

**OFFICE OF THE PUBLIC ADVOCATE**

**ANNUAL REPORT  
2002-03**



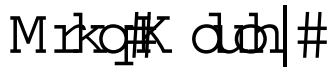
30 September 2003

The Honourable Stephanie Key MP  
Minister for Social Justice  
178 North Terrace  
ADELAIDE SA 5000

Dear Minister

I have the honour to present to you the ninth Annual Report of the Public Advocate, as required by the provisions of Section 24 of the *Guardianship and Administration Act 1993*. This report covers the period from 1 July 2002 to 30 June 2003.

Yours faithfully

The image shows a handwritten signature in black ink, which appears to read "John Harley". The signature is written in a cursive style and is positioned above the printed name.

John Harley  
PUBLIC ADVOCATE

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# *Public Advocate's report*

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## **Depression**

On 8 May 2003, the Commonwealth Minister of Immigration, Hon Phillip Ruddock, in a television program on SBS named *Insight*, stated that he did not think that depression was seen as a mental illness by the broader community. His comments were made in the context of his expressing a lack of concern that many detainees in the various commonwealth detention centres have been diagnosed with depression.

I saw the program myself and at first thought I had misheard what was said. Could a Minister of the Crown be denying that depression was a mental illness, notwithstanding that more eminent authorities than the Minister have recognised it as a mental illness for many years?

In response to the Minister's statement, Professor Ian Hickie, CEO of *Beyondblue: the National Depression Initiative*, said:  
*"Depression is recognised nationally and internationally as a major mental disorder. We have responsibility to provide optimal care to those people who reside in Australia, and that includes those in detention centres. Beyondblue would ask the Minister to clarify his understanding of depression as an illness and to ensure that the assessments and treatments provided in detention centres are of the same standard as those provided to people residing in other parts of Australia. That includes adequate documentation and particularly, accurate record*

*keeping about prescription of anti-depressant medication."*

Also, Dr Grace Groom, CEO of the Mental Health Council of Australia, said:  
*"Depression affects hundreds of thousands of Australians every year. One in four women and one in six men are affected at some stage of their lives. As depression imposes huge personal, family and financial costs, the MHCA calls for the Immigration Minister to recognise depression represents a major and economic challenge and every person has a right to effective mental health care."*

The Minister did not respond. It is of concern to me, and should be to every Australian, that a Minister of the Crown should be overseeing a system of detention where refugees are being denied proper treatment for a mental illness which many of us know from personal experience can be most debilitating, leading often to our own self destruction if untreated. And yet, apart from the response of *Beyondblue* and MHCA, there was no general public outrage expressed at the Minister's comments.

I can only say how ashamed I am to be a member of a society which is prepared to detain people who have committed no crime, and which is prepared to ignore the fact that as a result they are suffering from a mental illness that is unrecognised by those whose policies have either caused or exacerbated it. Where have we come as a society where we ignore the suffering of people living in our own land?

## **Official Visitors Program**

I received information in May of 2003 that the State Government has approved the implementation of an Official Visitors Program. I am delighted with this initiative. However it will not be given effect until the Health Complaints Bill presently before Parliament is finalised. It is proposed that the program will be administered by the Health Complaints Ombudsman.

I have informed the Minister of Health that I consider it would be quite inappropriate for the program to be placed there. In all other states where such a system operates, the officials are volunteers who are trained in dealing with people with disabilities and who understand the legal structures that may be in place, for example, guardianship, administration and the mental health system. But, importantly, they are not an inspectorate. To use volunteers as peripatetic police officers checking up on facilities to ensure that they are complying with standards and the law is a misconception of the purpose of the program. It will result in managers of service providers becoming defensive and possibly uncooperative. As a result the program will lose its effectiveness.

In other states where an Official Visitors Program exists it operates out of the Public Advocate's Office. It is an advocacy service for residents.

## **Forensic mental health**

In South Australia we have a purpose built forensic mental health facility known as James Nash House. Over the last two to three years there has been concern that there are inadequate beds

available for people with a mental impairment in the correctional system. This has now developed to such a stage that, on occasions, there are people who have been found not guilty by reason of their mental impairment, pursuant to s269 of the *Criminal Law Consolidation Act 1935*, but who are still being kept in prison because there is no space for them in James Nash House.

There are other cases I have become aware of where clients have been remanded in custody and are clearly suffering from a mental illness, but remain in correctional facilities because of the space problem in James Nash House. This frequently prevents proper psychological and/or psychiatric assessments being completed because the clinicians are unable to adequately observe the clients.

In addition to this, Mental Health Services has directed that they will no longer receive into James Nash House any clients who suffer from an intellectual disability or brain damage. This is, I understand, partly to ease the demand for beds and partly because they have neither the trained staff nor facilities to deal with people with these cognitive deficits.

No matter what slant you put on it, the government, by permitting this situation to continue, is breaching a number of the covenants contained in various declarations of human rights, including the *Universal Declaration of Human Rights*, *Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care*, the *Declaration on the Rights of Disabled Persons* and the *Body of Principles for the Protection of All Persons under Any*

*Form of Detention or Imprisonment.* It is also contrary to the *Mental Health Statement of Rights and Responsibilities* signed by all Australian Health Ministers of the Commonwealth, states and territories of Australia.

It should be an extremely urgent priority of the government to ensure that appropriate health care services and facilities be provided for this group of people.

### **Human rights**

Every citizen has the right to obtain a fair and equitable distribution of social services in accord with government policies and their international human rights obligations. But what is a right worth if it is unenforceable?

Governments in Australia can infringe them with impunity without any sanction except the Human Rights and Equal Opportunity Commission giving an adverse report – which the government can then ignore. In an article in *The Australian* in late January 2003, Rory Mongoven, the advocacy director of Human Rights Watch in New York, wrote that Australia can be perceived as a human rights wolf in sheep's clothing because of its constant rhetoric about protecting human rights whilst rejecting any international criticism of its performance in this area.

Access to medical treatment is a right and not a privilege which governments can manipulate to suit their political whims. Regrettably this occurs, leaving the citizen with no remedy except at the ballot box.

Today Australia is the only common law nation in the world that does not have a

Bill of Rights or human rights legislation to protect basic rights, nor does there seem to be any clamour from the political parties or citizens in general to take such steps. I recently read an article written by Professor George Williams and Megan David, both of the Law School, University of New South Wales, entitled *A Statutory Bill of Rights for Australia? Lessons from the United Kingdom*. In it, the learned authors refer to the long held principles of responsible government and parliamentary sovereignty, namely that our form of government is responsive to public opinion and answerable to the electorate and that Parliament is supreme and master of its own destiny subject only to the limitations of the constitution. The traditionalists argue that it is an abrogation of these principles to have a Bill of Rights, which can fetter the power of the Parliament in the way it conducts its business. The learned authors go on to say in arguing for a Bill of Rights in Australia:

*“Indeed, a Bill of Rights may redress the inadequacies of the Australian common law in the protection of fundamental human rights. Such inadequacies are becoming increasingly evident with the ease with which Parliament is able to abrogate basic rights and is also reflected in the fact that Australians are increasingly looking for protection not from domestic courts but from international institutions and treaties.”*

Indeed, in South Australia, our Parliament passed an act entitled the *Administrative Decisions (Effect of International Instruments) Act 1995* which now prevents international instruments from being used to influence administrative decisions and procedures in domestic law.

Successive Australian Governments have presented bills in 1995, 1997 and 1999 to negate the effect international treaties might have upon the domestic law of the country. For various reasons none of them have yet been passed but not for the reason that there was opposition to the principle enshrined in them.

Clearly the governments of Australia do not want any fetter on their powers which enable them to easily interfere with human rights, whereas overseas there is “*a growing commitment to the ideal that there [is] ‘no task more central to the purpose of a modern democracy than that of seeking to protect within the law, basic human rights of the citizen against invasion by other citizens or by the state itself’*”. (David and Williams, op cit, p3)

In 1998 the Parliament of Great Britain passed the *Human Rights Act 1998*, which seeks to provide a procedure to enforce the *European Convention on Human Rights and Fundamental Freedoms*. The Convention is based on the *Universal Declaration on Human Rights*, which has also been adopted by Australia.

The Act is said to be “*an instrument of balance between two legal traditions – first, judicial review grounded in the Convention rights and secondly, respect for the sovereignty of Parliament*”. (Livingstone S, *Civil Liberties Law: The Human Rights Act Era*, Butterworths, London, 2001, p5). Early this year I had the pleasure of hearing Rt Hon Lord Woolf, Chief Justice of England and Wales, and Rt Hon Lord Phillips, Master of the Rolls, speak about the *Human Rights Act 1998*. I have also read

articles by Lord Woolf and Rt Hon Lord Irvine, Lord Chancellor, on the topic. All attest to the success of the impact of the legislation and the fact that all of the predictions that it would bog the courts down and lead to “*chaos; a politicised judiciary; and the inauguration of the rule of lawyers. None of this has happened. The prophets of doom have been proved wrong*”. (Lord Irvine, *The Impact of the Human Rights Act: Parliament, the Courts and the Executive*, 2003 *Public Law* 308.)

