

**OFFICE OF THE PUBLIC ADVOCATE**

**ANNUAL REPORT  
2003-04**



30 September 2004

The Hon Jay Weatherill MP  
Minister for Families and Communities  
178 North Terrace  
ADELAIDE SA 5000

The Hon Michael Atkinson MP  
Attorney-General  
45 Pirie Street  
ADELAIDE SA 5000

Dear Ministers

I have the honour to present to you the tenth 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 2003 to 30 June 2004.

The period referred to occurred whilst the Minister responsible for my Office was the Minister for Families and Communities. However, as from 1 July 2004, the Minister responsible became the Attorney-General who will be required to lay the Report before Parliament in accord with section 24 of the Act.

Yours faithfully

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

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# *Public Advocate's report*

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## **Guardianship and Education**

One of the principal functions of the Public Advocate is to “give advice on the powers that may be exercised under the *Guardianship and Administration Act 1993* in relation to mentally incapacitated persons, on the operation of this Act generally and on appropriate alternatives to taking action under this Act”, section 21(1)(g). This is generically referred to as my “educative function”. However in addition to my disseminating information about the *Guardianship and Administration Act 1993*, I am also responsible for providing information and advice on the operation of the *Mental Health Act 1993* and the *Consent to Medical Treatment and Palliative Care Act 1995*.

My office undertakes these tasks by means of education sessions, the telephone advisory service, letters of advice, public lectures, the publication of literature, participation in ethics committees and our after-hours, 24/7 emergency pager service.

Until last year a large proportion of this work was undertaken by a full time Education Officer and a part time Information Officer. Both have now left our employ of their own volition to take up other positions in the public service. As is reported at page 24 of this report the funds for these positions have been diverted into client work but in particular to provide salaries for additional guardians to undertake the ever increasing load of guardianship (see page 17 hereof).

Whilst we were fortunate enough last year to receive additional funding for

1.0FTE guardian position for this purpose the increase in the number of guardianships has far outgrown these extra resources. As can be seen from the figures contained in the bar chart on page 18 entitled “End of year guardianship case loads”, there has been a consistent increase each year since 1999 (130) resulting now in 240 active cases, ie an increase of 110 or 85% over 5 years.

In addition to the rise in guardianships we are increasingly being drawn into undertaking the role of litigation guardian/ case guardian/ guardian ad litem in proceedings in the Magistrates Court, the Family Court, the Youth Court and the Supreme Court as litigants present with a mental incapacity such that they are unable to instruct a solicitor to represent them. This work, whilst immensely helpful to both the courts and to the litigants with a mental impairment, is extremely time consuming and therefore involves me and members of my staff being unavailable to do other work.

I therefore will be seeking from the responsible minister additional assistance so that I can better meet my statutory responsibilities in relation to upholding minimum guardianship standards and undertaking the function of community education.

Another aspect of my work which suffers from inadequate resourcing is that of systemic advocacy. There are many aspects of this work, but I have particular concerns in the areas of mental health, brain damage, intellectual disability and aboriginal issues, which

demand greater research and monitoring that I am unable to provide due to my involvement in case work and education.

### **Private Guardians**

With the funding of the private guardian's manual by the Law Foundation of South Australia Inc, we are now able to provide greater support to those family members and friends of protected persons who are prepared to undertake the role of guardian either under the *Guardianship and Administration Act* or by way of appointment under an Enduring Power of Guardianship.

Guardianship can at times be a most onerous task so it is important that we do all we can to assist. In other jurisdictions in Australia the equivalents of the Office of the Public Advocate have dedicated staff members to provide training and ongoing support to private guardians. The knowledge that this exists often empowers people to accept the role of guardian knowing that they will have recourse to specialist advice and assistance; and of course the more private guardians there are the less public guardianships, so relieving the Office of the Public Advocate and enabling us to undertake other work.

We always encourage private guardianships as there cannot be a better way of ensuring a much more personal relationship with the protected person than we are able to provide.

The Law Foundation, which was established by the Law Society of South Australia in 1987, provides funds for community education and information about the law. It receives its income by way of the interest earned on solicitor's trust accounts. The Attorney-General

each year allocates to the Foundation 10% of the interest. We are delighted that we were able to qualify for a grant this year and are most grateful to the Foundation for what we have received.

### **Forensic Mental Health**

In last year's report I adverted to some of the inadequacies in the Forensic Mental Health system. This year I particularly want to refer to the inadequacies within the South Australian Prison Health Service which is part of the Forensic Mental Health system.

Studies both locally and interstate indicate that approximately 7% of prisoners have schizophrenia or related psychotic conditions (not including substance related psychosis) and an additional 10% suffer from depressive disorders, post traumatic stress disorder or anxiety disorders. Substance abuse by this 17% is also the norm.

The South Australian Prison Health Service and the Department of Correctional Services provide primary care for prisoners with these problems. However, there is also a responsibility for specialist services to provide both direct care and to support primary care services in their management of prisoners with complex and serious mental disorders.

The *United Nations Basic Principles for the Treatment of Prisoners (1990)* provide, inter alia:

*"1. All prisoners shall be treated with the respect due to their inherent dignity and value as human beings."*

*"4. The responsibility for prisons ... shall be discharged in keeping with the State's other social objectives and its fundamental responsibilities"*

*for promoting the well-being and development of all members of society.”*

*“9. Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation.”*

The *International Covenant on Civil and Political Rights (1966)* provides, inter alia:

*“Article 10*

*1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”*

These international treaties are being breached because the level of services being provided to prisoners is not equivalent to that available in the community. Over the past decade the real level of specialist mental health services available for prisoners on a per capita basis has declined markedly. This has resulted in a significant service deficiency for prisoners.

At present non-violent offenders with obvious mental health problems are kept in prison whilst waiting for assessment of mental impairment for the courts whereas they should be placed in suitable health facilities or their assessments arranged in the community.

Violent offenders with the same mental health problems should be placed in a secure health facility, such as James Nash House, pending assessment. This frequently does not occur due to a lack of bed space. However, if the offender is kept in prison, then the assessment should be expedited so that the time in prison is minimised before a return to court.

The current level of specialist psychiatric face to face consulting services also reflects the service needs of a decade ago. Currently prisoners access 40 hours per month of face to face consultations. The average length of consultations is 20 minutes. The current level of service must be regarded as inadequate and borders on the dangerous. This service shortfall is across all prisons but is particularly acute at Port Augusta Prison.

The current access by prisoners to James Nash House is inadequate. Over the past decade effective numbers of available beds has declined from 30 down to 8 whilst numbers of prisoners have increased by 30% and the proportion of major behavioural problems has increased. Unless prisoners are severely disturbed and detainable under the Mental Health Act, there is often no access to inpatient services for the more detailed assessment and treatment necessary for those prisoners with chronic ongoing disability.

As prisoners’ mental health problems have been inadequately dealt with whilst in prison they experience significant problems in their transition into the community. There is frequently inadequate discharge planning whereby clinical information and responsibility for care is handed over to community based services.

The deficiencies in services to prisoners ensures that upon their release they will re-offend and fall into the correctional system once more with further harm to the prisoner and society in general.

There is already established a project within the Department of Health, Mental Health Services and Programs, with the

object of reforming the Forensic Mental Health system. However it will just produce another report to place in our bookshelves unless there is a strong commitment by the Government in terms of organisational and legislative change, money and resources, to meet its international human rights obligations to ensure that offenders have access to the range of health services that would be available to them in the community.

### **Thanks**

I wish to record my thanks to the Hon Stephanie Key MP, formerly Minister for Disability Services, the Hon Jay Weatherill MP and the Hon Michael Atkinson for their courtesy and the time they and their respective staffs devoted to attend to my requests.

I also thank my staff and particularly the Assistant Public Advocate, Ms Margaret Farr, for their hard work on behalf of our clients and for supporting me. I am extremely proud of their commitment and the quality of their work.

### **Unmet Needs**

The following matters continue to remain unaddressed or are inadequately addressed from my previous reports:

- a bill of rights to provide a strong legal framework for citizens with a disability to protect and enhance their human rights;
- the lack of appropriate facilities for adolescents and young adults with a mental disorder, and particularly 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;
- the need for appropriate and additional programs and lack of residential and respite care for people with an intellectual disability;
- the need for an investigation into the sexual and other abuse of people with an intellectual disability in government and private institutions;
- a Justice Support Program to provide a statewide network of justice support persons who give assistance and support at police interviews for people with a mental or intellectual impairment and are involved in the criminal justice system;
- the lack of assistance and advocacy for people appearing before the Guardianship Board;
- the cost of administration of a protected person's estate by the Public Trustee; and
- a Community Visitor Program staffed by volunteers to regularly visit and report to the Public Advocate on all facilities providing services to people with a mental incapacity.

