

**OFFICE OF THE PUBLIC  
ADVOCATE**

**ANNUAL REPORT  
2006-07**



15 October 2007

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 thirteenth 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 2006 to 30 June 2007.

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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I am pleased to provide an overview of the operations of my office for the 2006 2007 financial year.

This year the OPA has had 22 staff involved in the delivery of services. A new administrative team and a large number of temporary staff moving through the organisation have created challenges in orientation and service management. However all newcomers have approached their roles with enthusiasm and energy. The experienced staff members have demonstrated great willingness to support their new colleagues and, as always, I am impressed by the bravery and commitment of all concerned.

I make special mention of Jenni Wright, our retiring Senior Administrative Officer who contributed significantly to the development of our new database and website before her retirement. I would also like to acknowledge Suzanne Bull who rose to the challenge in her new role as senior guardian and provided supervision and support to the new guardians.

I welcome Trish Bull, Karen Bowden, Julie Anne Dowling and Rosemary Hillard who were all recruited to ongoing positions in the OPA during the reporting period.

## **Legislative Reforms**

### ***Advance Directives***

In my 2005-2006 Annual Report I opined that the current legislation dealing with advance directives was “both complex and cumbersome”. Under the chairmanship of the Hon Martyn Evans, a former Minister of Health and the architect of the Consent to Medical Treatment and Palliative Care Act 1995 and the Guardianship and Administration Act 1993, a committee has been established to review both of the before-mentioned Acts and the Powers of Attorney and Agency Act 1984 with a view to simplifying the law.

There has been much public consultation and the review committee is now working through the many difficult issues that have arisen.

The committee is being supported by Jean Murray and Kathy Williams from the Department of Health. Both of them are doing an excellent job.

### ***Domestic Partners***

On 1 June 2007 the Statutes Amendment (Domestic Partners) Act 2006 came into effect. From my Office's viewpoint the principal change was the amendment to section 59 of the Guardianship and Administration Act 1993. This provides for substitute or surrogate decision makers for persons who have a mental incapacity and cannot consent to medical treatment and who have not appointed a medical agent

under a Medical Power of Attorney, a guardian appointed by the Guardianship Board nor an enduring guardian appointed under an Enduring Power of Guardianship.

The substitute decision makers so provided for in section 59 included, prior to 1 June 2007 “a spouse, including a legal de facto spouse”. After 1 June 2007 it became “a spouse, including a domestic partner”.

What are “domestic partners”? They can be same - sex de facto partners but also other partners who may not be in a sexual relationship but live together on a genuine domestic basis as a couple and have lived this way for three years or more.

When considering if the living arrangements constitute a domestic partnership you must consider the following matters:

- how long they have living together in the relationship?
- whether the partners have shared the whole of their home in common or whether each has separate areas
- do they financially support the other, wholly or partly? Do they keep their money separate or do they pool it?
- do they own property separately or do they share it or own things jointly?
- are they committed to a shared life?
- are they raising children or providing care for children together?
- do they share the household tasks?
- do others regard you as a couple?

All of these factors are taken into account before making a determination.

One must have some sympathy for health service providers when seeking a valid and legally effective medical consent to treatment from someone who claims to be a “domestic partner” of the patient.

I can only assume that our legislators did not apply their minds to the precarious position in which this amendment places our clinicians. If the consent they obtain is from someone who does not satisfy the definition of a domestic partner (and only a court can definitively determine it) they could be guilty of assault and battery. If it is an end-of-life decision it can amount to manslaughter or murder.

### ***Mental Health Act Reforms***

By the time this report is tabled in Parliament the new Mental Health Bill 2007 will have been released and the period of public consultation expired.

The contents of the Bill are as a result of the recommendations contained in the Bidmeade Report 2005 entitled ‘Paving the Way’. Those recommendations followed extensive public involvement.

There was an implementation committee which examined the many drafts of the Bill leading up to the exposure draft.