In a very simple way I will try to summarise the effect of the Act. The courts are required, as far as it is possible, to read and give effect to legislation in a way which is compatible with the convention rights. If a court determines that there is an incompatibility, it can make a declaration of incompatibility. However, it is not binding on the parties and has no effect on the validity or operation of the legislation. There is no remedy unless the responsible Minister issues a remedial order. As this remedial power is itself discretionary, it emphasises the limit on judicial power.

The Minister can, under the remedial order, if there are compelling reasons to do so, amend the legislation as s/he considers necessary to remove the incompatibility.

The purpose of referring to the UK *Human Rights Act 1998* in my report is to highlight that a Bill of Rights like it in Australia “*might cause Parliaments and governments to reassess their approach in areas such as mandatory sentencing, refugee detention and even legislation directed at terrorism. It could create a much needed culture of human rights*

*dialogue at the parliamentary level and embed human rights principles more firmly into Australian legal culture”.* (David and Williams, op cit, p17.)

It could be a way forward for both state and federal governments to breathe “*new life into the relationship between Parliament, government and the judiciary, so that all three are working together to ensure that a culture of respect for human rights becomes embedded across the whole of our society*”. (Lord Irvine, op cit, pp324-325.)

Citizens with a disability are a most disadvantaged group in our community. We should be advocating for a stronger legal framework to enable them to protect their human rights. That framework does not exist at the moment.

## **Conclusion**

My staff continues to provide me with quite exceptional support. Without them I would not have the time to pursue the systemic issues which occupy me. I extend my grateful thanks to them.



**John Harley**  
**PUBLIC ADVOCATE**

## **Other systemic issues**

The following matters continue to remain unaddressed from my previous annual reports:

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



# *Role, structure, legislation*

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## **Functions and objectives**

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

The key legislative functions are:

- to act as guardian of last resort when appointed by the Guardianship Board;
- to investigate matters where a person who has a mental incapacity is at risk of abuse, exploitation or neglect (including self neglect);
- to provide advice and information about the *Guardianship and Administration Act 1993*, the *Mental Health Act 1993* and the *Consent to Medical Treatment and Palliative Care Act 1995* in a variety of formats;
- to take an interest in the programs being offered to meet the needs of people with mental incapacity;
- to undertake systemic advocacy to identify and act on areas of unmet or inappropriately met needs of people with mental incapacity;
- to provide some individual advocacy services through our education, investigation and guardianship work, to speak for and negotiate on behalf of mentally incapacitated persons;
- to support and promote the interests of carers of people with mental incapacity;
- the Public Advocate can make recommendations to the Minister for legislative and operational change.

## **Legislative authority**

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

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

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

## **Organisation of the agency**

The Public Advocate is an independent statutory official accountable to the South Australian Parliament. The Public Advocate is not subject to the control or direction of the Minister.

## **Relationship to other agencies**

The Office of the Public Advocate is funded by the Disability Services Office, within the Social Justice and Country Division of the South Australian Department of Human Services.

The funded staff positions of the Office of the Public Advocate as at 30 June 2003 are reflected in the organisational chart on page 33.

# Mission and values

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## Our clients

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

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

## Mental incapacity

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

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

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

## Mission statement

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

## Legislative principles

In all aspects of its work with clients, the Office of the Public Advocate is bound and guided by the principles contained in Section 5 of the *Guardianship and Administration Act 1993*. This section states:

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

- *Consideration (and this will be the paramount consideration) must be given to what would, in the opinion of the decision maker, be the wishes of the person in the matter if he or she were not mentally incapacitated, but only so far as there is reasonably ascertainable evidence on which to base such an opinion.*

This is often called the substituted judgement principle, which is in contrast to promoting decision making for people in their best interests.

- *The present wishes of the person should, unless it is not possible or reasonably practicable to do so, be sought in respect of the matter and consideration must be given to those wishes.*

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

- *Consideration must, in the case of the making or affirming of a guardianship or administration order, be given to the adequacy of existing informal arrangements for the care of the person or the management of his or her financial affairs and the desirability of not disturbing those arrangements.*

This principle allows and encourages families, friends and/or community networks to take responsibility for the health and welfare of people with mental incapacity without unnecessary government intervention.

- *The decision or order made must be the one that is the least restrictive of the person's rights and personal autonomy as is consistent with his or her proper care and protection."*

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

### **Vision**

To enhance the quality of life whilst safeguarding the health and well being of those people in our community who are vulnerable to self neglect, abuse or exploitation because of their mental incapacity. We will achieve this by:

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

- Identifying key areas of unmet, or inappropriately met needs of mentally incapacitated persons and taking action for improvement.

### **Values**

The staff of the Office of the Public Advocate is committed to the following values:

- The people, with whom we are involved, deserve to be treated with courtesy, dignity and respect.
- We work in partnership with others, to achieve the best possible outcomes for our clients.
- We encourage and support creative, innovative thinking and ideas, including measured risk taking within an environment that values learning and dynamic problem solving.
- We will act with integrity and professionalism in all our dealings.
- We are accountable for our decisions and actions, and give particular attention to ethical and human rights principles, in accord with United Nations declarations and Australian Governments' standards.
- We see our role as a privilege, and recognise the importance of a skilled and cohesive team in making a meaningful contribution to the welfare of those vulnerable people with mental incapacity.

## *Some 2002-03 highlights*

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- In June 2003 the OPA finalised its series of 24 new fact sheets – see page 27.
- This year, the OPA provided guardianship services on behalf of 289 people – see page 19.
- 2609 individuals received advice and information at 61 education sessions conducted by the OPA in 2002-03 – see page 27.
- The OPA undertook 227 screenings and investigations into the personal affairs of people believed to have a mental incapacity – see page 24.
- The OPA answered 3611 enquiries from service providers and the public – see page 31.
- John Harley, Public Advocate, was presented with a Sunflower Award in 2003 for Combatting Stigma by the Mental Illness Fellowship of SA.
- The OPA was proud to be part of a collaborative approach for the planning and delivery of comprehensive services to a number of clients recognised as having exceptional needs – see page 12.

## ***Providing exceptional responses to exceptional people***

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Over the past twelve months the OPA has been delighted to see the positive results achieved by some health and disability services in their work with clients who have exceptional needs. However these results have not been achieved easily.

Clients with exceptional needs are as unique and individual as are the responses that are necessary to make a difference to their lives. Generally, these individuals have social histories and multiple or borderline disabilities that give rise to risky behaviours affecting themselves, their families and sometimes the community. Traditional models of care do not work.

Service providers who are prepared to develop unique community based responses for these clients express concern that they will not be backed by funders, government or other services in sharing the responsibility and the risk. This is particularly true in our current political climate that is focussed on community protection and containment of people who are perceived to pose a risk to society. However, failure to embrace people with high and complex needs does not reduce the threat to the community in the long term. In fact, there may be an increase in the risk as these people find their way back into the community without appropriate transitional programs, for example, after long periods of incarceration.

The Department of Human Services, through its Exceptional Needs Program, has recognised that an across portfolio, individually tailored and, at times, high cost response is required to redress the extreme difficulties that these people have interacting with the community. We

commend the DHS for recognising the need to promote a whole of Department approach to these clients. However, the lack of identified funding has retarded timely responses to client need.

The success stories have occurred despite the environmental limitations. A small number of clients under our guardianship have benefited from individually tailored intensive support programs. The programs have focussed on whole of life and provided opportunities for participants to take their place in the community as citizens who have both rights and responsibilities. Risk minimisation strategies for clients, support staff and the community have been important considerations, but these have been primarily addressed through a focus on responding to client goals, activity, learning, support and community participation rather than containment. The clients have responded to the respect and dignity that the program design and the workers' approach have afforded them.

Important features of the programs appear to be:

- (a) identification of a lead agency prepared to drive the program;
- (b) training for care workers to enable them to fulfil their role effectively;
- (c) close daily support of a case coordinator who has sufficient time to devote to maintaining the client and the program;
- (d) commitment of management to funding and support of staff; and
- (e) mutual respect and cooperation between providers.

The extensive documentation and review strategies employed in each case provide fertile learning ground for other providers.

We commend in particular the collaborative work of the Lyell McEwin Mental Health Services and the IDSC Strathmont Centre. The preparedness of these services to work across conventional boundaries of service delivery has been a feature of their approach. Collaborative work with the SA Police, Department of Correctional Services, courts, Ambulance Service of South Australia, TAFE and a variety of voluntary programs has ensured coordination of responses. This is best illustrated by three stories.