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

# *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;
- to 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 was funded by the Disability Services Office, within the Social Justice and Country Division of the South Australian Department of Human Services during 2003-2004.

The funded staff positions of the Office of the Public Advocate as at 30 June 2004 are reflected in the organisational chart in the Employment and Human Resources section.



# 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 judgment 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 2003-04 highlights*

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- Agreement on transfer of the Office of the Public Advocate (OPA) to Attorney General's portfolio - to take place on 1 July 2004.
- Agreement on funding of renovations to 7<sup>th</sup> floor of the ABC Building for OPA – move to occur during next financial year.
- Department of Human Services funding of:
  - One additional guardian position;
  - Temporary senior position to advocate for residents affected by the closures of supported residential facilities (SRFs);
  - Grant to hold a symposium on Exceptional Needs clients held in April 2004;
  - Translation of an OPA fact sheet into 13 languages.
- Law Foundation grant towards the production of a manual for private guardians.
- Consultation with service providers and private guardians to produce the final draft of the private guardians' manual.
- Launch of fact sheets.
- Hosting national meeting of guardians, administrators and advocacy jurisdictions, April 2004.

- Hosting day symposium on Exceptional Needs clients involving 150 local and interstate participants.
- Mock Guardianship Board hearing at Glenside – presenting an application to the Board.
- Joint work with the then Department of Human Services on appropriate responses to SRF closures.
- Managing 480 active cases during the year, including guardianships under the Guardianship and Administration Act, individual advocacy matters, investigations and court appointed guardianships.
- Providing education to 2350 people, including 602 in country South Australia.
- Responding to 4594 enquiries from members of the public and service providers.
- Conducting 157 screenings and minor investigations.

## ***OPA advocates for vulnerable people in Supported Residential Facilities (SRFs)***

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The Office of the Public Advocate has been aware of and concerned about the limited range of community based, supported accommodation available for our client group. South Australia has relied heavily on SRFs to accommodate those in need of supported accommodation. At the same time owners and operators of SRFs have been raising concerns about their financial viability calling on the government to subsidise their activities. OPA has also been concerned about the varying standards of care, the rising cost to the residents and the limited availability of externally provided individualised support and case management for this group of vulnerable people.

In 2003 four metropolitan and one country SRF closed, displacing 105 residents. In the first 6 months of 2004 one other SRF closed and seven others were considered 'at risk' of closing. Two unlicensed facilities offering accommodation to people with mental incapacity also came to the attention of both the OPA and the Department of Human Services.

This pattern of closures and threatened homelessness and broader reform agendas resulted in positive action by the government. The Department of Human Services (Residential Services and Support Unit) received \$56 million to be spent over the next five years to address issues in the SRF and associated housing sectors. The immediate impact was the payment of a personal care subsidy for all current SRF residents and the pegging of residents' contributions at 80% of their pensions. In addition, individuals displaced through closures gained access to funding to ensure appropriate rehousing and support. Assessment teams and coordination positions within key disability agencies have also been established to address the needs of this client group.

In November 2003 the OPA received twelve months funding as part of this initiative to employ a worker to advocate for disaffected residents and to contribute to reform within the sector. This work has raised the OPAs awareness of a number of concerns inherent in the SRF sector, including the vulnerability of our client group to:

- variations in market forces;
- differing approaches/commitment across local government areas to their roles and responsibilities in licensing and monitoring;
- inconsistent use or lack of contracts and tenancy agreements for residents; and
- potential conflicts between operators' business interests and rights of clients.

The closures of SRFs have led to the displacement of some of the most vulnerable members of our community. Service responses provided have, where possible, incorporated providing stable accommodation in their own house or unit, clear tenancy arrangements, individual support and retraining programs designed to maximise independence. This has had a positive effect on many of the clients who seem to have

accepted the challenge of moving past the safe and familiar model of structured congregate care. With well coordinated service responses many of the individuals affected have shown a resilience and ability to adapt to their new circumstances well beyond what their caseworkers and others anticipated.

However, in the earlier days some individuals were hurriedly placed without proper attention to their individual needs, wishes or advocacy requirements. As a result, they experienced significant fear and distress and some found themselves displaced on more than one occasion when their receiving facility closed or could not cope with their needs.

Whilst SRFs offer some level of personal care in addition to board and lodgings, and some do this very well, financial and operating restrictions can result in all residents receiving a similar level of care - the 'one service fits all' approach. The more needy or more able residents may not be individually catered for. This situation has the potential for those individuals with high personal and social care needs to receive less attention than would be desirable, and for those with good living and social skills to become deskilled as individual strengths are not maintained or developed.

Emerging from the crisis has been the opportunity to develop coordinated responses between the Department of Human Services, regional government and non government service providers and some providers in the SRF sector. Ways of facilitating comprehensive consultation between potential residents, families, service providers and landlords are emerging and alternative housing and support strategies have been crafted around individuals. A feature of the service responses provided is the separation of the landlord and disability care provider function.

Congregate care and the role of the SRF sector in its provision will achieve clearer focus as reforms in supported housing progress. The OPA strongly supports moves towards:

- separation of landlord and disability support functions;
- requirements for tenancy agreements;
- recognition of independent advocacy and participation in decision making as rights of SRF residents;
- more opportunities to engage natural networks in the support of residents;
- improved collaboration between SRF managers and landlords, government and non government providers;
- creation of an improved range of supported accommodation alternatives;

The structural changes have started, and we should all be encouraged by the responses of those caught in the Closures.

## *Key outcomes*

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The Office of the Public Advocate has four key service areas. During 2003-04, 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 individual and systems levels.*

## **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. 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 68 individual client advocacy matters during 2003-04, 52 of which were new cases this year. This compares with 53 active cases in 2002-03 and 12 in the 2001-02 period.

A number of this year's cases related to the Supported Residential Facilities Advocacy Project that is featured earlier in this report.

Examples of Advocacy:

- Assistance was provided to an older woman living in a residential care facility and whose family were in dispute over the operations of an enduring power of attorney. OPA staff mediated the family dispute and assisted in obtaining evidence of the woman's capacity to execute a new advance directive. Two applications to the Guardianship Board were therefore diverted.
- The OPA convened a cross sector meeting of health, disability, transport, youth and funding services to plan a response to the unique needs of a mentally incapacitated 16 year old who presented significant risks to himself and others. Crown Law advice was sought on the relevance of the Guardianship and Administration Act to the circumstances of a minor.

The family was supported in making an application to the Guardianship Board and joint guardianship between the Public Advocate and the teenager's mother is now in place.

- The Public Advocate participated in a successful appeal to the District Court overturning a decision of the Guardianship Board. Alternative caregivers had not been appointed as guardians and administrators of an 18 year old severely disabled child who had been in their care since early childhood. The court's findings highlight that each case must be taken on its merit in determining guardianship and administration orders when alternative caregivers are involved. It also clarifies that caregivers who receive payment for providing care are not automatically in a position of conflict of interest.
- OPA has worked with several family members who have experienced difficulty in communication with the mental health services.

### *Supported Residential Facilities*

#### *Closures: Advocacy*

- Three individuals have been placed under the guardianship of the Public Advocate and others have been visited and provided with individual advocacy.
- Alternative housing has been advocated for on behalf of at least 42 clients.
- The OPA has organised emergency respite and permanent placement of two clients.
- The OPA has actively participated in regional and central coordinating committees and meetings relating to closures.
- The OPA liaised with the Department of Human Services on responses to

complaints made about facilities by residents and staff.

- The OPA took legal action in the Supreme Court on behalf of a group of residents who were threatened with eviction from one unlicensed metropolitan facility. The successful outcome meant residents remain there, as was their unanimous wish, and local government is now working towards licensing the facility as a SRF and are ensuring proper management of the facility and support to residents.
- The OPA convened a meeting of DHS representatives and a facility manager in an attempt to resolve tenancy issues and support arrangements for 19 residents.
- The OPA liaised with the Public Trustee staff regarding concerns about financial and contractual issues pertaining to residents in SRFs. The lack of effective liaison arrangements for many residents is of particular concern.
- The OPA assisted the Department of Human Services in advising all residents in supported residential facilities of the new individual subsidy scheme aimed at improving personal care and the proposed individual assessment process.

It is gratifying to note that some of the residents who have moved into a more independent living setting with tailored support programs are doing well. Others have successfully transitioned to aged residential care facilities.

Visits to some of the remaining SRFs reinforce concerns for this office about overcrowding, inappropriate client mixes and risk management issues. It is troublesome that we still look to this sector to take some of the most needy and challenging clients. The Public Advocate

has a number of protected people under guardianship who reside in this sector.

