. Building Communities
6. Expanding Opportunities

Attorney General's Department Targets:

- Protecting and supporting vulnerable people including victims and witnesses
- Ensuring public safety
- Making effective criminal and civil law

OPA targets:

- Enhancing advocacy and support for those most vulnerable
- Strengthening community capacity to respond to those who need protection

Program Objectives

- To promote the investigation of 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.

2007-2008 Resources

Advocacy work is undertaken by all staff in the OPA. The Public Advocate carries primary responsibility for pursuing systemic issues of concern, however staff raise issues arising from their work with individual clients and from community feedback.

2007-08 Outcomes

Individual advocacy cases:

The office was involved in 50 individual client advocacy matters during 2007-08, 21 of which were new cases during this year. This compares with a total of 59 in 200-07 and 57 in 2005-06. There were 38 other matters arising from enquiries, legal issues and administration issues which led to the temporary creation of a client record for brief interventions.

Whilst there have been concerns about the funding available to advocacy services in South Australia, several have made a strong commitment to the needs of adults whose lives are affected by a mental incapacity. The OPA has referred on a number of individual matters to these services seeing this as a appropriate source of assistance.

The inability of the OPA to respond to requests for assistance in matters before the Guardianship Board is an ongoing dilemma for the OPA.

In particular, individuals who are the subject of applications for Continuing Detention and Community Treatment Orders seek assistance which is not available because of our lack of resources. This responsibility is set down in the current Mental Health Act and is also proposed in the new Mental

Health Bill. Its availability is published in the Guardianship Board's literature.

Additional initiatives for the representation and support of people appearing before the Board were proposed in the Bidmeade Report Paving the Way: review of mental health legislation in South Australia. The proposals if adopted would have ensured an enhanced protection of the rights and autonomy of people who may be subjected to significant infringement of their liberties.

Each individual facing ongoing restriction of their freedom of movement should have automatic access to competent and independent advocacy when appearing before the Board.

Examples of Individual Advocacy:

We continue to encourage the early referral of young people who are currently under the Guardianship of the Minister for Families and Communities. This enables the OPA to participate in transition planning for those teenagers who have disabilities which are likely to result in the appointment of guardians and administrators to ensure appropriate decision making in adulthood. It is estimated that 6-8 teenagers each year will require OPA involvement in this planning process.

Successful transition planning has occurred for several young people during this reporting period. However there is room for improvement. An interagency working party is currently developing joint protocols to facilitate improved transition and to raise awareness amongst Families SA staff of the referral process and the functions of participating organisations.

OPA has supported several family members/ private guardians to deal with systems issues which have negatively impacted on their family member who has a mental incapacity. These cases have highlighted extreme difficulties in moving some individuals with high support needs from acute hospital settings to rehabilitation and community accommodation programs. These problems have also featured in our guardianship cases.

Systems issues:

The lack of incumbent Public Advocate for 8 months of the reporting period resulted in a reduction of new advocacy initiatives.

OPA has contributed to the debates on law reforms in mental health and advance directives. Submissions have also been made to the Enquiry into the Public Trustee, the Positive Ageing Plan of the Office for the Ageing. OPA representatives have participated in a variety of committee activities concerned with effective program delivery for people with a mental incapacity. Some of these are listed below:

- Australian Guardianship and Administration Committee
- Interagency working party comprising the Public Trustee, the Guardianship Board and OPA
- Alliance for the Prevention of Elder Abuse
- Magistrates Court Diversionary Program Steering Committee
- Advance Directives Review Steering Committee
- Member, Advance Directives Review Committee
- Respecting Patient Choices steering group
- Respecting Patient Choices Ethico-legal Committee

- Member, Mental Health Legislation Implementation Committee
- Member, Street to Home Steering Committee
- Member Management Assessment Panel
- Member Positive Ageing Kick Start Initiatives Steering Committee
- Member of Young People in Nursing Homes Working Party

The closure of Baxter Detention Centre has seen an end to our advocacy role in promoting the rights of mentally ill detainees’ to access specialist mental health treatment, accommodation and care suited to their emotional wellbeing.

For several years the OPA devoted substantial energies to highlighting the plight of detainees and advocating for the needs of individuals under our guardianship. The Public Advocate retains a guardianship role for a small number of detainees whose decision making ability is compromised due to mental illness and trauma and whose future in Australia remains uncertain.

The work of John Harley, Mary Allstrom and Suzanne Bull is specifically acknowledged. The OPA also received support and encouragement from our interstate colleagues and a number of Australians who sought better outcomes for these individuals and provided legal representation, professional support and friendship to detainees.

A number of former detainees continue to suffer mental health issues as a result of their life experiences and irrespective of their resident status. It is anticipated that some will require ongoing support to deal with the long term effects of trauma.

Considerations for 2008-09

- **Enhanced advocacy and support for those most vulnerable**
- **Strengthening community capacity to respond to those who need protection**

The OPA is committed to pursuing the establishment of a community visitors scheme as a mechanism for enhancing advocacy and support for vulnerable adults in state funded psychiatric and community accommodation facilities. This program represents an ideal opportunity for the state to enhance the psychological wellbeing of vulnerable adults by enabling South Australians to volunteer to visit and report on their needs and wellbeing.

It is noted that the *Mental Health Bill 2008* provides for such a program specifically for mental health clients to be established by Mental Health Act regulations in the future.

We take the view that such a program would be an important cornerstone to the promotion and protection of consumer rights, particularly for those who are detained in approved treatment centres.

In a similar way, the OPA will seek government support to enhance community capacity by establishing a community guardians' program. If implemented, this program would enable the delegation of the guardianship role by the Public Advocate to suitable community members whose background and skills could be matched to the particular needs of protected persons. We believe that such a program would

- (a) enhance the capacity of the OPA to respond to the growing demand for guardianship and

- (b) enable tailoring of guardianship services to the needs of people from different cultures and for those living in rural and remote areas of South Australia.

The OPA has identified several groups of clients for whom it wishes to provide ongoing advocacy because of their extreme marginalisation. These are:

- Prisoners and forensic clients who have ongoing high support needs requiring collaboration between mental health, disability, drug and alcohol and justice services
- Young aboriginals who have a mental incapacity and for whom service systems do not exist
- Clients with AIDS related cognitive incapacity and high support needs, for whom protective programs are required in their own and the community's interests.



Guardianship

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

State Targets:

2. Improving Wellbeing
3. Expanding opportunities

Attorney General's Department Targets:

- Protecting and supporting vulnerable people including victim and witnesses
- Ensuring public safety
- Eliminating avoidable delays

OPA targets:

- Improved practices and procedures for lifetime of guardianship
- Promote prevention, detection and amelioration of abuse and neglect
- Strengthening community capacity to respond to those who need protection

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, which can affect a person's health, welfare or lifestyle.

Resources 2007-08

During 2007-08 AGD funded an additional 2 temporary PO2 positions which secured 9 FTE PSO2 funded positions, 8 FTE being devoted entirely to guardianship work. In 2006-07, the OPA introduced on a trial basis a Senior Guardian's position to provide more supervision and support to the guardianship team and to monitor performance standards. The trial was continued throughout 2007-08 with two individuals holding the position. The AGD has now committed funding to these 2 positions on an ongoing basis from 2008-09. This will allow consideration of converting the Senior Guardian's position to ongoing.

Other professional resources were consolidated in 2007-08 to form a community liaison and information service team (CILS). In addition to non guardianship work, this team manages the stable guardianship cases held in a

monitoring caseload and some other guardianship cases.

In late 2007 the OPA employed and experienced part time social worker short term to review and recommend action on a number of guardianship cases. This eased the pressure on the team somewhat by recommending revocation of orders for 40 protected people. The OPA hopes to repeat this strategy again next financial year.

Waiting lists for less urgent new guardianship matters have again been applied for some of the year.

Outcomes 2007-08

Guardian of last resort

During 2007-08, OPA provided guardianship services under the *Guardianship and Administration Act* on behalf of 603 people (499 in 06/07). This represents a 17% increase over the previous year (16% previous year). The number of active cases managed by the office in each year has continued to rise, as new cases exceed the closures.