*Story 1:*

Three years ago a young man returned to his family home having been contained in isolation in a residential care setting in his mid teens. He was believed to have an intellectual disability and a mental illness and his life was characterised by offending behaviour, hyperactivity, impulsivity and family conflict. Extensive seven day per week support was provided to maintain him in the family home and to engage him in daily activities. Involvement extended to supporting family reunification with his sister. Inter agency and family meetings were held on a regular basis to review progress and address issues. Crises were addressed promptly with service providers from all agencies supporting each other and ensuring consistency of approach. This young man is no longer on psychiatric medication and is now being trained to run a small business. His educational needs are also being addressed.

*Story 2:*

One year ago, a young woman was

released from prison having previously spent six years in an institution. She was harming herself frequently and threatened the well being of others, particularly her carers. Attempts to contain her exacerbated this behaviour. On release, she was initially provided with 24 hour care and an activity and support program was negotiated in response to her interests. Support hours have been reduced now and she attends TAFE on a regular basis. She is learning to deal with the world around her.

*Story 3:*

A man who has lived in institutional settings for many years now has his own home in the community. He still receives 24 hour support but has an activity program that enables him to make some contribution to others. This man had a reputation for violence that led to a containment approach offering him little dignity or self respect. He now undertakes daily exercise, gardening chores and other recreational activities. His guardian can now sit at his kitchen table and share a cup of tea.

These clients have required significant financial investment to achieve an appropriate level of support and to enable them to develop personally. However, the cost of care over previous years has also been high, and, in each of the above cases, the new models of care have achieved savings over time. The opportunities provided and positive gains that these people have shown in taking up community citizenship sets an excellent example for all service providers.

**We commend this work to the South Australian Government hoping that dedicated funding will be forthcoming to support the Exceptional Needs Program.**

**Margaret Farr**  
**ASSISTANT PUBLIC ADVOCATE**

## *Key outcomes*

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The Office of the Public Advocate has four key service areas. During 2002-03, funding and reporting is according to these four key areas:

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

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



# Advocacy

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

## **Objectives**

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



## **Resources**

The Public Advocate personally undertook most systems advocacy work. See the Public Advocate's Report on page 3 for more information. Advocacy is also inherent in much of the work undertaken by staff at the OPA with staff taking up various matters as they arise. Accessing services, mediating conflict and promoting the autonomy of individuals with mental incapacity are features of this year's work.

## **Outcomes**

### ***Individual advocacy cases***

The office was involved in 53 individual client advocacy matters during 2002-03, 36 of which were new cases this year. The type of advocacy work done in these matters depends on the needs of the particular client. Usually the client has a mental incapacity, and the OPA is not currently involved with the client in another way, for example as guardian. Some of the advocacy cases culminate in an application for administration or guardianship being made to the Guardianship Board, and the Public Advocate is often then appointed to act as the person's guardian.

Some examples of the advocacy work during 2002-03 are as follows:

- the OPA worked with family members and other service providers to protect the interests of a client with an acquired brain injury who was in receipt of compensation payments that were being managed under a Supreme Court order;
- the OPA worked with staff at a correctional facility to implement a release and case management plan for a client with the dual disabilities of mental illness and intellectual

impairment and who was due to leave the facility but required continuous supervision within the community;

- the OPA assisted a family member who was enduring guardian for her son to obtain additional resources to support her son, in particular, his need for supported accommodation;
- the OPA applied for a Community Treatment Order for a mentally ill young man to promote his mental health and enable him to continue to live in the community with his family;
- OPA staff members were involved in setting up an accommodation and care plan for a client with an intellectual disability who was living in the community. His aggressive and abusive behaviour towards staff at the facility in which he resided meant that the use of restraint was necessary to ensure the safety of both the client and staff members. An application was made to the Guardianship Board for the Public Advocate to be appointed as guardian with Section 32 powers to authorise the use of restraint.

### ***Representation on external committees***

Staff members were active within the following external committees during 2002-03:

- Australian Guardianship and Administration Committee;
- Interagency working party comprising the Public Trustee, the Guardianship Board and the OPA;
- Chair, Interdepartmental Committee on Monitoring in Prisons;
- Change of Portfolio Working Party – proposal to move OPA to the Attorney-General's Department;

- Alliance for the Prevention of Elder Abuse;
- Child Protection Review;
- Department of Human Services Ethics and Privacy Committee;
- Department of Human Services Exceptional Needs Supported Accommodation Working Party;
- Intellectual Disability Services Council Ethics Committee;
- Intellectual Disability Services Council Legal Committee;
- Law Week Committee;
- Acting Chairman, State Council, Australian Institute of Administrative Law;
- Advisory Council, National Pro Bono Centre of Australia;
- Deputy Chair, Public Sector Lawyer's Committee, Law Society of SA;
- Magistrates Court Diversionary Program;
- Implementation Working Group for the Detention of Patients under the *Mental Health Act 1993*;
- Mental Health Privacy Committee;
- Mental Health Implementation Reference Group;
- Mental Impairment Implementation Reference Committee;
- Western mental health consumers and carers forum.



# Guardianship

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

## **Objectives**

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

## What is guardianship?

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

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

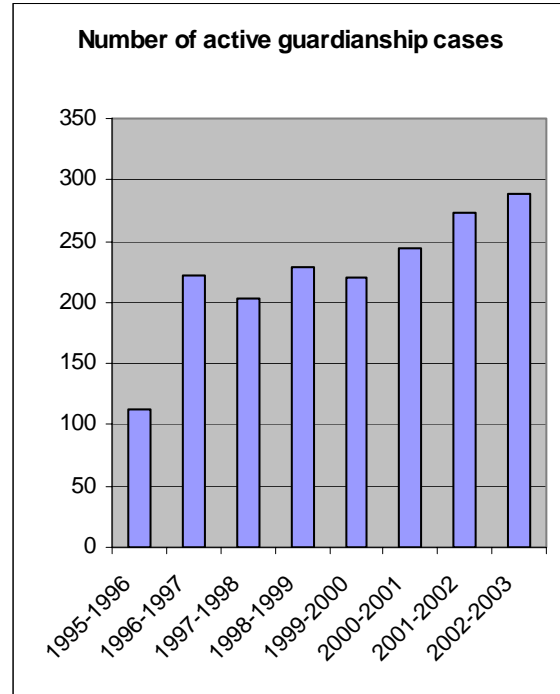
## Resources

This year, due to the Education Officer position being vacant for eight months, the OPA was able to employ an additional contract 0.7 FTE PSO2 in the guardianship program. The split of guardianship cases into intensive/continuity cases and monitoring cases to reflect the difference between proactive and monitoring roles performed by a guardian was continued. The monitoring caseload, which accounts for approximately one third of active guardianships, was initially overseen by a contract PSO1 and later by the enquiry and monitoring team.

## Outcomes

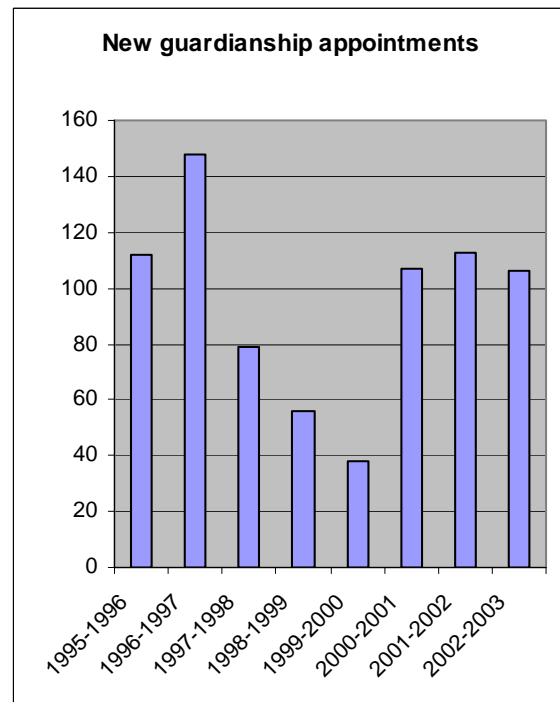
### *Guardian of last resort*

During 2002-03, the OPA provided guardianship services on behalf of 289 people. The number of active cases managed by the office in each year has continued to steadily rise, as can be seen on the following graph.