### **Systemic Advocacy**

Staff members were active within the following external committees during 2003-04:

- 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;
- Department of Human Services Ethics and Privacy Committee;
- Intellectual Disability Services Council Ethics Committee;
- Intellectual Disability Services Council Legal 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 Impairment Implementation Reference Group;
- Forensic Mental Health Working Party;
- Advance Directives - Law Reform
- Interdepartmental Coordinating Committee for Closures of SRFs; and

- Steering Committee for Aldridge Court.

The Public Advocate continues to promote the need for:

- a human rights bill which protects and promotes the human rights of citizens of South Australia, in particular those with mental incapacity;
- simplification of the legislative framework for advance directives;
- improved accommodation, clinical and support programs for people with mental incapacity, particularly those who offend and spend periods in prison and forensic units;
- integrated service models which demonstrate cross service and cross sector collaboration at the individual client level.



# 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

OPA continued to divert resources from Education to the client workload throughout this year. Additional ongoing funding provided by the Department of Human Services from January 2004 has enabled a further full time position to be created. The Public Advocate and Assistant Public Advocate also carried a guardianship caseload throughout the year.

At the end of this financial year, there were 4 FTE PSO2 permanently funded positions primarily devoted to guardianship work.

Guardianship cases are divided into intensive/continuity cases managed by the senior guardians and monitoring (stable) cases managed by the monitoring team. Approximately 0.3 FTE PSO1 time is devoted to this latter client group and is used mainly for reviews required by the

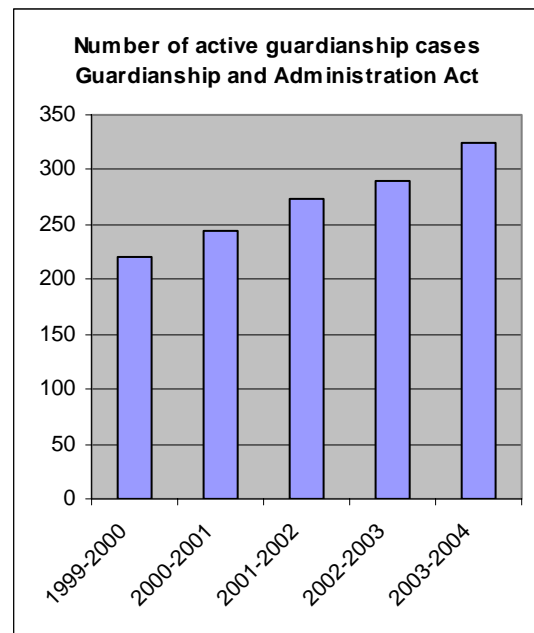
Guardianship Board. This resource has been funded temporarily from Education resources and vacancy factors.

Restructuring next year will ensure the ongoing allocation of resources to this role.

## Outcomes

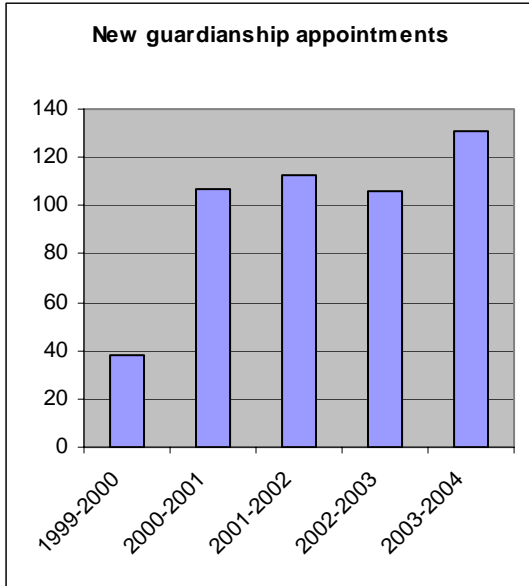
### *Guardian of last resort*

During 2003-04, the OPA provided guardianship services under the *Guardianship and Administration Act* on behalf of 324 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.



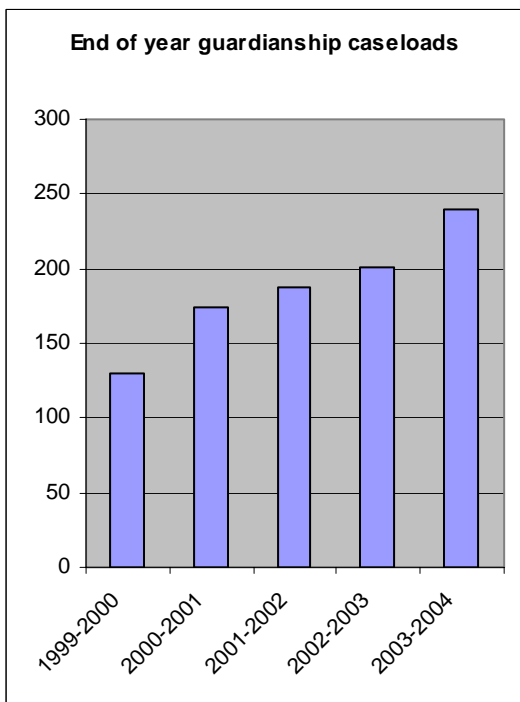
### New guardianship appointments

This year there were 131 new guardianship appointments under the *Guardianship and Administration Act*, an increase on last year's figures and consistent with the overall trend of the past four years in contrast to 1999-2000 figures of 39 new appointments (see graph below).



### End of year caseloads

Case closures again fell well below new appointments thus continuing the upward trend in end of year active caseloads. As at 30 June 2004, there were 240 active cases under guardianship (G&A Act).



### Disability profile of guardianships

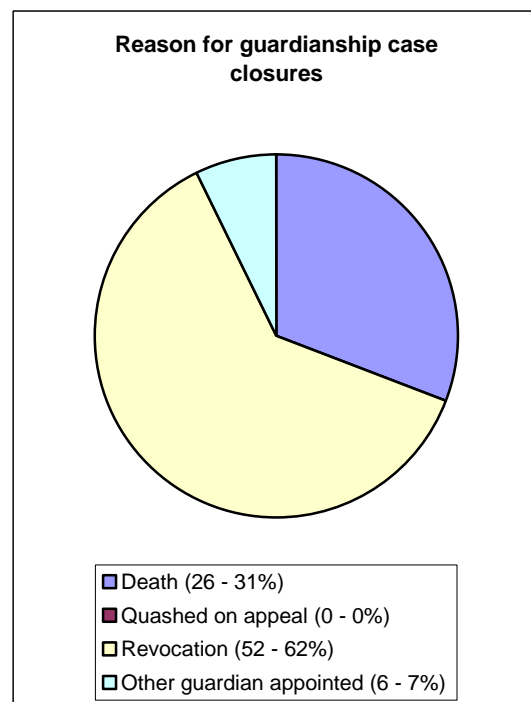
Many clients under the OPA's guardianship have more than one recognised disability. Those under guardianship at the end of the past two reporting periods showed similar breakdowns.

Disability profile of guardianship cases including secondary diagnosis

Diagnosis	2002-2003	2003-2004
Mental illness	33%	33%
Dementia	41%	39%
Intellectual impairment	24%	23%
Brain damage	18%	17%
Neurological disorder	3%	3%
Personality disorder	1%	1%

### Guardianship case closures

Eighty four cases were closed this year: 26 due to death, 52 due to revocation and 6 because other guardians were appointed. This is illustrated in the chart below.



## **Guardianship and Court Matters**

The OPA has continued to provide a service in cases where people are involved in legal proceedings during a period where they are suffering a mental incapacity.

This is consistent with the mandate of the OPA to promote and protect the rights and interests of people with a mental incapacity. If a person with a mental incapacity is unable to instruct a solicitor, the Public Advocate can be appointed by the court in order to provide instructions to a solicitor. This enables the person with the mental incapacity meaningful participation in the proceedings.

The appointed person 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 these proceedings, where conflict exists between best interests and wishes, best interests are the paramount consideration.

During 2003-04 the OPA was involved in 12 matters where courts requested assistance. Ten of these were opened this year. Matters included:

- statutory wills for people who do not have testamentary capacity (Supreme Court);
- maintenance claims for a person with mental incapacity (Family Court);
- pre-trial conferencing, custody and access arrangements for parents with mental incapacity (Youth Court).

### **Issues Faced in Guardianship**

Again guardians were faced with a range of challenging issues.

- The OPA has been approached to take on guardianship for a small number of

young people who have been known to Family and Youth Services and who have disabilities. In some of these cases, the identification of adult systems of support and care has been the main concern. Several have had multiple problems which challenge their ability to function in the community and yet they do not qualify readily for the mainstream disability services. Several have required referral to the Management Assessment Panel. Here, the combination of early childhood abuse and trauma, disrupted parenting, minor intellectual disability or brain trauma and substance abuse lead to major difficulties in relating to the community.