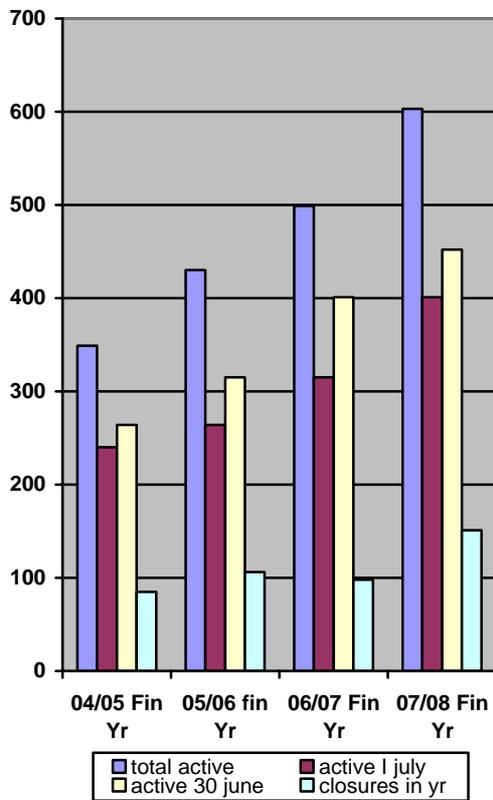
New guardianship appointments

This year there were 202 new guardianship appointments under the *Guardianship and Administration Act*, a 10% increase on last year's figures (184).

End of year guardianship caseloads

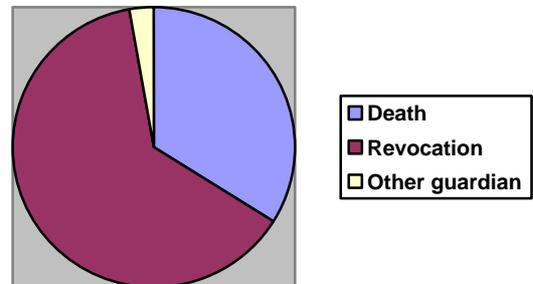
Case closures were 151 representing an increase by 54 (61%) when comparing 07/08 figures to 06/07. As at 30 June 2008, there were 452 active guardianship cases compared with 401 at the beginning of the year. This represents a 13% increase in active cases for the reporting period.

Graph:
Active Guardianship Caseloads compared over 04/05 to 07/08:



than 12 months, 60% for less than 2 years and 81% for less than 3 years.

Chart:
Reasons for Guardianship closures in 07/08:



Graph:
07/08 Closures by length involvement:

Death:
N=51, Average =2.2 yrs, Median =1.6 yrs
Average age at date of order =76yrs, median = 78 yrs

Revocation:
N=96, Average =2.2yrs. Median = 1.6 yrs
Average age at date of order = 56, median = 55 yrs

Guardianship case closures:

Of the 152 closures, 96 were due to revocation of orders, 51 due to death, and 4 due to private guardians being appointed.

In the previous reporting period the rate of revocation had not kept pace with previous 3 reporting periods. (ie 19.6% of the active caseload was closed in 06/07 in comparison with 24.4% to 26% in the two previous financial years.) For 2007-8 this rate returned to 25%. However there was still an overall net increase in the active caseload, consistent with previous trends.

For those clients whose guardianship orders were revoked during the year, 26% were under guardianship for less

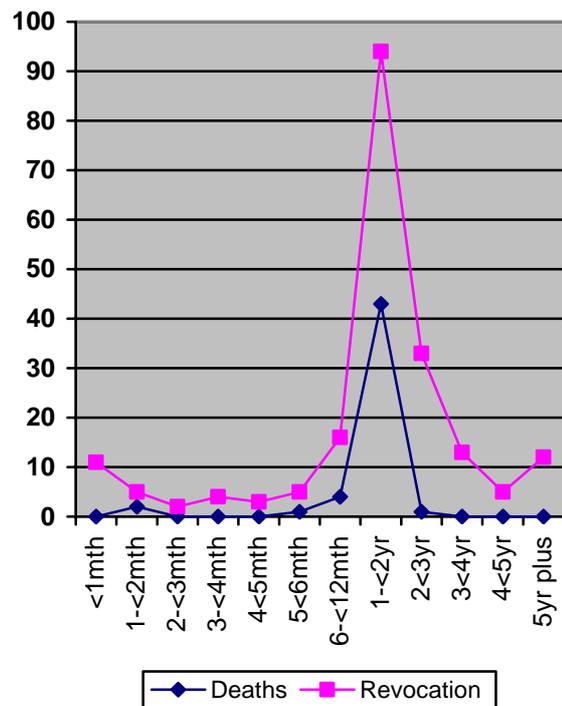
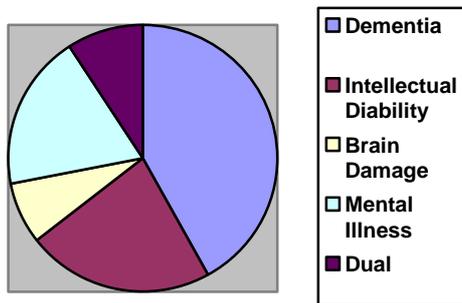


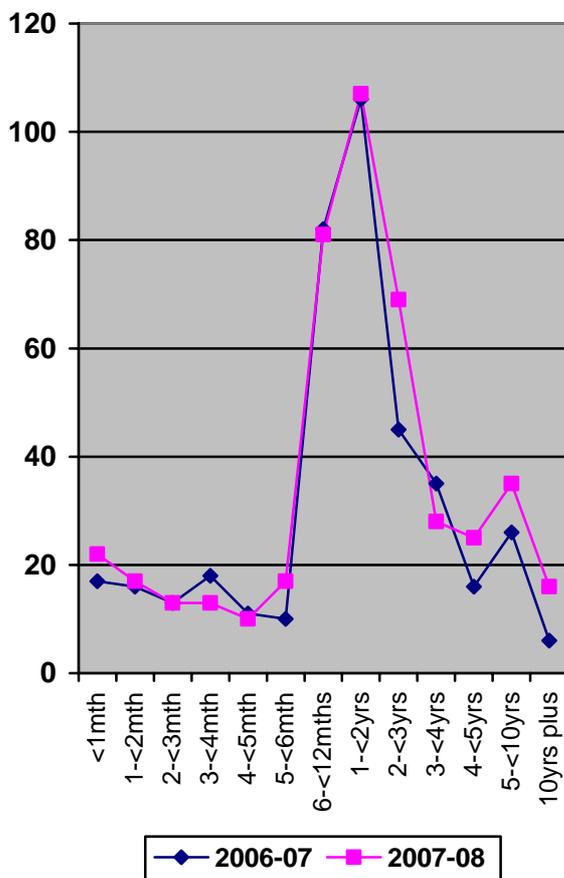
Chart:
Known diagnoses closed clients 07-08



Active Guardianship Cases at 30 June 2007 and 30 June 2008

The graph below compares the length that end of year active guardianship cases had been open in the past 2 financial years. Some 2007-08 data is missing:

For 2007-08 the average length = 2 yrs (c/w 1.9 yr), median length 1.3 yr (c/w 1.3 yr)

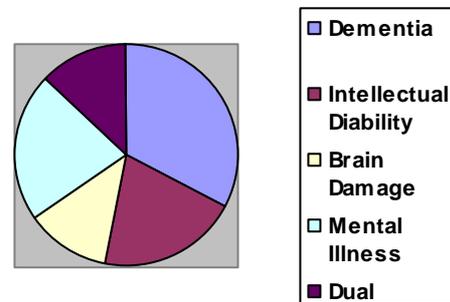


Age, gender and disability profile

The **age** of active guardianship clients as at 30 June 2008 broke down into approximately one third under 41 years, one third between 41 and 70 and one third over 70 years of age. This is the same as in the previous reporting period. Females and males were equally represented.

Diagnostic grouping of guardianship cases active as at 30 June 2008 is missing some data but still shows little change from the previous year.

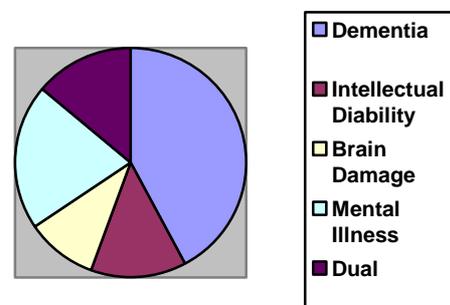
Chart: Diagnosis 30 June 08



New Guardianship cases 2007 -2008

53% percent of new clients were female. 23% were less than 41yrs, 27% were between 41 and 70 years and 50% 71 years and over. This data suggests a shift toward guardianship for older people and warrants further monitoring over time.

Chart: Diagnostic profile new cases 07/08



Court Matters

OPA has continued to provide a service in cases where people are involved in court proceedings and where their mental incapacity affects their ability to instruct legal counsel. This is consistent with the mandate of OPA to promote and protect the rights and interests of people with a mental incapacity.

If a person with a mental incapacity is unable to instruct, the Public Advocate can be appointed by the court in order to provide instructions to a solicitor. This enables the person with the mental incapacity meaningful participation in the proceedings.

The OPA has adopted the generic term of “legal case” to describe matters which are before a court and where the OPA is appointed under court rules (eg as litigation guardian/ case guardian, guardian ad litem/ next friend).

This term is reflected in the new case management system.

13 matters have been classified as legal cases during this reporting period, 3 of which were opened during 2007-08 period.