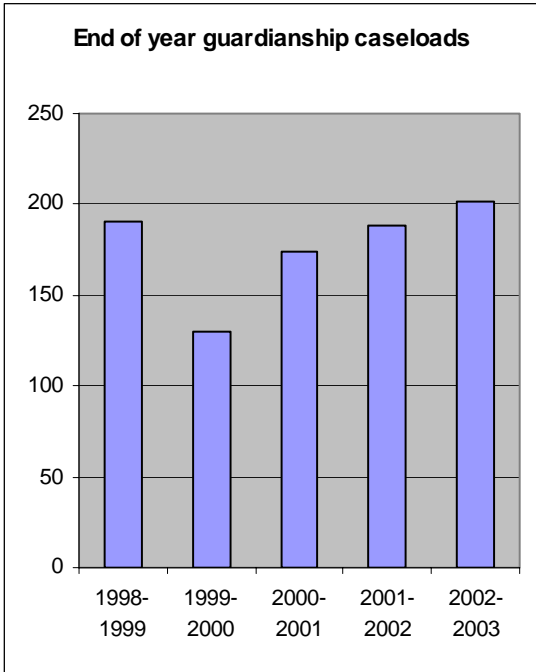
## New guardianship appointments

There were 106 new guardianship appointments made during 2002-03. As the following graph indicates, the number of new guardianship appointments made to the OPA in 2002-03 has remained high.



**End of year caseloads**

As at 30 June 2003, there were 201 active cases where the Public Advocate was appointed as guardian for a person with a mental incapacity by the Guardianship Board under the *Guardianship and Administration Act 1993*. The following graph shows the end of year guardianship caseloads carried by the OPA.



Again this year guardians found themselves using significant amounts of resources mediating family conflict. At times the primary purpose of guardianship, that is, achieving positive outcomes for protected people, can be clouded by intractable conflict. Pleasingly, however, all guardians this year saw major improvements for individuals under their guardianship. For example:

- a young woman has had access re-established with an estranged parent and was empowered to decide on the terms of contact for herself;
- a young man was protected from the repeated intrusions to his home by a

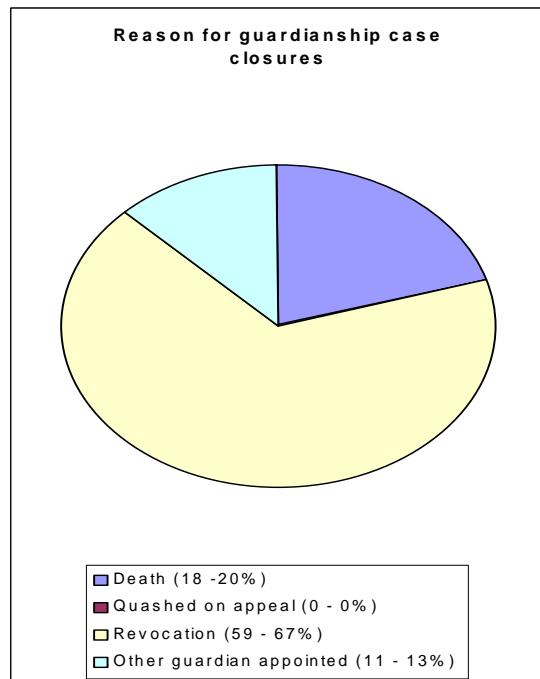
family member through the guardian obtaining a standing eviction order from the Residential Tenancies Tribunal;

- a young woman who made herself unwelcome in supported accommodation throughout the last few years of her life has now commenced a period of stability living alone in rented accommodation with regular one to one direct care support.

Sadly, not all stories are happy. The inability of this office to secure appropriate supported accommodation for an Aboriginal man with problems related to alcohol abuse, epilepsy and aggression, increased risks to his health, culminating in acute medical problems and severe neurological and physical damage. We are troubled by our limited ability to help those clients who have suffered alcohol related brain damage but retain an active desire to be free or are combative in their relationships with others.

**Guardianship case closures**

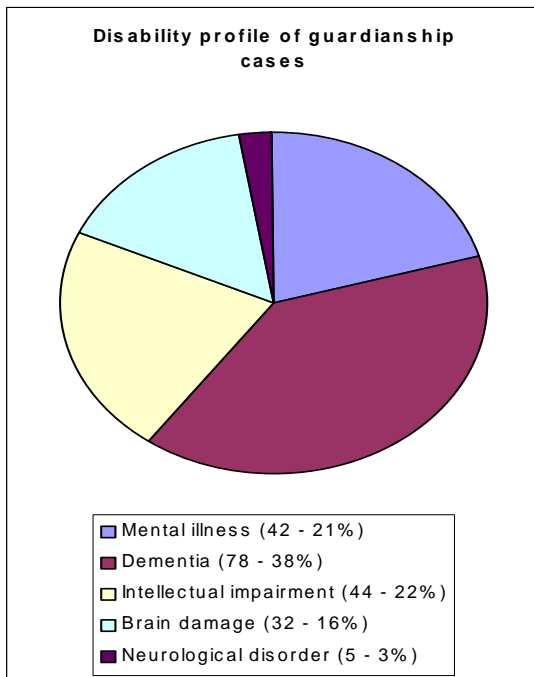
Eighty eight guardianship cases were closed this year.



Most cases were closed because the Guardianship Board revoked the order. Other reasons for closure were because the protected person died or because another guardian, ordinarily a family member or friend, was appointed instead of the OPA. Wherever possible, the OPA encourages other suitable parties to take over the role of guardian. Even when families are in conflict, it can be possible to negotiate agreement on suitable family guardianship arrangements.

### Disability profile of guardianships

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



Of note in this disability profile is that 25% of protected people had more than one disability. Taking into account both the primary and secondary diagnoses of

protected people, the disability breakdown of guardianship cases is as follows:

### Disability profile of guardianship cases including secondary diagnosis

Diagnosis	Number of cases	Percentage of clients
Mental illness	67	33%
Dementia	82	41%
Intellectual impairment	49	24%
Brain damage	37	18%
Neurological disorder	6	3%
Personality disorder	3	1%

The predominance of mental illness is notably higher in this breakdown of the disability profile, accounting for 33% of guardianship cases rather than 21%. This breakdown also shows three protected people have a personality disorder as a secondary diagnosis. No OPA clients currently have a personality disorder as their primary diagnosis.

### Guardian ad litem

The mandate of the OPA to promote and protect the rights and interests of people with a mental incapacity has meant that the office has continued to provide a service in cases where people may be involved in legal proceedings during a period where they are suffering a mental incapacity. If a person with a mental incapacity is unable to instruct their solicitor, the Public Advocate can be appointed by the court as *guardian ad litem* in order to provide instructions to their solicitor. This enables the person with the mental incapacity meaningful participation in the proceedings. During 2002-03, the OPA was involved in nine *guardian ad litem* cases; with six new cases opened during the year.

The *guardian ad litem* acts in the best interests of the person with the mental incapacity. They will also take into account the present wishes of the person and what their wishes would have been if they were not mentally incapacitated. In *guardian ad litem* proceedings, where conflict exists between best interests and wishes, best interests are the paramount consideration.

This year the OPA has been mainly involved in proceedings where women with a mental incapacity or mental illness have had their children removed from their care. In these cases the OPA has accepted appointment as *guardian ad litem* in the Family Court or as *next friend* in the Youth Court in order to provide instructions to their solicitors. Most commonly, the court proceedings arise when a woman is detained in an approved treatment centre with an acute episode of mental illness, and an application is made to the Youth Court to remove their children from their custody. The OPA plays an important role in ensuring that prejudices and misinformation are not used to make decisions around the capacity of the person involved.

In one case, a woman was detained with a flare up of her psychiatric illness, pursuant to non-compliance with her medication. She also had a violent partner, a chaotic home life and her child was significantly developmentally delayed. Family and Youth Services made an application to the Youth Court for a twelve month care and protection order that would place the child in the custody of the grandmother. The woman initially wished to instruct her solicitor not to consent to the order. However, the *guardian ad litem*, acting as the reasonable litigant, felt that if the matter went to trial, given the circumstances, the twelve month order

would be granted. The OPA officer visited the woman in hospital and discussed pursuing the best possible outcome for her, which would be consenting to the order but ensuring that it contained maximum opportunities for access and review of the order when her condition improved.

The OPA also accepts appointment in the Supreme Court, Magistrates Court or any other court where a person needs to be appointed to manage a particular legal action involving personal rights where a party to the proceedings has a mental incapacity. In 2002-03, the OPA was involved in the following matters:

- the OPA was appointed as guardian for a testatrix with a mental incapacity, pursuant to the *Wills Act 1936*, to protect her interests in a Supreme Court action to approve a statutory will;
- the OPA appeared as *amicus curiae* in a defamation action where the defendant was unrepresented and it appeared to the judge presiding that she had a mental illness;
- the OPA was appointed as litigation guardian for a defendant with a mental illness in a civil action in the Magistrates Court. The Public Trustee was appointed litigation guardian for the plaintiff.

As the knowledge of the role of the Public Advocate spreads, we expect this area of work to expand.



# Investigation

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

## **Objectives**

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



## Resources

During this financial year, the OPA continued its practice of one officer being primarily responsible for investigations. This enabled a consistent approach and closer liaison with the Guardianship Board.

