



Dr Michael Armitage  
Minister for Health  
Minister for Aboriginal Affairs  
PO Box 3141  
Rundle Mall  
ADELAIDE SA 5000

Dear Dr Armitage

I have much pleasure in forwarding you the first Annual Report of the Public Advocate and Office of the Public Advocate.

This report covers the period from 6 March 1995, until 30 June 1995, during which the Public Advocate was operating pursuant to the Guardianship and Administration Act 1993.

The Act was proclaimed on 6 March 1995. However, because this is the first Annual Report of the Public Advocate, I have included in the Narrative a history of the Public Advocate and Office of the Public Advocate since the announcement of my appointment, and subsequently taking up duty on 16 August 1993.

During this period, the Public Advocate was supported by a small team of three staff, and we provided a very basic service to the Guardianship Board, established pursuant to the Mental Health Act 1977. More detail of that work is included in the report for your information.

I would like to extend my gratitude to members of the Office of the Public Advocate who have worked with great dedication and commitment, often for very long hours, in attempting to meet the objectives of the Act.

I would also like to express my appreciation to other persons who have co-operated with the Agency in ensuring the objectives of the Guardianship and Administration Act 1993, and the Mental Health Act 1993, have been met.

Yours sincerely

John Dawes  
**Public Advocate**



## Public Advocate's Report

**P**roclamation of the Guardianship and Administration Act 1993 and the Mental Health Act 1993 occurred on March 6 1995. The successful launch of this event also signified the long awaited activation of the powers of the Public Advocate.

Following my appointment to the position of Public Advocate in July 1993, much of my work involved laying the foundations of my office and establishing the networks and work practices that have become central to the role and function of the position.

Evident during this embryonic stage was an awareness in the community that a statutory system was required to assist in finding the balance for people with reduced mental incapacity, between personal autonomy and ensuring their protection.

The need for a protective mechanism may in fact say more about societal aspects within certain families and communities rather than mental incapacity being the problematic issue. The Public Advocate recognises that some people with reduced mental capacity are often very vulnerable - not only because they may lack the ability to consider the options that are in their best interests, but regrettably, because they may also be more susceptible to neglect, abuse, or exploitation by others.

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

- intellectual disability
- Alzheimer's Disease
- severe mental illness
- acquired brain injury

These are examples of the types of conditions that may reduce a person's mental capacity and affect the way that the person would ordinarily make decisions for himself or herself.

In these situations, care and management is generally assumed by others. Family, friends, and community support are often the integral components in the life of the person with reduced mental incapacity. Acting on behalf of the person, such people in their often undervalued role, promote the person's independence and position in society.

Sadly however, this is not always the case. In some situations family conflict can affect the care or decisions being made on behalf of a person. Emotionally charged tensions and personal agenda may result in the wishes of the person with reduced mental capacity being overlooked, overpowered, or manipulated. In other cases, certain family members or friends may be over-restrictive in their efforts to protect a loved one from any possible harm. Additionally, there are those people with mental incapacity in our community who have no-one who cares for or about them.

*It is the role of the Public Advocate to ensure that when a person with reduced mental capacity is being cared for, and his/her affairs managed either informally or formally within the community, the associated responsibilities are carried out adequately and appropriately. In addition, the Public Advocate works to ensure that the rights and dignity of people with reduced mental capacity (and their carers) are promoted, their position in the community strengthened, and the risk of exploitation, abuse, or neglect minimised.*

The Guardianship and Administration Act 1993 stipulates the principles that must be applied where substitute decisions are being made on behalf of a person with mental incapacity.

In essence, these can be summarised as:

**substituted judgement** (primary consideration must be given to the decision the person would make for himself or herself, if he or she had retained capacity)

**present wishes** (where ascertainable, the persons expressed wishes must be considered)



existing *informal arrangements* (where a person's quality of life is assured by family, friends, and community networks, such arrangements should not be disturbed)

*least restrictive alternative* (measures to assure the person's quality of life should be the least restrictive of all alternatives available)

These principles affirm the right of people with reduced mental capacity, to as much personal autonomy and control over their own lives as they are capable of exercising. As a further safeguard, the Act also establishes two separate agencies.

*The Guardianship Board* which hears applications and makes decisions about the appointment of guardians and administrators, and also makes decisions and orders under the Mental Health Act 1993.

*The Office of the Public Advocate* which has a watchdog role and a number of responsibilities under both the Guardianship and Administration Act 1993, and the Mental Health Act 1993.

The Public Advocate's main responsibilities are to:

- Accept appointment when necessary as *Guardian of Last Resort* to make legal guardianship decisions on behalf of a person who has mental incapacity, where there is no other appropriate person to do so.
- *Investigate* (for the Board and independently) situations that may infringe on a person's rights, report on these, and suggest solutions and/or alternatives.
- *Provide Information* about guardianship and mental health laws including offering advice on options and alternatives to formal guardianship.
- *Advocate* by speaking up for, and supporting individuals to achieve change, whilst also working to gain wider community understanding and acceptance of people with reduced mental capacity.

The two Acts of Parliament imply a wide range of functions for the Office of the Public Advocate (OPA). To date, OPA has tried to meet all these responsibilities. This report highlights the great community need for such a service and the commitment and dedication required of staff to deliver expected outcomes. However, it is becoming increasingly evident that the resources originally allocated to ensure a quality service were significantly underestimated.