Issues in Guardianship

Acute health sector issues

Guardians have again been impressed by the difficulties in moving mentally incapacitated clients with high support needs between sectors. A small group of clients have remained in the acute care sector for periods in excess of 12 months pending community based accommodation and support packages being offered through the disability sector. Despite the policy directions to

refrain from placing younger people in the aged residential care sector, several clients requiring this type of support have ended up in the residential care sector because of the lack of viable options. We will continue to advocate for alternatives to be developed.

Prisoners and Forensic clients

Returning people to the community from prison or forensic services has again proved difficult in several cases. This has been because of the lack of previous involvement with mental health and/or disability services or the disengagement of those whilst the person has been incarcerated and therefore a lack of continuity and transition planning.

In one matter, despite months of negotiation and cross agency meetings, discharge plans were reluctantly agreed at the 11th hour after all services had initially rejected lead responsibility.

The OPA was placed in the position of determining what we believed was the most appropriate transitional solution and requesting its provision via senior management. This client clearly had a need for mental health and disability service collaborative assistance and was potentially eligible for aged care programs. The nature of his offending behaviour, the significant contribution that mental health stability would make to his own and the community’s wellbeing, and his obvious difficulties coping within the prison environment were classic indicators of need for effective transition planning.

We are grateful to the services which eventually received him into their care and continue to monitor his progress.

This and other cases raise systemic considerations of how decisions should be made about such clients and by whom.

Community Supports

This year we have again been impressed by the growth of non government support programs and the ability of some to respond to the challenges of supporting high needs clients. Programs observed include (a) the support of a small group of woman in a therapeutic residential and support program which emphasizes self responsibility, (b) several support programs for young people with Asperger syndrome, and (c) mentoring programs for clients who are very challenging to engage.

We are particularly grateful to one community organisation which provided emergency support at 24 hours notice to one protected person whose discharge transitional support arrangements were withdrawn by another organization. OPA and this organization collaborated to provide direct care until a high level aged care package could be established. Whilst this client is now in residential care, she was afforded the dignity of a further trial at home inspite of overwhelming difficulties in establishing eligibility for any service. The availability of an excellent community agency with workers able to cope with challenging behaviour and advocate for her wellbeing gave her this opportunity.

Risk management

Guardians have again been required to negotiate the relationships between guardianship responsibilities and organisations' risk management and occupational health and safety responsibilities. The OPA is clear that guardianship is not about managing staff issues although, in some matters, the appointment of a decision maker will have a side benefit to staff if decisions might not otherwise be made. Issues

pertaining to the conduct of visitors in hospitals and aged residential care facilities can represent significant challenges to management representatives however guardians will only intervene where the wellbeing of the protected person is the primary issue.

Future directions 2008-2009

- ***Improved practices and procedures for lifetime of guardianship***

Efficiency

The OPA continues to seek out ways of improving efficiency and effectiveness in response to guardianship decision making.

A further restructuring of staff resources into short and long term is being contemplated. It is believed that a strengthened short term team will increase the responsiveness to new guardianship cases by shortening the time between orders being made and cases being allocated, reduce the time it takes to make decisions and provide continuity of worker for those who require short term guardianship only. This will predictably reduce the average length of guardianship over time and reduce the rate of increase of guardianship numbers.

Many new guardianship cases are in acute care hospitals at the time of application and a guardian is required to make decisions about alternative accommodation. We would hope to influence the length of stay required pending decisions of the guardian.

Rights of people with a disability

The current Guardianship and Administration Act 1993 allows for appeals against decisions of the Guardianship Board but not against decisions of the guardian. Whilst the

OPA offers an internal mechanism for review of decisions made by guardians through a review by the Public Advocate, this is not enshrined in law and does not constitute an independent review. The OPA has explored the use of S74 of the Act as a mechanism for external scrutiny. However, only the guardian can seek this advice and direction.

In New South Wales, the Public Guardian's decisions are appealable to an external court. Several other states are pursuing this option to enhance the rights of people with a decision making incapacity and to conform with the United Nations Convention on the Rights of Persons with Disabilities Article 12. "Equal recognition before the law."

There are some restrictions on the powers of a guardian by the Guardianship Board exercising its responsibility to grant the least restrictive orders. However in practice most orders are generic and the guardian therefore has considerable discretion.

An amendment to the Act which allows certain parties to appeal decisions of any guardian to an external body would be in keeping with this convention. The Office of the Public Advocate will consider this further in the coming year and make recommendations on how an appeal mechanism might operate in South Australia.



Investigation

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

State Targets

4. Improving Wellbeing

Attorney General's Department Targets:

- Protecting and supporting vulnerable people including victim and witnesses

OPA targets:

- Promote prevention, detection and amelioration of abuse and neglect
- Improve practices and procedures for the lifetime of guardianships

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 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

The Guardianship Board can direct that the Public Advocate conduct an investigation under Section 28 of the Guardianship and Administration Act 1993. One worker has fulfilled the role of investigator this year. The investigator conducts an enquiry into the circumstances of an individual and prepares a report for the Board. In addition, that worker has coordinated the OPA's involvement in matters before the Guardianship Board which may result in the Public Advocate's appointment as guardian (screening).

Outcomes

Section 28 investigations

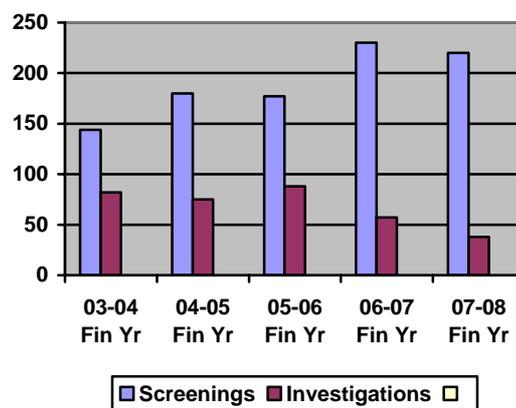
The OPA has responded to 38 requests from the Guardianship Board to investigate a matter which is before the Board. 10 were open at the beginning of the reporting period, 28 were opened during the year and 6 remained open as at 30 June 2008.

Pre-hearing screenings

Wherever practical, a representative of OPA attends Board hearings to make comment on the applications which nominate a role for this Office. OPA is now seldom appointed without this service having an opportunity to comment on the appropriateness of our involvement. It is estimated that the OPA reviewed approximately 220 applications where the Public Advocate could have been appointed. Screening matters are generally open for a brief period pending the Board's hearing and decision.

Combining the number of investigative activities performed in each year the following picture emerges:

Graph: Numbers of Investigations and Screenings over 5 years



Future plans 2008 2009

The OPA is considering the possibility of visiting some potential protected persons prior to at screening hearings. If implemented, OPA staff should gain an improved understanding of the expressed wishes, issues surrounding that individual's autonomy and need for protection and then be better placed to make substitute decisions in a timely manner if required.

Allegations of abuse and neglect of people whose lives are affected by mental incapacity are common in applications before the Guardianship Board. The OPA and the Board are currently discussing ways in which information from these applications can be captured systematically to further inform our practice and contribute to the state government work particularly relating to the abuse of older people and its prevention.

The OPA will continue to advocate for the introduction of powers of investigation for the Public Advocate in his/her own right. Allegations of abuse and neglect of persons with a mental incapacity could then be assessed without requiring an application to the Guardianship Board.



Community education

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

State Target

1. Customer and client satisfaction with government services

AGD Target

- Empowering public to make informed decisions

OPA Target

- Update website
- Promote collaborative education strategies

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 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 OPA's strategic directions.
- To provide regular updated online information on OPA as well as written resources.
- To make selected pamphlets available in other languages.

Resources

This year, OPA continued to provide a reactive education service responding to a number of requests within metropolitan and country South Australia. The teleconferencing facilities of the Guardianship Board have also been used for several sessions for country workers. OPA has been represented at a number of education activities organised by other bodies.

The responsibility has been shared amongst staff.

In an attempt to promote self education, wherever possible, service providers are also referred to the website to obtain on line information, particularly where requests for face to face sessions are or very small groups and on simple subject matter.

Outcomes

Education sessions

OPA has continued to respond to requests from organisations and individuals and participate in a range of activities. OPA accepted 50 invitations to speak at conferences and meetings.

The OPA has not had the capacity to develop a proactive education strategy despite good intentions.

2006 -07 Annual Report

During the 2007-08 period, the 2006-07 Annual Report was produced and made available on the website.

Website

Whilst the website is only 2 years old, there have been some difficulties in its maintenance. It is planned to revamp the site for ease of management and community use. The website is however very popular and as increasingly customers have access to the internet, the OPA staff have been able to direct more people to the internet for information. The daily average number of visitors to the website is 80 individuals.