- Guardianship of clients within the forensic system has again proved challenging in trying to negotiate appropriate care plans to support their release into the community. For example, finding aged care accommodation for an older man with a frontal lobe dementia and a history of offending was difficult to achieve.
- Family conflict remains a feature of a number of our guardianships and decision making processes are resource intensive and stressful for the workers, particularly when the protected person is unable to express a wish.

Recently the Crown has decided not to provide representation for government applicants/ the Public Advocate in some appeals. Whilst the current Public Advocate is a lawyer this is not always the case. The Office of the Public Advocate has no designated legal officer position to prepare for appeals or other legal matters which present during the course of guardianship activities.



# 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

For the first half of the financial year, investigations were conducted by one person in order to consolidate relationships with the Guardianship Board and to achieve efficiencies in workload management. However internal role changes within the office have again led to sharing out the responsibility for screening applications before Board hearings and conducting investigations requested by the Guardianship Board. It is estimated that approximately 0.5FTE of senior guardianship time is spent on this activity.

## Outcomes

A total of 226 investigations were opened in the 2003-04 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 2003-04, 69 of the 226 investigations (approximately 31%) warranted individual client files being opened. A further 13 were carried forward from the previous year. 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 178 undertaken prior to a Guardianship Board hearing.

Wherever practical, a representative of OPA attends Board hearings to make

comment on the applications which nominate a role for this Office. OPA is now seldom appointed without this service having an opportunity to comment on the appropriateness of our involvement. The exceptions to this are where a private guardian has been foreshadowed in an application and the Guardianship Board sees fit to appoint the Public Advocate instead.

### Section 28 investigations.

There were 32 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. Board requests were less this year (32 compared with 44).

### Section 21 investigations

There were 9 significant client investigations commenced 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 the subject of an application to the Guardianship Board.

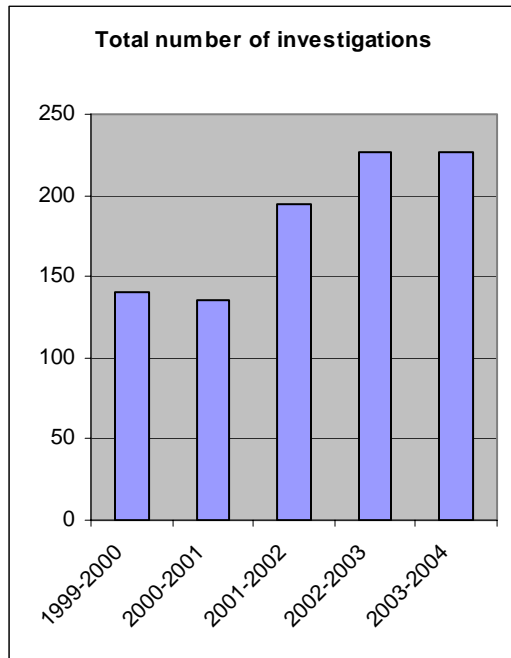
### Sterilisation investigations

There were two new sterilisation investigations commenced this year.

### Other investigations

There were six other matters dealt with this year.

The graph below compares the number of investigations undertaken over the past 5 years.



### Data Issues

The OPA intends to review the data capture mechanisms for this area next financial year.

### Issues in Investigation

The OPA has no legislated powers of investigation under the Guardianship and Administration Act and is therefore reliant on the skills of workers to engage parties in a collaborative manner.

Where matters were before the Board and cooperation could not be gained with interested parties, the matters were referred back to the Board for further action.

During this year the Board requested assistance in:

- determining the appropriateness of the appointment of a nominated private guardian;
- investigating interagency conflict and the need for guardianship;
- determining mental capacity issues where the need for guardianship or administration seemed questionable;
- attempting to reduce conflict over issues pertaining to the wellbeing of people with mental incapacity;
- investigating abuse or neglect in residential and family settings.
- assisting an applicant to produce evidence of jurisdiction or locate the subject of the application;
- investigating the views and wishes of family members in conflict and recommending a course of action to the Board;
- advising on the appropriateness of an application for an individual to be appointed guardian when the views and interests of the potential protected person and the applicant are in conflict.

In a number of matters, guardianship applications were diverted by the OPA's intervention.



# 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

Some education resources were again diverted to client work this year. The agency was largely reliant on the Public Advocate for delivering education sessions with 4 other staff assisting.

The resignation of both the full time Education Officer in April after an 18 month leave of absence and the part time Information Officer at the end of February has created a significant gap in the OPA skill base and knowledge. However, the additional funding from the Law Foundation allowed a long planned education project to be completed.

## Outcomes

### *Education sessions*

The OPA has continued to respond to requests from organisations and individuals and participates in a range of activities. The OPA was unable to respond to 24 of 85 education requests due to short notice, lack of resources at the time requested, recent activities in the same area, or inappropriateness of the request. Where possible, alternative speakers were suggested or written material provided. Several were advised to resubmit their requests at a later date and positive responses were given at that time.

In total, 2346 individuals received advice and information through 61 education sessions conducted by the OPA during 2003-04. This compares with 2609 individuals reached during 61 education sessions in 2002-03.

The OPA uses three main audience categories for classification of 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 1257 service providers attended 33 education sessions provided in the metropolitan area.

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

Year	Sessions	Audience
1997-98	44	828
1998-99	52	1552
1999-2000	33	1440
2000-01	42	613
2001-02	36	741
2002-03	28	1116
2003-04	33	1257

### **Metropolitan carers and consumers**

These talks focus on the promotion of advance directives and general guardianship and administration issues. This year 13 education sessions were given to carers and consumers, reaching 457 participants.

The OPA rejected 14 requests to speak to consumers and carers during this reporting period which in part explains the drop in numbers shown on the following table.

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

Year	Sessions	Audience
1997-98	39	934
1998-99	14	615
1999-2000	10	337
2000-01	19	596
2001-02	9	295
2002-03	23	973
2003-04	13	457

## Country talks

In 2003-04, the OPA gave 15 talks in country areas, reaching a total of 607 people. This represents the highest recorded number of country participants over recent years and reflects OPA's commitment to country activities.

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

Year	Sessions	Audience
1997-98	14	246
1998-99	5	173
1999-00	3	75
2000-01	14	372
2001-02	6	263
2002-03	9	450
2003-04	15	607

## Issues in Education Provision

OPA is aware of a range of organisations and activities which complement and overlap the education undertaken by itself. The respective activities are largely uncoordinated. OPA proposes to undertake a strategic planning exercise with other key stakeholders with a view to some rationalisation of effort and priority setting.

OPA acknowledges the work being undertaken by the Alliance for the Prevention of Elder Abuse (APEA) and the Carers of Protected Persons Action and Support (COPPAS) group in promoting the areas of advance directives and understanding the guardianship processes.

In the past the OPA has provided consultative services in policy and protocol development and participated in a range of activities designed to promote a better understanding of the rights and needs of the mentally impaired. These

were known as education activities. Redirection of resources to direct client work has resulted in little activity of this nature during 2003-2004.

The Public Advocate and his staff are concerned about their inability to make effective contribution to policy and program development in related sectors. These contributions are central to the advocacy function of the Public Advocate and resourcing of such activities must be addressed as a matter of urgency.

## Publications

### Fact sheets

The new Fact Sheets were launched in September 2003. A single fact sheet providing an overview of key issues contained in the 24 English translation Fact Sheets was developed by OPA and its translation funded by the Department of Human Services. This is now available on the OPA website in 13 languages.

### Flowcharts

Flowcharts pertaining to appeal processes are yet to be printed but are available on the OPA website.

### Private Guardians Manual

"Now you are a Guardian" has been drafted and will be available in print from the end of 2004.

### Website

The website has been amended to enable visitors to identify recent additions to its contents. The website will now include discussion papers produced by the OPA and transcripts of key papers delivered by the Public Advocate.

## **2002-03 Annual Report**

During the 2003-04 period, the 2002-03 Annual Report was produced. Reports are now made available on the OPA website rather than printed.

### ***Education activities***

Education activities have been varied this year, including:

- submission to the Parliamentary Committee on Supported Accommodation and appearance before that Committee;
- submission to Standing Committee of Attorneys-General on Sterilisation of Minors;
- vetting of an information manual relating to the Guardianship Board for use in community legal centres;
- commencing work on legal and ethical issues surrounding contraception, consent and compulsion and people with fluctuating capacity;
- contribution to Disability Matters, a quarterly newsletter produced by the Department of Human Services.

### **Australian Guardianship & Administration Committee (AGAC)**

South Australia hosted the meeting of the Australian Guardianship and Administration Committee in April this year. Representatives of Public Advocates, Public Guardians, Presidents of Tribunals, and the Public Trustees gathered to discuss common issues across the jurisdictions. The group was joined by Mr Robert Knowles, Commissioner for Complaints to discuss issues arising from the Commonwealth funded aged sector.

