

**OFFICE OF THE PUBLIC  
ADVOCATE**

**ANNUAL REPORT  
2005-06**



29 November 2006

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

Dear Mr Attorney

I have the honour to present to you the twelfth 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 2005 to 30 June 2006.

This period represents our second year under your portfolio.

Yours faithfully

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

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# *Public Advocate's report*

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This year has been extremely busy for my staff and me. Staff movements have been significant; in particular I note the retirement of Anita Micallef, one of the original OPA staff. Her knowledge, experience, and strong advocacy for the rights of those with a mental incapacity will be missed. I am grateful to all of my staff for their outstanding commitment to their work and, in particular, to the new staff who have embraced the office culture and responded to the work loads with great enthusiasm. I also wish to thank the Attorney-General's Department Executive and other senior staff who have provided leadership and support to us in accommodation, database and human resource development projects.

## **Organisation developments**

The staff and I moved to the refurbished 7<sup>th</sup> floor of the ABC Building in August 2005 thus fulfilling my long held objective of providing complete physical and administrative separation from the Guardianship Board, which now remains in sole occupation of the 8<sup>th</sup> floor. Previously we shared premises and resources making it appear to the public that we operated interdependently.

Other benefits have been the improved working conditions for staff and a pleasant environment for members of the community to visit when seeking assistance from this office.

This has assisted in maintaining morale through the busiest, and I suggest most stressful, year in the history of the office.

Our new facilities also contain a training room which, once we obtain resources to present them, will be used for education purposes for

professionals and members of the public.

## **Workloads**

The OPA was somewhat overwhelmed with new guardianships in the first half of the year; the year ending with 50% more new guardianships than the previous reporting period. Closure rate improved this year however the OPA year end active guardianship caseload is up by 25% compared with 04/05 as is the active guardianship caseload (23% greater than 04/05). Pre-hearing screenings and investigations directed by the Guardianship Board also increased. Whilst advocacy numbers were similar, anecdotal evidence is that intervention was restricted in most cases due to the large number of active guardianships. OPA provided a limited education service declining more invitations to speak than it accepted and undertaking no activities for approximately 4 months of the year. This was due to the fact that we have been using funding previously used for education and information officer positions to enable us to undertake guardianships and investigations.

Interim funding from the AGD and use of those resources enabled the creation of 2.8FTE additional temporary PSO2 positions for this purpose.

In addition, the Attorney-General's Department commissioned an external review of the office which included benchmarking workloads and funding against other states. It is hoped that the results of this review will inform the future resourcing and administrative management of the office.

### **Practice standards and case management tools**

The OPA has been fortunate to have the assistance of a senior policy officer in the latter part of the year and as a result has been able to commence a comprehensive review of its policy and procedural framework. The aim of the policy review is to reflect changing expectations of performance by internal and external stakeholders, and the need to improve accountability and support structures for staff, particularly for those who are new to the organisation.

At the same time, a new case management system is being developed. Enhanced features in the new database, which is due to come on line in October 2006, should assist staff to better plan and implement their work and enable improved performance monitoring by management.

Whilst I am confident that my staff members provide an excellent service within the limitations of time and resources, I do receive complaints about our work and this year the OPA was also a co-defendant in a law suit alleging negligence by our office. These incidents provide valuable opportunities to reflect on our training, supervision and standards of practice. The influx of new staff and several complaints about the OPA processes reinforced the need to improve our practice frameworks.

### **Community issues**

#### ***The mental health of detainees***

I am pleased to report that communication between my office and the Commonwealth Department of Immigration and Ethnic Affairs has improved in the past year. However I still remain concerned about the responsiveness of systems to the

mental health and support needs of detainees still resident at Baxter Detention Centre and in the community. Among other things, the closure of the Special Stay Unit at Glenside Campus, which was established for detainees requiring inpatient mental health care, was a serious retrograde step. The unit provided exemplary treatment and care for those severely traumatised people and offered the mental health system an opportunity to demonstrate best practice in refugee mental health care. Also of concern is the limited community follow up provided to address the ongoing mental health needs of those severely traumatised former detainees who have eventually been released into the community on visas.

Since the closure of the Special Stay Unit at Glenside, OPA has continued fortnightly networking meetings with various stakeholders working with mentally ill asylum seekers, including the Australian Refugee Association, Red Cross, Circle of Friends representatives and Uniting Care Wesley. This networking has been highly effective in the support of individual asylum seekers suffering with mental health issues, and in advocating for this group of people at a systemic level.

#### ***Advance Directives: promotion and reform***

The current South Australian legislation which provides for the execution of Enduring Powers of Attorney and Guardianship and for Medical Powers of Attorney and Anticipatory Directions is both complex and cumbersome. I am pleased that steps are being taken towards the reform of legislation in this area. I hope that within the next few years only one advance directive

will be necessary thus making the provision of public education, the witnessing and the monitoring processes much easier.

From information gathered through the OPA enquiry service and Guardianship Board hearings, it is apparent that advance directives are still being executed by individuals who have already lost capacity.

There appear to be three key problems which lead to this:

- lack of appropriate capacity assessment by professionals and carers in those cases where incapacity is evident;
- failure on the part of those witnessing documents (in particular solicitors and justices of the peace) to accept responsibility for verifying the donor's understanding and willingness to execute documents; and
- opportunism on the part of family, friends and associates fuelled by rivalry or greed.

Another problem seems to be the ignorance or deliberate flouting of responsibilities accepted by donees when they activate documents and take on substituted decision-making responsibilities.

There is significant and ongoing education required to address all of these issues and it is hoped that any new legislation will support improved monitoring strategies.

On the other hand, advance directives can be effectively used to forward plan and ensure trusted individuals become responsible for decision-making. The OPA has promoted their use through its own education programs and through its association with the Alliance for Protection against Elder Abuse. This group is a partnership between several organisations within

the Justice portfolio – Public Trustee, Legal Services Commission, South Australian Police – and the Aged Rights Advocacy Service (which is a non-government organisation). Other organisations such as the Law Society and Alzheimers Australia are also committed to promoting protective behaviours on the part of older people in particular.

### ***End of Life decision making and treatment withdrawal***

Substitute consent for people with a mental incapacity is provided for within the *Guardianship and Administration Act 1993* and the *Consent to Medical Treatment and Palliative Care Act 1995*.

Avenues for providing substitute consent when an adult is not able to do so on their own behalf are clear. The law is also reasonably clear. However, it is an area where this office is becoming increasingly involved in various capacities:

- advising and supporting families and carers who are placed in the position of having to make a decision to withdraw treatment;
- acting as guardian where there is conflict within and between the family of the protected person and/or the treating team, resulting in an inability to give consistent instruction to the treating team regarding treatment withdrawal; and
- acting as guardian where there is no-one who is prepared to give instruction to the treating team regarding treatment withdrawal.

No two cases are the same and invariably there is considerable conflict and emotion involved. The time taken and resources consumed are also enormous but not wasted, as we try to

assist all parties to understand the underlying law and principles of the *Guardianship and Administration Act 1993* and the *Consent to Medical Treatment and Palliative Care Act 1995* in arriving at a decision.

The only method of judicial review of a medical agent's decision under the *Consent to Medical Treatment and Palliative Care Act 1995* is the Supreme Court. To date no-one has taken this step.

If the decision is made by a guardian either under an enduring power of guardianship or appointed by the Guardianship Board, the remedy for an aggrieved person with a proper interest would be to either apply to the Guardianship Board for another guardian to be appointed or appeal to

the Administrative and Disciplinary Division of the District Court for another guardian to be appointed. This happened on one occasion this year where I appealed against an order appointing a family member as guardian to enable him to withdraw treatment for his intellectually disabled child. This was a most difficult and traumatic case for everyone involved in the process but I fear that this may become a more common occurrence in the future.

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

# *Role, structure, legislation*

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## **Functions**

The Public Advocate was established under section 21 of 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*.