Considerations for 2008-2009

- **Promote collaborative education strategies**

The new Mental Health bill will involve significant work in terms of service provider and community education. The OPA believes that it has an important role in ensuring that accurate information for consumers is made available in a variety of forms. Of concern is the resourcing of this strategy as funding has not yet been identified for this initiative.

Similarly, proposes for Advance directive reforms are likely to have significant additional responsibilities for the OPA some of which will be educative.

The OPA will continue its involvement with the Alliance for Prevention of Elder Abuse and the Aged Rights Advocacy Service “Kick Start Initiatives” Program both of which have a primary focus on prevention through education and information strategies



Enquiry Service

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

State Target

2. Customer and client satisfaction with government services

AGD target

- Empowering public to make informed decisions

OPA target

- Update website
- Promote collaborative education strategies

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 OPA.
- To promote the least restrictive alternatives in the resolution of issues relating to people 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

The OPA allocates 1.2FTE PO1 staff to public enquiry management. For part of this year, the enquiry service was not fully staffed. OPA attempts to respond to callers promptly with a promise of return contact within 24 hours for non urgent matters.

Data suggests that there was a higher rate of missed callers this year compared with the previous reporting period. Missed callers means those enquiries where contact did not eventuate even though messages had been left.

Outcomes

Enquiry Numbers

This year it has been possible to more accurately log the numbers of discrete enquiries.

These enquirers may have multiple contacts imbedded in each enquiry. Old enquiries can also be resurrected to enable continuity of information on an ongoing matter.

This year there were 4000 discrete episodes of enquiries. A comparison with previous years is recorded below.

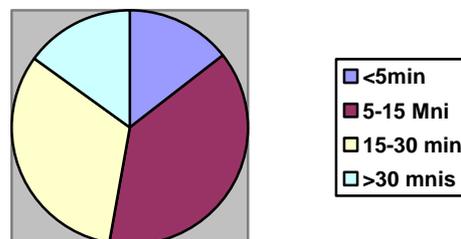
Table:

Comparison of total numbers of enquiry calls over past 9 years

Year	Total enquiries
1999-2000	3063
2000-01	3229
2001-02	3642
2002-03	3611
2003-04	4594
2004-05	4955
2005-06	5227
2006-2007	3798
2007-2008	3998

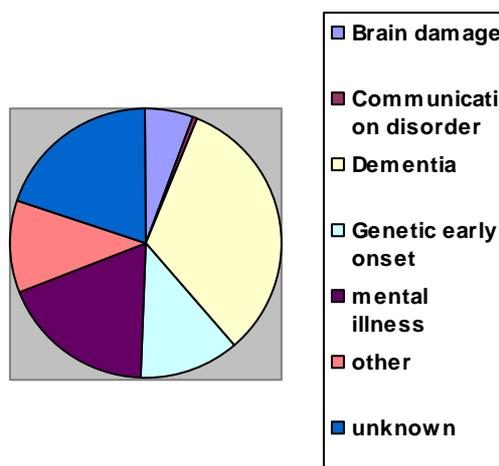
Time spent on enquiries

Time was recorded for the majority of matters. The Pi Chart below shows the proportion of enquiries in each category where time was recorded.



Diagnosis

Where a diagnosis of mental incapacity is offered this is recorded. Data was entered in 3582 matters and the breakdown is represented below.



Enquiry Issues

There were a range of enquiry issues raised by the 4000 enquirers. Details of the breakdown of recorded issues is on the next page. The most common requests were for information and advice on administration and guardianship orders and on advance directives as seen below:

- 14% sought information on advance directives (c/w 17% in 06-07)
- 23% enquired about administration orders (c/w 23% in 06-07)
- 21% enquired about guardianship issues (21% in 06-07)

Comparison of recorded enquiry types for past four years

Enquiry category	04-05	05-06	06-07	07-08*
Potential Administration	1096	1147	866	1291
Potential Guardianship	806	836	772	1141
Advance directives	894	1058	663	762
GB process /appeals	290	225	28	
Information/ Education	943	680	226	32
Mental health	277	157	173	239
Consent to treatment	147	240	74	139
Other calls	539	410	166	61
No action/ withdrawn	439	900	367	10
Complaint	46	84	30	76
Duty of Care	82	49	50	31
Advocacy			32	126
Case consult			12	114
Informal Arrangements			181	163
Inter Jurisdiction			5	42
Legal matter			53	94
Private Guardians			16	11
Wills and estates			13	75
Risk Management/Duty care				31

Future Directions 2008-2009

Promote collaborative education strategies

The OPA aims to improve its data collection from enquiries to incorporate

collation of systemic issues and trends in community knowledge requirements. Our aim will be to establish a system which will inform both our advocacy and investigation work into the future.

Consolidated Data 2007-2008

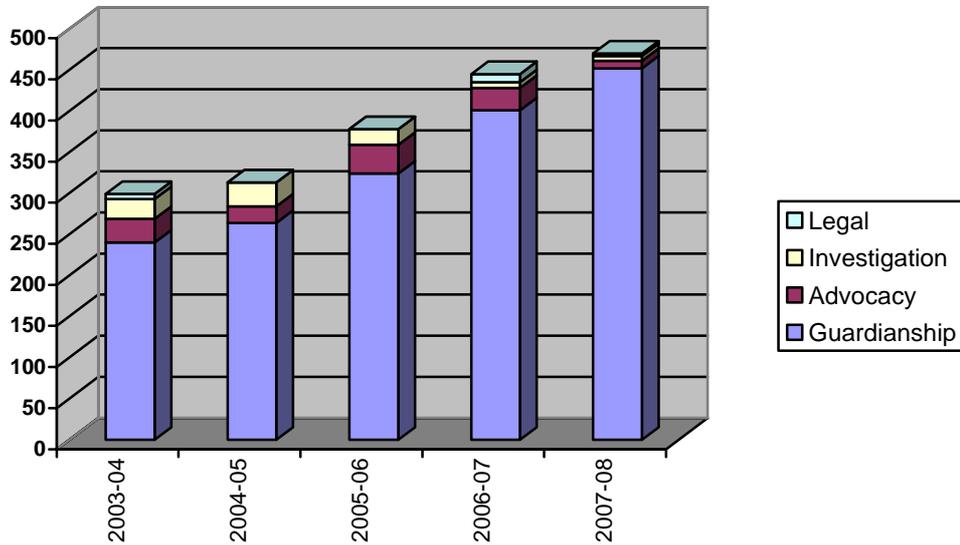
The following is a summary of the client related data provided in other sections of the Annual Report.

1 Summary of episodes of service by episode type

Episode type	Year	Open at beginning of year	Opened in year	Open at yr end	Closed in year	Revocation	Death	Other guardians/quashed	Total Active
Guardianship	03/04	193	131	240	84	52	26	6	324
	04/05	236	113	264	85	58	22	5	349
	05/06	259	171	324	106	56	42	8	430
	06/07	315	184	401	98	51	44	3	499
	07/08	401	202	452	151	96	51	4	603
Advocacy	03/04	15	47	29	33				62
	04/05	29	48	20	57				77
	05/06	18	54	35	37				72
	06/07	31	28	27	32				59
	07/08	27	23	9	41				50
Investigation	03/04	13	69	24	58				82
	04/05	22	53	29	46				75
	05/06	22	66	19	69				88
	06/07	17	40	7	50				57
	07/08	7	31	6	34				38
Legal cases	03/04	2	10	6	6				12
	04/05	6	4	0	10				10
	05/06	0	4	0	4				4
	06/07	2	11	10	3				13
	07/08	10	3	3	10				13
Other cases	07/08	0	11	1	10				11
Total Active Cases	03/04	223	257	299	181	52	26	6	480
	04/05	293	218	313	198	58	22	5	511
	05/06	299	295	378	216	56	42	8	594
	06/07	365	263	445	183	51	44	3	628
	07/08	445	270	471	246	96	51	4	715
Percentage Shift	03/04 to 04/05	+31%	-15%	+5%	+9%	+6%	-15%	-16%	+6%
	04/05 to 05/06	+2%	+35%	+21%	+9%	-3%	+91%	+60%	+16%
	05/06 to 06/07	+22%	-11%	+18%	-15%	-11%	+5%	-63%	+6%
	06/07 to 07/08	%	+22%	+3%	+6%	+34%	+88%	+16%	+33%