Doubtless there will be some critics of the legislation as the overall effect will be to make it quicker but easier to obtain community treatment orders and the periods of detention will appear to be lengthier. However there has also been an attempt to reinforce the rights of consumers to have these orders reviewed. In particular the Bidmeade Committee were insistent that there be a community visitor scheme established to provide a presence in the treatment centres to ensure advocates were available to consumers to advise and advocate for them.

It is therefore imperative that, when the new Mental Health Act is proclaimed to come into effect, there is established a properly resourced and trained team of community visitors ready to assist consumers.

## **Service Issues**

### ***New Forensic Mental Health Facility at Mobilong***

The SA government has recently announced its intention to build a new forensic facility at Mobilong to replace James Nash House at Oakden and Grove Closed Ward at Glenside Campus.

I advised the Hon Gail Gago, MLC, Minister for Mental Health and Substance Abuse that I have and I continue to have two major issues with the proposal.

The first is that the plan is for the facility to house only 40 beds. At present, Forensic Mental Health Services already has 40 beds which is insufficient as they are chronically full with at least 50% of inpatients being non-prisoners (declared liable to supervisions under section 269 of the Criminal Law Consolidation (Mental Impairment) Amendment Act 1995). In fact, in many cases there are non-prisoners being held in prison facilities because there are no vacancies in James Nash House. This is in clear violation of their human rights. I have previously drawn this to the attention of Parliament.

The competition for beds also affects mentally unwell prisoners' access to the facility due to the limit of 40 beds. There is substantial evidence of the need to increase beds in any new forensic mental health model.

The second issue is one of service delivery. At present the staff work hard to facilitate regular contact between friends and relatives, government and non-government organisations and patients in James Nash House. This is particularly important for those non-prisoners who are being gradually re-integrated into the community (which is, in the majority of cases, metropolitan accommodation). Placing any new facility in Mobilong will result in a great disadvantage for patients and their families who need to be able to have face to face contact with each other. This also affects accessibility for patients to most support services which are relied upon for rehabilitation and recovery. Any transition into the community will also be severely hampered as most patients choose to live in the metropolitan area.

The move of the facility to Mobilong could be likened to the Commonwealth Department of Immigration and Citizenship's previous policy of locating detention facilities in remote areas such as Woomera, Nauru and Port Augusta to ensure inaccessibility of detainees from support networks. I would like to be convinced that the SA government is not following the same policy.

I have requested that consideration be given to dual services taking into account the two groups of individuals that require a service, i.e. prisoners and non-prisoners. A metropolitan based facility, in addition to the one proposed, could take into account the above issues and lack of beds.

I refer to the evidence of Dr Ken O'Brien in the Coroner's inquest into the death of Walker. I quote from the findings:

*"Ideally, someone in Mr Walker's condition might be managed in a hospital-like James Nash House. But the small number of beds available at James Nash House for mentally ill prisoners was in Dr O'Brien's opinion, most unsatisfactory and he could not count on one becoming available for Mr Walker. According to Dr O'Brien, since the introduction of the Mental Impairment Legislation, of the 30 beds available at James Nash House, the vast majority are taken up by persons being detained after being found to have committed crimes whilst mentally impaired or incompetent. This leaves less available hospital beds for other mentally ill prisoners than were available ten years ago. (T359) Dr O'Brien believed that there has been a steady increase in the numbers of prisoners suffering mental illness in recent years."*

I personally know of prisoners with mental illness requiring hospital care and also prisoners with an intellectual disability being kept in G Division at Yatala for their own protection because their behaviour is so intrusive for the other prisoners that they are subject to violent attacks.

In fact prisoners with an intellectual disability have on occasions been specifically refused accommodation because James Nash House is not suitable and not staffed to manage them - so they are kept in solitary confinement in prison.