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

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

## **Organisation of the agency**

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

## **Relationship to other agencies**

The Office of the Public Advocate was funded by the Attorney General's Department 2005-2006.

The funded staff positions of the Office of the Public Advocate as at 30 June 2006 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 who have an interest in issues arising from mental incapacity.

## Mental incapacity

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

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

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

## Mission statement

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

*“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 differs from making decisions in the best interests of people. It requires decision makers to put themselves “in the shoes of the person”.

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

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

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

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

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

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

### **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.

### **Objectives**

We will fulfil our mission 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 OPA's clients.
- Identifying key areas of unmet, or inappropriately met needs of mentally incapacitated persons and taking action to improve their circumstances.
- Providing leadership in the application of the Principles of the Act to the circumstances of people living with mental incapacities.

### **Values**

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

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

## *Some 2005-06 highlights*

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- Additional support provided by the Attorney-General's Department.
- The move to newly renovated premises on the seventh floor of the ABC Building at Collinswood.
- Benchmarking of the OPA's staffing, budget and activity levels against other similar services across Australia through a process of external review commissioned by the Attorney General's Department.
- The provision of additional temporary funding resources to assist the OPA in dealing with its increased workload
- Circulation of copies of "Now you are a guardian" a manual to assist new private guardians in their role.
- Ongoing advocacy for improvement of services for the wellbeing of detainees residing in Baxter Detention Centre, Glenside Campus and in the community
- Managing 594 active cases during the year, including guardianships under the *Guardianship and Administration Act* (430), individual advocacy matters (72), investigation cases (88) and court related guardianships (4). For guardianship, this represents:
  - 51% increase in new guardianship cases compared with 04/05; (30% compared with 03/04);
  - 23% increase in active guardianship caseload; and
  - 25% increase in end of year guardianship caseload compared with 04/05
- Undertook 189 screenings of guardianship applications before the Guardianship Board where the Public Advocate was nominated as a potential guardian.

- Provided 22 education sessions to 973 people in metropolitan Adelaide.
- Responding to 5200 enquiries from members of the public and service providers.
- Conducting 189 screenings and minor investigations relating to matters before the Guardianship Board where the Public Advocate is the potential guardian.
- Funding for the development of a new case management system which will be shared with the Guardianship Board – due for implementation in the 06/07 financial year.
- Development of a new website – to be operational in September 2006.
- Participation in reform processes designed to improve legislative and service provisions for people with mental incapacity:
  - Mental Health Act –implementation of review recommendations;
  - Review of provisions for making advance directives; and
  - Respecting Patient Health Care Choices programme at The Queen Elizabeth Hospital.

## ***AIDS and Dementia: balancing autonomy, support and community protection***

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The circumstances of a small number of people with AIDS related dementia have been brought to the attention of this office during this year, several becoming guardianship clients.

At the time of the Public Advocate becoming guardian, there was no coordinated program response for clients whose cognitive impairment and lifestyle resulted in behaviour which placed them and others at risk. This office was required to participate in the development of individualised accommodation models with resident 24 hour support staff for two clients. Both clients experienced extended acute hospital stays, and in one case placement in hospice care, due to the lack of alternatives. These arrangements were not appropriate care options for either men.

The support model developed for these clients is resource intensive and requires support staff to have a high level of empathy and skill in dealing with the needs of young men who are no longer capable of understanding or discharging their responsibilities to others in the community. Not only do care providers need to respect the individual's right to have the best quality of life possible, including participating in the community, but also minimise the opportunities for infection of others. The supported care model developed needed to be flexible and able to react quickly to changing circumstances without losing focus on the delicate balance of rights and risks.

Legal guardianship has been critical to ensuring this balance. On the one hand, the *Guardianship and Administration Act* requires guardians to give paramount consideration to the previous lifestyle of the individual prior to the loss of capacity and to their current wishes and to choose options which are least restrictive of the person's autonomy. On the other hand, a guardian is granted powers of compulsion in order to lawfully restrict freedom of movement and life choices in the interests of the protected person and for community safety reasons.

With the success of anti retroviral treatment, people with HIV are surviving longer and therefore problems associated with cognitive impairment are becoming more evident. It is likely that health and disability systems will need to fund similar accommodation and support programs in the future. The current programs will add to our knowledge and skills in creating community based accommodation solutions for individuals with infectious conditions and impaired functioning.

Critical to the success of the programs will be ongoing strong partnerships between those delivering the services and those with authority and expertise in the law and risk management. In this way, accountability for decisions and directions can be shared and the negotiation of appropriate balance between individual rights and community protection achieved in each case.

## *Key outcomes*

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The Office of the Public Advocate has four key service areas. During 2004-05, 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

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

## Outcomes

### *Individual advocacy cases:*

The office was involved in 72 individual client advocacy matters during 2005-06, 54 of which were new cases during this year. This compares with a total of 77 active cases in 2004-05 and 62 in 2003-04.

### *Examples of Advocacy:*

- The OPA continues to assist a small number of women who are unable to instruct solicitors in Youth Court matters due to their mental capacity issues. Here, OPA advocates for the best possible access arrangements to enable contact between mother and child to continue wherever possible.
- The OPA was called in by a number of service providers to assist in determining appropriate multi agency responses for clients with complex needs.
- The OPA also sat on the state's Management Assessment Panel which advises on support programs for people with high and complex needs.
- Advocacy for coordinated responses to clients with HIV dementia arose out of our guardianship role.
- The plight of individual immigration detainees with mental health problems necessitated that the OPA seek service responses from both state and Commonwealth governments.

### *Advocacy for those attending Guardianship Board hearings:*

OPA continues to lack the capacity to provide individual advocacy for those people with mental incapacity who appear before the Guardianship Board. Other advocacy services provide some assistance but the vast majority of people appear without support. The uncertain future of some advocacy services within South Australia further jeopardises the rights of individuals who appear in this jurisdiction. It is hoped that, with the legislative review process currently in progress, provision will be made for greater access to representation at hearings.

### *Committee Membership*

Staff members were active within the following external committees during 2005-06:

- Australian Guardianship and Administration Committee;
- Interagency working party comprising the Public Trustee, the Guardianship Board and OPA;
- Alliance for the Prevention of Elder Abuse;
- Department of Health Ethics and Privacy Committee;
- Former Intellectual Disability Services Council Ethics Committee;
- Intellectual Disability Services Council Legal Committee;
- Magistrates Court Diversionary Program Steering Committee;
- Advance Directives Review Steering Committee;
- Respecting Patient Choices steering group;
- Respecting Patient Choices Ethico-legal Committee;
- State Council, Australian Institute of Administrative Law;
- Member, Committee for the Review of Mental Health Legislation;



- Member, Calvary Hospital Ethics Committee;
- Management Assessment Panel;
- Chair, Human Rights Coalition;
- Deputy Member, Ministerial Advisory Committee on Supported Residential Facilities;
- Member, Street to Home Steering Committee;
- Member, Adelaide Aged Care Assessment Consent Committee;
- Member, Advocacy Services Forum, Social Inclusion Unit; and
- Member, Law Society of South Australia Professional Standards Committee

### ***Mediating and managing conflict around people with mental incapacity***

Mediation has traditionally been seen as a technique of problem solving between parties of equal status and power. In this jurisdiction, conflict frequently arises around important life decisions which need to be made with or on behalf of someone who has a mental incapacity.

The OPA staff frequently find themselves involved in conflict resolution where interested parties are unable to reach conclusions or do so with little reference to their relative or friend whose life is being discussed. Sometimes the decisions are clouded by personal agendas and unresolved past differences.

Through careful intervention, some of these interactions can be directed positively to problem resolution avoiding more drastic steps such as guardianship applications or escalating conflict.

The OPA believes that the wishes and interests of individuals with a mental incapacity can be taken into account in

situations of conflict through a mediation process provided that appropriate advocacy structures are incorporated to ensure that those interests and wishes are adequately represented and heard during mediation.