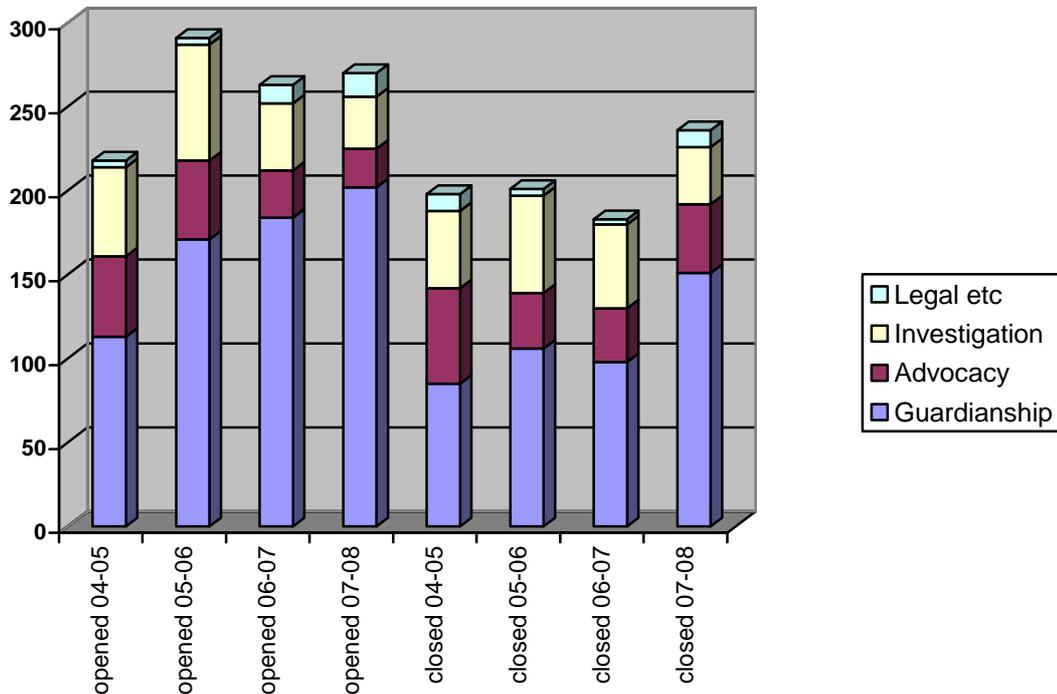
2. End of Financial year active caseload comparisons.

This graph illustrates the end of year active cases for the past 5 financial years by type categories of cases. Note that guardianship accounts for the increase in active caseload.



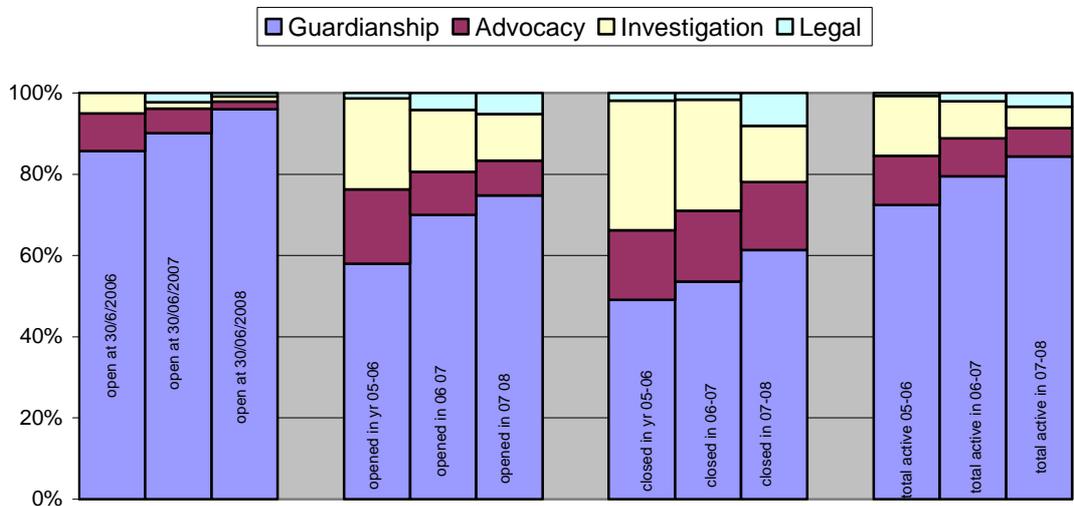
3. Comparison of case opening and closures 2004/05 to 2007/08

The graph below compares opening and closure of cases across 4 financial years. Note that the number of closures is less than cases opened in each year and drop in rate of closure.



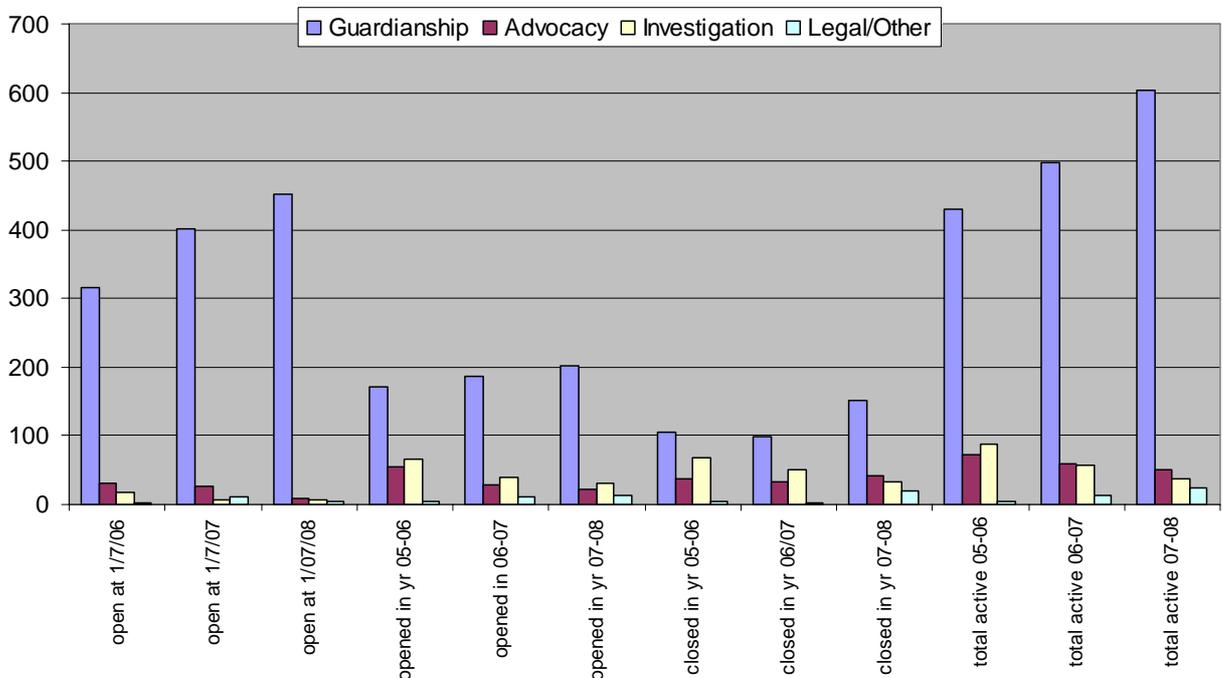
4 Case type as a percentage of total case activity 2005-2006 to 2007-2008

The graph below shows each case type as a percentage of all case types. Over the past three years statutory guardianship has accounted for an increasing percentage of client activity.



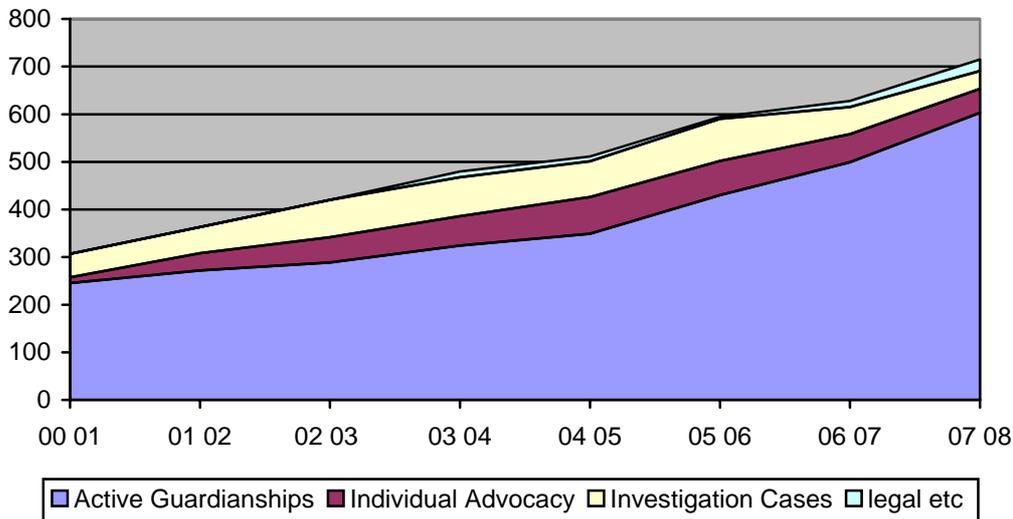
5 Comparison of case numbers and types 2005-2006 to 2007-2008 financial years