### **Exceptional Needs Clients Symposium**

The OPA hosted a day symposium on policy and program responses for clients with exceptional needs. Health, disability, housing and correctional organisations spoke about the issues and responses for high need clients. One hundred and fifty local and interstate participants discussed future directions for local and national consideration.

# *The Challenge of Private Guardianship*

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## **Private Guardian vs Guardian of Last Resort**

OPA has long been concerned about clients who have family members and friends capable of exercising the role of guardian but are reluctant to take this on for various reasons. Some are not given the right information about the role or not encouraged to take it up by service providers or the Guardianship Board. Some service providers prefer to work with the OPA. Individuals unfamiliar with legal processes can also lack the confidence to take on a legal role, particularly where there is likely to be conflict.

This year, the OPA was successful in obtaining funding from the Law Foundation towards the development of a manual for guardians. "***Now you are a guardian***" was written by Suzanne Bull with the assistance of a group of private guardians, representatives of COPPAS, the Carers Association and the Guardianship Board and with input from OPA staff. It is a useful factual resource and also provides guidelines for substitute decision making using practical examples. It will be available on the OPA website and in hard copy by the end of 2004.

It is hoped that this resource will assist in promoting private guardianships.



# 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 2003-04, 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. OPA allocated 1.6 FTE PSO1 to manage enquiries and handle the monitoring caseload, which accounted for approximately one quarter of the guardianship cases managed by the office. It is estimated that 1.3 FTE of this time was directed to enquiries this year.

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 4594 enquiry calls. The vast majority of contact with the OPA occurs via the telephone, but 27 requests were received by email, 37 by letter, and there were 133 walk-in enquiries.

Data from the past 5 years shows a steady increase in the enquiry activity, including a 28% increase over the last two financial years. This can be explained by a real increase in activity, improved compliance with recording and by a tendency for matters to be held longer by the enquiry team rather than

transferred to advocacy or investigation casework.

Details on enquiries for the past 5 years are compared in the following table.

**Comparison of total numbers of enquiry calls**

Year	Total enquiries
1999-2000	3063
2000-01	3229
2001-02	3642
2002-03	3611
2003-04	4594

## Enquiry Types

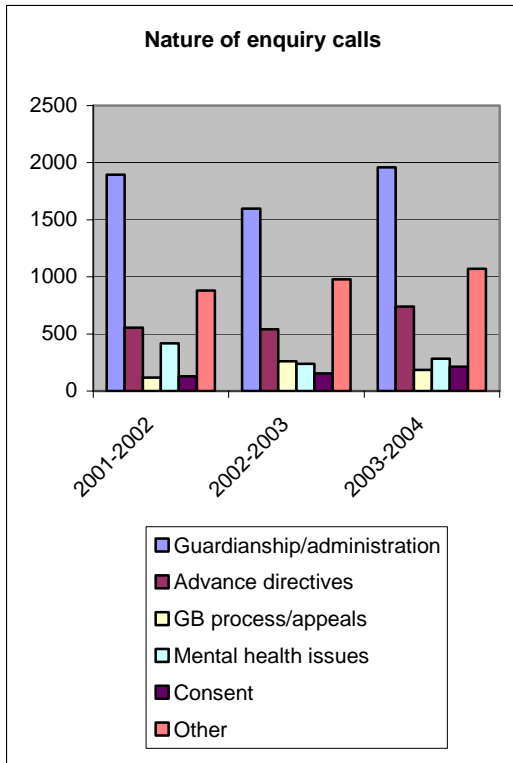
Some enquiries include more than one issue and up to 3 issues can be recorded by the Enquiry Officer.

The 'other' category has become the largest enquiry type. A review of data stored in this category reveals primary issues such as risk management and duty of care queries, complaints and matters where the enquiry officer failed to connect with the caller. New categories and counting measures will be introduced next year to better reflect Enquiry activities.

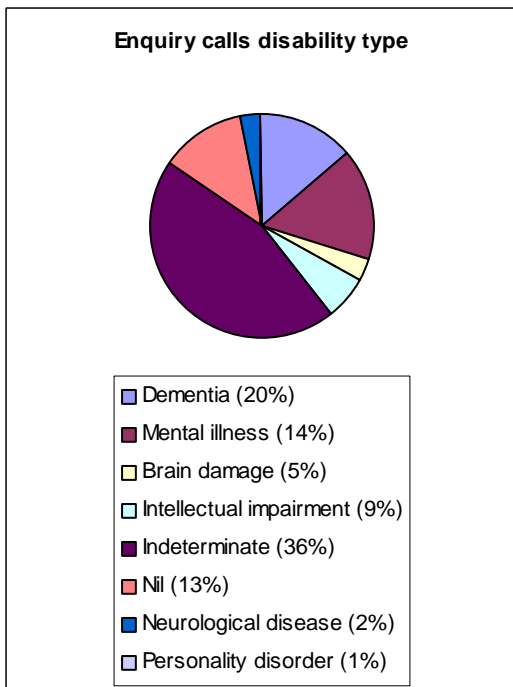
Data for the past three years is outlined below.

**Comparison of enquiry types**

Enquiry category	2001-2002	2002-2003	2003-2004
1. Potential Administration	1118	910	1038
2. Potential Guardianship	755	688	920
3. Advance directives	554	540	739
4. Guardianship Board process/appeals	116	260	184
5. Information/Education	210	302	548
6. Mental health	411	239	282
7. Consent to treatment	129	154	213
8. Other calls	860	978	1072



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



### Some examples of enquiries

Enquiry Officers find themselves communicating with service providers, financial institutions, providers of utilities, lawyers, distressed and sometimes disgruntled family members and concerned citizens. Whilst much of the work involves routine information and advice giving, the Enquiry Officer can become involved in crisis management, counselling, risk management and legal matters as exemplified below:

- providing advice on end of life decision making in the face of conflicting family views;
- negotiating suspension of banking in matters where a person with a mental incapacity is being financially abused;
- encouraging enduring guardians to adhere to the principles of the Guardianship and Administration Act;
- organising interim emergency orders with the Guardianship Board where a person with a mental incapacity is significantly at risk;
- referring people to appropriate accommodation, support and legal services;
- interpreting legislation to assist organisations who are developing related policies and procedures.

# Consolidated Data 2003-2004

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

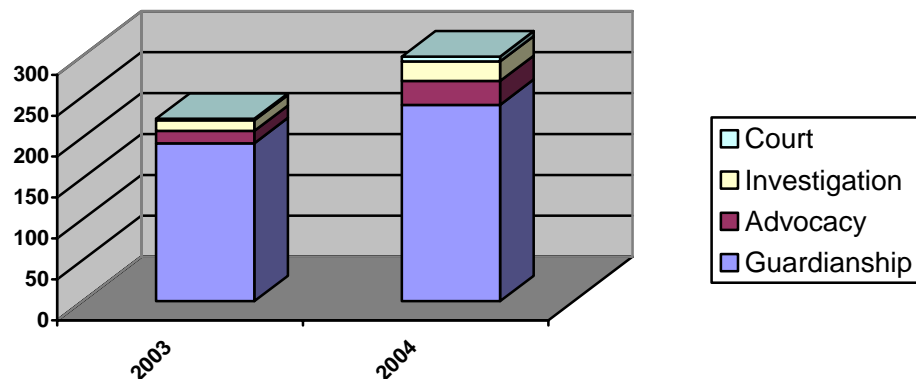
## 1. 2003-2004 Activity related to registered clients

### 1.1 Summary of episodes of service by episode type

Episode type	Open at 1/7/2003	Opened in year	Open at 30/6/2004	Closed in year	Revocation	Death	Other guardian	Total Active
Guardianship	193	131	240	84	52	26	6	324
Advocacy	15	47	29	33				62
Investigation	13	69	24	58				82
Court work	2	10	6	6				12
<b>Total Active Cases</b>	<b>223</b>	<b>257</b>	<b>299</b>	<b>181</b>				<b>480</b>

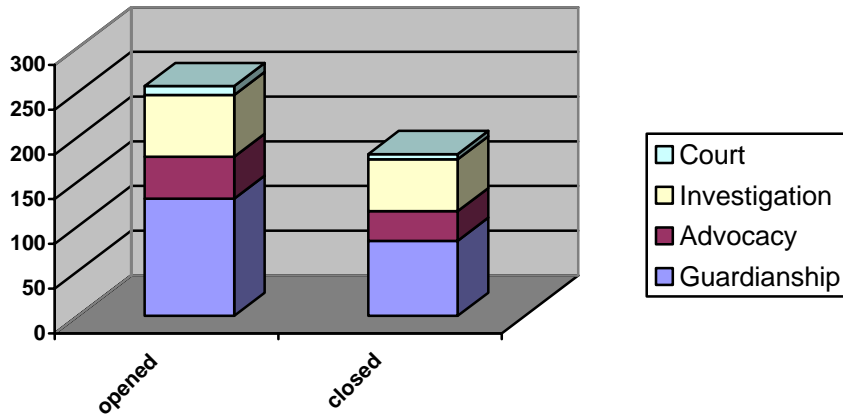
### 1.2 End of Financial year active caseload comparisons

This graph illustrates the increase in end of year active cases in all categories of cases.