At times, decisions about priorities and resource allocation has necessarily occurred on an *ad hoc* basis, in response to immediate demand. Whilst this reactive response is an important component of OPA's work, the need to incorporate preventative strategies at a broader community level is also recognised. It is critical that the rights and interests of people with reduced mental capacity are protected and promoted **within all levels** of our South Australian communities, thereby diminishing the need for the formal appointment of guardians and administrators, which must always be considered as an option of last resort.

It is with a great sense of pride that I present this inaugural Annual Report of the Public Advocate. It not only records the exceptional achievements of this newly created Office, but also recognises a special group of staff who have extended themselves significantly in establishing the high quality of service offered. They have consistently maintained their sense of purpose and most importantly their sense of humour in the face of sometimes almost overwhelming stresses and demands.

John Dawes  
**Public Advocate**

## THE PUBLIC ADVOCATE'S OFFICE

ANNUAL REPORT 1994-1995



## - some background -

### **PRE-PROCLAMATION SOME PRECEDING EVENTS**

**1979** - The Guardianship Board and Mental Health Review Tribunal were established under the provisions of the Mental Health Act 1977.

**1981** - The Intellectually Retarded Persons Project reported on the need to extend jurisdiction of the Board to cover all adults needing official guardianship.

**1986 and 1988** - A legislative subcommittee of the Mental Health Advisory Committee reported on required changes to administrative arrangements covered by the legislation and other matters, including the handling of security patients.

**1988** - A team to review the Guardianship Board and Mental Health Review Tribunal was appointed by the then Minister of Health, Dr John Cornwall.

**1989** - The Review Team released its report. Recommendations included changes to the legislative base which determined the role and function of the Board, the abolition of the Mental Health Review Tribunal, and the establishment of the Office of the Public Advocate position.

**1993 (May)** - The Guardianship and Administration Act 1993 and the Mental Health Act 1993 were passed by Parliament.

**1993 (July)** - Public Advocate appointed.

**1995 (March)** - The new legislation was proclaimed by the Governor of South Australia.

### **EARLY BEGINNINGS**

The Guardianship and Administration Act 1993 establishes the position of the Public Advocate. Division 3 Section 21, stipulates the general functions of this position. Mr John Dawes was appointed to the position of Public Advocate on 7th July 1993 and commenced work on 16th August 1993.

The period from August to December 1993 was used by the Public Advocate to consider the work of the Public Advocate in Victoria, the work of the Public Advocate in Western

Australia, and generally in becoming familiar with the application of guardianship and mental health laws in this State nationally.

Additionally, in these first few months, the Public Advocate spent time on establishing the functional basis to his office. The establishment of a new office necessitated careful planning and consideration of the role and responsibilities of the office and the types of employees that would be required to meet expected outcomes.

### **ESTABLISHMENT**

By July 1994, staffing for the Office of the Public Advocate (OPA) was;

#### **Public Advocate**

Mr John Dawes (August 1993)

#### **Assistant Public Advocate**

Ms Rennie Gay (January 1994)

#### **Education Officer**

Ms Lisa Huber (January 1994)

#### **Clerical Officer**

Ms Tracy Kotzur (July 1994)

At this time, the OPA shared with the Guardianship Board the services of an Administrative Officer, Mr Paul Green, Administrative Assistant, Ms Helen Murphy, and Project Officer, Ms Helen Mellowship.

In October 1993, the OPA advertised the availability of three positions as Advocate/Investigator/Guardian.

Appointments to these positions were made in February 1994, however, funding issues meant that these people were unable to commence in their nominated positions until closer to the date of Proclamation of the new legislation.

Ms Yvette Gray, Ms Anita Micallef and Ms Angela Andary commenced work with the OPA some twelve months after their appointments. Proclamation also saw the OPA securing Ms Leonie O'Malley as its Senior Administrative Officer, following the abolition of the Mental Health Review Tribunal where she was previously employed.

### **STRUCTURE**



Uncertainty about the OPA budget prior to proclamation hindered the development of a structure and the establishment of systems within the Office. The OPA recognised the need for complementary and compatible systems and procedures for OPA and the Guardianship Board, however without knowing the potential for staff numbers and function, it was difficult to design a structure which allowed the objectives of the Act to be met.

## **EARLY DAYS**

### **ROLE AND RESPONSIBILITIES**

#### **INTAKE/ENQUIRIES**

During the period prior to proclamation, there was a significant increase in the number of enquiries made to OPA which had previously been dealt with by Board social workers.

The staffing limitations were a cause of concern with the demand for information and advice (particularly regarding the impending new laws), rapidly exceeding the ability of the limited staff to manage.

Data for the number of telephone enquiries reflected an increase each month following the commencement of recording in April 1994.

#### **INVESTIGATIONS**

Pre-proclamation, the majority of cases requiring investigation had been referred by the public, as individuals or organisations. Correctly, it was anticipated that over time a much larger proportion of our investigative work would be conducted at the request of the Board.

Between January and July 1994, OPA provided 30 education sessions to professionals and service providers, involving 771 participants. Some of the sessions were conducted in conjunction with the Board. In all, 46 sessions were provided for 116 people.

Recipients included:

Aged care services  
Dentists  
Medical Officers

A random survey evaluation of these sessions found that of the 272 people surveyed, 269 rated the sessions useful to very useful.

During this time, the OPA distributed 12,400 information pamphlets on the new legislation.