The graph below compares the numbers of case types and at various points in the years



6. Case activity over recent years

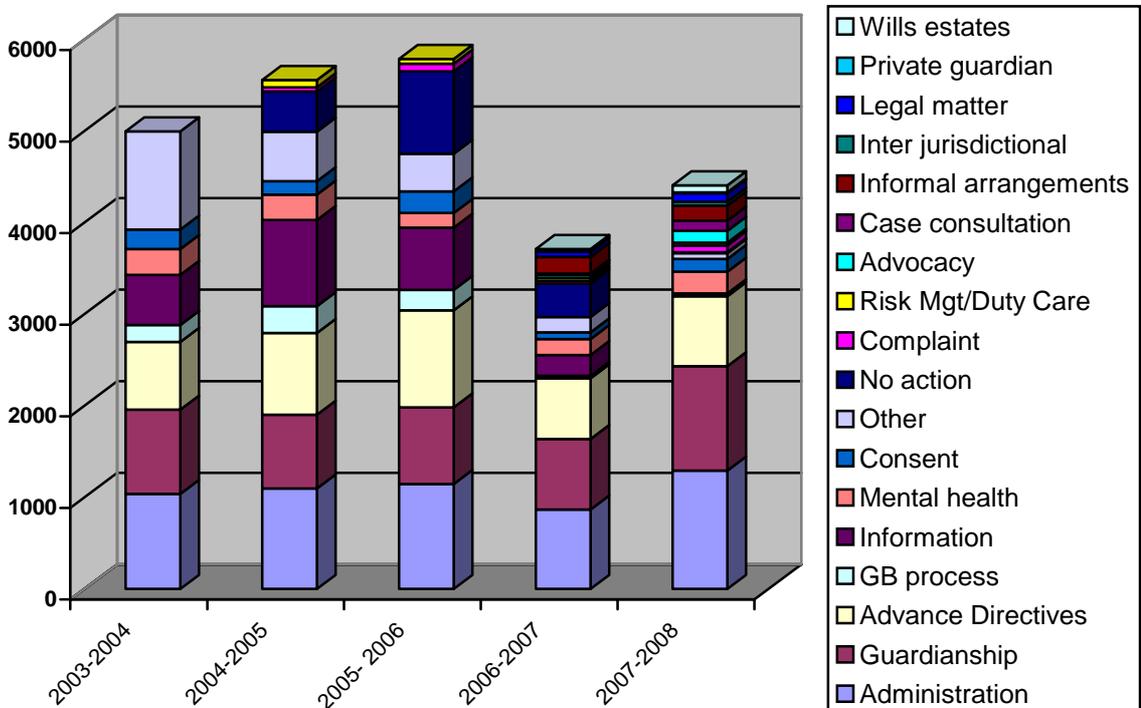
The graph below illustrates the number of active cases over the past 7 financial years and demonstrates the upward trend in numbers and the proportion of cases which are guardianship matters.



7. Enquiry Data

The graph below compares enquiries issues raised over the past 5 years.

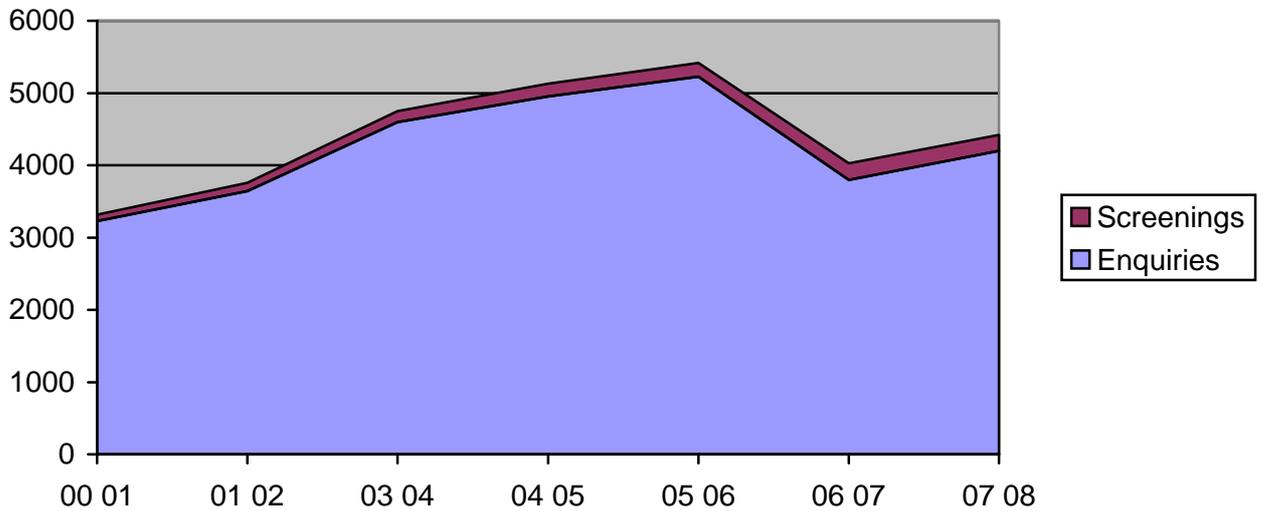
Note (a) data missing for 07/08. (b) Recording categories have changed over the years.



8. Enquiry and Guardianship Board case screening activities

The graph below indicates the trend in screening and enquiries activities over the past 7 financial years.

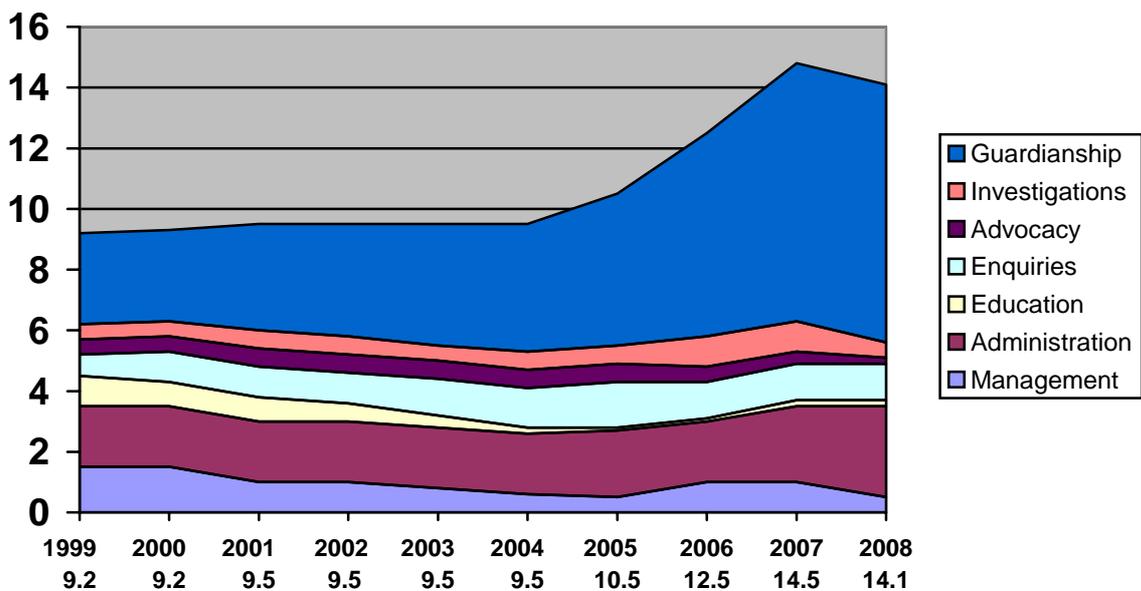
Note: change in enquiries recording system accounts for lower figures in 06/07 and 07/08



9. Utilisation of staff time

The graph below maps estimated time spent on various office roles over the history of OPA. Note the increasing proportion of resources devoted to guardianship.