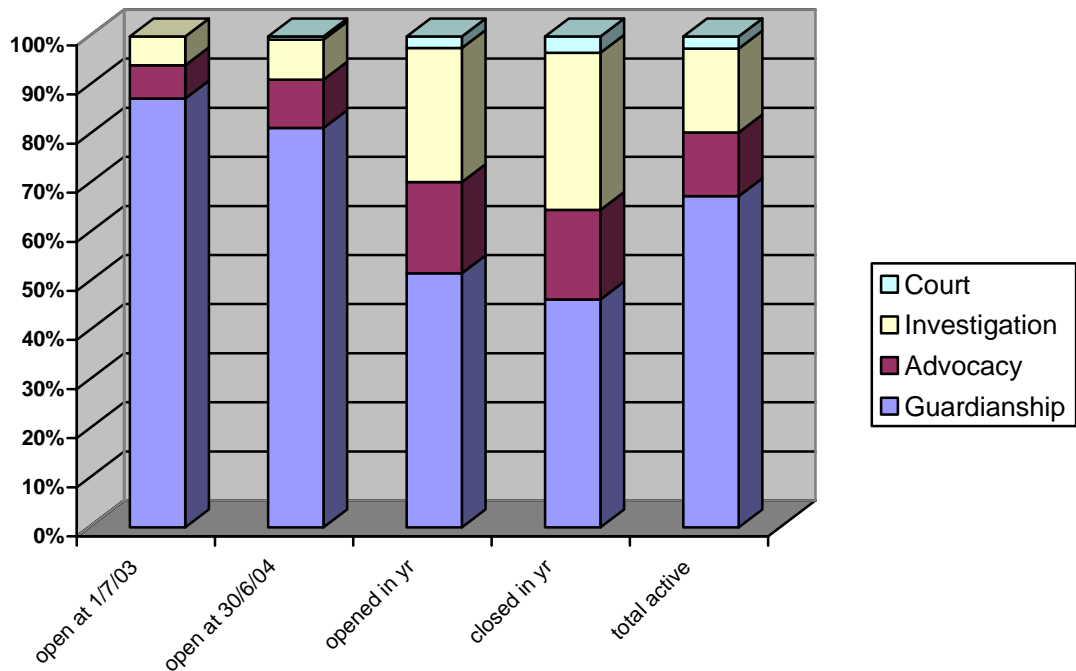
### 1.3 Case opening and closures

The graph below also illustrates that the rate of opening cases exceeds case closures in all activities. However the contrast is greatest in the guardianship cases.



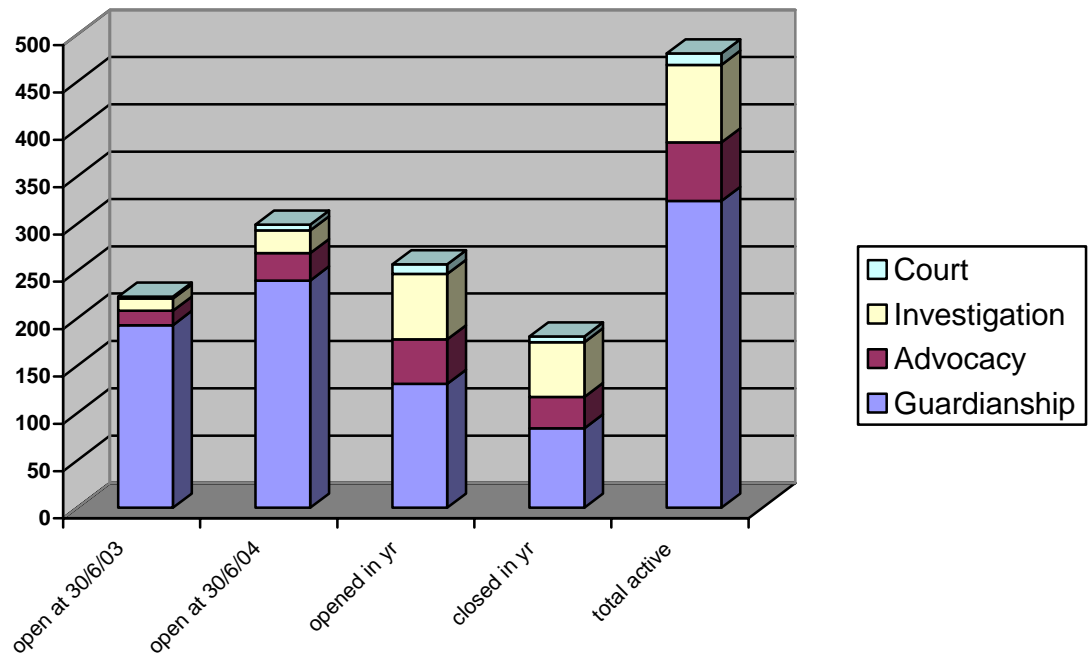
#### 1.4 Case type as a proportion of total case activity 2003-2004

The graph below shows each case type as a proportion of all case types. Whilst guardianship cases represent the major activity at a point in the year (80%+ of active cases), short term advocacy and investigation cases represent approximately one third of total active cases in the year.



## 1.5 Comparison of case numbers and types 2003-2004 financial year

The graph below compares the case types as shown in table 1.1 above.



## 1.6 Disability profile of clients

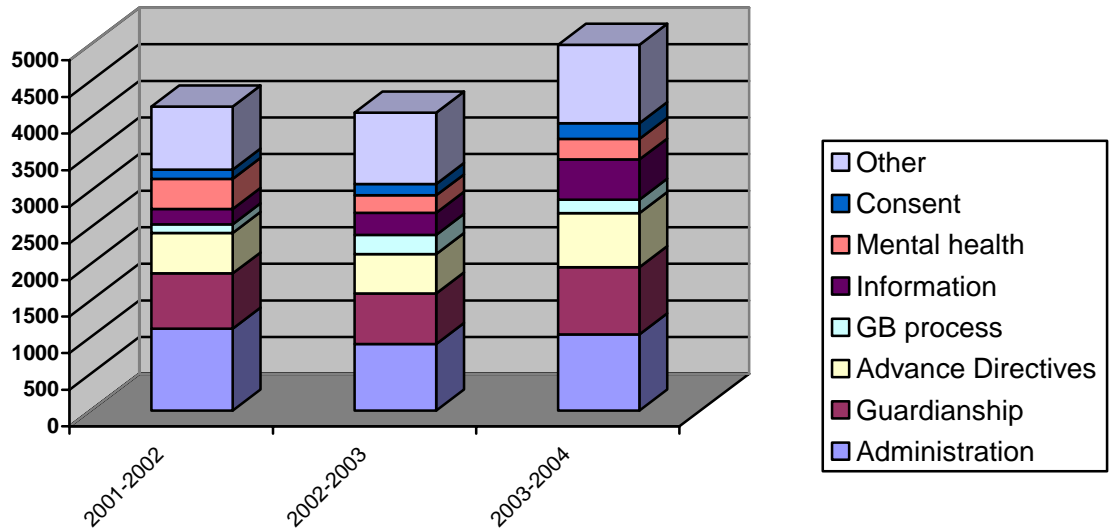
Data gathering at present allows only “snapshot” views of the disability profiles of clients. The chart below compares the end of year disability profiles of guardianship cases and all active cases as at 30/6/2004.

