

OFFICE OF THE PUBLIC ADVOCATE



ANNUAL REPORT 1996-1997

25 September 1997

The Hon Dr Michael Armitage MP
Minister for Health and Disability Services
PO Box 65
Rundle Mall
ADELAIDE SA 5000

Dear Dr Armitage

I have much pleasure in forwarding to you the third Annual Report of the Public Advocate, as required under Section 24 of the *Guardianship and Administration Act 1993*. This report covers the period from 1 July 1996 to 30 June 1997.

The third Annual Report summarises the many achievements of the office, and reflects on the issues and trends that we have identified over this period. As you will see, we have once again achieved an enormous amount during the last year.

JOHN DAWES
PUBLIC ADVOCATE

TERMINOLOGY

ENDURING POWER OF GUARDIANSHIP is a legal document which a person makes when he or she has mental capacity, to appoint someone trusted to make health and lifestyle decisions should capacity be lost in the future. This arrangement is made by private citizens and does not involve the Guardianship Board. Enduring Guardianship provides the means to alert others to your personal wishes when you can no longer speak for yourself.

ENDURING POWER OF ATTORNEY is different to Enduring Power of Guardianship. Enduring Power of Attorney is a legal document which a person makes when he or she has mental capacity, to appoint someone trusted to make all, or some, financial decisions should capacity diminish in the future. This arrangement is made by private citizens and does not involve the Guardianship Board.

MENTAL INCAPACITY is defined in the *Guardianship and Administration Act 1993* as meaning the inability of a person to look after his or her own health, safety or welfare or to manage his or her own affairs, as a result of-

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

GUARDIANSHIP is a way of legally appointing a substitute decision maker for someone who cannot make all, or some, personal decisions due to reduced mental capacity. A Guardianship Order is made by the Guardianship Board and gives a person/s (the guardian/s) the authority to make decisions in health and/or lifestyle matters. Where it is necessary to appoint a guardian, and there is no family member or friend suitable or willing to be appointed, the Board will appoint the Public Advocate as guardian of last resort.

ADMINISTRATION is a way of legally appointing a responsible person to make financial/property and certain legal decisions on behalf of a person who cannot make these decisions in a considered way because of reduced mental capacity. An Administration Order is made by the Guardianship Board and gives a person, such as a family member or friend, or an organisation the authority to make decisions regarding financial matters.

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

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

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

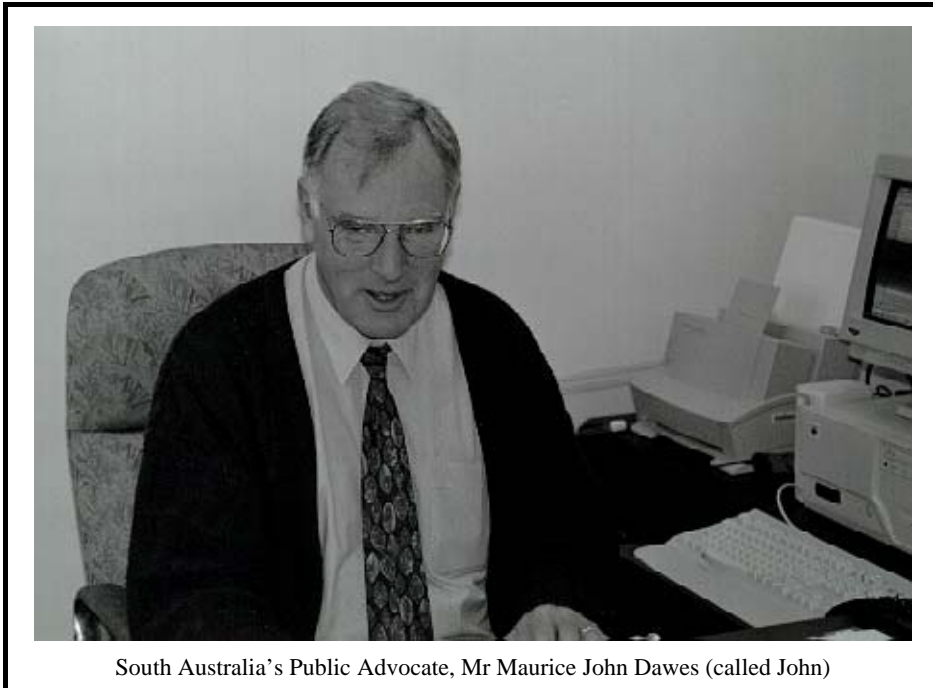
REVIEW refers to the Board's capacity to reassess a prior decision in the event that new information or a change in circumstances becomes evident.

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

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PUBLIC ADVOCATE'S REPORT



This is the third annual report of the Office of the Public Advocate (OPA). During this year we have continued to improve our operations under the *Guardianship and Administration Act 1993* and raise public awareness about the functions of the office.

The OPA has continued to have a strong community education program, currently run by 1.6 fte staff. During this year, the use of technology has furthered the information dissemination capacity of the OPA. The OPA Web Page was created, which contains thirteen of the OPA's community pamphlets, the Public Advocate Newsletter and a range of other information. Information via the Internet provides an additional means of access for the many people who seek the information that the OPA provides.

During the 1996-97 financial year, there has continued to be a steady increase in the number of adult guardianship appointments. There were 148 new appointments, bringing the total number of guardianships managed by the OPA to 222. My staff and I are concerned about this number, as our work in guardianship is often the most complex and difficult human service work, which is undertaken at the expense of work in the investigation and advocacy areas. During the year, there were 4.8 fte staff working in the guardianship, investigation and advocacy programs, including myself and the Assistant Public Advocate. At the end of June, a new short term position (6 month contract) for a social worker was created, primarily to assist the permanent staff in managing the large number of guardianship cases.

This is the third year of operation of both the Office of the Public Advocate and the *Guardianship and Administration Act 1993*. Section 86 of this Act states ‘This Act will expire on the third anniversary of its commencement’, which is during the next financial year, on 6 March 1998. To this end, the Minister of Health has established a review committee, to recommend legislative changes prior to this date. Many of the points made in the OPA’s submission to the review committee are summarised on page 24 of this report.

During this year, my officers and I have noted a number of concerning developments and trends. These include gaps in services for people with multiple or unclear diagnoses who are unable to live safely in the community, legal representation for people with a mental incapacity in court proceedings dealing with the custody and care of their children, and financial abuse. These, and other, issues are detailed in the sections of this report, *Issues arising out of guardianship*, starting on page 28, and *Our clients ... some case studies*, starting on page 32.

The OPA is a small office with the responsibility for promoting and protecting the rights and interests of a large group of people whose disabilities are as diverse as the individuals who are affected. This is an overwhelming task, in which community need outstrips our capacity to respond in a way in which my staff and I would consider to be satisfactory. In light of the many challenges, I would like to commend the efforts of my staff in their work and also recognise and extend my appreciation to the many individuals and organisations who have provided assistance to the OPA in taking an interest in the wellbeing of people with reduced mental capacity whose rights, together, we strive to uphold.

JOHN DAWES
PUBLIC ADVOCATE

OFFICE OF THE PUBLIC ADVOCATE



LOCATION

The Office of the Public Advocate is located at:

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

Phone: (08) 8269 7575
Fax: (08) 8269 7490
Toll Free: 1800 066 969
email: opasa@opa.sa.gov.au

OBJECTIVE

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

- intellectual disability;
- dementia, eg Alzheimers' Disease;
- severe mental illness;
- acquired brain injury;
- other conditions that may result in a person being unable to communicate his or her wishes in any way.

The 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.

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 decisions that would have been made, had the person retained his or 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.

ACCOUNTABILITY

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

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

The Public Advocate is required to submit an annual report on the year's activities to the Minister for Health and Disability Services by 30 September in each year.

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

LEGISLATIVE AUTHORITY

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

Other legislation which is relevant to the work of the Office of the Public Advocate includes:

Commonwealth

- *Disability Discrimination Act 1992*
- *Human Rights and Equal Opportunity Commission Act 1986*
- *Family Law Act 1975*

State

- *Administration and Probate Act 1919*
- *Adoption Act 1988*
- *Aged and Infirm Persons' Property Act 1940*
- *Children's Protection Act 1993*
- *Consent to Medical Treatment and Palliative Care Act 1995*
- *Criminal Law Consolidation Act 1935*
- *Criminal Law (Sentencing) Act 1988*
- *Disability Services Act 1993*
- *Freedom of Information Act 1991*
- *Powers of Attorney and Agency Act 1984*
- *Retirement Villages Act 1987*
- *Supported Residential Facilities Act 1992*
- *Wills Act 1936*

FUNCTIONS

21 General functions of Public Advocate

(1) *The functions of the Public Advocate are-*

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

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

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

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

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

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

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

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

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

28 Investigations by Public Advocate

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

29 Guardianship Orders

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

STAFFING

PUBLIC ADVOCATE

Mr John Dawes

ASSISTANT PUBLIC ADVOCATE

Ms Rennie Gay

EDUCATION OFFICER

Ms Lisa Huber

INFORMATION OFFICER

Ms Stephanie Lewis (0.6fte)

PUBLIC ADVOCATE OFFICERS

Ms Anita Micallef

Ms Angela Andary (0.8fte)

Ms Yvette Gray (on leave August 1996 - January 1997)

Ms Donna Lambden (contract position October 1996 - April 1997)

SOCIAL WORKER

Ms Gina Testa (from June 1997 - 6 month contract position)

STUDENT SOCIAL WORKERS (1997 placements)

Mr Michael Gomolak

Ms Jodie de Jong

ADMINISTRATIVE STAFF

- **Senior Project and Financial Systems Officer**

Mr Paul Green

- **Senior Clerical Officer**

Ms Leonie O'Malley (on leave July 1996 - June 1997)

Ms Tamela Scotcher (contract position July 1996 - June 1997)

- **Clerical Officer**

Ms Tracy Ball (on leave July - December 1996)

Mr Todd Geisler (from August 1996)

- **Clerical Trainee**

Ms Ann Beattie (September 1996 - June 1997 - subsidised training position)

During the 1996-97 financial year the Office of the Public Advocate has required the services of temporary clerical staff for 20 days.