#### **ADVOCACY**

Between January and July 1994, the OPA became aware of a number of issues of concern for people with reduced mental capacity and their carers. Some of these issues became apparent through involvement with individuals, others via the public, and some from the Board itself.

During this time, 28 advocacy issues had been identified and it became apparent that attending to these matters whilst at the same time meeting other statutory responsibilities, was to become a significant challenge to the OPA. A number of the identified issues continue to be ongoing matters for the OPA.

#### **PROCLAMATION**

The long awaited proclamation of the Guardianship and Administration Act 1993 and the Mental Health Act 1993 occurred on the 6th of March 1995. Raising public awareness of Proclamation involved 3 main activities:

1. Mail Out
2. Planned Information Sessions
3. Media Launch

#### **MAIL OUT**

An extensive mail out provided key service providers, professionals and consumers with “tailored” information packages about the legislative changes relevant to specific work practice. 6,511 packages in total were distributed.



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Higher education facilities  
State and private psychiatric care services  
Disability Services  
Professional and agency associations  
Selected lawyers and financial institutions

### **INFORMATION SESSIONS**

Planned information sessions were conducted by OPA and the Guardianship Board, providing the opportunity for interested persons to hear and discuss the implications of the legislative changes.

**5 metropolitan sessions** - Total attendance of 445 people, ie an average of 90 people per session

**5 country sessions** Port Augusta  
Berri  
Wudinna  
Maitland  
Mount Gambier

Total attendance of 175 people, ie an average of 35 people per session.



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## **MEDIA LAUNCH**

Strategic Public Relations assisted OPA and the Guardianship Board in the development of a comprehensive media strategy for publicising the new laws.

Newspaper coverage and radio interviews by John Dawes and Tony Lawson (President of the Guardianship Board) were some of the outcomes. Television coverage included a television interview with local media identity, Ann Wills.

The main “event” however, focussed on Peter Motley (previous VFL star of Carlton Football Club) appointing his wife Andrea, as his Enduring Guardian. Geoff Motley, Peter’s father was also in attendance.

Dr Michael Armitage spoke on the benefits for families in the changes to the legislation. This occasion was televised on four of the News programs the same evening.

As expected, a significant rise in enquiries to the OPA about “Living Wills” and alternatives to formal Guardianship eventuated.



# THE PUBLIC ADVOCATE'S OFFICE

## - an overview -

### LEGISLATIVE AUTHORITY

The Office of the Public Advocate takes its legislative authority from the Guardianship and Administration Act 1993 and the Mental Health Act 1993. These laws came into effect at proclamation on the 6th of March 1995.

### COMMONWEALTH

Human Rights and Equal Opportunity Commission Act 1986

Family Law Act 1975

### STATE

Criminal Law Consolidation Act 1935

Disability Services Act 1993

Freedom of Information Act 1991

Powers of Attorney and Agency Act 1984

Aged and Infirm Person's Property Act 1919

Consent to Medical Treatment and Palliative Care Act 1995

Supported Residential Facilities Act 1992

Child Protection Act 1993

### PUBLIC ADVOCATE

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

### ACCOUNTABLE AUTHORITY

The Public Advocate is an independent statutory official. In performing his functions, the Public Advocate is not subject to the control of the Minister.

The Office of the Public Advocate is a program of the Minister for Health, currently Dr Michael Armitage, Minister for Health and

Aboriginal Affairs. The responsible funding body is the South Australian Health Commission via the Disability Services Office.

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

Under this Act, the Office of the Public Advocate is required to submit an annual report on the year's activities to the responsible Minister.

### LOCATION

At 30 June 1995, the Office of the Public Advocate can be accessed at:

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

Phone: (08) 269 7575  
Fax: (08) 269 7490  
Toll Free: 1800 066 969

### PURPOSE

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

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

- Intellectual Disability
- Dementia, eg Alzheimers
- Severe mental illness
- Acquired brain injury and other conditions that may render a person unable to communicate his or her wishes.

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- Dementia, eg Alzheimers
- Severe mental illness
- Acquired brain injury and other conditions that may render a person unable to communicate his or her wishes.

of the Public Advocate's role to ensure that these responsibilities are carried out adequately and that the rights and dignity of people with reduced mental capacity (and their carers) are promoted, their position in the community strengthened and the risk of exploitation, abuse and neglect minimised.

### CORPORATE PHILOSOPHY

The Office of the Public Advocate believes;

- That decisions made on behalf of a person with reduced mental capacity should be as



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

### **GENERAL FUNCTIONS**

Section 21 of the Guardianship and Administration Act 1993 states:

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

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

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

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

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

(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.

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

## **PROGRAM STRUCTURE AND SERVICES**

### **PROGRAMS AND SERVICES**

During the 1994/95 year, the Office of the Public Advocate provided the following programs and services.

#### **1. Enquiry Service**



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2. Individual Advocacy
  3. Systems Advocacy
  4. Education
  5. Investigation for the Guardianship Board
  6. Investigation of matters arising from the public
  7. Guardianship

### **ENQUIRY SERVICE**

The Office of the Public Advocate has established and maintained an enquiry/information service to respond to enquiries from members of the public and from service providers

The objectives of this service are;

- ↳ to inform the general public and the service community about guardianship and administration, the Guardianship Board and its orders, and about alternatives to guardianship;
- ↳ to promote the utilisation of the least restrictive options in the resolution of clients problems;
- ↳ to increase the proportion of applications to the Board which are appropriate and comprehensive.