% of clients with disability	Dementia	Mental illness	Intellectual impairment	Brain damage	Neurological	Personality disorder
Guardianship	41.6	31.4	22.9	18	3.3	0.8
All case types	38.6	33.1	22.8	16.6	3.4	0.7

## 2. Enquiry Data

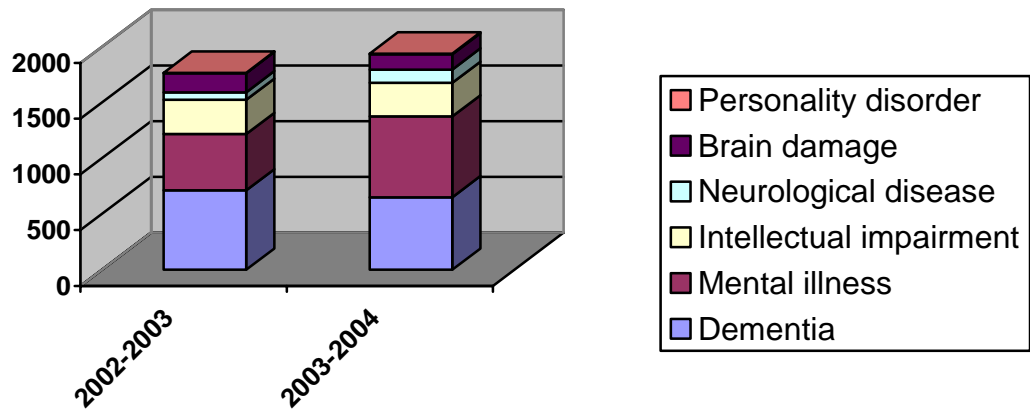
### 2.1 Types of enquiries received

The graph below compares enquiries in each recorded category over the past 3 years. Additional categories are being introduced for the next reporting period in order to better understand the “other” category.



## 2.2 Disability types

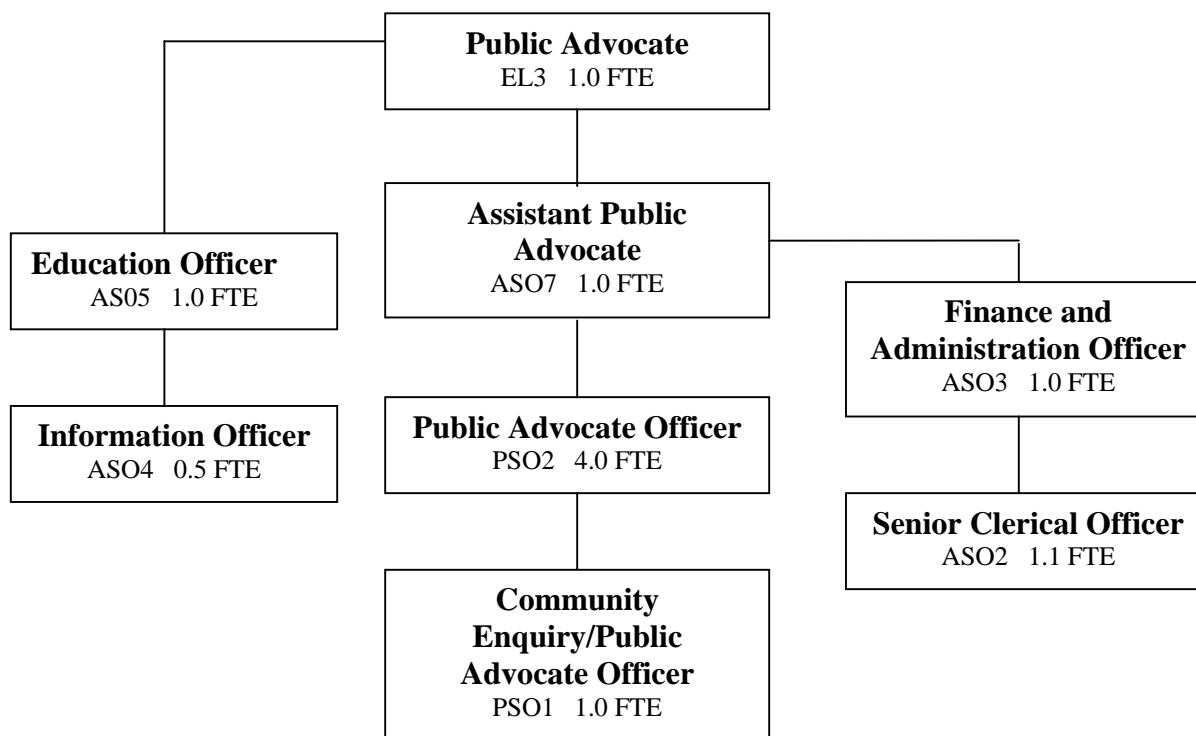
Many enquiries received by the OPA do not relate to individuals with disabilities. In addition, information provided by callers does not always allow the identification of disability type. Where disability has been recorded, the following profile emerges over the past 2 financial years:



# *Employment and human resources*

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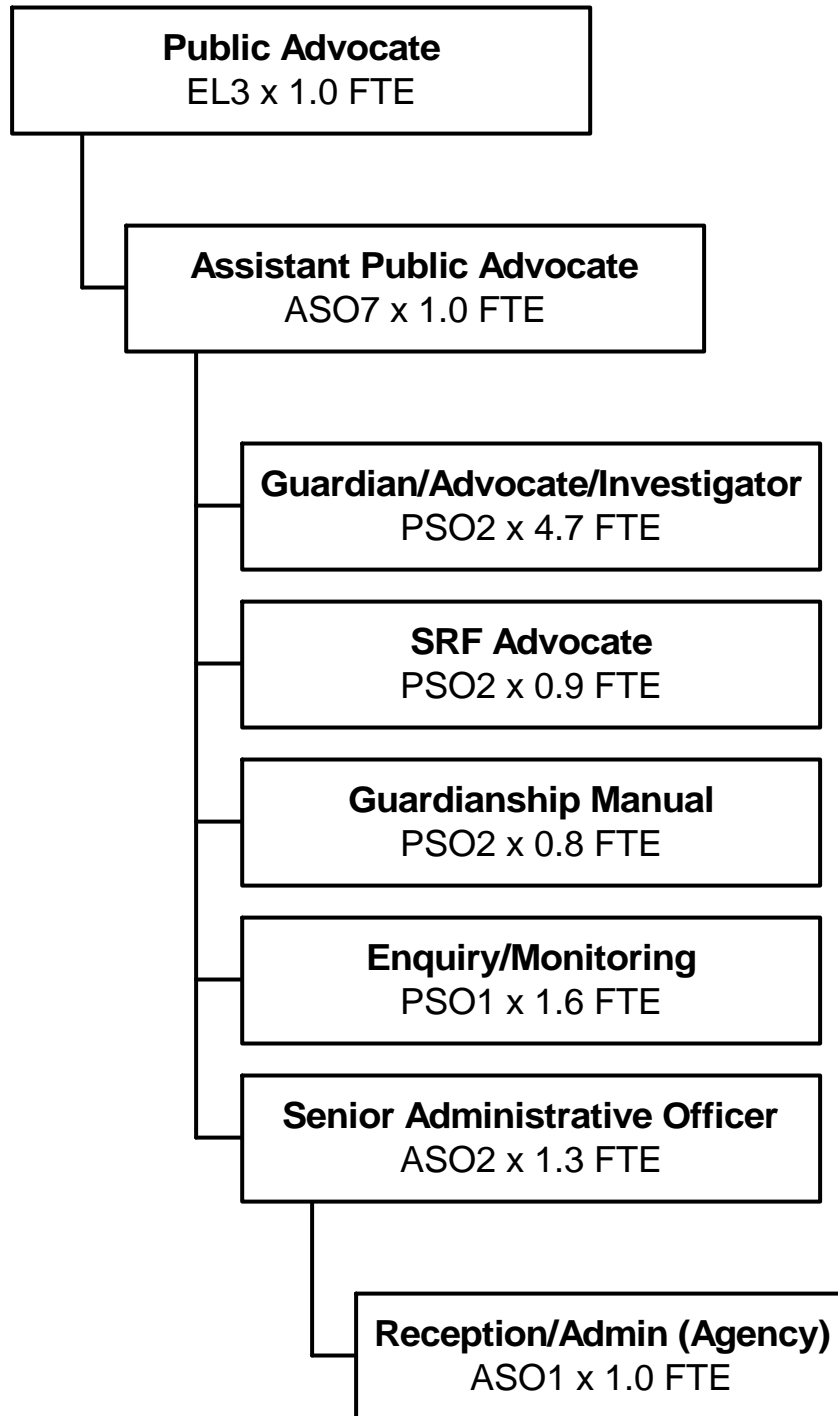
## **Organisational chart – Funded positions** As at 30 June 2004



- Staff changes throughout the year are described on page 45.
- Public Sector Management Act employees by stream, level, appointment type and gender as at 30 June 2004 are listed in Table 1 on page 46.
- Sick leave, family carers leave and special leave with pay for individual needs and responsibilities is listed in Table 2 on page 47.
- Workforce diversity is described in Table 3 on page 47.
- Cultural and linguistic diversity is described in Table 4 on page 47.
- Age profile is listed in Table 5 on page 48.
- Voluntary Flexible Working Arrangements are listed in Table 6 on page 48

Actual resource utilisation throughout 2003-04 varied considerably due to staff movements, organisational priorities and additional temporary funding.

**Organisational chart – Actual Positions**  
As at 30 June 2004





### **Human resources development**

The OPA encourages staff to pursue development opportunities. Activities were however, down on last year. This is in part explained by staff movements, and the lack of implementation of performance management which was proposed for this year. Conference attendance has been the main source of development this year.