STAFFING ISSUES

The Office of the Public Advocate (OPA) continues to operate with 9.5 fte permanent staff positions.

During this financial year, the Office of the Public Advocate and the Guardianship Board ceased to have shared staff positions. This arrangement had been in place since Proclamation, and had proved to be unsatisfactory for the OPA. There were three shared positions, all half time - two in the administration area and one as Project Officer. The OPA took the opportunity to redesign these positions for the benefit of the office, and created the new Senior Project and Financial Systems Officer (1.0 fte) and Information Officer (0.5 fte) positions.

The Senior Project and Financial Systems Officer has responsibility for the budget and overseeing the administration area, as well as various information technology and project tasks. The Information Officer position has significantly strengthened the ability of the office to provide a dynamic and responsive community education program.

The OPA has recently created a new short term position (6 month contract) for a Social Worker, whose main role is to assist other professional staff in the management of the large number of guardianship appointments.

During the 1996-97 financial year, the OPA has hosted two students on placement from Flinders University School of Social Administration and Social Work.

STAFF DEVELOPMENT AND TRAINING

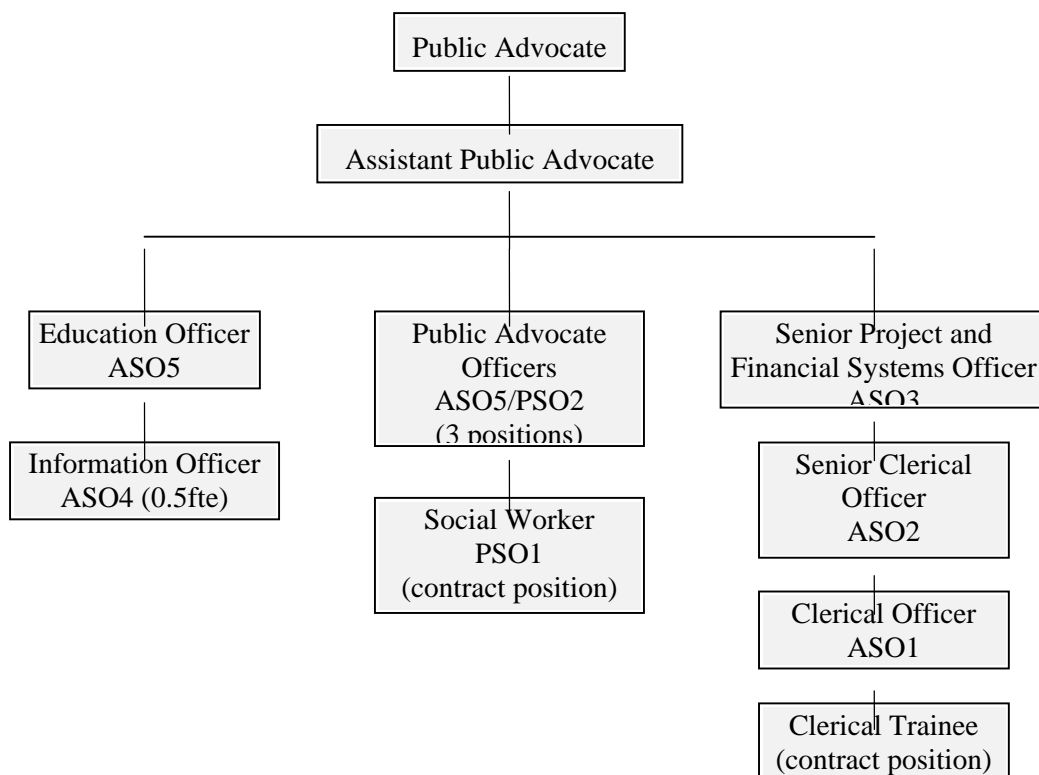
The complex nature of the Office of the Public Advocate's work requires staff to equip themselves with the skills and knowledge necessary to produce high quality work and meaningful outcomes.

A total of \$6,172 was spent on staff development during the 1996-97 financial year. The range of activities undertaken by OPA staff members include:

- attendance at Australian Nursing Federation workshop on the new federal *Aged Care Bill 1997*;
- basic and intermediate Internet and Web Page Design courses;
- attendance at the Fifth National Conference on Guardianship and Administration 'Exploring the issues: practical realities in substitute decision making' in Brisbane.
- 'How to manage multiple projects, meet deadlines and achieve objectives' seminar;
- Microsoft Publisher 97 training course;
- Edward de Bono seminar at the Australian Institute of Management;
- attendance at a forum about Asperger's Syndrome, run by the Centre of Applied Philosophy at the Flinders University of South Australia;
- 'Mental health for all: what's the vision', national conference on mental health services, policy and law reform into the 21st century, Centre of Health Law and Ethics, University of Newcastle.

ORGANISATIONAL STRUCTURE

(as at 30 June 1997)



SERVICES

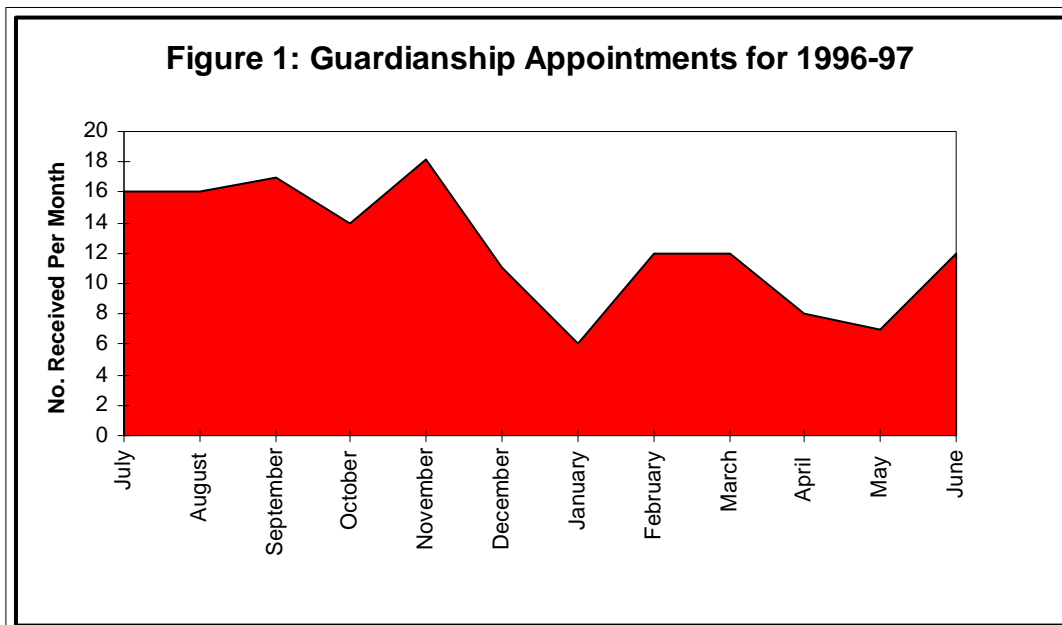
GUARDIANSHIP

The nature of guardianship

Guardianship involves a person taking on the responsibility of making necessary personal decisions on behalf of a person who cannot make his or her own decisions because of a mental incapacity. Not all persons who have a mental incapacity require a guardian. On the contrary, a guardian will only be appointed by the Guardianship Board when there is no other less restrictive option. This means that, if appropriate decisions made on behalf of a person can continue to be made by family members, friends and service providers, then these informal arrangements should not be disturbed. Sometimes the informal arrangements stop working, or significant conflict about the person's care arises. It is in these cases where the appointment of a guardian may be necessary, to ensure that the person with the mental incapacity has someone making necessary decisions on his or her behalf.

Guardianship appointments for 1996-97

Where a guardian is needed and there is no other appropriate person to be appointed, Section 29(b) of the *Guardianship and Administration Act* allows the Guardianship Board to appoint the Public Advocate as guardian. In the period July 1996 to June 1997, the OPA was appointed guardian for 148 persons. This brought the total number of guardianships managed by the Office to 222. The new guardianship appointments were received month by month in the following numbers:

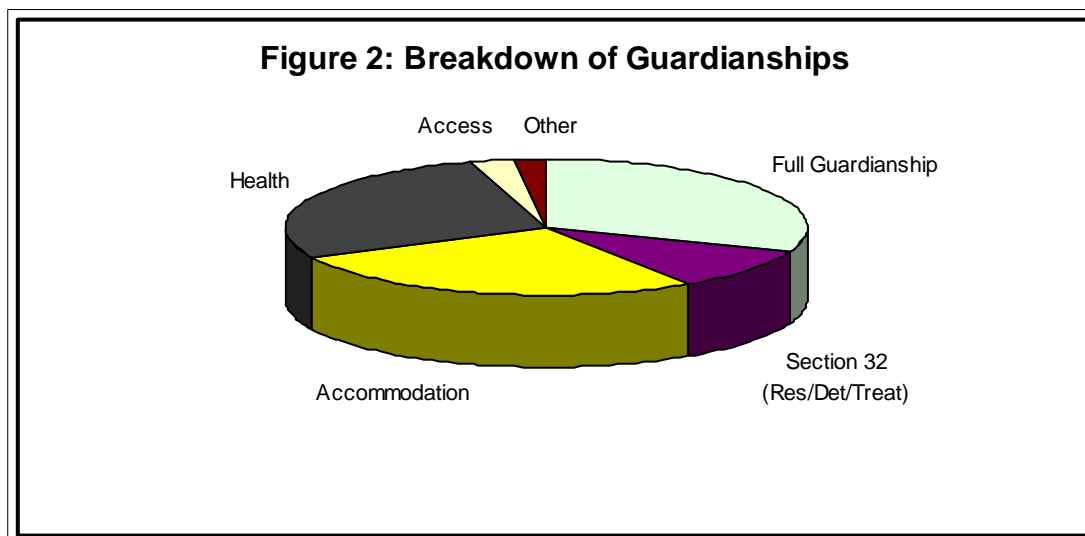


The role of the guardian is to be the substitute, legal decision maker on matters relating to the person. The guardian does not become the person's case manager, nor organiser of care. The guardian is the person who accepts, or refuses, proposed care and management plans on behalf of the person for whom the appointment of a guardian has been made. A guardian makes decisions in the way the person would have made them, if capacity had not been lost.