The enquiry service provides;

- ↳ information about the Office of the Public Advocate, the Guardianship Board and their functions;
- ↳ information about the Guardianship and Administration Act 1993, and the Mental Health Act 1993;
- ↳ referrals to the relevant agencies and persons;
- ↳ information and advice on Consent to Treatment;
- ↳ information and advice on Powers of Attorney, Enduring Guardianship and advance directives;
- ↳ a community education function.

The enquiry service is not a counselling service.

The service during the July 1994 to June 30 1995 period;

- ↳ was available between the hours of 8.45am and 5.00pm Monday to Friday (exempting Public Holidays);
- ↳ was available after hours to deal with emergency enquiries via the after hours service;
- ↳ responded to all telephone enquiries within two working days;
- ↳ endeavoured to resolve enquiries at first contact.

The OPA is clearly establishing itself within the community as a consultancy service to persons requiring advice and/or guidance. Many calls are from professionals engaged in working with clients who are unable to make decisions. Some are from carers. Some are from the clients themselves.

### **INDIVIDUAL ADVOCACY**

“The Public Advocate is required to speak for and negotiate on behalf of any mentally incapacitated person in the resolution of any problem faced by the person arising out of his or her mental capacity.” (Section 21 (1) (d), Guardianship and Administration Act, 1993).

The objectives of this service are;

- ↳ to identify and minimise the problem(s) faced by an individual arising out of his or her mental incapacity;
- ↳ to assist clients and their carers to develop and implement alternatives to formal guardianship and administration, in accordance with the principles of the Act;
- ↳ to provide support for carers or persons with a mental incapacity.



Some matters requiring individual advocacy are referred to the Public Advocate by the Guardianship Board. Others came to the Public Advocate's attention through direct approaches by a range of individuals and agencies including service providers and carers.

The demand for individual advocacy services is high and it is beyond the capacity of the Public Advocate to respond to all requests for assistance. The Office of the Public Advocate's individual advocacy must therefore focus on cases of significant exploitation, abuse and neglect.

Where appropriate, the OPA refers advocacy to community based agencies.

#### **SYSTEMS ADVOCACY**

Systems advocacy emerges from issues and problems identified through work in individual advocacy, guardianship and investigation. Systems issues relate to the well-being and rights of people with mental incapacity, and focus on policy, program or organisational deficiencies, or alternatively the need for a change in the style or manner of a public or a private organisation.

The objectives of activity in this area are;

- to increase the quality of life for people with a mental incapacity by promoting a sense of obligation in all sectors of the community to respond to and meet their needs;
- to identify needs and gaps in services and to assist in the development of interactive ways to meet those needs;
- to promote the interests of those with a mental incapacity by encouraging and assisting organisations, both public and

private, to include consideration of issues relevant to the client groups in their planning and policy development processes.

- to participate in regional and state networks of service providers, self-help and voluntary organisations, facilitating at every opportunity effective communication between these services and the Minister of Health and the Disability Services Office.

Staff have contributed the following;

- Committee for the Advocacy Course Advisory Group, auspiced by Disability Action Inc. This project will improve consistency of education for advocates and set standards of competence for its graduands;
- The Guaranteed Care Project Steering Group, An integral scheme required to provide "guaranteed" ongoing care for persons with disabilities whose primary carers in the future will be unable to continue providing necessary care;
- Representation on the Elder Protection Management Committee. In addition, OPA and the Elder Protection staff often consult regarding issues of abuse, exploitation and neglect of elderly people.
- Intellectual Disability and the Criminal Justice System. His Honour Judge Lee chaired this Committee.

#### **EDUCATION**

The Office of the Public Advocate has as one of its primary roles, the provision of advice and information regarding the powers that may be exercised under the Guardianship and Administration Act 1993, and the Mental Health Act 1993.

The objectives of this service are;

- to increase awareness and understanding of the issues and the legal implications of guardianship, administration, and mental health treatment amongst professionals and service providers and in the general community;
- to enable service providers to deal more efficiently with issues relating to persons who have a mental incapacity or mental illness;



- 
- b to ensure that staff of the Office of the Public Advocate, the Guardianship Board, and Board members have access to information about disabilities, services, and options in alleviating the difficulties which can result from mental incapacity, and about their statutory role and function.

A comprehensive 12 month staff development program for the OPA and Board staff was facilitated by the Education Officer and assisted staff in the transition from the previous legislation.

Appropriate and factual information is under continual development at OPA. During the period from 1 July 1994 to 30 June 1995, programs were designed and implemented to meet the needs of persons with a mental incapacity, their families, their carers, administrators and the general public on the operation of the Act and the appropriate alternatives to seeking orders.

These programs occurred as planned education sessions in both metropolitan and country areas and, on a reactive ad hoc basis to expressed need from the community.

An important role for the OPA is the provision of information to the community regarding advanced directives as a means for individuals to plan for the future. Such preparatory measures are essential to ensure Guardianship Board Orders are used *only* as a last resort.

Enduring Power of Attorney has been available for some time as a means by which a person who has capacity, can appoint someone to manage his or her financial affairs, in the event of loss of competence.