The OPA is currently advocating for the development of an accessible mediation and conflict resolution program targeting the needs of people with mental incapacity developed and evaluated. The principles of the *Guardianship and Administration Act* are seen as relevant philosophical cornerstones for any program which seeks to negotiate solutions in the interests of people with mental incapacity.

The OPA envisages that partnerships could be formed between key agencies working with people with mental incapacities, advocacy services and research and training institutions in order to establish:

- a mediation program which coordinates the resources of mediators who have skills and knowledge in working with people with mental incapacities;
- training for workers in mediating matters which involve the wellbeing of people with mental incapacities
- mentoring for new mediators;
- website based resource materials on this type of mediation; and
- robust evaluation of the program.

We understand that only limited work has been done in this area and there is an opportunity for this state to inform others both nationally and internationally.



# 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 has continued to feel the pressure of increasing numbers of guardianships during this financial year with waiting lists for allocation being a regular occurrence. With over 90 new cases within the first 6 months of the year and concerns about service quality, industrial matters and occupational health and safety issues concerning the wellbeing of both clients and staff, funding for an additional 2 temporary PSO2 positions was provided by AGD. Internal funding was also reorganised to create extra PSO2 time in lieu of a second PSO1 position.

An organisation review benchmarked South Australia against like jurisdictions and this material is being used in support of budget bids.

At the end of the financial year, there were 7.5 FTE PSO2 funded individual positions, 6.5 FTE being devoted to guardianship work.

Guardianship cases are divided into intensive/continuity cases and monitoring (stable) cases. In previous years the latter was managed by PSO1 resources with limited decision making delegations. This role was transferred to a senior part time guardian during this accounting period for pragmatic reasons. Now a full time senior worker with full decision making delegation is attached. This appears to provide a more flexible and responsive system for stable guardianship cases. Numbers in monitoring fluctuate but have been in the 60 to 70 during 05/06.

For intensive/continuity cases attempts are made to hold caseloads at a maximum of 40 cases per FTE. The Public Advocate and Assistant Public Advocate continue to carry guardianship cases to support staff with their workloads.

Where waiting lists are applied, a priority allocation process is adopted for clients at high risk.

## **Outcomes**

### ***Guardian of last resort***

During 2005-06, OPA provided guardianship services under the *Guardianship and Administration Act* on behalf of 430 people (349 in 04/05). This represents a 23% increase over the previous year. The number of active cases managed by the office in each year has continued to rise, as new cases exceed the closures. This is illustrated on the next page.

### **New guardianship appointments**

This year there were 171 new guardianship appointments under the *Guardianship and Administration Act*, a 51% increase on last year's figures (113) and 30% more than the 03/04 figures (131). (see next page)

### End of year caseloads

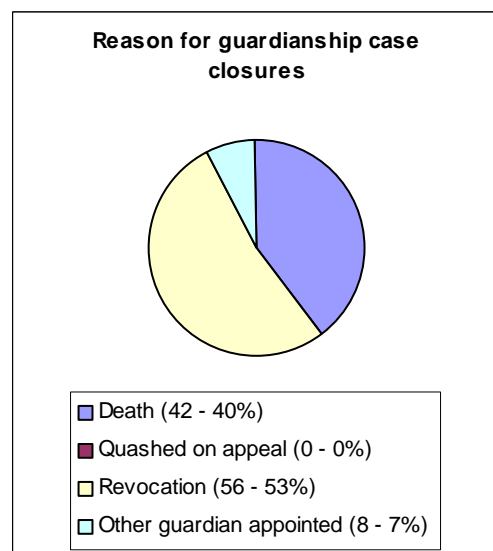
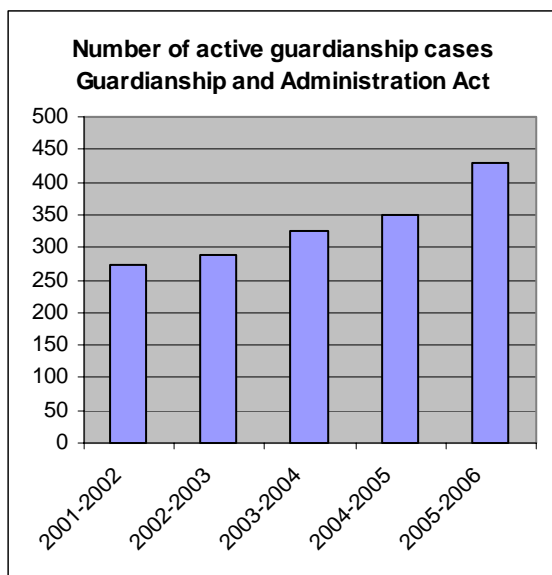
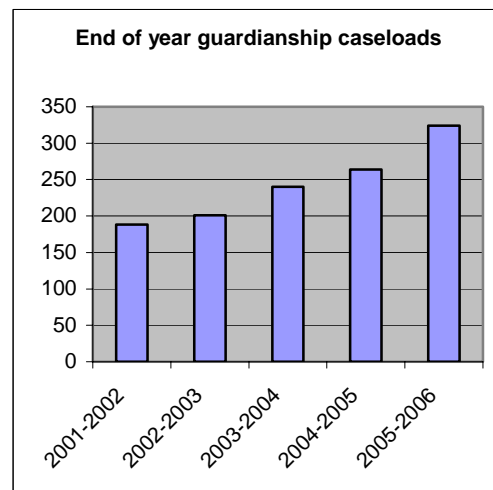
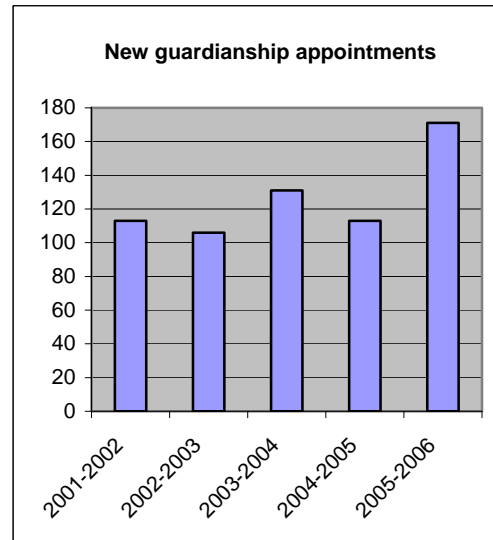
Despite case closures increasing during the reporting period, end of year active caseloads continue to climb. As at 30 June 2006, there were 324 active cases compared with 259 at the beginning of the year. This represents a 25% increase for the year. The increase in closures was to do with death rates (42 as opposed to 22 in 04/05).

### Guardianship case closures

One hundred and six cases were closed this year: - 42 due to death, 56 due to revocation and 8 because other guardians were appointed.

### Disability profile of guardianships

Dementia (40%), mental illness (33%), intellectual impairment (22%) and brain damage (18%) remain the primary diagnostic groupings of the clients under guardianship. This profile has remained fairly constant over recent years. Many clients have more than one recognised disability.



## **Guardianship and Court Matters**

OPA has continued to provide a service in cases where people are involved in court proceedings during a period where they are suffering a mental incapacity. This is consistent with the mandate of OPA to promote and protect the rights and interests of people with a mental incapacity. If a person with a mental incapacity is unable to instruct 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.

In Youth Court matters, due to a reinterpretation of our role this year, OPA will accept only an advocacy role on behalf of an adult who is unable to instruct due to mental incapacity. This change in policy and practice affects interpretation of trends in court activities undertaken by OPA.

During 2005-06 OPA was involved in four matters where courts requested assistance.

## **Death of protected people**

The numbers of deaths of protected people almost doubled this year (42 vs 22). These mostly related to older persons and people with terminal illnesses. Tragically, several clients suicided or met deaths by misadventure. All clients under guardianship are now subject to Coroner's investigations thus allowing independent review of the circumstances surrounding death and any preventable elements.

## ***Protected Persons with mental incapacity and substance dependency***

The OPA has been appointed guardian for a number of younger men and women who have complex problems associated with mental illness or some other primary disability but also have alcohol or other substance abuse problems.