Depending upon the areas of need, which are reflected in the terms of the Guardianship Board order, a guardian can make decisions about matters such as where the person can live; where the person can holiday, and with whom; giving or refusing consent to medical or dental procedures; general care and management; medical treatment and palliative care.

Breakdown of guardianships

Of the 148 new guardianship appointments made by the Guardianship Board to the OPA in 1996-97, the following breakdown in these appointments was recorded:



Section 32 powers

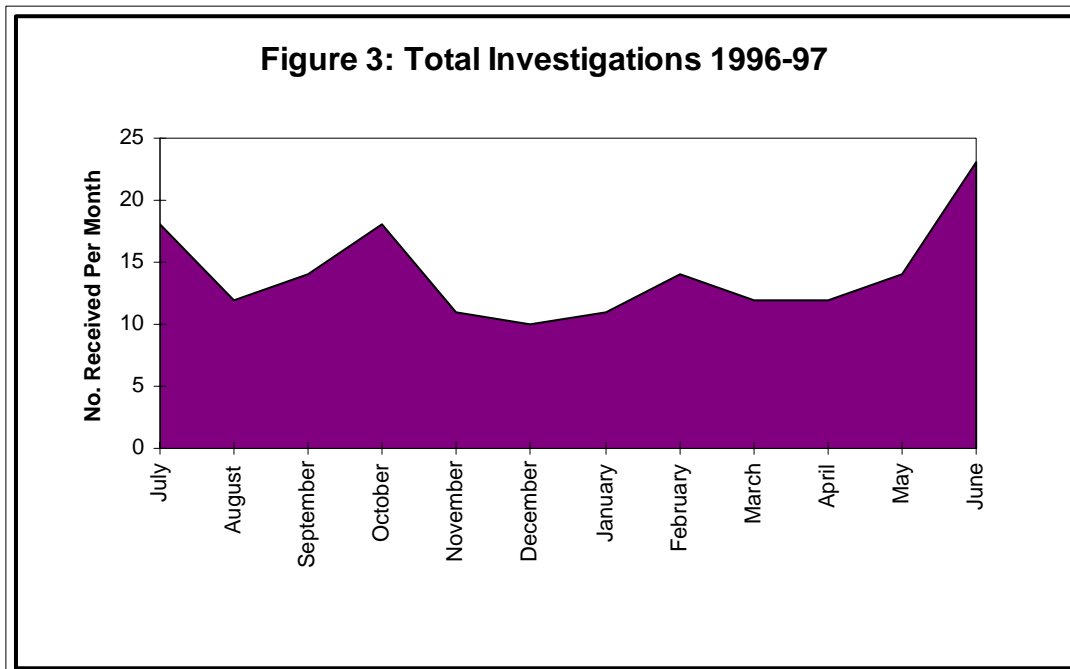
Being guardian for a person with a mental incapacity does not provide the authority to force decisions upon that person. If a guardian needs to authorise physical compulsion for the placement, detention or day to day care and treatment of a person with a mental incapacity, the guardian must apply to the Guardianship Board for Section 32 powers to provide this authority. An example of the kind of matters that could lead to Section 32 powers being necessary is if the OPA is appointed as guardian for accommodation decisions. In these cases, the guardian is the person who has the authority to make decisions about where the person lives, for example, to consent to the person remaining at home if adequate services are available or to consent to entry into a supported residence or nursing home if this greater level of care is needed. Sometimes a person with reduced mental capacity clearly demonstrates their refusal to be placed in a different environment. When reasonable discussion and persuasion is ineffective in helping the person accept the move, and physical compulsion for placement and day to day care is required, then the guardian must apply to the Guardianship Board for Section 32 powers. The OPA, as guardian, sought Section 32 powers in fifteen matters during 1996-97.

As the OPA becomes more experienced at managing guardianship cases, we have been able to identify some trends emerging in this area. For a discussion of some of these trends, see the section *Issues arising out of guardianship* starting on page 28.

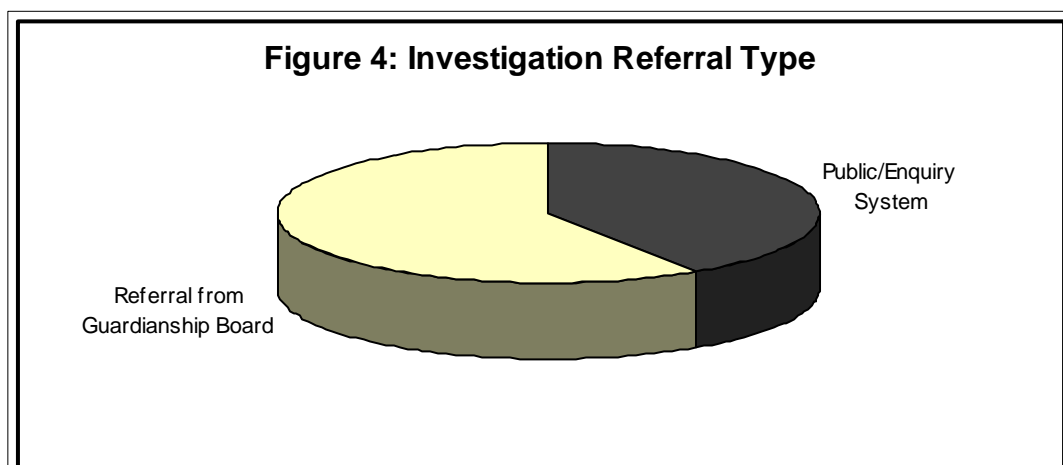
INVESTIGATION

Under Section 28(1) of the *Guardianship and Administration Act 1993*, the Guardianship Board can direct the OPA to undertake investigations. This involves the OPA collecting information and presenting evidence to the Guardianship Board. The OPA will generally provide written reports to the Guardianship Board. Because the OPA is a separate entity to the Board, its reports provide an independent assessment of the circumstances which have resulted in an application for legal protective orders. The OPA can also investigate other matters relating to the *Guardianship and Administration Act 1993* and the *Mental Health Act 1993*. The OPA can report on situations that infringe on a person's rights and suggest alternatives and/or solutions.

In the period July 1996 to June 1997, the OPA has undertaken 169 investigations. These were received month by month in the following numbers:



The 169 investigations were received from the following sources:



EDUCATION

The OPA Education Unit is comprised of 1.6 fte staff, ie a full time Education Officer and a part time Information Officer, and is assisted by the clerical and professional peer support of the OPA staff.

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

- Provision of education sessions;
- Planned education activities;
- Additional unplanned activities.

Provision of education sessions

In the period July 1996 to June 1997, the OPA Education Unit has provided 73 education sessions. Direct contact was made with 1889 people, with an average of 28 contacts per session.

Target group	Number of sessions 1994-95	Number of sessions 1995-96	Number of sessions 1996-97	Number of contacts 1994-95	Number of contacts 1995-96	Number of contacts 1996-97
Carer/ consumer	23	33	35	471 - average 20 per/session	761 - average 23 per/session	662 - average 19 per/session
Profess/ service provider	24	36	33	1130 - average 47 per/session	1033 - average 29 per/session	1064 - average 32 per/session
Country	6	7	5	215 - average 35 per/session	298 - average 35 per/session	163 - average 35 per/session
TOTALS	53	76	73	1816	2092	1889



Education Officer Lisa Huber presenting an information session to a group of carers of people with dementia

*The OPA Education Unit provided 35 information sessions for carer/consumer groups in 1996-97
662 contacts were made, ie an average of 19 persons/session.*



Information seminar for the MALSSA state network at Disability Information and Resource Centre on 25/9/96. From left to right: Moss Polites Executive Officer MALSSA; Stephanie Lewis Information Officer OPA; Robert Fuss Deputy State Ombudsman; Sue Foster Assistant Commissioner Education Equal Opportunities Commission.

*The OPA Education Unit provided 33 information sessions for professionals/service providers in 1996-97
1064 contacts were made, ie an average of 32 persons/session.*

The Education Unit is well aware of the growing evidence which suggests the need for service providers and professionals to have greater access to the information that the OPA can provide. A number of situations have arisen, relating to the correct use and understanding of the Guardianship Board and its powers, that some people consider to be due to a perceived lack of knowledge within sectors such as professional groups. However, rather than being solely due to a lack of available resources, often of greater influence is the wider issue of overall attitudes to legislative requirements and professional culture. This issue is of great importance to the Education Unit in attempting to carry out its responsibilities within the professional/service provider arena. That is, after over two years of working with the 1993 legislation, what is the realistic expectation for such groups to take on the onus of responsibility for their own knowledge requirements and to what extent is the OPA expected to 'fill in' information deficits?

*The OPA Education Unit provided 5 information sessions in country locations in 1996-97: two in Whyalla, two in Port Lincoln and one in Mount Gambier
(The Public Advocate presented a joint seminar with Public Trustee, in Mount Gambier, for Law Week.)
163 contacts were made, ie average of 35 persons/session.*

The Education Unit has not provided the level of service in delivering information sessions in country locations as it had hoped to. The number of trips possible is determined by a variety of factors, and is limited by a lack of available resources. This year, Port Lincoln was visited for the first time. Prior to recent visits, both Whyalla and Mount Gambier had not been visited for two years. With current resources, the Education Unit is only able to consider five country trips (maximum) per year.