*(Many people do not realise that when a house is owned in joint names, and one of the owners has lost mental capacity without previously appointing an Enduring Power of Attorney, then by State law it is necessary for an Administrator to be appointed by the Guardianship Board in order to seek permission for the sale of a home).*

Through the Guardianship and Administration Act 1993, it is also now possible for a person who has capacity to appoint an Enduring Guardian to make decisions about welfare, health and lifestyle matters.

## INVESTIGATIONS FOR THE GUARDIANSHIP BOARD

Section 21 (1) (h) of the Guardianship and Administration Act 1993 authorises the Public Advocate upon direction from the Board, to investigate and report to the Board on the affairs of a person who is the subject of an application to the Guardianship Board.

The objectives of this service are;

- b To respond to the Board's need for information by providing reports which are timely, accurate, objective and succinct.
- b To promote the interests of the persons the subject of Board applications and review, by ensuring that their views are sought and made known to the Board.

Every investigation conducted by the Public Advocate constitutes an act of advocacy for the person said to have a mental incapacity. A factual report by the Public Advocate assists the subject of the application, by ensuring that all relevant information is placed before the Board.

The Guardianship Board and the Office of the Public Advocate recognise that resources



available for investigations are limited and accordingly sets priorities as follows;

- Applications involving serious allegations of abuse or neglect (including self neglect) where the Board is unable to identify an appropriate alternative source of information.
- Applications involving Prescribed Treatments under Part 5 of the Guardianship and Administration Act 1993.
- Applications involving complex family disputes or complex financial or legal affairs (including matters relating to Enduring Power of Attorney and Enduring Guardianship) where the Board is unable to identify an appropriate alternative source of information.
- Applications involving serious disputes or uncertainty concerning competence or the wishes of the person said to be mentally incapable where the Board is unable to identify an appropriate alternative source of information.
- Applications involving allegations of abuse, (including self neglect) or exploitation where the Board is unable to resolve the matter without the production of a disinterested report from the Office of the Public Advocate.

- to be guardian for those persons who are, in the opinion of the Guardianship Board, in need of care and protection, and for whom no other suitable guardian can be found.

Guardianship describes the control which may be exercised and the protection which may be afforded in relation to personal life decisions. Personal life decisions consist of all matters (except in financial affairs) which can effect a person's welfare.

A guardian is a person authorised by the Guardianship Board to make decisions on behalf of some other person over the age of 18 who, because of mental incapacity, lacks decision making ability in particular areas of their life.

Guardians are usually family members or friends. Where no suitable person is available or willing to act as Guardian, the Board can appoint the Public Advocate who can, with the approval of the Board, delegate guardianship powers to his officers.

***Guardianship is not a simple answer to complex service issues***

***It is not appropriate to place a Guardianship Order over someone simply to facilitate access to services***

***Guardians should not be appointed because a person "needs help" - there are other services which should be utilised.***

***Guardianship is a last resort - alternative options should be actively pursued first.***

***If services are not available - having a guardian doesn't create them.***

***Guardianship should be as limited as possible, therefore monitoring Orders is important.***

***Making a Guardianship Order without adequate support services, sets the process up to fail.***

***A Guardian is not a case manager.***

## **GUARDIANSHIP**

The objectives of this service are:



THE OFFICE OF THE PUBLIC ADVOCATE  
CONSUMER/CLIENT PROFILE

*ANNUAL REPORT 1994-1995*



## RECIPROCAL ARRANGEMENTS

Section 34 of the Guardianship and Administration Act 1993, provides for *reciprocal arrangements* allowing for the recognition of Orders made by Interstate Boards. As yet, these arrangements have not formally been tested.

## SO WHAT HAPPENED WHEN TWO CLIENTS WERE REMOVED BY CARERS, TO AVOID BOARD ORDERS, AND TAKEN INTERSTATE?

The Guardianship Board appointed the Public Advocate as Guardian of Last Resort, and the Public Trustee as Administrator for two sisters, both of whom have intellectual disabilities and were deemed to be at risk of physical and emotional abuse and financial exploitation. Due to the evidence before it, the Board gave the Guardian (Public Advocate) special

powers to detain the sisters to a specified place as a protective measure.

However, before they could be placed into a safe residential setting, the sisters' primary carers removed them unexpectedly, and their whereabouts became unknown.

Nothing was heard of the young women for four weeks, until the Department of Social Security at Broken Hill contacted the Guardian in South Australia. At that point, it became clear that the carers had taken the sisters interstate to thwart the South Australian made Orders. Expressed aggression and alleged threatening behaviour by the carers gave cause for concern. The Guardian's goal in South Australia was to bring the women back to South Australia and to place them in a safe environment.

Guardianship Board orders are state based. As the situation was critical, the approach taken by the Office of the Public Advocate was to apply to the New South Wales Guardianship Board for powers to remove the sisters from their carers and to return them to South Australia.

Murphy's law dictates that crises occur on Fridays, and so it was in this case. By the time the Senior Investigator for the New South Wales Guardianship Board had received 48 pages of faxed information from the Office of the Public Advocate (South Australia), it was 1.30pm. He undertook to put the matter before the Board if that was warranted. The Senior Investigator suggested that the South Australian Guardian contact the Department of Community Services, Disability Section at Broken Hill, to assess the situation and provide alternate care if the Guardianship Board did not make the necessary order for removal of the sisters. The Manager from Community Services became a pivotal participant in bringing this matter to a successful end.