These clients usually have poor relationships with the community and with their families, offending behaviour for which they are sometimes found unfit to plead. Their ability to engage in constructive relationships with service providers may also be compromised. Their risk taking behaviour is generally part of their "pre incapacity" lifestyle and the guardian is required to make realistic judgements about what substitute decisions are likely to be realistic, enforceable and helpful rather than harmful.

Service commitment to this group is difficult to sustain, and where commitment exists, difficult to deliver in the face of homelessness and itinerant lifestyles. Outcomes seem to rely on the tenacity and commitment of individual workers to keep presenting options rather than a cohesive and systematic housing and support response.

Can we do better?



# 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

OPA continues to focus investigative work requested by the Board on particular individuals within the office. Since April 2006, two workers have shared the responsibility for undertaking Section 28 investigations and screening new applications for guardianship where the PA is nominated as guardian. Whilst these workers have also carried part guardianship caseloads there has been an enhanced time commitment to the investigative role.

## Outcomes

A total of 265 investigations were opened in the 2005-06 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 reviews of paper work and brief telephone calls.

In 2005-06, 66 of the 265 investigations (approximately 25%) warranted individual client files being opened because of the nature of the matter or because the subject of the application was a previous client of the OPA. A further 22 active client investigations were carried forward from the previous year bringing the total to 287 active investigations for the year.

A small number of clients are double counted because investigation of a simple matter sometimes leads to more complex work and the matter transfers to client file status.

The following are the types of investigations undertaken by OPA:

## Pre-hearing screenings and investigations

There were 189 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.

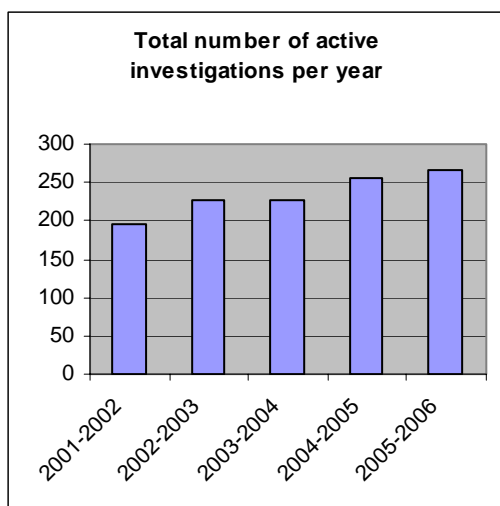
## Section 28 investigations.

There were 43 new investigations requested under Section 28 during this financial year. The Guardianship Board requests these investigations under this section of the *Guardianship and Administration Act 1993*. A comprehensive report is prepared at the direction of the Guardianship Board to assist them in their decision making. The OPA has been able to provide a more responsive service in the latter part of this year due to the availability of two staff. On occasions the OPA has recommended that the Board call for an investigation because of concerns brought to the attention of the office around abuse and neglect of an individual with a mental incapacity.

## Sterilisation investigations

There were no new sterilisation investigations commenced this year.

The graph on the next page compares the number of investigations open in each of the past 5 years.



### Issues in Investigation

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. In general, most parties are willing to cooperate with OPA during this process.

During this year, investigation processes and outcomes have been the major source of informal and formal complaints about the OPA practice. Generally concerns have been about lack of/insufficient contact with certain parties, bias in the investigation, disagreement with the findings and recommendations and expectations of resolution which are outside of the scope of the investigation direction.

The use of the OPA to investigate situations of conflict predisposes the office to criticism in emotionally charged situations. However, the OPA is reviewing its processes and its joint protocol with the Board to ensure that expectations around investigations are made clearer to interested parties as well as internally.

On the other hand, feedback from the Board suggests that we are providing an improved service and are meeting that organisation's expectations.

One area of concern for investigators is making comment on the adequacy of financial and legal arrangements in more complex situations. The OPA does not have forensic financial investigators and needs to be clear in its recommendations as to the extent and limits of its expertise in this area. However stakeholder expectations are often higher than the Board and it may be necessary for this responsibility to be clarified further.

### *Elder Abuse and Neglect a continuing problem*

Older people make up approximately half of the matters referred for guardianship appointments. The figure is likely to be greater in the area of financial administration. Abuse and neglect feature in a significant proportion of the matters referred to the Guardianship Board and this office. Much occurs in the context of family conflict which overrides the wishes and interests of the elderly person. Sometimes this is unintentional and retrievable with education and information. Sometimes entrenched positions do not allow people to see past their own needs and it is extremely difficult to negotiate good outcomes for the older person.

This year, the OPA has noted banks taking a particular interest in the financial wellbeing of some older people who appear to be victims of financial exploitation.

Guardianship and administration orders provide the most practical response to protecting the rights and interests of the older person when capacity is lost. However these mechanisms are usually implemented after a history of abuse and the deleterious effects cannot always be rectified.





# 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 OPA's input on issues relating to mental incapacity are made.
- To actively participate in interagency forums and committees where the terms of reference meet OPA's strategic directions.
- To provide regular updated online information on OPA as well as written resources.
- To make selected pamphlets available in other languages.

## Resources

This year, OPA was forced to severely restrict its involvement in education activities. Despite good intentions, there has not been the capacity to undertake education planning and this is unlikely to be resolved without the reintroduction of a dedicated resource to coordinate program development and delivery.

## Outcomes

### *Manual for Private Guardians*

*Now you are a guardian* is the Manual produced by the OPA to assist private guardians in understanding their role and responsibilities. This reporting period is the first full year of distribution and 240 manuals were posted to newly appointed private guardians. The Manual is also sold through Service SA and will be available on the new OPA website for downloading.

### *Education sessions*

OPA has continued to respond to requests from organisations and individuals and participate in a range of activities. OPA accepted 22 of 49 invitations to speak at conferences and meetings. When the OPA is unable to respond, alternative speakers were suggested or written material provided. In total, 973 individuals received advice and information through education sessions conducted by OPA during 2005-06.

### **Metropolitan service providers**

Approximately 600 service providers attended 15 education sessions provided in the metropolitan area. This is less than half of the previous year's audience.

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

Year	Sessions	Audience
1997-98	44	828
1998-99	52	1552
1999-00	33	1440
2000-01	42	613
2001-02	36	741
2002-03	28	1116
2003-04	33	1257
2004-05	30	1373
2005-06	15	600

### **Metropolitan carers and consumers**

Talks to community members focus on the promotion of advance directives and general guardianship and administration issues. This year, seven education sessions were given to carers and consumers, reaching approximately 370 participants. The majority of requests rejected by the OPA this year were from consumer and carer groups.

### **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
2004-05	11	846
2005-06	7	373

### **Country talks**

In 2005-06, OPA gave no talks in country areas.

**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
2004-05	2	45
2005-06	0	0

**2004 -05 Annual Report**

During the 2004-05 period, the 2003-04 Annual Report was produced and made available on the website.

**Website**

Work on the website was postponed during the year, however the new website will be operational by the end of 2006. The new website will adopt contemporary web tools and be easily amended by the OPA staff.

The website is regularly accessed by the public, with an average of 120 visits per day during the recording period.

***Legislation and Practice Changes***

Recent legal interpretations of sections of the *Guardianship and Administration Act 1993* have necessitated minor legislative amendments and practice changes within the jurisdiction.

The definition of “relative” in the Act was amended to reflect that the term “in loco parentis” only applies to someone acting on behalf of a person under the age of 18 years.

An additional category was also added giving substitute consent authority to individuals who are responsible for overseeing the ongoing day to day supervision, care and wellbeing of a person who cannot give their own consent to medical or dental procedures.

This and other amendments are outlined in a fact sheet produced and distributed by the OPA in early 2006.

A recent interpretation of the *Guardianship and Administration Act 1993* regarding the application of Act to minors has also resulted in practice changes. The consent of a parent or guardian is now required before the Guardianship Board will make a guardianship or administration order for someone under the age of 18 years. As a result, the Public Advocate has prepared an information sheet on the application of this legislation to minors.