Planned education activities

The OPA Web Page Project was undertaken. The site contains thirteen of the OPA's community pamphlets, the Public Advocate Newsletter and a range of other information about the *Guardianship and Administration Act 1993* and the *Mental Health Act 1993*.

The second Annual Report 1995-96 for the Public Advocate was produced.

Country Information Seminar in Mount Gambier during Law Week in May 1997. Presented in conjunction with the Public Trustee.

Consultation and participation on the steering committee for the Advocacy Course Advisory Group auspiced by Disability Action. This group has led to the development of the first nationally recognised accredited training program for advocates, that is currently being offered through the TAFE system. Work on this project is ongoing.

Review and redesign of the *Guardianship and Administration Act 1993* application form with the Guardianship Board. Work on this project is nearing completion.

Two editions of the Public Advocate Newsletters were produced (December 1996 and June 1997). 1000 copies of each were printed and distributed to key government and non government agencies. For inclusion on our mailing list, contact the OPA.

Several new pamphlets were written, printed and distributed:

- Community Pamphlet No 8, *Where to go: information, advocacy and complaints services for persons with reduced mental capacity and their carers;*
- Community Pamphlet No 11, *Appeals against detention orders made by doctors and psychiatrists;*
- Community Pamphlet No 12, *Appeals against decisions or orders made by the Guardianship Board;*
- Community Pamphlet No 14, *Prescribed Medical and Psychiatric Treatment.*

Eight other of the OPA community pamphlets were updated, converted into trifold format, and distributed:

- Community Pamphlet No 1, *What is a Guardianship Order*;
- Community Pamphlet No 2, *What is an Administration Order?*;
- Community Pamphlet No 3, *What is the Guardianship Board?*;
- Community Pamphlet No 4, *Treatment Orders under the Mental Health Act 1993*;
- Community Pamphlet No 5, *Detention Orders under the Mental Health Act 1993*;
- Community Pamphlet No 6, *Advice to applicants: Mental Health Act 1993*;
- Community Pamphlet No 7, *Advice to applicants: Guardianship and Administration Act 1993*;
- Community Pamphlet No 10, *What is the Office of the Public Advocate?*.

All of the OPA community pamphlets and the Public Advocate Newsletter were uploaded onto the Disability Information and Resource Centre's Common Ground Bulletin Board system and MALSSANET, MALSSA's regional network, and are available online through these systems.

Four of the OPA community pamphlets were prepared for translation into other languages, however, funding available through the Migrant Health Service was inadequate. Efforts for translation of the OPA's educational material continues.

Promotion of the Enduring Power of Guardianship Kits, in all 11 Messenger press papers and various other publications.

The OPA Student Pack was updated and mailed directly to 41 tertiary courses/institutions.

An Information Sheet relating to sterilisation of persons who have a mental incapacity was compiled. This is now attached to the Guardianship Board's application form.

A small resource collection for the office was established. Work on this project is ongoing.

Additional unplanned activities

The increasing requests for the Education Unit to provide a consultative service to external organisations (as well as continuing this role for the OPA and the Guardianship Board) led to additional statistical data collection regarding the work done in response to such demands.

The OPA Education Unit has undertaken 48 additional education activities for the 1996-97 period. Activities undertaken vary in the amount of time and work required, and have included:

- a number of directory and handbook listing updates;
- consultation and rewrite of the legal section of a palliative care book designed for nursing homes;
- a number of contributions to various publications, including newsletters;
- consultation in designing protocols relating to mental health issues;
- four Crown Solicitor's opinions sought;
- consultation in policy development relating to sexual assault issues;
- provision of educators pack for Alice Springs and the NT.

Agencies and organisations making requests have included Adult Mental Health Services, Palliative Care Unit, Flinders University of South Australia, Port Augusta Council, Information SA, Supported Residential Facilities Unit, South Australian Health Commission, Marion Community Legal Service, Port Adelaide TAFE, Yarrow Place, Public Trustee, Alzheimers' Association, Children's Interest Bureau, Seniors Information Service, Legal Services Commission, Office of Adult Guardianship, Northern Territory Health Services.

Education projects planned for the 1997-98 year

- Fourth Annual Report 1997-98 for the Public Advocate;
- Revision and redevelopment of the OPA Orientation Manual;
- Development of a Guardianship Manual for private guardians and enduring guardians;
- Train the Trainer kit - to increase the capacity of service providers to provide community education about guardianship, the legislation, etc;
- Development and writing of policies for the OPA on issues such as grievances and complaints, substitute decision making, consent to medical/dental treatment and cultural, linguistic and religious issues;
- Production of a new pamphlet 'What to expect at a Guardianship Board hearing';
- Continue efforts to have pamphlets translated into other languages;
- 'Campaign on competence' - with the development of standardised guidelines/procedural steps to be followed when assessing mental competence;
- Investigation of the possibility of a WEA course, eg 'All you need to know about making Advance Directives';
- Provision of a seminar for service providers relating to the outcomes of the review of the *Guardianship and Administration Act 1993*.

mental incapacity
- who decides?

making decisions for other's
peoples rights, wishes
and interests.

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

What you will **discover** at the OPA website...

About us
Info about the OPA and its roles and functions under the Guardianship and Administration Act 1993 and the Mental Health Act 1993. The latest newsletter too!

Guardianship Board
This tribunal decides whether a person's diminished mental capacity places the person at substantial risk of abuse, exploitation or neglect. If so, the Board can make various protective orders over the person.

Your future plans
Various laws in SA allow those of us who are mentally competent to appoint our own 'agents' to make decisions for us in case our mental capacity is lost in the future. Info covers Enduring Power of Attorney/Enduring Power of Guardianship/Medical Agent.

Consent to treatment
If you lost your mental capacity and could not give (or refuse) consent for your treatment, who could legally give (or refuse) consent on your behalf? What treatments require the involvement of the Guardianship Board?

Office of the Public Advocate (OPA)
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email: opasa@opa.sa.gov.au

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The promotional postcard advertising the OPA Web Page address and the information that is available at our site. The postcard was mailed directly to over 750 agencies across SA with the June 1997 Public Advocate Newsletter.

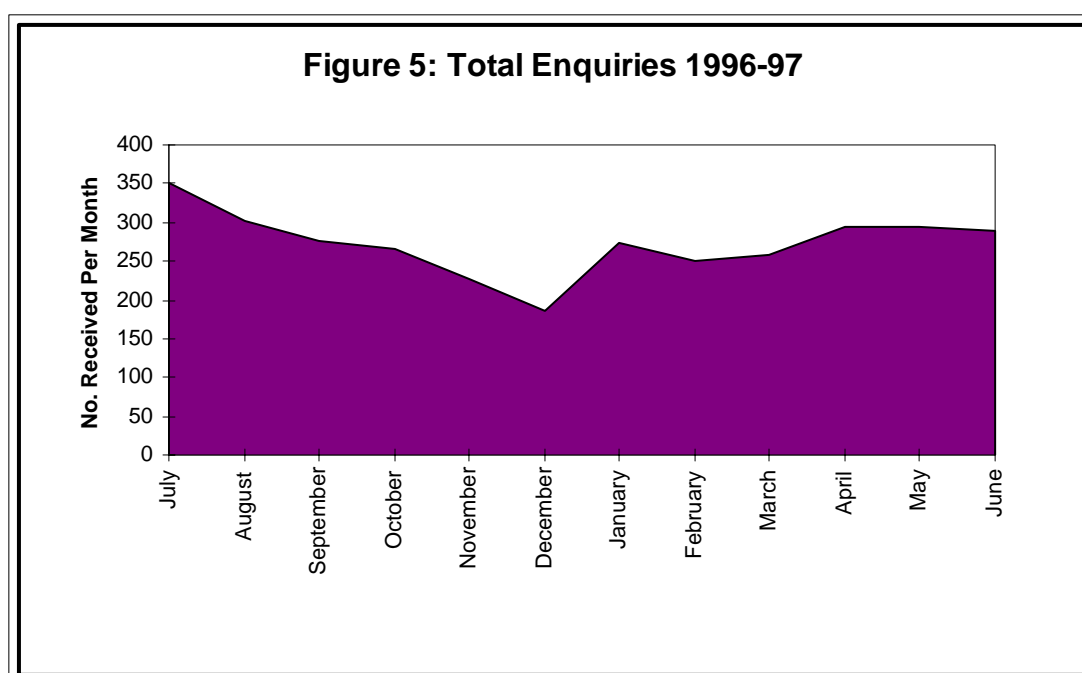
Conclusion

The Education Unit is particularly excited about the influence of technology in furthering the information dissemination capacity of the OPA. The Unit believes that the proposed education activities for the 1997-98 financial period reflect the development of the OPA generally. Corporate knowledge and expertise is evolving. The OPA, through the nature of this work, grapples with significant issues that span many different agencies and organisations. This places the OPA in an ideal position to facilitate the collaboration of different services in working to find the best possible solutions for people with reduced mental capacity. Continuing our efforts to strengthen cooperative links with other agencies will serve to promote the OPA and consolidate the growing status of staff as specialists in the area of protective law for people with decision making disability.