Late Friday afternoon, in a telephone hook-up between the Guardian in South Australia, the Guardianship Board in New South Wales, and the Manager in Broken Hill, a Removal Order was issued by the New South Wales Board. With police assistance, the sisters were escorted to the New South Wales/South Australian border. From there, South



Australian police drove them to their new accommodation, where with support, they are expected to become part of the community.

In the two days that this matter took to resolve, the following organisations were involved in two States:

#### **SOUTH AUSTRALIA**

The Office of the Public Advocate  
The Public Trustee  
Crown Solicitor's Office  
Guardianship Board  
2 country Police Stations  
Intellectual Disability Services Council  
The carer in the proposed accommodation

#### **NEW SOUTH WALES**

Police at Broken Hill  
Department of Social Security at Broken Hill  
Department of Community Services at Broken Hill  
Secretary, Member of Parliament  
Guardianship Board  
Office of the Public Guardian

Complexity in negotiations and co-ordinating actions of individuals hundreds of kilometres away is taxing on a worker's strengths and resources. In this case, the Guardian was also required to use investigative and advocacy skills to persuade, inform, alert, and reassure some individuals whose involvement was essential for a timely resolution of this matter. As the Guardianship and Administration Act 1993 has only been in operation since March 1995, the intra and interstate co-operation between the various organisations and agencies can be seen as a precedent which augurs well for the future.

#### **BOARD INVOLVEMENT WHEN THERE IS A POTENTIAL FOR CONFLICT**

Mr R is an elderly gentleman living with his daughter in the family home. His progressive decline due to dementing illness meant he could no longer live independently and needed supervised care.

A potential for conflict of interest between the daughter, who held an Enduring Power of Attorney, and meeting his accommodation needs surfaced when it became clear that a substantial amount of money would be needed

to secure a suitable hostel room. Mr R and his daughter were joint owners of the home, and the daughter had no intention of moving or selling the property which she inherited fully on her father's death.

In reality, the daughter was not managing Mr R's finances due to her own poor health, instead, a great-nephew was engaged in this task. The Office of the Public Advocate liaised with all family members to negotiate a resolution that would benefit Mr R and follow his explicit wish that his daughter remain in the family home. The matter was heard by the Guardianship Board who made the great-nephew Administrator of Mr R's affairs. He was then able to revoke the Enduring Power of Attorney and free Mr R's previously undisclosed savings, in order to access suitable accommodation for him.

#### **BOARD INTERVENTION SHOULD ONLY BE CONSIDERED AS A LAST RESORT**

Ms W is a young woman living alone in the community, and wishing to maintain her independence. She has multiple disabilities including mental illness, intellectual disability and has insulin dependent diabetes. Her eligibility for continued assistance from the Intellectual Disability Services Council was uncertain, and the Office of the Public Advocate was contacted to advocate for the maintenance of services. This was achieved through consultation and co-operation with the various service providers, and resulted in Ms W receiving three Community Support Inc hours per day.

The time allocated is used to educate Ms W in food preparation, diabetes management and shopping for a health life-style. This plan has been so successful, that an application for Guardianship and a Community Treatment Order were dismissed by the Guardianship Board.

#### **MAXIMISING CLIENT EMPOWERMENT**

Mr P is a young man with a diagnosis of schizophrenia. He wrote to the Guardianship Board from the Remand Centre, where he was on remand for a series of offences. He vehemently denied his diagnosis arguing that



his diagnosis was incorrect and that his main problem was related to drugs. The Office of the Public Advocate visited him at the Remand Centre where Mr P described his feelings of anger over the diagnosis and more importantly the Community Treatment Order which required him to have regular medication. Mr P felt that he would like to have a trial period off medication. The Office of the Public Advocate contacted the medical professionals who were involved in his care, prior to his incarceration. The psychiatrists concerned with his care all believed Mr P did have a mental illness, but that Mr P was very much caught up in the institutional system where he described feelings of powerlessness. It was felt that the Community Treatment Order only set up feelings of antagonism between Mr P and those delivering the medication. At a review of the Guardianship Board, this Office argued for a sense of collaboration to develop between client and doctor and that an example of goodwill may assist. The psychiatrists involved agreed that a trial period off medication may be useful, particularly as he was to be in a controlled environment ie prison, so his reaction could be monitored. At the hearing of the Guardianship Board, it was agreed that a trial period would benefit the relationship between Mr P and his doctor. It would also help isolate the main problem in Mr P's life. Mr P agreed to stay off illicit drugs, and agreed that a Community Treatment Requirement be in place as a safety net.

## THE OFFICE OF THE PUBLIC ADVOCATE SERVICES AND MANAGEMENT

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

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

Corporate Service Staff:

**Ms Leonie O'Malley** - Senior Clerical Officer/Enquiry Officer .FTE

**Ms Tracy Kotzur** (B Bus - Admin Management) - Administration Officer .FTE

**Mr Paul Green** Senior Administrative Officer (FTE shared position with the Guardianship Board - currently provides 50% of time to the Office of the Public Advocate)

**Ms Helen Mellowship** - Project Officer (FTE shared position with the Board - currently provides 10% of her time to the Office of the Public Advocate Information Systems).



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During this financial year, the Office of the Public Advocate has also benefited from the services of :

**Ms Helen Murphy** - Senior Administrative Assistant

**Ms Karin Leist** - Clerical Trainee

## **HUMAN RESOURCE DEVELOPMENT**

Ongoing staff development is a crucial need for any newly establishing office. The complex nature of the Office of the Public Advocate's work makes it even more important for staff to equip themselves with the skills and knowledge necessary to produce high quality work and meaningful outcomes.