# 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 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 2005-06, 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's establishment allows for the employment of 1.5FTE PSO1 social workers.

Originally it was envisaged that this team would manage enquiries and the guardianship monitoring however constant changes within the office and growing need for active guardianship resources led to temporary redirection of half of these funds to PSO2 resources. One part time PSO1 manages the bulk of enquiries with administration staff taking a stronger role in the management of straightforward matters. Out of necessity the OPA has reduced the amount of telephone case consultation provided but the enquiry officer still provides some advocacy for members of the community who are in difficulties. Enquirers are also being encouraged to use the website for access to standard information. The new website will allow users to search by topic/word giving greater access to information.

In addition to the Enquiry Service, OPA also offers an emergency contact that is available 24 hours, seven days per week. A representative of OPA carries a pager to respond to urgent matters on behalf of 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.

The new data system due to be implemented in September 2006 will streamline data entry.

## Outcomes

During the financial year, OPA received 5227 enquiry calls. The vast majority of contact with OPA occurs via the telephone, but 64 requests were received by email, 40 by letter, and there were 99 walk-in enquiries.

### 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
2004-05	4955
2005-06	5227

## Enquiry Types

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

Data integrity remains a problem with the enquiry system as the management of multiple calls sometimes leads to double entry of the same enquiry or failure to re-categorise types of enquiries appropriately when return calls are received. Types of enquiries received and numbers of issues are therefore indicative only.

- 17% of enquirers could not be contacted/had resolved their queries by the time contact was made;
- 20% sought information on advance directives
- 22% enquired about administration orders
- 16% enquired about guardianship issues

**Comparison of number and enquiry types for  
past four years**

<b>Enquiry category</b>	<b>2002-2003</b>	<b>2003-2004</b>	<b>2004-2005</b>	<b>2005-2006</b>
<b>1. Potential Administration</b>	910	1038	1096	1147
<b>2. Potential Guardianship</b>	688	920	806	836
<b>3. Advance directives</b>	540	739	894	1058
<b>4. Guardianship Board process /appeals</b>	260	184	290	225
<b>5. Information/ Education</b>	302	548	943	680
<b>6. Mental health</b>	239	282	277	157
<b>7. Consent to treatment</b>	154	213	147	240
<b>8. Other calls</b>	978	1072	539	410
<b>9. No action/ withdrawn</b>			439	900
<b>10. Complaint</b>			46	84
<b>11. Risk mgt/ Duty of Care</b>			82	49

# Consolidated Data 2005-2006

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

## 1. Comparison of 03-04 to 05-06 activity related to registered clients

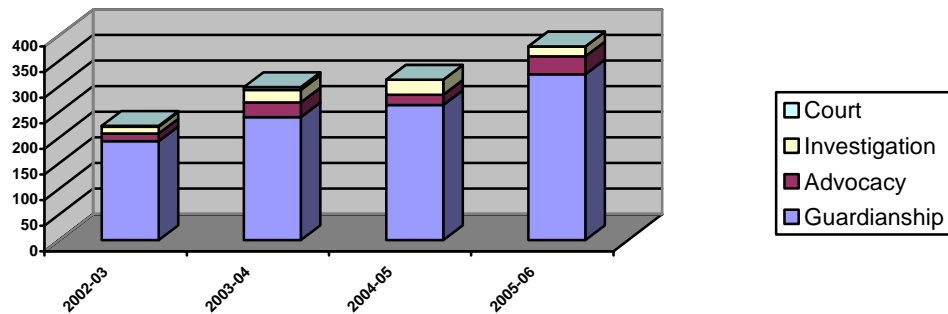
### 1.1 Summary of episodes of service by episode type

Episode type	Year	Open at beginning of year	Opened in year	Open at yr end	Closed in year	Revocation	Death	Other guardian	Total Active
Guardianship	03/04	193	131	240	84	52	26	6	324
	04/05	236	113	264	85	58	22	5	349
	<b>05/06</b>	<b>259</b>	<b>171</b>	<b>324</b>	<b>106</b>	<b>56</b>	<b>42</b>	<b>8</b>	<b>430</b>
Advocacy	03/04	15	47	29	33				62
	04/05	29	48	20	57				77
	<b>05/06</b>	<b>18</b>	<b>54</b>	<b>35</b>	<b>37</b>				<b>72</b>
Investigation	03/04	13	69	24	58				82
	04/05	22	53	29	46				75
	<b>05/06</b>	<b>22</b>	<b>66</b>	<b>19</b>	<b>69</b>				<b>88</b>
Court work	03/04	2	10	6	6				12
	04/05	6	4	0	10				10
	<b>05/06</b>	<b>0</b>	<b>4</b>	<b>0</b>	<b>4</b>				<b>4</b>
Total Active Cases	03/04	223	257	299**	181	52	26	6	480
	04/05	293**	218	313**	198	58	22	5	511
	<b>05/06</b>	<b>299**</b>	<b>295</b>	<b>378</b>	<b>216</b>	<b>56</b>	<b>42</b>	<b>8</b>	<b>594</b>
Percentage shift	03/04 to 04/05	+31%	-15%	+5%	+9%	+6%	-15%	-16%	+6%
Percentage shift	04/05 to 05/06	+2%	+35%	+21%	+9%	-3%	+91%	+60%	+16%

\*\* difference in figures relates to timing delays where closures are backdated to previous financial year after data analysis has occurred.

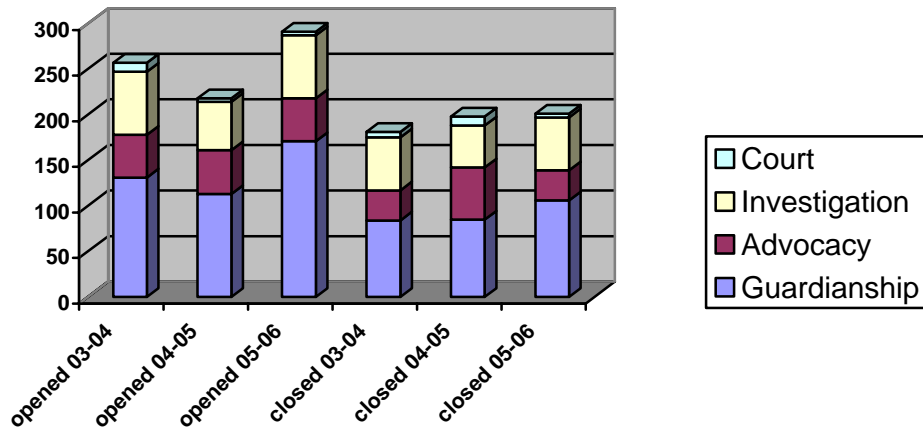
### 1.2 End of Financial year active caseload comparisons

This graph illustrates the end of year active cases for the past 4 financial years in all categories of cases. Note that guardianship accounts for the increase in active caseload.