ENQUIRIES

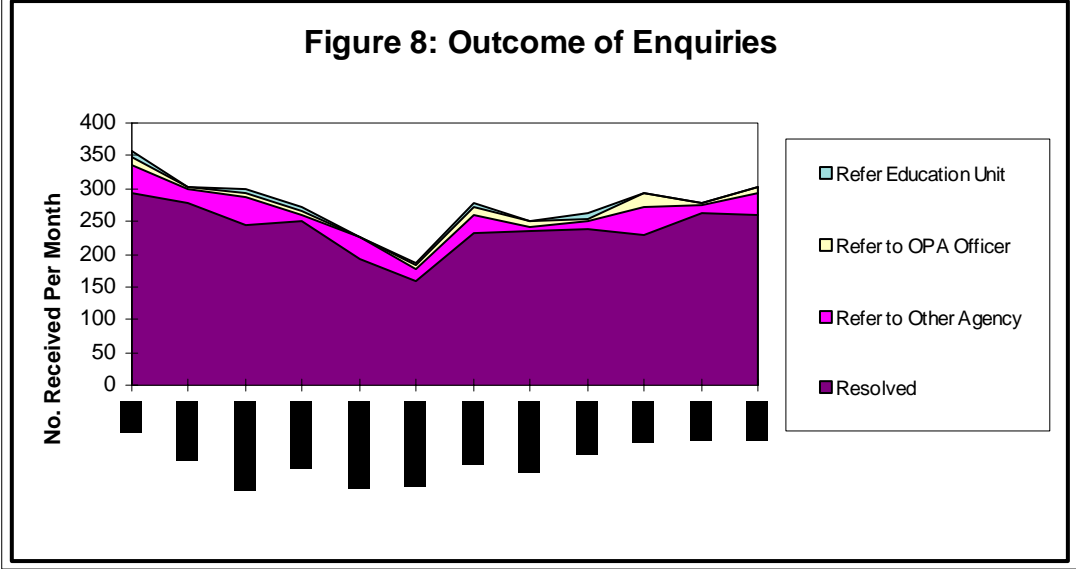
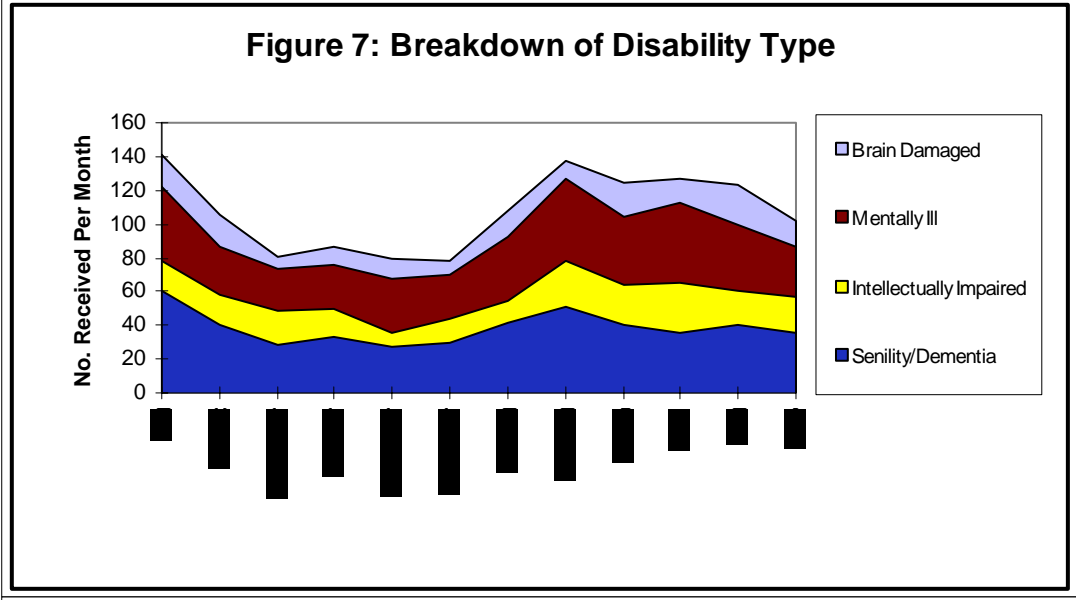
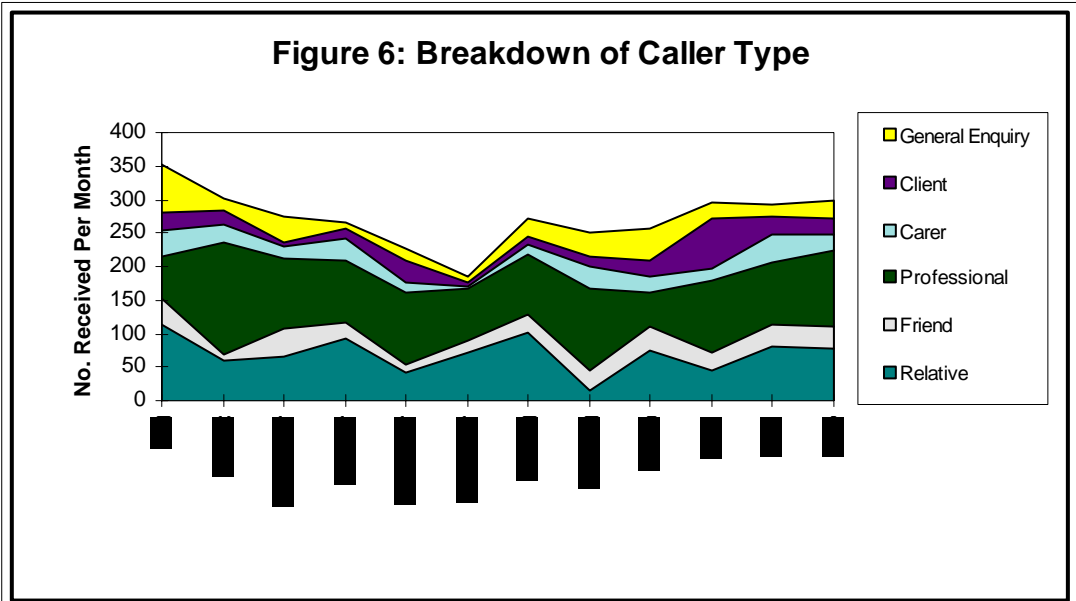
One of the main responsibilities of the OPA is to provide information about the operation of the *Guardianship and Administration Act 1993* and the *Mental Health Act 1993*. On an individual level, the OPA provides a telephone consultancy service. Staff members can provide information about the Guardianship Board and what happens at Board hearings, what legal protective orders mean and how they operate, as well as providing guidance about the application process.

In the period July 1996 to June 1997, the OPA has undertaken 3229 enquiries. This is approximately 270 per month, 62 per week, or 13 per day.



The majority of enquiries received by the OPA are over the telephone. This amounts to 92% of the enquiries. Of the remainder, seven per cent were walk in enquiries, and one per cent arose from a written request for information. The types of enquiries received by the OPA include the following:

- A daughter is concerned for her mother's welfare. She alleges that her brother is forcing her elderly mother to sign bank withdrawal slips for his own purposes.
- A lawyer from Mount Gambier asks about the differences between an Enduring Power of Attorney and an Enduring Power of Guardianship, and how these differ from a Medical Power of Attorney.
- A Director of a hostel wants to know how the law stands regarding a person with alcoholic related dementia who is refusing necessary medical treatment.
- A person detained under the *Mental Health Act 1993* wants information about her appeal rights.



ADVOCACY

While the OPA does not provide a specific individual advocacy service, advocacy is an integral part of the OPA's work. As guardian, the OPA promotes and protects the rights and interests of people for whom it has been appointed guardian. As investigator, both for the Guardianship Board and in other matters, the OPA reports on situations that infringe on a person's rights and suggests alternatives and/or solutions. Through its telephone consultancy service and education activities, the OPA provides information and advice about the operation of state mental health and guardianship laws and related issues, and offers support to carers. Officers involved in all of the OPA's core programs have undertaken both individual and systemic advocacy. Some examples include:

- We questioned the policy of an organisation relating to the use of Depo Provera for the menstrual management of women with a mental incapacity in institutional care. Work with this organisation has led to the development of improved policy direction regarding this issue, meaning that all alternatives to Depo Provera are now considered prior to menstrual management decisions being made.
- The OPA is a key contributor to the development of a series of learning packages which have led to the establishment of the Advocacy Training Program. This program has recently been accredited as the first nationally recognised training program in advocacy in Australia, and is designed to provide a consistent approach to advocacy education. The OPA participated in the facilitation of a two day Train the Trainer workshop to lecturers from TAFE who will deliver the course throughout the north west of the state including the Spencer Gulf and Eyre Peninsula regions. For further information, contact your local TAFE campus or Maurice Corcoran at Disability Action.
- We were contacted through the enquiry service by a family member concerned about the restraint practices of one of the major South Australian hospitals. As a result of the OPA's involvement, the hospital reviewed its policy.
- The OPA has continued its involvement as a member of the Interjurisdictional Committee on Guardianship and Administration. This body has undertaken lobbying and educational work on a national level. The implications of the new *Aged Care Act 1997* on persons with a mental incapacity is an issue currently being explored with the commonwealth.
- We have been involved in a carer and consumer group representing issues of sexuality and disability. This group aims to raise awareness and create debate on many issues relating to sexuality including the sterilisation of women who have mental incapacity.
- The OPA has consulted with a key organisation in developing its policy on working with people who have mental incapacity and which informs the substitute decision making process undertaken for these clients.

ISSUES

REVIEW OF THE GUARDIANSHIP AND ADMINISTRATION ACT 1993

The *Guardianship and Administration Act 1993* is due to expire on 6 March 1998. To this end, the Minister of Health has established a review committee, comprising nine members. Submissions to the review were called for in February 1997, and were due in April. The OPA, along with many other organisations and individuals, submitted a lengthy submission to the review committee. Our submission proposed a range of amendments to the legislation. Some of the points we made included:

- *Section 3 - definition of medical treatment.* This definition is narrow, and does not include non-medical treatments such as naturopathy, physiotherapy and acupuncture. It should be broadened to include these treatments.
- *Section 6(4) - requirement to select a psychiatrist.* When hearing new applications and appeals under the *Mental Health Act 1993*, the professional member on the Guardianship Board must be a psychiatrist. A shortage of psychiatrist members means that these matters are often heard by single member Boards. We suggested a possible amendment to this Section to also allow other professionals with psychiatric experience, such as nurses and general practitioners, to be selected.
- *Section 14(8) - Interim/emergency orders.* The OPA believes that this Section should be changed to require the Guardianship Board to review each interim/emergency order within a seven day period by a full three member Board. Current Board practice involves a single member Board making an interim/emergency order and then a single member Board reviewing this order.
- *Section 14(13) - Statements of Reasons.* In the interests of natural justice and fairness, we feel strongly that, in all cases, the Guardianship Board should provide a Statement of Reasons along with the copy of the order to the person who is the subject of the hearing, rather than just in the cases that proceed to an appeal.
- *Section 29(5) - restrictions on who can be appointed guardian.* The OPA believes that this Section should be amended to allow willing service providers to be appointed as guardian, with a reporting mechanism to the OPA. This would ensure that cultural and regional factors would be considered and responded to.
- *Section 32 - applying for Section 32 powers.* We feel that this Section should be amended to allow a person to apply for Section 32 powers along with a Guardianship Order, rather than requiring a Guardian to first be appointed.
- *Section 67 - appeals to the Administrative Appeals Court.* This process is both costly and time consuming. The OPA has proposed a scheme of 'first interview' be established, to allow potential appellants to be advised whether the basis of an appeal exists in law, to assist them in deciding whether to lodge an appeal.