### **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. Staff representation at Executive meetings is also included in the organisation management. The Public Advocate participates in executive fora on a regular basis.

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

The OPA was 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 was provided by the DHS on request, and OPA used the Department's Workplace Health and Safety Division when required.

The OPA has an elected, trained OHS representative. OHS matters are routinely discussed in OPA staff meetings. The OPA used the DHS work site inspection checklist as the tool for regular site assessments. First aid and fire warden training has been implemented.

There were no staff incidents reported this year.

A security review in the previous financial year has provided additional impetus for accommodation planning. This will mean a better working environment by the 05/06 financial year.

The decision to continue to redirect education resources to direct service and the additional funded position have provided some stress reduction for staff. However, workloads have continued to rise, thus reducing the positive impact of these strategies.

OPA management was mindful of the significant sick leave in 2001-02 (2 days per FTE) and 2002-03 (6.8 days per FTE). This year's performance was an improvement (4.8 days per FTE).

# *Administrative matters*

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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 were processed by Intellectual Disability Services Council (IDSC) Finance Section.

## **Consultants**

There were no consultants engaged during the 2003-04 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, new fact sheets were launched and one guide was produced in 13 languages 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. In particular, individual and systemic advocacy is a feature of our work.*

*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 2003-04 financial year.

### **Computing**

As part of the negotiated transfer from the Department of Human Services to the Attorney-General's Department, funding has been agreed for the upgrade of computer hardware and software. This will ensure compliance with government standards. A service level agreement has been put in place for the support of the OPA's database for the next 3 years. During this time we will be required to develop and implement a new database.

### **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 5% this year (2003-04 \$10,180 compared with 2002-2003 \$9,672). 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 decreased by 10% for the financial year (\$7,448 in 2003-04 compared with \$8,262 in 2002-03). Expenditure on taxis has decreased by 12% (\$3,027 in 2003-04 compared with \$3,438 in 2001-02). This may in part be an accounts timing issue.

### **Overseas travel**

There was no overseas travel by staff of the OPA during 2003-04.

### **Accommodation**

Discussions regarding separating the physical locations of the Guardianship Board and the OPA have occurred over the past 5 years. The transfer package to AGD includes funding towards this much needed change. During the next financial year, level 7 of the ABC Building will be redeveloped to accommodate the OPA providing for an improved environment for visitors and staff. Included in the development is a conference/training room which should allow more efficient use of staff time in training and an expansion of our training activities.

### **Staffing**

OPA achieved its first ongoing funded staffing increase during its lifetime, representing a 10% increase in staffing resources. In addition, restructuring of the administrative staffing dispensed with the ASO3 position and created an ASO1 position. This change will be implemented during 2004-05.

Temporary funding for special projects created additional activity within the office. Stabilising staff is an objective for next year and, to this end, the OPA is seeking to make 3 contract staff ongoing employees of the organisation.

# *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 49.

*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. During this year, the OPA sought legal opinion on the application of the FOI legislation to its functioning because of the sensitive nature of information held and its close working relationship with a quasi judicial setting. Two staff undertook FOI training this year.

*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 2003-04*

OPA received 7 requests under FOI this year. Resignation of the accredited officer led to a delay in processing some applications pending training of a new officer.

*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 operated as part of the Social Justice and Country Division of the SA Department of Human Services. This year, 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 2003-04 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 2003-04</b>			
<b>Description</b>	<b>Actual</b>	<b>Budget</b>	<b>Variation</b>
<b>Salaries and Wages</b>	<b>672,276</b>	<b>698,392</b>	<b>(26,116)</b>
<b>Goods and Services</b>	<b>156,789</b>	<b>148,148</b>	<b>8,641</b>
<b>Assets</b>	<b>7,613</b>	<b>6,500</b>	<b>1,113</b>
<b>Revenue</b>	<b>(895)</b>		<b>(895)</b>
<b>GST Recoverable</b>	<b>1,749</b>		<b>(1,749)</b>
<b>Total Net Expenses</b>	<b>834,034</b>	<b>853,040</b>	<b>(19,006)</b>

# *Appendix 1: Staff changes 2003-04*

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## **Public Advocate**

- Mr John Harley commenced his second term as Public Advocate in 2003-04.

## **Assistant Public Advocate**

- Ms Margaret Farr continued full time for the year.
- The APA took 3 months Long Service Leave and Ms Anita Micallef acted in the position.

## **Public Advocate Officers**

- Ms Anita Micallef, Ms Yvette Gray and Ms Suzanne Bull are the three permanently employed Public Advocate Officers.
- Ms Gray and Ms Bull undertook special projects for part of the year.
- Ms Mary Allstrom continued to work on a part time contractual basis during the entire 2003-04 period.
- Ms Annie Phillips, Ms Bianca Fecycz and Mr David Cripps were contracted for part of the year.

## **Education Officer**

- Ms Angela Andary resigned from her position as Education Officer in May 2004 after an 18 month period of leave without pay.

## **Information Officer**

- Ms Stephanie Lewis resigned in February 2004 to take up a promotional position.

## **Student placements**

The OPA was fortunate to have the assistance of Sophia Lemke for part of this year.

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

- Ms Mary Allstrom is the incumbent of the full time position. She was back filled by Ms Bianca Fecycz until December 2003 and then by Sophia Lemke.
- Ms Annelise Van Deth was employed on a part time contract for all of this reporting period.

## **Administrative staff**

- Mr Paul Green, Administration and Finance Officer, returned from leave without pay in July 2003 and transferred to another position in the public sector in June 2004.
- Mrs Jenni Wright and Ms Stephanie Evans, Senior Clerical Officers, were employed part time for the full reporting period.
- 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 2004**

Public Sector Management Act employees by stream, level, appointment type and gender as at 30 June 2004									
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	2	2	0	0	0	0	2	2
ASO3	1	0	1	0	0	0	0	0	0
ASO4	0	0	0	0	0	0	0	0	0
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>	<b>1</b>	<b>3</b>	<b>3</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>3</b>	<b>3</b>
<b>Professional</b>	0	0	0	0	0	0	0	0	0
PSO1	0	0	0	0	2	2	0	2	2
PSO2	0	3	3	1	3	4	1	6	7
<b>Total</b>	<b>0</b>	<b>3</b>	<b>3</b>	<b>1</b>	<b>5</b>	<b>6</b>	<b>1</b>	<b>8</b>	<b>9</b>
<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>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>1</b>	<b>1</b>	<b>0</b>	<b>1</b>
<b>Total all streams</b>	<b>1</b>	<b>6</b>	<b>6</b>	<b>1</b>	<b>5</b>	<b>7</b>	<b>2</b>	<b>11</b>	<b>13</b>

**Table 2: OPA sick leave, family carers leave and special leave with pay for individual needs and responsibilities as at 30 June 2004**

<b>OPA sick leave, family carers leave and special leave with pay for individual needs and responsibilities as at 30 June 2004</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>2003-04</b>	<b>4.82</b>	<b>.035</b>	<b>0</b>
<b>2002-03</b>	<b>6.82</b>	<b>0</b>	<b>0</b>

**Table 3: OPA workforce diversity as at 30 June 2004**

<b>OPA workforce diversity as at 30 June 2004</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>2</b>	<b>2</b>	<b>100</b>	<b>0</b>	<b>0</b>
<b>Other Professional</b>	<b>9</b>	<b>8</b>	<b>89</b>	<b>0</b>	<b>0</b>

**Table 4: OPA cultural and linguistic diversity as at 30 June 2004**

<b>OPA cultural and linguistic diversity as at 30 June 2004</b>			
<b>Cultural diversity as at 30 June 2004</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>1</b>	<b>1</b>	<b>2</b>
<b>Other Professional</b>	<b>6</b>	<b>3</b>	<b>9</b>



**Table 5: OPA age profile as at 30 June 2004**

<b>OPA age profile as at 30 June 2004</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	
20-24	0	0	0	0	
25-29	0	1	1	7.7	
30-34	0	1	1	7.7	
35-39	1	0	1	7.7	
40-44	1	3	4	23.1	
45-49	0	2	2	15.7	
50-54	0	3	3	23.1	
55-59	1	0	1	7.7	
60-64	0	1	1	7.7	
65+	0	0	0	0	

**Table 6: Voluntary Flexible Working Arrangements as at 30 June 2004**

<b>OPA Voluntary Flexible Working Arrangements as at 30 June 2004</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>	0	0	0	0	0
<b>Flexitime</b>	13	0	0	2	11
<b>Compressed Weeks</b>	0	0	0	0	0
<b>Part time and job share</b>	7	0	0	0	7
<b>Working from Home</b>	0	0	0	0	0

# *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

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