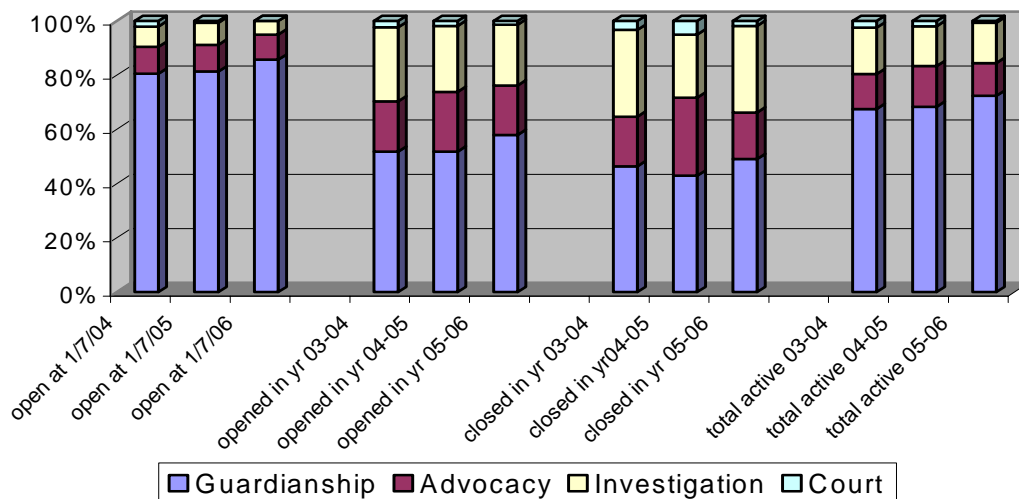
### 1.3 Comparison of case opening and closures 2003/04 to 2005/2006

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



### 1.4 Case type as a proportion of total case activity 2003-2004 to 2005-2006

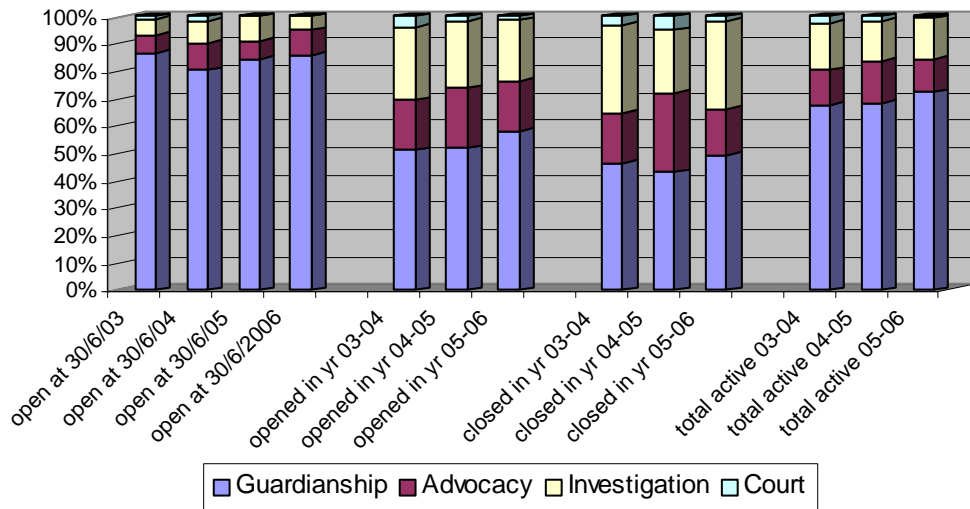
The graph below shows each case type as a proportion of all case types. Over the past three years statutory guardianship has accounted for an increasing percentage of client activity.





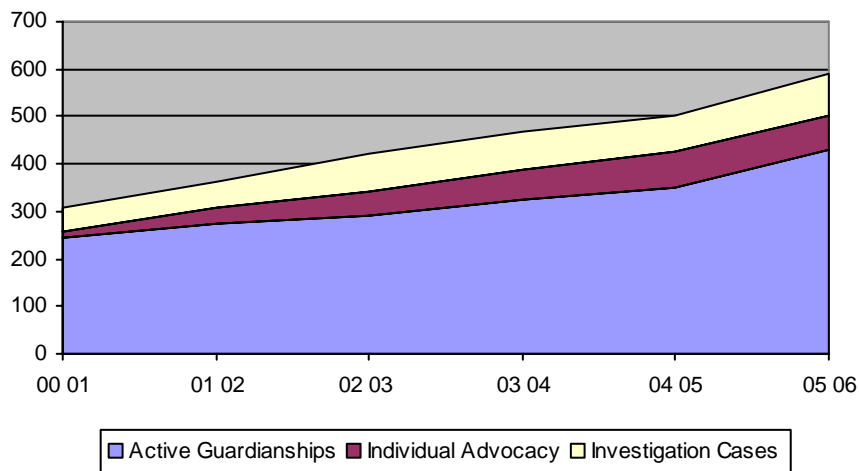
### 1.5 Comparison of case numbers and types 2003-2004 to 2005-2006 financial year

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



### 1.6 Case activity over recent years

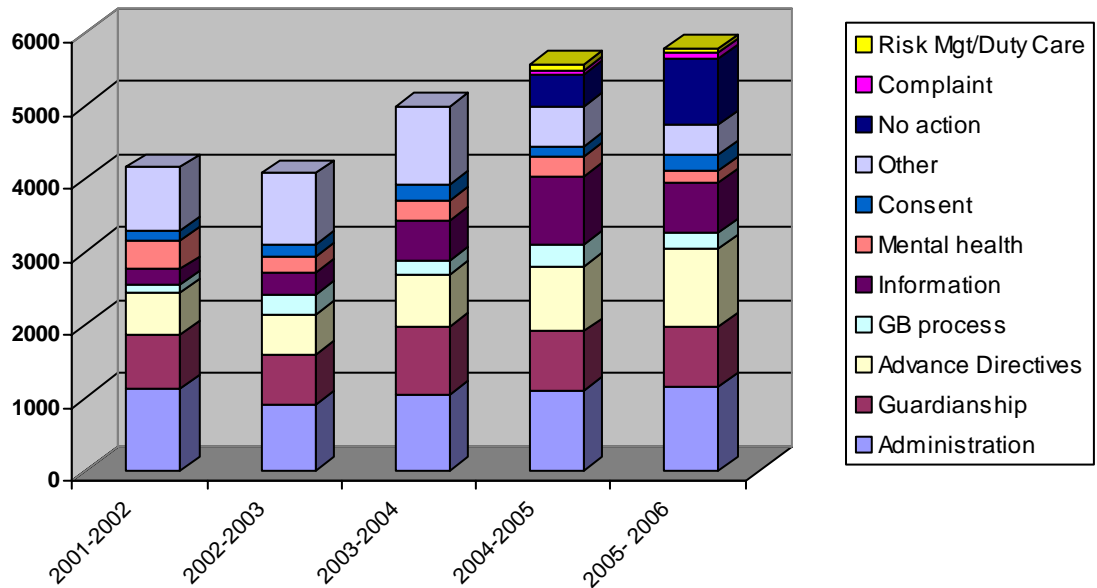
The graph below illustrates the number of active cases over the past 5 financial years and demonstrates the upward trend in numbers.



## 2. Non client activities

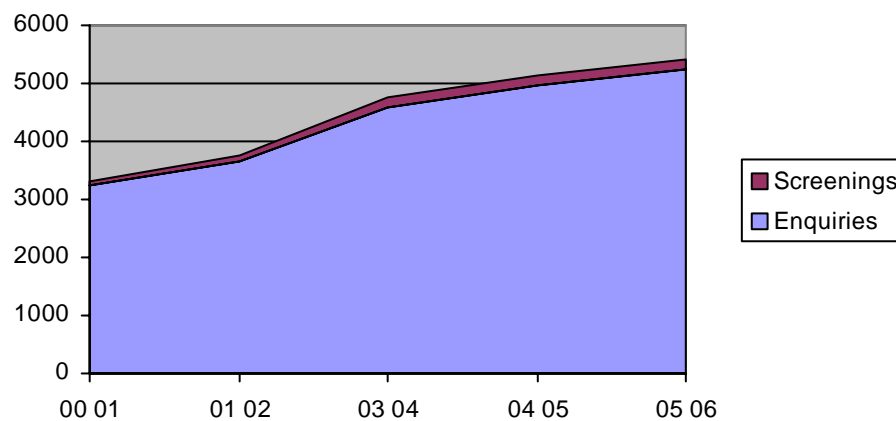
### 2.1 Enquiry Data

The graph below compares enquiries in each recorded category over the past 5 years. Note the growth in enquiries about advance directives.