## Outcomes

A total of 227 investigations were conducted in the last financial year. There is a wide variation in the amount of time involved in conducting an investigation. Some are very complex matters, involving days of work, whilst others are relatively straightforward. In 2002-03, 78 of the 227 investigations (approximately 35%) warranted individual client files being opened due to the complexity of the matter. A small number of clients are double counted as investigation of a simple matter sometimes leads to more complex work and transfers to client file status. The following are the types of investigations undertaken by the OPA:

### Pre-hearing screenings and investigations

#### *There were 158 investigations made prior to a Guardianship Board hearing.*

These are matters where an application has been made to the Guardianship Board and the OPA is nominated as the guardian. The OPA undertakes some preliminary screening to determine the appropriateness of orders sought and/or the availability of an alternative guardian. Pre-hearing investigations include matters such as:

- An application lodged by a general practitioner requested the appointment of a guardian to arrange home supports for an elderly man. The OPA staff contacted the doctor, outlined the role of guardian and

suggested a number of community services that could assist. The application was then withdrawn.

- An application for guardianship suggested that the Public Advocate be appointed as guardian. Enquiries as to who was involved in the person's day to day welfare resulted in locating a neighbour and friend of many years who was willing to be the guardian for her confused friend.

### Section 28 investigations.

#### *There were 44 investigations requested under Section 28.*

The Guardianship Board requests these investigations under this section of the *Guardianship and Administration Act 1993*. This means that a comprehensive report is prepared at the direction of the Guardianship Board to assist them in their decision making. Some examples of the work done as Section 28 investigations are:

- Family members allege the misuse of an Enduring Power of Attorney by a relative and seek the appointment of an administrator by the Guardianship Board. The Board requests the assistance of OPA to establish the facts of the situation.
- The Guardianship Board adjourns a matter so that OPA can provide comment on the appropriateness of a request for the appointment of a guardian and make a recommendation on who might be the most suitable person to be appointed as guardian.
- Family members and service providers have different perspectives about how a person with a mental incapacity should be treated medically. The Guardianship Board requests that the OPA provide a report.

## Section 21 investigations

*There were six significant client investigations made under Section 21.*

These are investigations that are undertaken as a result of an external request to the OPA. They can include matters that relate to the *Guardianship and Administration Act 1993* or the *Mental Health Act 1993*, but clients are not necessarily initially the subject of an application to the Guardianship Board. Section 21 investigations include matters such as the following:

- A friend raises questions about the treatment of an elderly man by one of his neighbours. An OPA investigator visits the man, accompanied by the friend, and establishes that he is selling his home significantly below market value and is not capable of understanding the transaction. The OPA staff member makes an application to the Guardianship Board for an interim Administration Order to protect the financial interests of the man.

## Sterilisation investigations

*There were four sterilisation investigations undertaken.*

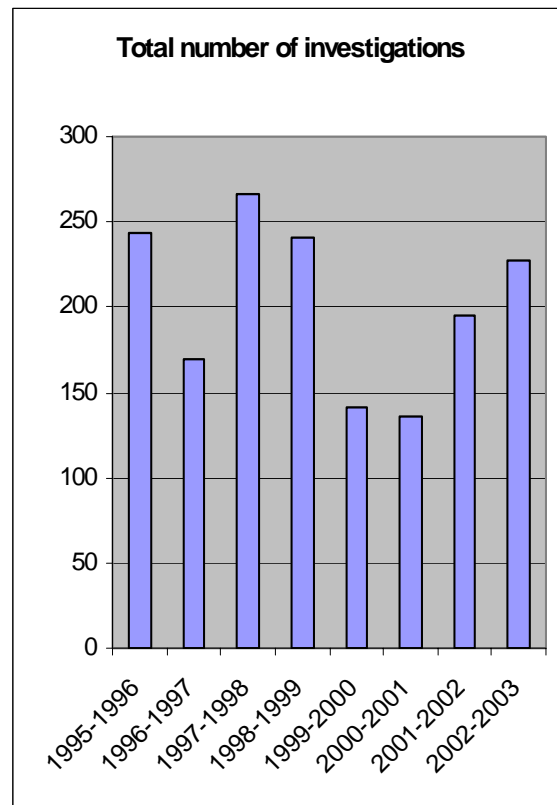
These are investigations undertaken when the Guardianship Board has received an application for a sterilisation. All of these matters are referred to the OPA for a thorough report investigating the circumstances surrounding the application. This year, the Guardianship Board authorised two sterilisations for young women; one application was withdrawn and the other matter is still pending resolution.

## Other investigations

*There were 15 other investigations conducted by the OPA in 2002-03.*

These are those investigations that do not fit into any of the other categories. For example:

- Parents living interstate request OPA assistance in locating their son, who is mentally unwell. The OPA investigator makes enquiries to numerous hospitals and mental health community facilities and liaises with the Guardianship Board and the SA Police. A file is opened and the parents are told of the unsuccessful search.
- A young woman who has been repeatedly refused accommodation because of behavioural problems contacts OPA for assistance. The OPA staff explores the extent of her homelessness and makes a referral to a relevant agency hoping for assessment and allocation of a case manager who could facilitate stable housing and provide support.





# Community education

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

## **Objectives**

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

## **Resources**

The Education Officer was on leave from October 2002 until June 2003 and monies for this position were diverted to the guardianship program and Enquiry Service. The Information Officer returned from maternity leave in July 2002 and worked on a 0.4 FTE basis for the rest of the reporting period. Other staff members, including the Public Advocate and Assistant Public Advocate, contribute to the education work of the OPA, including conducting the majority of education sessions this year.

## **Outcomes**

The OPA has continued to respond to requests from organisations and individuals and participates in a range of activities. Lack of resources has led to some refusals of public speaking engagements.

## ***Publications***

### **Fact sheets**

In June 2003, the OPA finalised its series of new fact sheets that replace the coloured trifold pamphlets and the A4 information sheets. There are 24 fact sheets, providing information about the state guardianship and mental health legislation. A list of the fact sheets is on page 44. The fact sheets are all available on the OPA web site.

### **Flowcharts**

In addition, five new appeals flowcharts have been developed to assist people wishing to appeal. These flowcharts will be printed and circulated during the next financial year.

## **2001-02 Annual Report**

During the 2002-03 period, the 2001-02 Annual Report was produced, printed and distributed. Four hundred copies were printed, with most of these being mailed out direct to agencies during the year.

### **Draft dysphagia position paper**

In November 2002, the OPA convened a colloquium on the medico-legal aspects of dysphagia management. There were approximately forty participants, including risk managers, those involved in the development of policy, and those with an interest in the issue from the perspective of their clients. At the colloquium, Ms Ingrid Norman, Managing Solicitor for the Crown Solicitor's outposted legal unit at the Department of Human Services, provided the legal framework and Professor David Currow, Director of Hospice, Repatriation General Hospital, gave a clinical perspective. As a result of this colloquium, the OPA has produced a draft dysphagia position paper. (see box on page 29)

### ***Education sessions***

In total, 2609 individuals received advice and information through 61 education sessions conducted by the OPA during 2002-03. This compares with 2539 individuals reached during 60 education sessions in 2001-02.

The OPA uses three main audience categories for its education sessions, but acknowledges that this only provides a guide as to the primary audience, as many sessions are given to mixed groups of carers, consumers and service providers.

### **Metropolitan service providers**

A total of 1116 service providers attended 28 education sessions provided in the metropolitan area.

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

<b>Year</b>	<b>Sessions</b>	<b>Audience</b>
<b>1997-98</b>	<b>44</b>	<b>828</b>
<b>1998-99</b>	<b>52</b>	<b>1552</b>
<b>1999-2000</b>	<b>33</b>	<b>1440</b>
<b>2000-01</b>	<b>42</b>	<b>613</b>
<b>2001-02</b>	<b>36</b>	<b>741</b>
<b>2002-03</b>	<b>28</b>	<b>1116</b>

### **Metropolitan carers and consumers**

These talks focus on the promotion of advance directives and general guardianship and administration issues. This year 23 education sessions were given to carers and consumers, reaching 973 participants. Of the 23 education sessions given to metropolitan carers and consumers this year, twenty of them have been to groups with more than fifty participants. One of these was the large public forum held during Law Week in conjunction with the Legal Services Commission at Pilgrim Hall. This session was about wills and advance directives, and attracted 120 participants, which was the maximum number that the venue could accommodate. The OPA plans to hold similar large sessions in the future in conjunction with other agencies.

The OPA has refused nine requests for education sessions to carers and consumers in cases where there are other organisations that can provide the same information. For example, both the Legal Services Commission

and the Law Society provide speakers about advance directives (as well as wills, which is outside of the mandate of the OPA). Carers of Protected Persons Action and Support Group (COPPAS) run monthly information sessions about the Guardianship Board and guardianship and administration issues.