Staffing levels and allocation of resources



Note the 14.1 staffing level in 2007 2008 reflects an average vacancy factor across the year of 0.6FTE

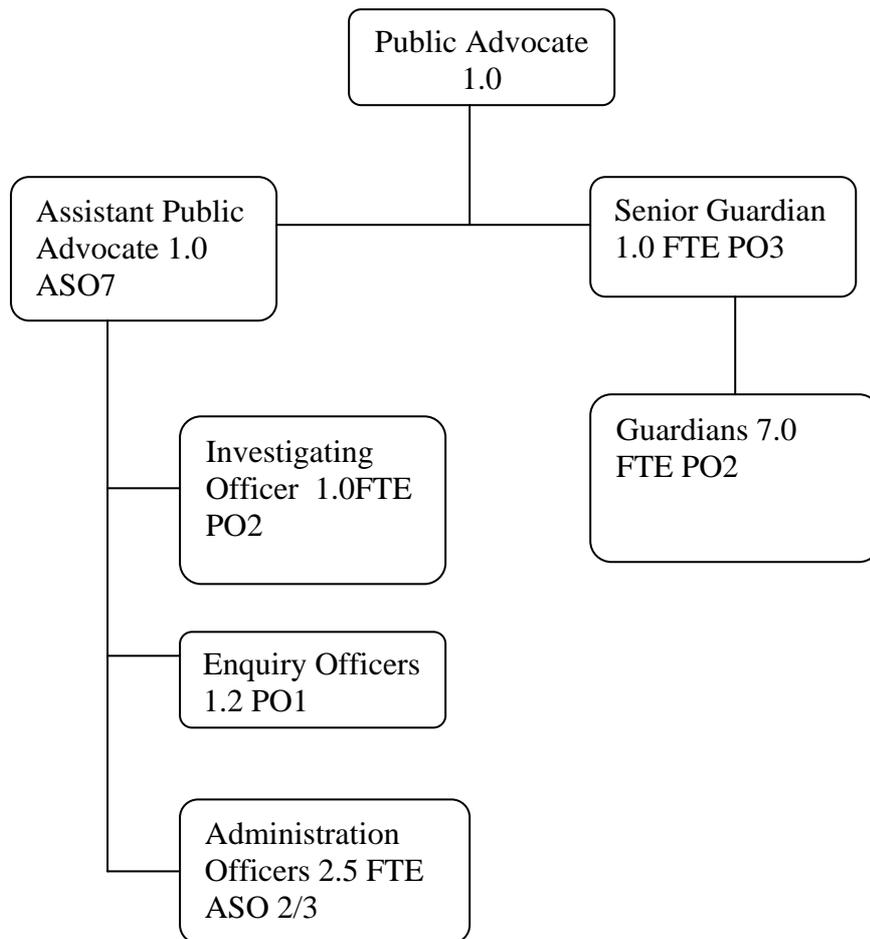
Employment and Human resources

Organisational chart – Funded positions

As at 30 June 20078

Funded establishment as at 30/6/2008 was 14.7 FTE with all positions confirmed as ongoing funded.

Actual resource utilisation throughout 200-08 varied considerably due to staff movements, organisational priorities.



Human resources development

A number of activities were undertaken during the year. AGD corporately sponsored training activities have been a number of by a number of staff during the reporting period.

Professional development sessions are also managed internally by a staff committee. Sessions include case presentations, issues discussions and guest speakers.

Leadership and management development

The Public Advocate participates in AGD executive form on a regular basis and senior staff have taken advantage of some of the training in corporate areas of responsibility.

Staff are involved in all major organisational decisions with opportunities to discuss resource deployment and utilisation, as well as organisation priorities.

Occupational health, safety and injury management

OPA was guided by the policies and best practice principles of the Attorney General's Department in relation to occupational health and safety and injury management. Practical assistance was provided by the AGD on request, and OPA uses the Department's Workplace Health and Safety Division when required. OPA participate in the AGD policy reviews and audits.

OPA has an elected, trained OHS representative and First Aid Officer. OHS matters are routinely discussed in OPA staff meetings.

There were no work related claims during this reporting period.

During the reporting period the OPA participated in the AGD preparations

for a workcover audit. Guidelines and procedures were upgraded and improved recording procedures introduced. A wok station review will be conducted in July 2008.

The organisation is making a concerted effort to use the AGD aggression reporting forms because of increasing concerns about abuse of staff particularly over the phone.

Loss of work time through sick leave was 4.7 days per FTE this year, 4days in sick leave and 0.7 days in family carer leave. This was less than half of the reported sick leave from 06 07.

Staff Assistance

OPA provided temporary placement for several government redeployees during 07 08.

Administrative matters

Account payment

Accounts are authorised by OPA and processed by Attorney-General's Department.

Consultants

There were no consultants engaged during the 2007-08 financial year.

Contractual arrangements

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

Disability Action Plans

A report on our progress against the five outcome areas outlined in Promoting Independence – Disability Action Plans for South Australia is as follows.

Ensure accessibility to services to people with a disability.

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.

New brochures produced on behalf of the OPA will include accessibility information in their contents

Ensure information about services and programs is inclusive of people with disabilities.

OPA's education program is directed towards informing the public and people with a disability about matters pertaining to the *Guardianship and Administration Act 1993*, the *Mental*

Health Act 1993 and the *Consent to Medical Treatment and Palliative Care Act 1995*.

OPA provides written information on the legislation pertaining to people with mental incapacity and this is available on its website. A longer term ambition is to make this information available in different forms to assist in access .

Deliver advice or services to people with disabilities with awareness and understanding of issues affecting people with disabilities.

OPA delivers a range of advice and services specifically to further the interests of people with mental incapacity. In particular, individual and systemic advocacy is a feature of our work. OPA has a particular interest in the plight of marginalised clients for whom services are inadequate or poorly coordinated.

Provide opportunities for consultation with people with disabilities in decision making processes regarding service delivery and in the implementation of complaints and grievance mechanisms.

The OPA is currently reviewing its complaints processes and will seek feedback from stakeholders as the work progresses.

Ensure that the office has met the requirements of the Disability Discrimination Act 1992 and the Equal Opportunities Act 1984.

OPA is bound to comply with legislation that relates to the management and accountability requirements of Government, including the *Disability Discrimination Act 1992* and the *Equal Opportunity Act 1984*.

Equal opportunity programs

OPA promotes a workplace environment in which the *Equal Opportunity Act 1984* and the *Sex Discrimination Act 1984* are fully supported. OPA adheres to the relevant policies and procedures of the Attorney-General's Department.

In particular, 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. One part time staff member has been granted permission to work from home for part of his week. As at 30 June 2008, 4 OPA employees were employed on a part time basis.

Fraud

There were no instances of fraud during the 2007-08 financial year.

Translating and Interpreting

This year the OPA spent \$2600 on interpreting and translating services representing 49 individual services. The OPA utilised additional interpreters in conjunction with service providers and the Guardianship Board.

Computing and Case Management

The CMS database is shared with the Guardianship Board and offers improved support to staff, information sharing and performance monitoring. Additional work is now required to improve its performance and enable the introduction of KPIs.

Energy Efficiency Action Plan Reports

OPA is a tenant of the Australian Broadcasting Corporation and is in part governed by landlord practices. The OPA encourages energy efficient practices, recycling and is awaiting the delivery of a hybrid vehicle for staff community visiting.

Overseas travel

There was no overseas travel by staff of OPA during 2007-08.

Staffing

The OPA permanent establishment was 14.7FTE at June 2008 as a result of and AGD commitment to fund two existing temporary PO2 positions on an ongoing basis. One ASO1 position and 1 ASO2 position were reclassified during the year.

The organisation had hoped for additional funding for administrative support for 2008-09 but was unsuccessful in its bid. An organisation restructure is planned for 2008 -09 in recognition of the need to increase the administrative establishment on an ongoing basis.

Freedom of information

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

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

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

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

The nature of 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 education sessions. OPA also consults target groups on specific matters.

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

- OPA Annual Reports.
- Files relating to investigation and the care of protected persons.
- Administrative files relating to the business operations of OPA.

- A series of printed resources, including OPA fact sheets, which provide information about the state guardianship and mental health legislation.

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

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 2007-08

OPA FOI matters are reported as part of the Attorney Generals Department statistics. Requests are processed by the Attorney General's Department Freedom of Information Officer on behalf of the OPA.

FOI applications can be directed to:
Office of the Public Advocate
PO Box 213 Prospect SA 5081

Alternatively to:
The Freedom of Information Officer
Attorney General's Department
45 Pirie Street
Adelaide SA 5000

Financial summary

The Office of the Public Advocate operated as part of the Attorney General's Department for the full reporting period. The financial operations of OPA are consolidated into their reports and audited with the financial statements of the Attorney General's Department.

The chart below provides an expenditure summary for OPA for the 2007-08 year.

Office of the Public Advocate Financial Result 2007-08			
	Budget \$	Outcome \$	Variance (unfavourable) \$
Operating Revenue	1,030	4,067	
Operating Expenses	1,473,528	1,389,165	89,460
Assets	6,000	16,900	(10,900)
Surplus/deficit	(1478)	1414	64

The end of year underspend was due to a significant saving in salaries because of delays in recruiting a new Public Advocate. Other vacancies occurred at various times during the year.

On the other hand expenditure on goods and services and assets are significantly over budget but more than covered by the salaries line.

The OPA took the opportunity to replace several leased items with new equipment now owned by the organisation in accordance with government policy.

Appendix 1: Staff changes 2007-08

A total of 21 staff had an employee relationship with the OPA in 07/08.

Public Advocate

- Mr John Harley resigned effective from January 2008 and the position remained unfilled at June 30.