USE OF NEW TECHNOLOGY

In 1996-97, for the first time, the OPA made its information pamphlets and newsletter available on two local bulletin board systems and the Internet.

During the 1996-97 financial year, as the OPA community pamphlets were updated, copies were placed on Common Ground Bulletin Board and MALSSANET, along with copies of the Public Advocate Newsletter. Common Ground is an electronic bulletin board run by Disability Information and Resource Centre (DIRC). The system allows 28 users to be online at the same time, through 20 dial-in lines, a dedicated Internet line and internal DIRC access points. There are over 2000 registered users and more than 250 log ons per day. MALSSANET is the bulletin board used by MALSSA's state network. It is accessed by organisations located across the state - in Coober Pedy, Whyalla, the Riverland, Murray Bridge, Mount Gambier, Port Augusta and Port Pirie. The feedback we received indicated that our information was widely accessed. For this reason, the OPA decided to take the next step and make available all of its information resources through the Internet.

In January 1997, the OPA Education Unit started work on the OPA Web Page Project. The site contains thirteen of the OPA's community pamphlets, the Public Advocate Newsletter and a range of other information. Links from the page go to the text of the *Guardianship and Administration Act 1993*, the *Mental Health Act 1993*, associated Regulations, as well as to related organisations. The OPA Web Page was launched on 31 July 1997 by the Public Advocate, John Dawes, at Ngapartji Internet Cafe on Rundle Street. The launch was a resounding success, attended by over sixty people.

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



At the OPA Web Page launch at Ngapartji Internet cafe. Staff member, Angela Andary, demonstrating the site.

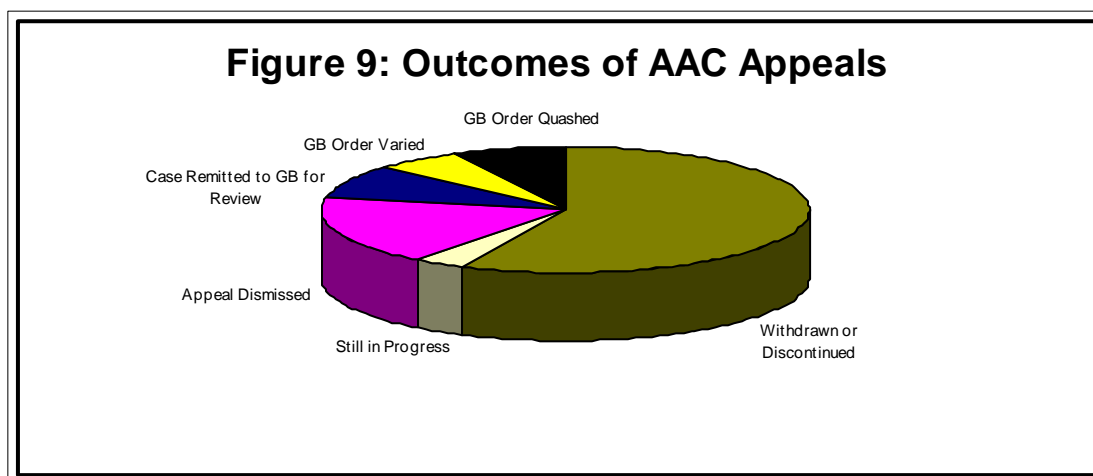
APPEALS TO THE ADMINISTRATIVE APPEALS COURT

Under the *Guardianship and Administration Act 1993*, appeals against decisions or orders made by the Guardianship Board are made to the Administrative Appeals Court (AAC), a division of the District Court of South Australia. This appeal process has been in place since 6 March 1995, when the Mental Health Review Tribunal was disbanded and the *Guardianship and Administration Act 1993* proclaimed.

Our records indicate that, between 6 March 1995 and 30 June 1997, 185 appeals were lodged at the AAC. Six of these matters were still in progress as of 30 June 1997, indicating that 179 matters had been finalised.

Outcomes of AAC appeals

As can be seen on the following diagram, over half (99) of the 185 appeals lodged at the AAC were withdrawn or discontinued prior to a full hearing. This was for a number of reasons, including appellants withdrawing their appeals upon receiving legal advice or after the preliminary conference, or appellants not attending and the matter being dismissed by the AAC for want of prosecution. Of the 179 cases that had been finalised by 30 June 1997, 69 matters proceeded to a full hearing. Of these 69, the appeal was dismissed in 31 cases (including eleven where leave to appeal was refused by the AAC), the case remitted back to the Guardianship Board for a review hearing in fifteen cases, and the Guardianship Board order varied in ten cases and quashed in thirteen cases.

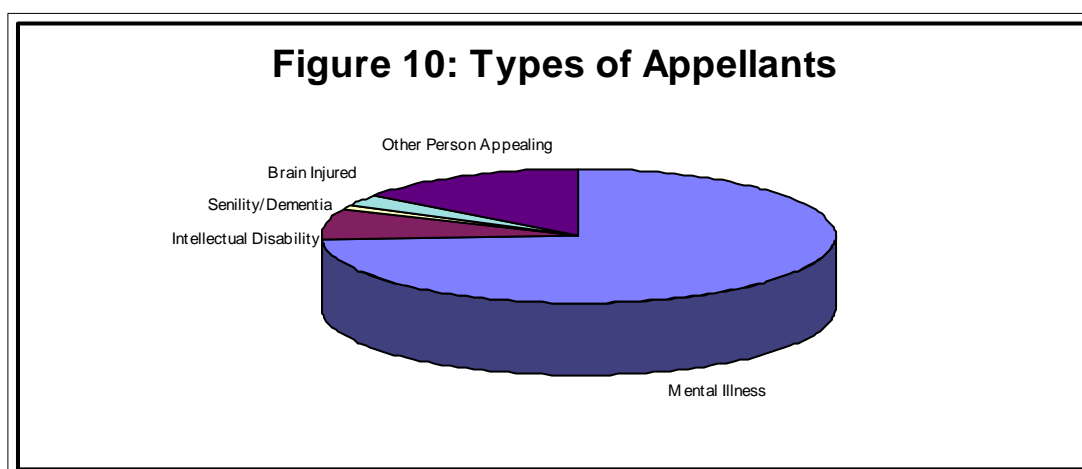


Orders appealed against

Looking at the types of orders being appealed against, there appears to be relatively even numbers of orders from under each of the two Acts, the *Guardianship and Administration Act 1993* and the *Mental Health Act 1993*. The two orders most frequently appealed are Administration Orders (89 appeals) and Community Treatment Orders (61 appeals). It should be noted that multiple orders are frequently the subject of the same appeal. Examining the statistics, no clear trends relating to the types of orders most commonly withdrawn, dismissed, varied or quashed have emerged. The figures for the outcomes of appeals against particular orders tends to be relatively proportional to the total numbers of appeals lodged against those orders.

Types of appellants

The large majority of appeals were lodged by the person to whom the proceedings relate, that is, the person said to have a mental incapacity or mental illness. This amounts to 158 of the total of 185 appeals. In these 158 matters, the type of incapacity is categorised as 137 mental illness, fourteen intellectual disability, two brain injured and five senility/dementia. It should be noted that some of these appellants have appealed multiple times during this period, and that the Administrative Appeals Court allows each appeal, and counts it as a new appeal. Appeals lodged from the 27 other persons, including relatives, friends, private administrators and the Public Advocate, were in relation to people with the following types of incapacity - two mental illness, seven intellectual disability, two brain injured and sixteen senility/dementia.



Legal representation

Legal representation is provided for in Section 73 of the *Guardianship and Administration Act 1993*. If the appellant is the person to whom the proceedings relate, then a lawyer is provided at no cost to the person. Only six of the 158 appellants said to have a mental incapacity or mental illness have chosen not to be represented, either by a lawyer of their choice or a lawyer from a panel provided by the Law Society of SA to the Administrative Appeals Court.

Supreme Court appeals

If a person is unhappy with the outcome of their appeal to the Administrative Appeals Court, there are certain rights to appeal further against this decision. Appeals against decisions of the AAC are made to the Supreme Court under Section 70 of the *Guardianship and Administration Act 1993*. A person who wishes to appeal to the Supreme Court must first obtain leave to appeal, either from the AAC or from the Supreme Court. There are costs associated with Supreme Court appeals and these must be paid by the person appealing. To date, only one matter has proceeded to the Supreme Court from the AAC. In this case, the Supreme Court overturned the decision of the AAC, which had varied a decision of the Guardianship Board, and reinstated the original Guardianship Board decision.

ISSUES ARISING OUT OF GUARDIANSHIP

GUARDIAN AT LITEM

During 1996-97, the Public Advocate was appointed guardian ad litem several times in both the Youth Court and the Family Court, in cases where a party to the proceedings is a 'person under disability'. This is defined in the Supreme Court Rules as 'An infant, and any person, who by reason of physical weakness or intellectual impairment, whether temporary or permanent, is unable to give sufficient instructions to take, defend or compromise proceedings.' (Rule 5, 1987)

In each case, the application to the court has been made by the solicitor acting for a parent of a child who is the subject of an application. In most of these cases, the OPA has been consulted, however, there have recently been cases in the Family Court where orders have been made nominating the Public Advocate or requiring that the Public Advocate provide some service and where it has been left to the solicitors involved to notify the OPA of the order and of any consequent obligation.