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

<b>Year</b>	<b>Sessions</b>	<b>Audience</b>
<b>1997-98</b>	<b>39</b>	<b>934</b>
<b>1998-99</b>	<b>14</b>	<b>615</b>
<b>1999-2000</b>	<b>10</b>	<b>337</b>
<b>2000-01</b>	<b>19</b>	<b>596</b>
<b>2001-02</b>	<b>9</b>	<b>295</b>
<b>2002-03</b>	<b>23</b>	<b>973</b>

### **Country talks**

In 2002-03, the OPA gave nine talks in country areas, reaching a total of 450 people. Numbers were boosted by participation in Rural and Remote Mental Health Services education initiatives for country general practitioners and other health service providers. We are committed to providing a service to country regions, but our resources are limited to allow for the time that it takes to travel to some of the outlying regions.

#### **Comparative data for education sessions given in country areas**

<b>Year</b>	<b>Sessions</b>	<b>Audience</b>
<b>1997-98</b>	<b>14</b>	<b>246</b>
<b>1998-99</b>	<b>5</b>	<b>173</b>
<b>1999-2000</b>	<b>3</b>	<b>75</b>
<b>2000-01</b>	<b>14</b>	<b>372</b>
<b>2001-02</b>	<b>6</b>	<b>263</b>
<b>2002-03</b>	<b>9</b>	<b>450</b>

### ***Consultative activities***

The OPA conducted fourteen consultative activities during the financial year. These consultative activities are broad ranging. They include the provision of advice and information to other agencies on their policies or written material, particularly those that have reference to the *Guardianship and Administration Act 1993* or the *Mental Health Act 1993*, and the provision of material for inclusion in newsletters or directories. This year, the OPA commenced writing a regular article for the quarterly newsletter of the Disability Services Office of the SA Department of Human Services, *Disability Matters*. Activity levels in this area have been significantly retarded by the lack of resource availability for education activities.

#### **Total number of consultative activities**

<b>Year</b>	<b>Activities</b>
<b>1997-98</b>	<b>78</b>
<b>1998-99</b>	<b>81</b>
<b>1999-2000</b>	<b>65</b>
<b>2000-01</b>	<b>41</b>
<b>2001-02</b>	<b>30</b>
<b>2002-03</b>	<b>14</b>

### **Draft dysphagia position paper**

The draft dysphagia position paper aims to provide a basis for 'best practice' of dysphagia management within the bounds of the areas of discussion and is intended to assist risk managers and other health sector workers when developing appropriate policies and protocols in this area.

Best practice in dysphagia management must take into consideration both the legal and practical issues in the delivery of service, as well as the rights of the patients and their cultural, social, psychological and spiritual needs. Protocols in health facilities need to reflect these areas of consideration if best practice is to be applied. Protocols for practice should include examination and documentation of:

- patient issues;
- staff and environmental issues;
- family issues;
- evidence of the patient's wishes;
- evidence of the type of relationship the patient and the patient's family have with clinical staff;
- evidence of effective and informed consent processes in consultation with the patient and the family on an ongoing basis;
- determining the degree of risk and the cause and effect level of predictability;
- working to a consistent interpretation;
- discussing the degree of risk with the patient or the patient representative; and
- defining, reviewing and re-examining the degree of risk on a continual basis in consultation with all the relevant parties.

Copies of the draft dysphagia position paper are available from the OPA.



# Enquiry Service

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

## **Objectives**

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

## Resources

In 2002-03, the OPA continued to provide an Enquiry Service during office hours with the objective of providing a 24 hour response time to calls, including provision for urgent responses. In March 2003, the OPA allocated 1.7 FTE PSO1 to manage enquiries and handle the monitoring caseload, which accounts for approximately one third of the guardianship cases managed by the office. The two workers in this team rotate responsibility for enquiry calls and managing the monitoring cases within the guardianship program. The management of enquiries represents a significant pressure on these resources well beyond the budgeted 1.0 FTE equivalent.

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

## Outcomes

During the financial year, the OPA received 3611 enquiry calls. The majority of contact with the OPA occurs via the telephone, with 42 requests received by email, 28 by letter and 124 walk-in enquiries. The number of walk-in enquiries has risen significantly in recent years.

Whilst many enquiries are straightforward information provision on the merits of the legislation and its application, the OPA is increasingly being drawn into giving advice on ethical and legal matters pertinent to people with a mental incapacity. Whilst some of this activity is legitimate, the OPA is increasingly disturbed by the use of our staff as substitute professional supervisors, risk managers or legal advisers who workers seek to quote in case notes as sources of decision making and advice. These trends are most obvious in the general hospital and mental health environments.

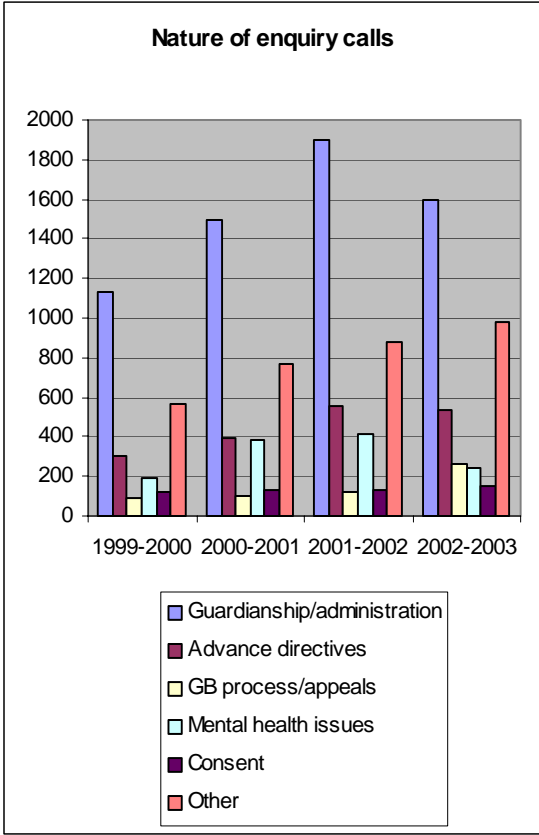
**Total numbers of enquiry calls**

Year	Total enquiries
1995-96	3570
1996-97	3229
1997-98	3539
1998-99	3744
1999-2000	3063
2000-01	3229
2001-02	3642
2002-03	3611

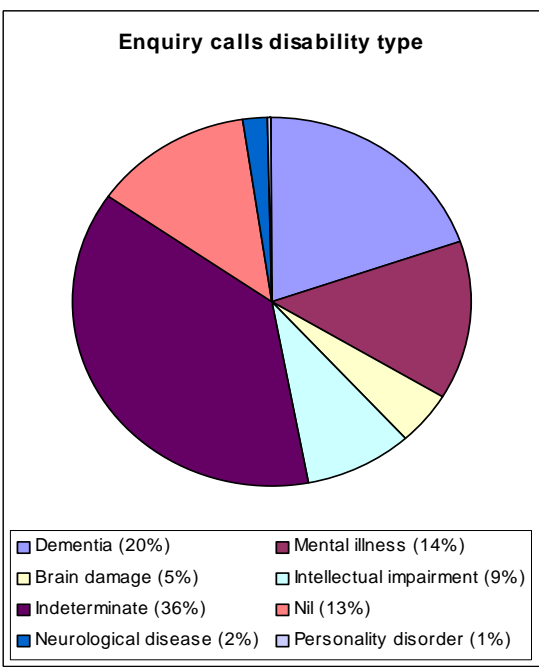
**Comparison of enquiries**

Enquiry category	2000-2001	2001-2002	2002-2003
1. Potential Administration	892	1118	910
2. Potential Guardianship	603	755	688
3. Advance directives	391	554	540
4. Guardianship Board process/appeals	104	116	260
5. Information/Education	467	210	302
6. Mental health	380	411	239
7. Consent to treatment	129	129	154
8. Other calls	703	860	978