Assistant Public Advocate

- Ms Margaret Farr was employed for the full reporting period and also acted as Public Advocate for 8 months.

Senior Guardian

- Ms Suzanne Bull took 12 months leave of absence commencing in November 2007.
- Elly Kirk has acted as senior guardian since November 2007.

Public Advocate and Community Enquiry Officers

- Ms Suzanne Bull took leave of absence
- Ms Mary Allstrom resigned
- Ms Elly Kirk to on the role of acting senior guardian
- Ms Julie Anne Dowling and Ms Karen Bowden were permanent PO2 employees throughout the year
- Mr Andrew Sarre continued in contract with the organisation throughout 2007-08
- Ms Yvette Gray who was on leave without pay resigned to take up permanent employment elsewhere
- Mr David Cripps returned as a part time employee after a period of leave without pay

- Ms Tarnia White, worked as a part time enquiry officer for the entire reporting period
- Ms Rosemary Hillard worked as an Enquiry Officer and then temporarily as a guardian
- Ms Alison Lamshed and Ms Janet Kelly completed contracts within OPA
- Ms Margi Keville gained permanent employment with the office
- Ms Lizzie Stokes, Ms Maria Atkins and Ms Mylee Edwards worked on contracts for part of the reporting period
- Ms Angela Andary returned to the OPA for a brief period to undertake a revocation project

Administrative staff

- Ms Trish Bull had a change in Title to Office Coordinator and her position was reclassified.
- Ms Sarah Barry resigned form her position.
- Ms Michelle Howse was made permanent and her position was reclassified.
- Ms Cheryl Thomas was employed on part time contract throughout the year.
- Ms Debbie Buttress was attached to the OPA office for part of the year.
- Ms Di Chartres assisted both the OPA and the Guardianship Board with policy and program planning and development.
- Several agency staff provided additional administrative support to the organisation at various times.

Appendix 2: Staff profile tables

Table 1: OPA Public Sector Management Act employees by stream, level, appointment type and gender as at 30 June 2008

Public Sector Management Act employees by stream, level, appointment type and gender as at 30 June 2008									
Stream	Ongoing			Contract			Total		
	M	F	Total	M	F	Total	M	F	Total
Administrative	0	0	0	0	0	0	0	0	0
ASO2	0	1	1	0	0.5	0.5	0	1.5	1.5
ASO3	0	1	1	0	0	0	0	1	1
ASO7	0	1	1	0	0	0	0	1	1
Total	0	3	3	0	.5	.5	0	3.5	3.5
Professional									
PSO1	0	0.7	0.7	0	0	0	0	0.7	0.7
PSO2	0.6	3.0	3.6	1	3	4	1.6	6.0	7.6
PO3					1.0	1.0		1.0	1.0
Total	0.6	3.7	4.3	1	4	5	1.6	7.7	9.3
Executive	0	0	0	0	0	0	0	0	0
EL3	0	0	0	0	0	0	0	0	0
Total	0	0	0	0	0	0	0	0	0
Total all streams	0.6	6.7	7.3	1	4.5	5.5	1.6	11.2	12.8

Table 2: OPA sick leave, family carers leave and special leave with pay for individual needs and responsibilities as at 30 June 2008

OPA sick leave, family carers leave and special leave with pay for individual needs and responsibilities as at 30 June 2008			
	Average number of sick leave days taken per FTE	Average number of family carer days taken per FTE	Average number of special leave with pay days for individual needs and responsibilities taken per FTE
2007-08	4	.7	0.1
2006-07	12.4	0.1	0
2005-06	5.1	0	0.2
2004-05	10	0	0
2003-04	4.82	.035	0
2002-03	6.82	0	0

Table 3: OPA workforce diversity as at 30 June 2008

OPA workforce diversity as at 30 June 2008				
	Total number of employees	Female	Aboriginal & Torres Strait Islander employees	Employees with a permanent disability
Executives	0	0	0	0
Senior Managers	1	1	0	0
Middle Managers	1	1	0	0
First Line Supervisors	0	0	0	0
Other Administrative	3	3	0	1
Other Professional	9	7	1	0

Table 4: OPA cultural and linguistic diversity as at 30 June 2008

OPA cultural and linguistic diversity as at 30 June 20078			
Cultural diversity as at 30 June 2004	Country of birth Australia	Other country of birth	English is main language spoken at home
Executives		0	
Senior Managers	1	0	1
Middle Managers	0	1	1
First Line Supervisors	0	0	0
Other Administrative	3	3	3
Other Professional	6	3	9

Table 5: OPA age profile as at 30 June 2008

OPA age profile as at 30 June 2008					
Age groups (years)	Number of employees (persons)			% of all agency employees	% of South Australian workforce
	Male	Female	Total		
15-19	0	0	0	0%	
20-24	0	0	0	0%	
25-29	0	1	1	7%	
30-34	0	0	0	0%	
35-39	0	2	2	14%	
40-44	2	2	4	29%	
45-49	0	1	1	7%	
50-54	0	2	2	14%	
55-59	0	3	3	21%	
60-64	1	1	1	7%	
65+	0	0	0	0%	

Table 6: Voluntary Flexible Working Arrangements as at 30 June 2008

OPA Voluntary Flexible Working Arrangements as at 30 June 2008					
Type of arrangement	Total employees	Number of employees using a Voluntary Flexible Working Arrangement			
		Executive		Non-executive	
		Male	Female	Male	Female
Purchased leave	0	0	0	0	0
Flexitime	13	0	0	2	11
Compressed Weeks	0	0	0	0	0
Part time and job share	4	0	0	1	3
Working from Home*	1	0	0	1	0

* Casual arrangement has applied to all professional staff.

List of OPA publications

FACT SHEETS

1. An introduction to the *Guardianship and Administration Act 1993*
2. An introduction to the *Mental Health Act 1993*
3. What is the Guardianship Board?
4. Guardianship Orders (*Guardianship and Administration Act 1993*)
5. Administration Orders (*Guardianship and Administration Act 1993*)
6. What to expect at a Guardianship Board hearing (*Guardianship and Administration Act 1993*)
7. Advice to applicants (*Guardianship and Administration Act 1993*)
8. Advance directives in SA
9. Consent to medical and dental treatment for people with mental incapacity
10. Prescribed medical treatment (*Guardianship and Administration Act 1993*)
11. Section 32 powers (*Guardianship and Administration Act 1993*)
12. Detention and Continuing Detention Orders (*Mental Health Act 1993*)
13. Community Treatment Orders (*Mental Health Act 1993*)
14. What to expect at a Guardianship Board hearing (*Mental Health Act 1993*)
15. Advice to applicants (*Mental Health Act 1993*)
16. Prescribed psychiatric treatment (*Mental Health Act 1993*)
17. Section 12 appeals (*Mental Health Act 1993*)
18. Appeals to the District Court (*Guardianship and Administration Act 1993*)
19. What is the Office of the Public Advocate?
20. Office of the Public Advocate complaints policy
21. Information, advocacy and complaints services for people with mental incapacity
22. Mental capacity and advance directives
23. Informal arrangements for people with mental incapacity
24. What is a liaison person? (*Guardianship and Administration Act 1993*)
25. Guardianship and the Public Advocate: Information for Families and Friends

APPEALS FLOWCHARTS

- A. Section 12 appeals for detained patients
- B. Appeals against Guardianship Orders
- C. Appeals against Administration Orders
- D. Appeals against Continuing Detention Orders
- E. Appeals against Community Treatment Orders

TRANSLATED MATERIALS

The following table provides a list of OPA's translated materials:

Language	Basic Fact Sheet	Guide to Guardianship and Administration	Statement of Legal Rights for detained patients (form 7)
Arabic	✓	✓	✓
Chinese	✓	✓	✓
Croatian		✓	✓
English	✓	✓	✓
German	✓		
Greek	✓	✓	✓
Italian	✓	✓	✓
Khmer		✓	✓
Macedonian		✓	✓
Persian	✓		
Polish	✓	✓	✓
Russian	✓		
Serbian	✓		
Spanish		✓	✓
Tagalog	✓		
Turkish		✓	✓
Ukrainian	✓		
Vietnamese	✓	✓	✓

POSITION PAPERS

- Sterilisation position paper
- Restraint position paper
- Guardian ad litem position paper

MANUALS

“Now you are a Guardian: a manual for private guardians in South Australia” can be purchased from Service SA at a cost of \$8.80 (phone 13 23 24 or from their website at www.service.sa.gov.au) or by coming in to the Office of the Public Advocate on the 7th floor of the ABC Building, 85 North East Road, Collinswood.

All pamphlets are obtainable on the OPA website www.opa.sa.gov.au or for Medical Power of Attorney and Anticipatory Directions and the guide to their use, see <http://www.health.sa.gov.au/consent>