The representation of persons with a mental incapacity in proceedings as serious as those dealing with the care and custody of children remains a concern of the OPA. We have no way of knowing how often orders are made concerning people who are unable to instruct, or who, as a consequence of disability, are unable to fully participate in legal proceedings. The OPA intends, over the next year, to discuss the broad issue of representation with officers of the Attorney-General's Department, and the appointment of the Public Advocate as Guardian ad litem with the relevant courts.

GUARDIANSHIP - DETERMINING THE BEST PERSON FOR THE JOB

A guardian is a substitute legal decision maker on matters relating to the person. Where possible, a guardian acts and makes personal decisions on behalf of a person, as if they were that person. Section 5(a) of the *Guardianship and Administration Act 1993* states that '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 means attempting to ascertain, at a minimum, the history, the cultural background, religious beliefs, past preferences and values of the person who is the subject of the order. It is reasonable to doubt the extent to which an appointed official can achieve this. Apart from the gap which exists between the life and experience of the officer and the protected person, there are the very real constraints imposed by time and distance, making it difficult to do justice to the principles by which we should work.

The Public Advocate is, for example, guardian for an Aboriginal man well known to people providing services in the inner city. Although as guardian, the Public Advocate can and does attempt to understand and respect the cultural mores of this man and the community of which he is a part, there can be little doubt that the appointment of a person of similar background would be more appropriate.

In many other cases, the Public Advocate is guardian for people living in rural areas far from Adelaide where our office and staff are based. Time and distance prevent the guardian from fulfilling their obligation to learn about and to adequately represent the interests of these people.

The OPA regards it as a priority that alternative guardians are found, if not in the person's immediate family, then from within the cultural, ethnic and regional area that the protected person comes from. It is important that greater effort be made by applicants, by the Guardianship Board and by the OPA to identify potential guardians and to encourage them to nominate themselves for appointment. Clearly, people prepared to accept this responsibility deserve support and assistance in understanding and fulfilling the role, and this office would regard the provision of such support and advice as an important part of its role.

TRANSITION - FROM YOUTH TO ADULT GUARDIANSHIP

The Public Advocate has been appointed guardian for around eight young people who were under the guardianship of the Minister of Family and Community Services, and, who were, in most cases, cared for by the state in a variety of settings. Typically, it had been found that foster care or arrangements which replicated familial care were not successful, partly because of the persistent, pervasive and longstanding behavioural problems these young people have.

The group we are concerned about are those now identified for attention by the Behavioural Intervention Service, a new joint initiative of Child and Adolescent Mental Health Service, the Department for Family and Community Services and the Department for Education and Children's Services. They are young people who are likely to have mental health problems, unpredictable, violent behaviour that places themselves, peers or others at risk, involvement with substance abuse, neurological deficits, and associated intellectual impairment or developmental delay. They and their families have frequently had a long and unhappy experience with a number of agencies.

As these young people approach adulthood, those concerned about their safety and welfare are likely to apply to the Guardianship Board for the appointment of a guardian to make decisions about care, treatment and accommodation. As guardian, the Public Advocate has found the transition of these young people from the adolescent to the adult service sector to be extremely difficult. It is usually the case that management has been provided by the Department for Family and Community Services. When a child turns 18 years of age, however, a new case manager must be found. It has been our experience that, given the multiple problems of this group, it is easy for agencies to insist that the person seeking service should be the client of an alternative agency. There is no doubt that these clients are demanding of time and resources, and that a multiplicity of problems makes them eligible for assistance from a number of services.

What appears to be missing is a process for transferring care and responsibility and for negotiating the mix of services and funding appropriate in each case. Without that process of forward planning and management, crises will continue to occur and those crises will be met by poorly considered responses. Over the following year, the Public Advocate will liaise with those agencies providing services for this particular client group in an effort to develop a process for making the transition from youth to adult services smoother, fairer and more effective.

ACCESS ORDERS THROUGH THE BOARD

Limited guardianship orders allow for the least restrictive approach to be taken in establishing and maintaining the health, welfare and safety of a protected person. In certain cases, the Guardianship Board has used its power to make orders which limit other people's access to the protected person. These 'access' orders are commonly made in association with accommodation or health care orders, and invariably require the guardian to take an active role in the establishment and continuation of access arrangements. The friends or family of the protected person are the ones who are given limited access by the guardian to their friend or family member.

These orders cover a large number of circumstances. They have been made to allow separated and disputing parents to have access to their intellectually disabled child; to limit visits by aggressive relatives to elderly and confused parents still living in their own home; to allow friends to visit in a nursing home, but prevent any outings in the presence of those particular friends; to place restrictions on visits by well intended, but insensitive, friends to people readjusting to living in the community after long periods of illness and hospitalisation.

Take, for example Mr N's circumstances. Mr N is an elderly man with significant dementia who now resides in a nursing home. For many years his wife and daughter cared for him, but his support needs were significant and this led to frustration and ultimately physical abuse by his daughter. The OPA was appointed joint guardian with his wife. The guardians decided to move Mr N to a nursing home and limited access by his daughter to supervised visits. This eased the burden of care for the relatives, gave Mr N increased safety, and still allowed his daughter to see him.

Another example of the issues involving access occur when parents separate in an atmosphere of conflict and anger, which results in children often struggling with feelings of mixed loyalties. When these children are young adults with an intellectual disability, establishing an acceptable access routine can be extremely problematic.

Parents may fiercely protect their children from exposure to the source of their own anguish, with the child being unable to express coherently their thoughts regarding contact with their non custodial parent. In these circumstances the guardian has to assess the wishes of the person in regard to access, and often work closely with care agencies and parents to negotiate an acceptable routine.

CLIENTS IN LIMBO

The policy of deinstitutionalisation, of moving people disabled by mental illness or intellectual disability into community settings, is supported by all those familiar with the restriction of opportunity, indignities and abuses experienced by so many people living in institutional care. The integration of people into community settings proceeds, and options for alternative care continue to be developed, albeit slowly. Those facilities which were previously relied upon to provide care and accommodation are now cast in a new role, as facilities of last resort, or as providers of care only in times of acute need.

The reality of the need for care is, however, more complex than the simple institutional versus community dichotomy suggests. The Public Advocate is guardian for at least ten people who are unable to live safely in the community, and for whom institutional care provided by Glenside Hospital or Strathmont Centre offers a poor alternative, if it is made available at all. Most of these people are serial offenders, and their behaviour brings them into frequent contact with the police and courts. The Department for Correctional Services has also been an important provider of care when offences have been committed. Many of these people have at least a dual diagnosis, a very poor response to treatment, and personalities or behaviours which make it difficult to provide care. What they have in common is a need for constant supervision, for occupation and, for some, rehabilitation.

Approving accommodation and care arrangements in these guardianship cases is difficult. There are no facilities other than the major institutions that can provide the level of care and supervision that is necessary, and no guardian can authorise detention in a treatment or correctional centre. The options are few, and this remains a source of great anxiety for all those involved in the care of this small but significant group - family, case workers, police and courts and the appointed guardian.



At the fortnightly OPA team meeting we discuss a range of issues, including those arising out of guardianship. From left to right: Tamela Scotcher, Lisa Huber (partly obscured), John Dawes, Yvette Gray, Angela Andary, Stephanie Lewis, Paul Green (partly obscured), Anita Micallef.

OUR CLIENTS ... SOME CASE STUDIES

MENTAL HEALTH SERVICES - THE NEED TO DELIVER

The OPA is concerned about a number of cases involving clients who have a diagnosed mental illness but who appear to be denied services from the designated community mental health teams. Often the service denies involvement on the basis of the clients not wishing to have a service despite there being clear evidence of need. There seems to be an unofficial policy within some of the teams not to allocate a case manager unless a Guardianship Board order, such as a Community Treatment Order, is in place. This leads to the withholding of services to mentally ill persons who may deteriorate to such an extent that detention is required.

Where a community mental health team claims to be unable to be involved with a person's care, it is often left to the families of the person with the mental illness to become applicants for Community Treatment Orders. Despite the law allowing this, making an application for a Community Treatment Order is a clinical decision which should not be left solely to families. The fact that the application form must be signed by a medical practitioner is an indication of this point.

The following case illustrates the issues being raised.

Mr P has a chronic schizophrenic illness and is said to have a significant lack of insight into his illness. The OPA was contacted by Mr P's mother with a request to assist her in filling in an application for a Community Treatment Order. She felt that she had few options other than to make the application herself. The events that led up to this decision included numerous threats against her and other family members, and assaults by Mr P to such an extent that they were all fearful of him. Mr P also behaved aggressively and threatened others in the community. He has a history of numerous admissions as a detained patient and sporadic involvement with a private psychiatrist over a number of years. After his last period of detention, a referral was made to the local community mental health team, but they refused to allocate case management unless a Community Treatment Order was in place.

Following Mr P's mother's contact, the OPA telephoned the mental health team and was informed that, because of Mr P's threatening behaviour, it was a police matter and we should liaise with the police. We were also informed that the mental health team had no authority to intervene as Mr P was refusing their service.

The OPA informed the mental health team that Mr P's mother had made an application for a Community Treatment Order and invited them to attend the hearing. The Guardianship Board subsequently made the order with no-one in attendance from the service. Since the making of the order, the difficulties have continued, with staff of the service clearly showing a misunderstanding of their responsibilities under the *Mental Health Act 1993*. Mr P's mother has reported that no treatment had been offered since the Community Treatment Order was made, and that her efforts to speak with staff at the service in relation to Mr P's treatment had not resulted in any action being taken.