Monthly development sessions have been held, some of which were held in conjunction with the Board. Guest speakers were regularly invited to increase corporate knowledge of aligned agencies and networks.

A particular success for both the Office of the Public Advocate and Board staff, was an information session on Mental Illness Issues, conducted by Glenside Campus. Recently, a number of staff have undertaken training in the application of computer technology.

Future needs have been identified, and an ongoing staff development plan has been formulated for the Office of the Public Advocate. The Office of the Public Advocate also facilitates a staff development program for the Guardianship Board.

## **EQUAL EMPLOYMENT OPPORTUNITY**

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

## **OCCUPATIONAL HEALTH AND SAFETY**

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

Only one work injury has occurred. This involved a staff member accidentally spraying whiteboard cleaner in her eyes. Immediate eyewash for an extended period, and medical attention, ensured eye damage was minimised. A cloth and "pour" technique for cleaning such surfaces has alleviated any risk of similar incidents.

The Office of the Public Advocate has a qualified First Aid Officer and a representative on the "Eighth Floor" Occupational Health and Safety Committee.

## **STATISTICAL ANALYSIS AND REPORTING**

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

## **ENVIRONMENT AND CONSERVATION**

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

## **INFORMATION TECHNOLOGY**



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## FINANCIAL REPORT

# IDENTIFIED ISSUES AND TRENDS

### NEW LEGISLATION; THE NEW GUARDIANSHIP BOARD AND IT'S OPERATION

Like the Office of the Public Advocate, the new Guardianship Board has experienced some initial teething problems. Consistency of Board process and outcome is an issue that requires continued commitment to overcome.

The ongoing professional development for Board members, and constructive feedback arising from Board hearings is important.

### SECTION 32 POWERS

Of particular concern for the Office of the Public Advocate is the high number of guardianship appointments made to the Public

Advocate in order to acquire Section 32 powers under the Guardianship and Administration Act 1993. These powers are made, for example, to enable the Guardian (who must be the applicant) to detain a person with a mental incapacity to a certain place, or to receive certain treatment against the person's will, in the interest's of the person's or others safety and/or wellbeing.

In many cases, family or friends take on the responsibilities of Guardianship. However, this is not always possible or appropriate. For example, the parents of a son with an intellectual disability who for the safety of all, requires accommodation placement against his will. He may sever his ties with his family all together, if it is his parents who as named guardians on the Order, are forcing him to move.



In many cases, it would appear appropriate for direct service providers to be appointed in order to apply for Section 32 powers. However, as the law does not provide for this, it is often the situation that the Office of the Public Advocate is appointed as Guardian of Last Resort solely for the purposes of applying for these powers. In many cases, the Office of the Public Advocate has no other purpose in the matter.

The Office of the Public Advocate has not been adequately resourced to deal with the steadily increasing numbers of these guardianship appointments. In addition, there is the question of whether the legislation regarding this issue, is in philosophical conflict with the principle of least restrictive option. It is essential where the Board implements Section 32 powers, that such Orders are not made as a solution to complex issues about service provision that falls outside Board jurisdiction.

The roles and responsibilities of the Public Advocate as described in Section 21 of the Guardianship and Administration Act 1993 imply a wide range of functions for the Office. The implementation of these responsibilities in work practice has highlighted conflict of interest for staff which much be recognised. For example, a client visits the Office of the Public Advocate and requests advocacy services. Via the community, an application about the person is received by the Board, a hearing is held, and the need to appoint the Office of the Public Advocate as Guardian of Last Resort for the purpose of acquiring Section 32 powers arises - obviously the advocate for the client cannot be the Guardian. However, because of the Office of the Public Advocate's limited human resources, this situation is a conflictual one for staff involved - that fact that on the one hand we profess as advocates to "speak for" and "stand along side" our clients, yet on the other hand as when appointed Guardian, we may be involved in highly intrusive decisions which are in direct opposition to our client's wishes.

## **STERILISATION**

It is Board practice, that all applications for the sterilisation of persons who have a mental

incapacity are referred to the Office of the Public Advocate for investigation. Sterilisation is a "Prescribed Treatment" under the Guardianship and Administration Act 1993 (the Act), and must therefore have the consent of the Guardianship Board to proceed. The Family Court also has jurisdiction in this matter.

In making an Order for Sterilisation, the Board must be satisfied that the stipulation's under Section 62 (2) of the Act are met. In addition, the Board requires a number of issues to be clearly addressed in any Office of the Public Advocate report concerning an application for the approval of a sterilisation procedure.

In all, the process by which the Office of the Public Advocate prepares such reports is, correctly, a systematic and comprehensive one, involving frequent communication with the applicant, service providers, clients and families, and the referral of clients for additional specialist opinion.

Arising as an outcome of this work is the blatantly apparent need for specialist sexual services for people with mental incapacity and their carers. Sexual health counselling opportunities for people with mental incapacity are significantly lacking.

A related issue is the alleged incidence of pregnancy among clients who have a mental incapacity, and are being cared for in a supervised setting.