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



### Some examples of enquiries

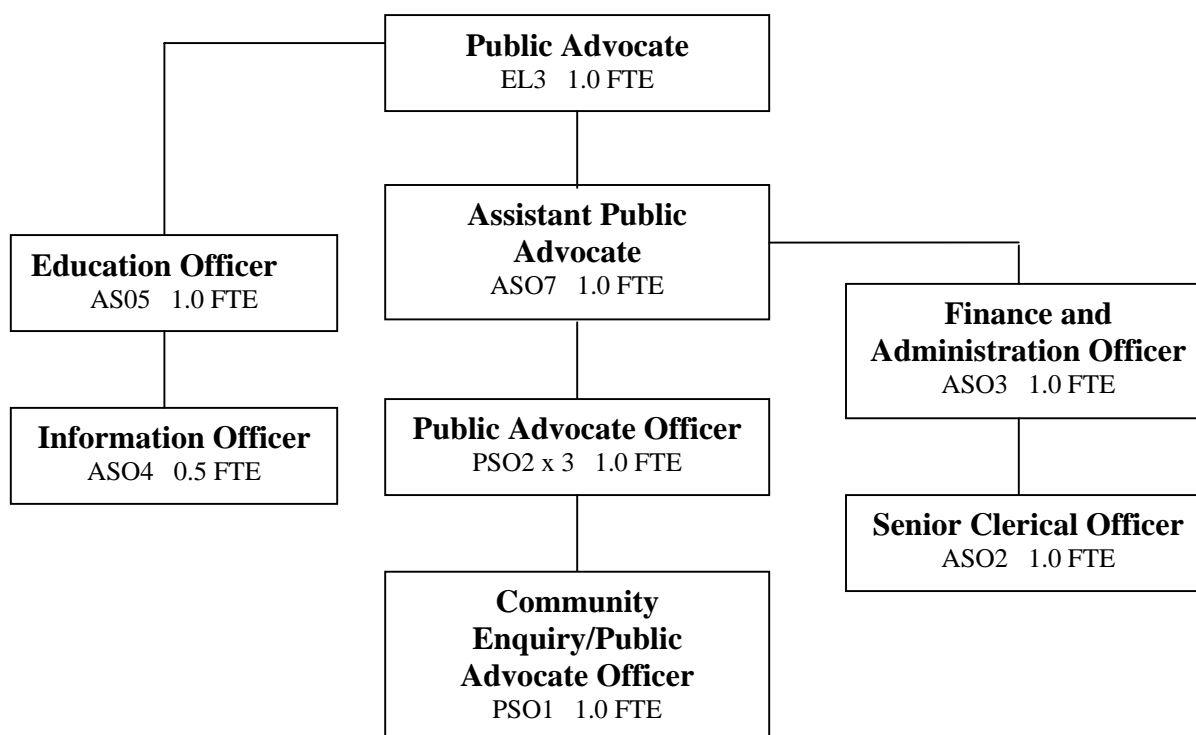
A treating doctor from a hospital called to ask about the law relating to medical consent. The patient was a middle-aged woman with an intellectual disability, who was in need of surgery to repair a fractured femur. The patient did not have the capacity to consent to this procedure, had no known relatives and had been living in the same supported residential facility for the last twenty years. The Enquiry Officer advised that under section 59 of the *Guardianship and Administration Act 1993*, a person who acts *in loco parentis* can provide substitute medical consent for a person with a mental incapacity. In this case, the manager of the supported residential facility acted in this role, and was legally able to provide substitute medical consent on behalf of the woman for the surgical procedure to be undertaken.

A man telephoned the OPA to discuss his concerns about his elderly father's financial affairs. His father had dementia and no longer had his mental capacity, and had previously signed over an Enduring Power of Attorney to his eldest son. The caller had serious concerns about how his brother was managing his father's money, advising that large amounts of money had disappeared from his father's bank account and that his brother was now attempting to sell his father's house. The Enquiry Officer advised the caller to make an application to the Guardianship Board for the appointment of an administrator, under an Administration Order, to protect the remainder of his father's finances and estate.

# *Employment and human resources*

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## **Organisational chart – Funded positions As at 30 June 2003**



- Staff changes throughout the year are described on page 40.
- Public Sector Management Act employees by stream, level, appointment type and gender as at 30 June 2003 are listed in Table 1 on page 41.
- Sick leave, family carers leave and special leave with pay for individual needs and responsibilities is listed in Table 2 on page 42.
- Workforce diversity is described in Table 3 on page 42.
- Cultural and linguistic diversity is described in Table 4 on page 42.
- Age profile is listed in Table 5 on page 43.
- Voluntary Flexible Working Arrangements are listed in Table 6 on page 43.

### **Human resources development**

Training and development expenditure during 2002-03 was \$1829 (0.31% of total remuneration costs) compared with \$1862 (0.26% of total remuneration costs) in 2001-02.

A report on the principles set out in the *Guideline for Planned Human Resource Development in the South Australian Public Service* is as follows.

The OPA encourages staff to pursue development opportunities, with the minimum expectation that each staff member access one course or learning activity annually. Below are some of the activities attended by staff this year:

- Freedom of Information Accredited Officer training (2 staff);
- Introductory Excel (1 staff);
- Senior First Aid (1 staff);
- CME training (1 staff);
- Fire Warden training (1 staff);
- Risk management assessment and integration (1 staff);
- Safety in the client's home (1 staff);
- Aboriginal cultural awareness and sensitivity (5 staff);
- 30% of staff provided with leave to pursue other career moves.

The office intends to formalise its Human Resource Development Plan, as part of its Strategic Plan, during the next twelve months. The office has not documented any individual development plans during the last twelve months. This is also a priority for 2003-04.

### **Leadership and management development**

The OPA employs one Executive EL3 and one Assistant Public Advocate ASO7 who have responsibilities for staff

management and strategic directions. Executive meetings are also attended by one of the PSO2 staff members, as staff representative. The Public Advocate participates in executive fora on a regular basis. Formal leadership or management training has not been undertaken by any of the parties in the past year.

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

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

The OPA has an OHS committee, which meets as required. OHS matters are also discussed in all OPA staff meetings. During 2002, training was undertaken in Senior First Aid and a new Fire Warden was trained. The OPA OHS representative attended workshops in risk management assessment and integration and safety in the client's home. The OPA uses the DHS work site inspection checklist as the tool for regular site assessments.

In 2002-03 the OPA engaged an occupational therapist to undertake workplace assessments, following concerns about the impact of high levels of data input on individual staff. The first round of these assessments was undertaken in this financial year, with remaining staff to be assessed in the next financial year. New chairs for most staff workstations were purchased as part of a

strategy to improve the safety of working environments. In 2002-03, the OPA also updated its mobile phones and had a hands-free kit installed into the leased government vehicle.

One of the main issues confronting the OPA in 2002-03 has been security. Following the tragic death of Dr Tobin in 2002, and in the light of increasing security concerns, security presence in the work environment was immediately increased. The OPA's contribution to this unbudgeted cost was in excess of \$10,000. A risk assessment was also undertaken in conjunction with the Guardianship Board in late 2002. Recommendations from this review led to the continuation of a security presence

in the ABC Building during business hours, the purchase of two-way radio equipment and a re-evaluation of redevelopment plans for the seventh and eighth floors of the ABC Building. Further work arising from this review will proceed next financial year.

Whilst there have been no incidents or claims made by staff during this reporting year, OPA management is mindful of the significant increase in average sick leave between 2001-02 (2 days per FTE) and 2002-03 (6.8 days per FTE). Taking into account that one staff member unfortunately required extensive sick leave, this is still an area of contemplation for the office.

# Administrative issues

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## Account payment performance

The OPA's policy is for all accounts to be paid within one week of receiving them. Accounts are processed by Intellectual Disability Services Council (IDSC) Finance Section. As the following chart shows, all of OPA's accounts during the 2002-03 financial year were paid by the due date.

Account payment performance – OPA accounts paid by the due date

Number of accounts paid by due date	401
Percentage of accounts paid by due date (by number)	100
Value in \$A of accounts paid by due date	\$282,863
Percentage of accounts paid by due date (by value)	100

## Consultants

There were no consultants engaged during the 2002-03 financial year.

## Contractual arrangements

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

## Disability Action Plans

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

*Ensure accessibility to services to people with a disability.*

The OPA is a statutory body specifically set up to further the interests of people with mental incapacity. Its target population is people with mental incapacity and their carers.

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

The OPA's education program is directed towards informing the public and people with a disability about matters pertaining to the *Guardianship and Administration Act 1993*, the *Mental Health Act 1993* and the *Consent to Medical Treatment and Palliative Care Act 1995*. During this reporting period, a series of new fact sheets was developed to make information more accessible to the public.

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

The OPA delivers a range of advice and services specifically to further the interests of people with mental incapacity.

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

Representatives of the OPA have participated in a range of committees and fora seeking to influence South Australia's approach to disability issues.

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

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

the *Disability Discrimination Act 1992* and the *Equal Opportunity Act 1984*.

### **Equal opportunity programs**

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

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

### **Fraud**

There were no instances of fraud during the 2002-03 financial year.

### **Energy Efficiency Action Plan Reports**

The OPA currently does not have an action plan. The OPA is a tenant of the ABC and is in part governed by landlord practices. Electricity costs have increased by 19.5% this year (2002-03 \$9,672 compared to 2001-02 \$8,093). There are no identifiable practice changes within the office to account for this. The office has adopted strategies to reduce electricity expenditure by turning off computer monitors when not in use, having the photocopier on power save, and turning all lights off within the office at the end of the day.