FINANCIAL PROTECTION - A MATTER OF TRUST

When Mr and Mrs J were made a reasonable offer for their small farm in the hills they thought it was probably time to move down to the city and be with their family. They viewed a new property development for the 'retired' and the final decision was made. S, their favourite nephew, offered to handle the process of selling the farm and buying the new home. Mr and Mrs J were grateful for this, and attended an appointment at his bank to sign Enduring Powers of Attorney (EPA) over to S. These documents were duly witnessed by the bank manager and the couple prepared to move.

It was not long after the move that S explained that there had been a short fall in funds due to a change in the fees at the time of property transfer, and on their behalf, borrowed \$50,000 to cover this. Neither Mr or Mrs J questioned this - S, after all, ran his own business and knew a thing or two about finances.

However a family friend wondered about this, and made discrete enquires regarding these mysterious 'fees', to discover that only a small proportion of the loan was needed to cover the difference, and that S's business was in serious financial trouble. The friend rang the Office of the Public Advocate to see if we could investigate the 'disappearance' of the balance. An investigation was undertaken, and it turned out that Mrs J's 'forgetfulness' was in fact early dementia. When interviewing Mrs J it became clear that she had no recollection of signing the EPA six months ago, and it was most likely that she lacked capacity to understand what she signed even then.

On the advice of the OPA, the family friend lodged an application to the Guardianship Board for the appointment of an independent administrator for Mrs J. Mrs J did not understand the need for any legal protective orders and her husband could not believe that their nephew would abuse his position of trust, even when extensive documentation was presented at the Board hearing in relation to the misappropriation of their funds by S.

The Guardianship Board made an Administration Order to the Public Trustee, which, given the overwhelming evidence of financial abuse, then revoked the EPA, thus protecting Mrs J's income and share of the property. Mr J, however, refused to revoke his EPA to S, and continues to struggle to meet the loan repayments, as he will not press charges against a member of the family.

A word of warning...

The Office of the Public Advocate is aware of many similar stories to this, where impropriety on the part of an attorney is evident. Some people have lost their homes and all financial security due to the unscrupulous dealings of the attorneys they have appointed. It is a criminal offence for an attorney to misuse an EPA in this way, but the law does not check up on attorneys to ensure that they are doing their job properly. This form of abuse is of great concern.

THE RISK OF MAKING ASSUMPTIONS

Mr B is an elderly and frail man who has an alcohol related dementia. He lives with his daughter, who provides his main care and support. His daughter is joint signatory to his bank account and assists him with his daily needs. Mr B also has a son, who approached a service provision agency with allegations that his sister was financially abusing and neglecting their father. The service providers subsequently put in an application to the Guardianship Board for a Guardianship Order and an Administration Order. Mr B's daughter then contacted the OPA. She was distressed to hear of the application, as she claimed that Mr B's needs were being well looked after. She related a long history of conflict between her and her brother.

When the OPA investigated this matter, it turned out that many of Mr B's son's allegations were indeed unfounded. The service providers had submitted the application without rigorous enquiry into the circumstances of Mr B. By only listening to Mr B's son (that is, only one side of the situation), they had made assumptions and applied for orders that were in fact unnecessary. The OPA officer was able to convince the service providers to withdraw the application. Involvement by the OPA in this case prevented an unnecessary Guardianship Board hearing which would have been costly in both financial and human terms.

The outcome in this case was in line with Section 5(c) of the *Guardianship and Administration Act 1993*, one of the principles of the legislation, that 'consideration must, in the case of the making or affirming of a guardianship or administration order, be given to the adequacy of existing informal arrangements for the care of the person or the management of his or her financial affairs and to the desirability of not disturbing those arrangements'.

ADULT GUARDIANSHIP - THE AUTHORITY TO DETAIN

Ms L is a resident of a suburban nursing home. She suffers from a brain injury, acquired through a recent stroke. Prior to the stroke, she had signed over an Enduring Power of Guardianship (EPG) to her daughter. Ms L has been assessed as needing nursing home care, and has moved into a suburban nursing home. She is restless and repeatedly states that she wishes to go home. She does not comprehend that she is no longer able to live on her own. One day she leaves the nursing home and returns to her previous house. The house is now empty, and there is no gas, water or electricity connected to the property. She refuses to leave and locks herself inside. Ms L has potentially serious medical problems and does not have her necessary medication with her. The OPA was contacted by Ms L's daughter, her enduring guardian, for advice. The OPA officer advised that an urgent application for Section 32 powers was necessary in order to return Ms L to the nursing home, and to authorise the nursing home to keep Ms L detained in the future. The Guardianship Board heard the application that afternoon at Ms L's house and granted Section 32 powers to the enduring guardian. The enduring guardian then had the authority to contact the police to take Ms L back to the nursing home.

QUESTIONING THE APPROPRIATENESS OF A LEGAL PROCESS

Ms R is a young women with a cyclical mental illness, living quite independently with Mr K, her de facto partner of two years. Both are clients of a mental health service. The Office of the Public Advocate was appointed as full guardian for Ms R after her case worker expressed concerns over her refusal to watch her ongoing medical problems and attend day programs aimed at reducing her social isolation.

Much to everyone's surprise, the findings of her initial medical examination indicated that she was pregnant. Mr K and Ms R were thrilled at the prospect of becoming parents, and the mental health service and her guardian began to discuss ways of supporting and preparing the pair for parenthood. However, further tests were not encouraging, and showed a very damaged foetus, which the specialists described as 'not compatible with life'. Ms R's doctor gently explained that she could not carry the baby to full term and that a termination of pregnancy on medical grounds would be necessary. Understandably this caused great distress to both prospective parents.

Her guardian spoke with the couple, and formed the opinion that Ms R had the capacity to give effective consent to the procedure. The guardian then spoke with the specialist, but he did not accept that Ms R could give consent, given his perception of her diminished mental capacity. This meant that the matter had to be referred to the Guardianship Board. A termination of pregnancy is a prescribed medical treatment under Section 61(3) of the *Guardianship and Administration Act 1993*, and with sterilisation procedures, is the only medical treatment that a guardian cannot consent to on behalf of another person.

In spite of their distress and sadness, Ms R and Mr K had to attend a full hearing of the Guardianship Board to determine whether or not consent to the termination should be granted. After weighing up the evidence, the Board decided that Ms R did have capacity to give consent to the procedure herself, and the specialist then accepted her signature on the required documents for the termination to proceed.

Ms R's wishes in this matter were very clear; she understood the baby could not survive even in the womb, and that she needed surgery to ensure her own safety was not further endangered. In this case the need for a termination was made solely on medical grounds, there was no other viable option, yet the legislation required that Ms R submit to the formality of a Board hearing at a time of great personal strain. Consent by the guardian would have obviated the need for a hearing, speeded up the process of arranging the termination, and may have reduced some of the stress that all were experiencing.

CORPORATE ISSUES

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 OPA 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 OPA recognises that a safe hazard free workplace, and the well being of staff, impacts on the quality of service provided to the community.

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

FREEDOM OF INFORMATION

There have been no applications to the Office of the Public Advocate under the *Freedom of Information Act 1991*.

STATISTICAL ANALYSIS AND REPORTING

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

During the 1996-97 financial year, staff of the South Australian Health Commission's Information Technology Services Branch completed work on the first stage of the Public Advocate System. This is a new data collection and analysis system, which was produced in order to meet the special data requirements of the OPA. The system will allow the OPA to obtain statistical case management information, access enquiry and client records, trace files and cross reference materials. The system was introduced to the OPA in August 1996, and all staff have received training in using the system.

Administrative staff are assisting the Public Advocate in the ongoing development and upgrading of the Public Advocate System with staff of the South Australian Health Commission's Information Technology Services Branch. The second stage of the system, incorporating some necessary modifications, is expected soon.

FINANCIAL REPORT

OFFICE OF THE PUBLIC ADVOCATE FINANCE AND FTE REPORT FOR THE 1996-97 FINANCIAL YEAR

Description	Actual 96-97	Estimate 97-98	FTE's 96-97	FTE's Estimate 97-98
<i>Salaries, Wages and Allowances</i>	471,511	506,000	9.5	9.5
<i>Telephone</i>	10,035	12,000		
<i>Purchase of Computer Equipment</i>	25,438	3,500		
<i>Purchase of Office Equipment</i>	8,584	7,000		
<i>General Expenses</i>	113,280	135,570		
Total	628,848	664,070	9.5	9.5

The Office of the Public Advocate commenced the 1996-97 financial year with a surplus of \$57,000. Since the commencement of the OPA in March 1995, the office has concentrated on upgrading office equipment and computers.

The OPA's computer expenditure was \$25,000 in the 1996-97 financial year. This amount included six new Pentium computers, a laser printer, an inkjet printer, a scanner, modem, as well as the OPA obtaining the services of an Internet service provider. The OPA also developed its own Web Page, which was authored by Community Information Strategies Australia (CISA). The idea behind the OPA's Web Page was to give the community an additional means of access to information about the services of the OPA and the Guardianship Board.

The office also bought additional book shelving and desks to help accommodate new staff commencing at the office on a temporary basis. This included several social work students on placement, who were given various tasks to help increase their practical experience and assist them in their studies.

The Office of the Public Advocate completed the 1996-97 financial year with a surplus of \$32,000, which it plans to use to employ temporary staff to augment the work of permanent staff.

OPA PAMPHLETS AND RESOURCES

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

PAMPHLETS:

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

REGULAR PUBLICATIONS:

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

OTHER INFORMATION RESOURCES:

- Enduring Power of Guardianship: A 'Do-it-yourself' Kit (including promotional brochures)
- Information sheet - Adult guardianship: making decisions for others
- Information sheet - Before lodging an application for guardianship or administration at the Guardianship Board
- Information summary - *Guardianship and Administration Act 1993* (Guardianship Board Orders, Enduring Power of Guardianship, Enduring Power of Attorney)
- Referral list of lawyers practising in the area of guardianship
- Sterilisation information sheet
- 'Tolerate the Difference', a paper by John Dawes delivered at the Barton Pope Lecture, October 1995

WEB PAGE ADDRESS:

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