## **ACCOMMODATION ISSUES**

The correlation between reduced mental incapacity and the issues of inappropriate accommodation placement and homelessness, is an all too common occurrence. For instance, many clients may not have a "treatable" mental illness or recognised intellectual disability, and therefore may be ineligible for services requiring such criteria. However the need for *asylum* (in the pure sense of the word) may be required whilst such a person is for any number of reasons, unable to continue functioning in a safe way in the community, due to the loss of ability to make considered and reasoned judgements about his or her own welfare.



The Public Advocate is also greatly concerned regarding the incidences of families resorting to the “abandonment” of their children with disabilities, as the only means left to them, in order to secure the supported residential care that their child/children require. Changes in family dynamics and structures have meant communities can no longer expect parents, particularly Mothers, to continue caring for children for the term of their natural life, as so many have done in previous generations.

Another concern for the Office of the Public Advocate is the ability within the community to adequately monitor the many hostels and boarding houses providing accommodation to people with reduced mental capacity. A handful of Office of the Public Advocate investigations have occurred as a result of concern for client’s financial and personal welfare whilst in the care of hostels and boarding houses.

Whilst the Supported Accommodation and Facilities Act will address to some extent the problem of abuse, exploitation and neglect of people in unscrupulous licensed facilities, the ability to take action is affected by the lack of suitable alternative placements for this group of people with specialised needs.

### **THE APPEALS PROCESS**

The appeals process under the new legislation is one which has presented a number of problems for clients and service providers, some of which have been resolved and some which have not. Delays and associated costs are the primary issues.

Appeals against Board Orders (which used to take place in the Mental Health Review Tribunal) now occur in the Administrative Appeals Court (AAC), a division of the District Court.

The potential numbers of appeals has been difficult to estimate as a number of clients seeking approval, who have had Orders made under the repealed law, were offered Review of their Orders by the new Board as a preferred option, (this option meant that clients were not eligible for free legal representation). In addition, the Court has experienced a range of teething problems in establishing a timely

and satisfactory process for handling appeals. Chief Judge Brebner, the Board, and the Office of the Public Advocate have worked collaboratively to address these issues.

Requests from the Court for typed transcripts of Board hearings in order for appeals to be heard, has posed a resourcing problem for the Board, as currently the Board budget has no provision for such a service.

The Office of the Public Advocate has assisted clients who have experienced significant confusion about the new process for appeal, and have acted as advocate where appropriate to ensure client rights were protected and their interests in the matter promoted. The Office of the Public Advocate has also had dealings with the Family and Youth Courts in regard to custody and access issues on behalf of clients who have a mental incapacity.

### **LOCATION**

A philosophical and practical issue for the Office is one relating to physical location of the Office of the Public Advocate. Philosophically, staff of the Office of the Public Advocate believe that being in the same location as the Board does not uphold the notion of being separate and independent of the Board. It is important that the community is able to distinguish between the two agencies, and co-location makes this difficult.

Additionally, the imposing ABC Building - significant landmark as it is, can be intimidating to Office of the Public Advocate clients, and can impose an air of formality which may hinder relaxed and open communication. Many clients for whom transport is an issue, find it necessary to catch two buses to access the building.

### **RURAL ISSUES**

The limited number of services available to people with reduced mental capacity in rural areas of the State imposes a significant reliance on the communities, service providers, and unpaid carers. This is particularly the case in dealing with personality and behavioural disorders.



Services generally for young people with mental illness are not clearly identified and are too few in number. This situation appears to be even more evident in rural areas where many families have experienced hardship and breakdown in continually difficult economic circumstances.

child with reduced mental capacity limits the options available in later life, and increases his or her risk of vulnerability within the community, thereby necessitating greater reliance on legal and protective intervention in later life.

## EDUCATION/POST SCHOOL OPTIONS

On occasion, the Office of the Public Advocate receives an enquiry from a community member who is desperately seeking assistance in relation to a child who has been excluded from a school environment, usually because of difficult behaviour. A handful have involved a period of exclusion from Special Schools, others apparently as a result of failed integration into mainstream schools. The Office of the Public Advocate supports such integration, however, imperative to the success of such programmes, is the adequate preparation and number of specially skilled teachers, and the availability of support officers to assist with every day activities. Inadequate programmes in the early years for a

## PLANNED ACHIEVEMENTS FOR 1995/1996

1. There will be greater awareness and improved understanding of the issues and legal implications of guardianship, administration and mental health treatment amongst key professionals, service providers, and in a broader context, amongst the general community.
2. Less availability of ad hoc information sessions, in favour of planned information events and greater availability and dissemination of written information material.
3. Greater educative focus on target groups identified in the Office of the Public Advocate's "Strategic Information and Education Plan", including persons from a Non English Speaking Background (NESB), financial companies, Government Social Services, Aboriginal services, and Tertiary institutions.
4. Co-host with the Guardianship Board and the Public Trustee, the Fourth National Guardianship and Administration Conference, in Adelaide between the 18th and 20th of October. The theme for the Conference will be: *Guardianship, Administration and Advocacy - Making the Net-Work!*
5. Production and distribution of a bi-annual newsletter to key agencies and community groups about the work of the Office of the Public Advocate.
6. The development and launch of a Do It Yourself Enduring Power of Guardianship Kit to encourage the use of advanced directives as an alternative to Board involvement, should mental capacity be lost.
7. The development of a Sterilisation Information Kit for anyone considering to apply to the Guardianship Board for the sterilisation of a person with mental incapacity. The Kit will provide guidelines and necessary forms, and assist the reader



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in “thinking through” the issues involved  
in applying the law.