Vehicle lease and operating costs increased by 13.52% for the financial year (\$8,262 in 2002-03 compared to \$7,278 in 2001-02). Expenditure on taxis has increased by 3.52% (\$3,438 in 2002-03 compared to \$3,321 in 2001-02).

### **Overseas travel**

There was no overseas travel by staff of the OPA during 2002-03.

# *Freedom of information*

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

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

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

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

The nature of the OPA's work leads to:

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

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

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

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

- OPA Annual Reports.
- Files relating to investigation and the care of protected persons.

- Administrative files relating to the business operations of the OPA.
- A series of printed resources, including the OPA fact sheets, which provide information about the state guardianship and mental health legislation. A list of the OPA's publications is on page 44.

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

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

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

## *Amending personal records*

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

## *FOI requests 2002-03*

OPA received one request under FOI this year.

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

# *Financial summary*

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

For this reason, full general purpose financial reports are not provided as part of this Annual Report. The chart below provides an expenditure summary for the OPA for the 2002-03 year. The financial functions of the OPA were managed by Intellectual Disability Services Council (IDSC) Finance Section for the full reporting period.

<b>Office of the Public Advocate expenditure summary for 2002-03</b>			
<b>Description</b>	<b>Actual</b>	<b>Budget</b>	<b>Variation</b>
<b>Salaries and Wages</b>	<b>595,554</b>	<b>615,188</b>	<b>(19,634)</b>
<b>Goods and Services</b>	<b>167,320</b>	<b>141,534</b>	<b>25,786</b>
<b>Assets</b>	<b>6,600</b>	<b>7,500</b>	<b>(900)</b>
<b>Revenue</b>	<b>(773)</b>		<b>(773)</b>
<b>GST Recoverable</b>	<b>13</b>		<b>13</b>
<b>Total Net Expenses</b>	<b>768,714</b>	<b>764,222</b>	<b>4,492</b>



# *Appendix 1: Staff changes 2002-03*

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## **Public Advocate**

- Mr John Harley continued in a contract position in 2002-03.

## **Assistant Public Advocate**

- Ms Margaret Farr was permanently appointed in November 2002.

## **Public Advocate Officers**

- Ms Anita Micallef, Ms Yvette Gray and Ms Suzanne Bull are the three permanently employed Public Advocate Officers.
- Ms Karen Graham acted partly in a PSO2 position until the expiry of her contract in February 2003.
- Ms Mary Allstrom continued to work on a part time contractual basis during the entire 2002-03 period.

## **Education Officer**

- Ms Angela Andary is the permanent Education Officer. She was on unpaid leave between October 2002 and June 2003.

## **Information Officer**

- Ms Stephanie Lewis returned from unpaid maternity leave in July 2002, working on a 0.4 FTE basis.

## **Student placements**

The OPA was fortunate to have the assistance of two students on placement during this year:

- Mr Michael Lowe, Law student;
- Ms Michelle Martin, Social Work student.

## **Community Enquiry/Public Advocate Officer**

- Ms Karen Graham's two year contract ended in February 2003.
- Ms Mary Allstrom was permanently appointed in February 2003, but has since continued to work in guardianship.
- Ms Bianca Fecycz was employed on a full time contract from February to December 2003.
- Ms Annelise Van Deth was employed on a part time contract from February to December 2003.

## **Administrative staff**

- Mr Paul Green, Administration and Finance Officer, was on unpaid leave for the entire reporting period.
- Ms Jenni Wright, Senior Clerical Officer, worked from July 2002 to March 2003 between periods of unpaid leave.
- Ms Stephanie Evans has continued to work in the administrative area throughout the 2002-03 period, undertaking a variety of contracts.
- Ms Erin Soininen was employed on a part time contractual basis between March and June 2003.
- Agency staff have also been employed during various periods to assist in the administrative area.

## Appendix 2: Staff profile tables

**Table 1: OPA Public Sector Management Act employees by stream, level, appointment type and gender as at 30 June 2003**

Public Sector Management Act employees by stream, level, appointment type and gender as at 30 June 2003									
Stream	Ongoing			Contract			Total		
	M	F	Total	M	F	Total	M	F	Total
<b>Administrative</b>	0	0	0	0	0	0	0	0	0
ASO1	0	0	0	0	0	0	0	0	0
ASO2	0	0	0	0	2	2	0	2	2
ASO3	0	0	0	0	0	0	0	0	0
ASO4	0	1	1	0	0	0	0	1	1
ASO5	0	0	0	0	0	0	0	0	0
ASO6	0	0	0	0	0	0	0	0	0
ASO7	0	1	1	0	0	0	0	1	1
<b>Total</b>	0	2	2	0	2	2	0	4	4
<b>Professional</b>	0	0	0	0	0	0	0	0	0
PSO1	0	1	1	0	2	2	0	3	3
PSO2	0	3	3	0	0	0	0	3	3
<b>Total</b>	0	4	4	0	2	2	0	6	6
<b>Executive</b>	0	0	0	0	0	0	0	0	0
EL3	0	0	0	1	0	1	1	0	1
<b>Total</b>	0	0	0	1	0	1	1	0	1
<b>Total all streams</b>	0	6	6	1	4	5	1	10	11

**Table 2: OPA sick leave, family carers leave and special leave with pay for individual needs and responsibilities as at 30 June 2003**

<b>OPA sick leave, family carers leave and special leave with pay for individual needs and responsibilities as at 30 June 2003</b>			
	<b>Average number of sick leave days taken per FTE</b>	<b>Average number of family carer days taken per FTE</b>	<b>Average number of special leave with pay days for individual needs and responsibilities taken per FTE</b>
<b>2002-03</b>	<b>6.82</b>	<b>0</b>	<b>0</b>
<b>2001-02</b>	<b>2</b>	<b>0.2</b>	<b>0.2</b>

**Table 3: OPA workforce diversity as at 30 June 2003**

<b>OPA workforce diversity as at 30 June 2003</b>					
	<b>Total number of employees</b>	<b>Female</b>	<b>%</b>	<b>Indigenous employees</b>	<b>Employees with a permanent disability</b>
<b>Executives</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Senior Managers</b>	<b>1</b>	<b>1</b>	<b>100</b>	<b>0</b>	<b>0</b>
<b>Middle Managers</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>First Line Supervisors</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Other Administrative</b>	<b>3</b>	<b>3</b>	<b>100</b>	<b>0</b>	<b>0</b>
<b>Other Professional</b>	<b>6</b>	<b>6</b>	<b>100</b>	<b>0</b>	<b>0</b>

**Table 4: OPA cultural and linguistic diversity as at 30 June 2003**

<b>OPA cultural and linguistic diversity as at 30 June 2003</b>			
<b>Cultural diversity as at 30 June 2003</b>	<b>Country of birth Australia</b>	<b>Other country of birth</b>	<b>English is main language spoken at home</b>
<b>Executives</b>	<b>1</b>	<b>0</b>	<b>1</b>
<b>Senior Managers</b>	<b>1</b>	<b>0</b>	<b>1</b>
<b>Middle Managers</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>First Line Supervisors</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Other Administrative</b>	<b>2</b>	<b>1</b>	<b>3</b>
<b>Other Professional</b>	<b>5</b>	<b>1</b>	<b>7</b>

**Table 5: OPA age profile as at 30 June 2003**

<b>OPA age profile as at 30 June 2003</b>					
<b>Age groups (years)</b>	<b>Number of employees (persons)</b>			<b>% of all agency employees</b>	<b>% of South Australian workforce</b>
	<b>Male</b>	<b>Female</b>	<b>Total</b>		
15-19	0	0	0	0	7.3
20-24	0	1	1	9	10.3
25-29	0	2	2	18	10.7
30-34	0	0	0	0	11.5
35-39	0	2	2	18	11.4
40-44	0	2	2	18	13.1
45-49	0	1	1	9	12.1
50-54	0	1	1	9	10.8
55-59	1	0	1	9	7.6
60-64	0	1	1	9	3.7
65+	0	0	0	0	1.5

**Table 6: Voluntary Flexible Working Arrangements as at 30 June 2003**

<b>OPA Voluntary Flexible Working Arrangements as at 30 June 2003</b>					
<b>Type of arrangement</b>	<b>Total employees</b>	<b>Number of employees using a Voluntary Flexible Working Arrangement</b>			
		<b>Executive</b>		<b>Non-executive</b>	
		<b>Male</b>	<b>Female</b>	<b>Male</b>	<b>Female</b>
<b>Purchased leave</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Flexitime</b>	<b>10</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>10</b>
<b>Compressed Weeks</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Part time and job share</b>	<b>5</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>5</b>
<b>Working from Home</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

# *List of OPA publications*

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## **FACT SHEETS**

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

## **APPEALS FLOWCHARTS**

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

## **POSITION PAPERS**

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

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