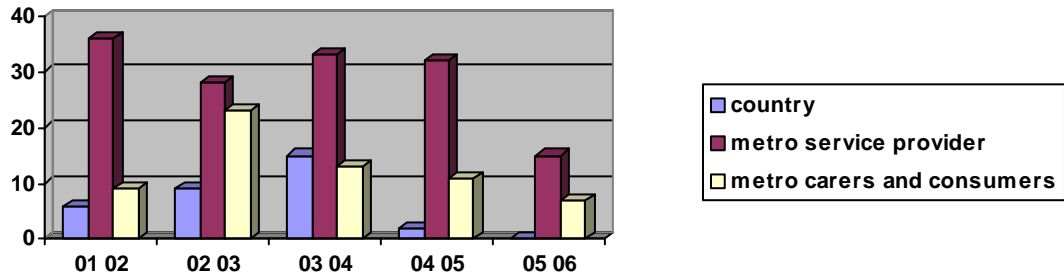
### 2.2 Enquiry and Guardianship Board case screening activities

The graph below indicates the trend in screening and enquiries activities over the past 5 financial years. This demonstrates the growth in activity.

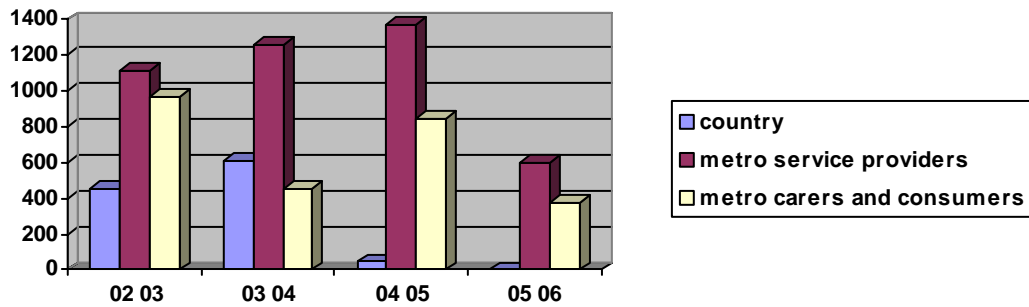


### 2.3 Education Sessions

The graph below indicates the numbers of education sessions given by audience type over the past 5 years.



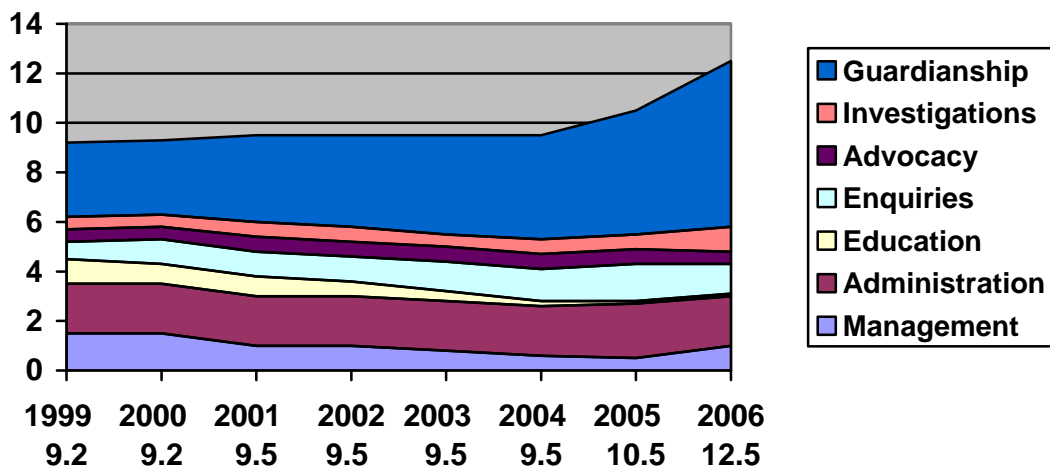
This graph indicates the audience numbers by type of audience over the past 5 financial years.



### 3. Utilisation of staff time

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

*Staffing levels and allocation of resources*



# *Employment and human resources*

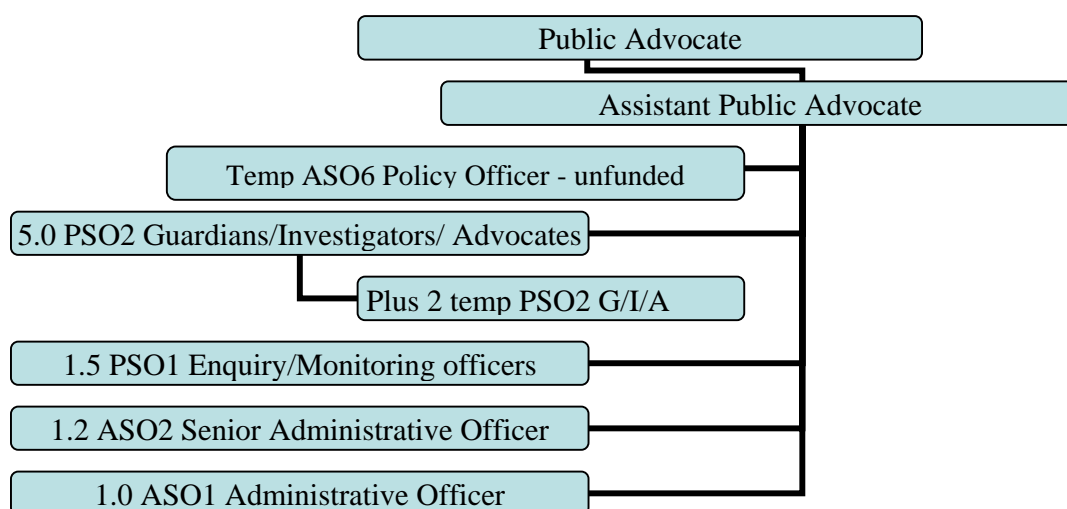
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## **Organisational chart – Funded positions**

As at 30 June 2006

Funded establishment as at 30/6/2006 was 12.7 FTE. In addition, an unfunded Policy Officer has been assisting the OPA for part of this year.

Actual resource utilisation throughout 2005-06 varied considerably due to staff movements, organisational priorities and additional temporary funding.



- Staff changes throughout the year are described on page 42.
- Public Sector Management Act employees by stream, level, appointment type and gender as at 30 June 2006 are listed in Table 1 on page 43.
- Sick leave, family carers leave and special leave with pay for individual needs and responsibilities is listed in Table 2 on page 43.
- Workforce diversity is described in Table 3 on page 44.
- Cultural and linguistic diversity is described in Table 4 on page 44.
- Age profile is listed in Table 5 on page 45.
- Voluntary Flexible Working Arrangements are listed in Table 6 on page 45.

### **Human resources development**

OPA encourages staff to pursue development opportunities. A number of activities were undertaken during the year. AGD corporately sponsored training activities have been utilised by approximately half of the staff during the reporting period.

### **Leadership and management development**

OPA employs one Executive EL3 and one Assistant Public Advocate ASO7 who have responsibilities for staff management and strategic directions. The Public Advocate participates in AGD executive fora on a regular basis and senior staff have taken advantage of some of the training in corporate areas of responsibility.

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

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

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

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

One staff member has suffered a work related repetitive strain injury which

has required treatment and modified work conditions.

The new office facilities have improved working conditions for staff.

Loss of work time through sick leave was less extensive during this reporting period. The average number of sick days per employee fell this financial year to approximately half of the previous period (5.1 vs 10). The figures for the year equate to the loss of approximately 1.5 productive working days per week (taking into account annual leave days and public holidays).

Industrial issues during the year highlighted the "unsafe" nature of the workplace because of the high workloads. The provision of additional staffing had a significant positive impact on this in the latter half of the reporting period. Management remains concerned about staff wellbeing.

### **Staff Assistance**

OPA provided workplace placements for three AGD employees on return to work programs and outposting for one SAPOL employee.

### **Policy Development**

With the increasing numbers of new staff coming through the organisation, orientation to professional roles and procedures highlighted out of date policy and procedural information. The temporary availability of a senior policy officer from SAPOL has allowed the organisation to commence addressing this problem and staff have enthusiastically participated in development of new procedures to support them in their work.

# *Administrative matters*

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## **Account payment**

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

## **Consultants**

There were no consultants engaged during the 2005-06 financial year.

## **Contractual arrangements**

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

## **Disability Action Plans**

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

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

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

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

OPA's education program is directed towards informing the public and people with a disability about matters pertaining to the *Guardianship and Administration Act 1993*, the *Mental Health Act 1993* and the *Consent to Medical Treatment and Palliative Care Act 1995*.

During this reporting period, a manual for private guardians was distributed to over 240 individuals who are supporting their friends and relatives by undertaking the role of guardian. This manual will assist them to more effectively fulfil their guardianship responsibilities.

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

OPA delivers a range of advice and services specifically to further the interests of people with mental incapacity. In particular, individual and systemic advocacy is a feature of our work. OPA continues to have a particular interest in the plight of immigration detainees whose mental health is being seriously affected by their circumstances.

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

Policy and procedure within the OPA is currently under review, in part as a result of feedback and complaints from stakeholders.

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

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

## **Equal opportunity programs**

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

In particular, OPA is committed to providing a flexible work environment that takes into account family commitments. This includes providing opportunities for part time employment, job sharing and opportunities to work from home on specific duties. As at 30 June, one quarter 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 2005-06 financial year.

### **Computing and Case Management**

OPA received an upgrade of its hardware and software in July 2004 ensuring compliance with government standards. A service level agreement is in place for the support of OPA's client database for the next 2 years.

AGD provided internal funding for the development of a new case management database. The database is shared with the Guardianship Board

and will offer improved support to staff, information sharing and performance monitoring. OPA is grateful for the assistance of Mark Langridge who is co-ordinating the project.

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

OPA is a tenant of the Australian Broadcasting Corporation and is in part governed by landlord practices.

### **Overseas travel**

There was no overseas travel by staff of OPA during 2005-06.

### **Staffing**

Restructuring of the establishment has allowed for a 10.7FTE staff base to be permanently available for the 05/06 financial year.

An additional 2FTE PSO2 staff have been provided as a result of AGD internal funding. Other temporary resources include a Senior Policy Officer on loan from SAPOL and a project officer co-ordinating the database development.

# *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 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 OPA and mentioned elsewhere in this report. OPA also consults target groups on specific matters.

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

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

- A series of printed resources, including OPA fact sheets, which provide information about the state guardianship and mental health legislation. A list of OPA's publications is on page 47.

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

OPA provides information on the FOI application process when contacted.

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

## *Amending personal records*

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

## *FOI requests 2005-06*

Due to our combined work with the Guardianship Board, the OPA sought legal clarification on exemptions for release of information prepared for a court authorities. Much of the material prepared for the Board is exempt. OPA received 4 requests under FOI this year. Our accredited FOI officer is on leave without pay and the services of the AGD will be used for processing future applications.

*All FOI application can be directed to the accredited FOI Officer at:  
Office of the Public Advocate  
PO Box 213 Prospect SA 5081*



# *Financial summary*

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The Office of the Public Advocate operated as part of the Attorney General's department for the full reporting period. The financial operations of OPA are consolidated into reported and audited with the financial statements of the Attorney General's Department. 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 OPA for the 2005-06 year.

<b>Office of the Public Advocate Financial Result 2005-06</b>			
	<b>Budget</b> \$	<b>Outcome</b> \$	<b>Variance</b> <b>(unfavourable)</b> \$
<b>Operating Revenue</b>	<b>0</b>	<b>887</b>	<b>887</b>
<b>Operating Expenses</b>	<b>1,080,806</b>	<b>1,101,083</b>	<b>(20,227)</b>
<b>Assets</b>	<b>6,000</b>	<b>0</b>	<b>6,000</b>
<b>Surplus/deficit</b>			<b>(13,390)</b>

During the reporting period, OPA received "one-off" funding from several sources for projects being undertaken:

- AGD provided funding for the database development and additional temporary staffing; and
- expenditure on the 7th floor refurbishment which was completed in August 2006.

# *Appendix 1: Staff changes 2005-06*

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## **Public Advocate**

- Mr John Harley commenced his third year in his second term as Public Advocate in 2005-06.

- Agency staff have also been employed during various periods to assist in the administrative area. We are grateful in particular for the assistance of Ms Liliane Fox.

## **Assistant Public Advocate**

- Ms Margaret Farr continued full time for the year.

## **Student placements**

Student placements were not offered during 2005-06.

## **Public Advocate and Community Enquiry Officers**

- Ms Yvette Gray, Ms Suzanne Bull, Ms Mary Allstrom, Ms Elly Kirk, Mr David Cripps, and Ms Tarnia White were the permanently employed Public Advocate Officers and Community Enquiry Officers throughout 2005-06.
- Ms Anita Micallef resigned from her position on Feb 2006, and retired from the Public Sector.
- Ms Annelise van Deth took 12 months leave of absence from April 2006.
- Ms Karen Bowden, Ms Alison Lamshed and Ms Julie-Anne Dowling joined the Office on temporary contracts in March/ April 2006.

## **Administrative staff**

- Mrs Jenni Wright and Ms Sarah Barry provided administrative support throughout the year.
- Assistance was received from Nicole Paull and Tina Jukic for short periods during the year.

## Appendix 2: Staff profile tables

**Table 1: OPA Public Sector Management Act employees by stream, level, appointment type and gender as at 30 June 2006**

Public Sector Management Act employees by stream, level, appointment type and gender as at 30 June 2006									
Stream	Ongoing			Contract			Total		
	M	F	Total	M	F	Total	M	F	Total
Administrative	0	0	0	0	0	0	0	0	0
ASO1	0	1	1	0	0	0	0	1	1
ASO2	0	1	1	0	0	0	0	1	1
ASO3	0	0	0	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>0</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>
Professional	0	0	0	0	0	0	0	0	0
PSO1	0	0.9	0.9	0	0	0	0	0.9	0.9
PSO2	1	3.7	4.7	0	2.8	2.8	1	6.5	7.5
<b>Total</b>	<b>1</b>	<b>4.6</b>	<b>5.6</b>	<b>0</b>	<b>2.8</b>	<b>2.8</b>	<b>1</b>	<b>7.4</b>	<b>8.4</b>
Executive	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>7.6</b>	<b>8.6</b>	<b>1</b>	<b>2.8</b>	<b>3.8</b>	<b>2</b>	<b>10.4</b>	<b>12.4</b>

**Table 2: OPA sick leave, family carers leave and special leave with pay for individual needs and responsibilities as at 30 June 2006**

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

**Table 3: OPA workforce diversity as at 30 June 2006**

<b>OPA workforce diversity as at 30 June 2006</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>1</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 2006**

<b>OPA cultural and linguistic diversity as at 30 June 2006</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 2006**

OPA age profile as at 30 June 2006					
Age groups (years)	Number of employees (persons)			% of all agency employees	% of South Australian workforce
	Male	Female	Total		
15-19	0	0	0	0	
20-24	0	1	1	7.7	
25-29	0	0	0	0	
30-34	0	2	2	15.4	
35-39	1	0	1	7.7	
40-44	0	1	1	7.7	
45-49	0	2	2	15.4	
50-54	0	2	2	15.4	
55-59	0	3	3	23	
60-64	1	0	1	7.7	
65+	0	0	0	0	

**Table 6: Voluntary Flexible Working Arrangements as at 30 June 2006**

OPA Voluntary Flexible Working Arrangements as at 30 June 2006					
Type of arrangement	Total employees	Number of employees using a Voluntary Flexible Working Arrangement			
		Executive		Non-executive	
		Male	Female	Male	Female
Purchased leave	0	0	0	0	0
Flexitime	12	0	0	1	11
Compressed Weeks	0	0	0	0	0
Part time and job share	3	0	0	0	3
Working from Home*	0	0	0	0	0

\* Casual arrangement has applied to all professional staff.

# *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

## TRANSLATED MATERIALS

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

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

## POSITION PAPERS

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

## MANUALS

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

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