I have previously made representations to the government about this deplorable abuse of the intellectual disabled and I was told that, when a new facility or an enlargement of James Nash House was being built, specific accommodation would be provided for this group of people. Mental Health Services and the former Intellectual Disability Services Council were both involved in these discussions. However I am informed that the staff at James Nash House were not consulted before the government made their decision to locate the new facility in Mobilong with a mere 40 beds.

In my Annual Reports of 2002-2003 and 2003-2004 I brought to the attention of Parliament my concerns about the inadequacy of Forensic Mental Health Services and mental health services provided by the Prison Health Service. They did not produce any response from the government nor any questions in Parliament.

As at the date of this report I have also not, apart from acknowledgement, received any response from the Minister addressing my further concerns.

### *Lifestyle supports.*

Lifestyle support is a particular need of people with mental incapacity. Whilst clinical intervention may positively address health, psychiatric and psychological symptoms, it is in day to day living that many adults with disability experience their greatest problems and conflicts with others. Lack of programs and insufficient resources to adequately train and support individuals with lifestyle issues has been a major concern throughout my time here. I am pleased to report that, for clients under my guardianship, where new lifestyle support programs have been funded, developed and accessible, positive outcomes have been achieved for the majority.

In aged care, the availability of EACH and Transitional Care packages has made it possible to support some protected persons who wished to stay in their own homes. In mental health, programs such as the Strategy Six initiatives have helped to reduce presentations at hospital and conflicts within the community. Waiting periods to access these services have however meant that some clients choices welfare cannot be optimised.

Critical to these positive outcomes has been the adequacy of the tailored training and support of staff employed by the non government and private organisations providing the supports as well as the continuity of the staff providing the hands on care.

Some of our clients have also benefited from comprehensive programs provided through the disability sector. However, requests for advocacy assistance from members of the public who are not receiving adequate disability services is a constant reminder to this office of the current difficulties that this sector has in delivering responsive and timely intervention for clients in need.

### *Accommodation resources*

I cannot let this year pass without raising my ongoing concerns about the limited accommodation options available to clients with high support needs. Where our clients still retain their own home we can approach the development of an appropriate support plan with some confidence. However, for young mentally ill or incapacitated people who can no longer be cared for in a family environment, contemplating Supported Residential Facilities as the only viable short term option is tragic. This office will no longer support the placement of young people under its guardianship into these types of facilities if they are vulnerable to abuse of other residents.

## **OPA Organisation Performance**

### *Workloads and throughput*

There have been many day to day challenges in our work with individuals for whom I am appointed guardian of last resort. Demands from this part of my work continue unabated and, as statutory guardianship is considered my first priority, all other activities are potentially adversely affected, particularly, when there are peaks in new guardianship appointments.



Despite the significant resource assistance provided by the Attorney General's Department, workloads still challenge the resources of our small office of 14.7FTE staff. This year there were 184 new appointments and the year ended with 401 individuals under guardianship, a 27% increase on the year opening (315). The average length of guardianship is 2.1yrs. This figure is skewed upwards by a number of matters which are open for periods far exceeding this (median length of guardianship 1.4yrs).

As with other human service organisations, it is challenging to balance the need to move clients through the service in a timely manner. This has to be achieved at a sufficient pace to allow new clients to have their needs met without ex clients experiencing adverse outcomes and requiring re entry to the guardianship system. There is also a tension between this office's mandate to promote guardianship practices which are least restrictive of a person's autonomy (ie revoking of orders as soon as possible) and the frequent desire of interested parties to maintain the status quo as a safety net should new issues arise.

The proportion of guardianship cases closed this year (cw active caseload) fell below 20% for the first time in 4 years (previous years 24 to 27%). The organisation is looking at ways to better address the throughput of cases in 2007/2008. On the other hand, several matters this year have returned to the Board for new orders soon after revocation was recommended by this office. These are the inevitable tensions inherent in guardianship work.

This year there has been a reduction in investigation work directed by the Guardianship Board under Section 28 of the Act. Individual advocacy work was also reduced. These aspects of our work are negotiable and therefore the OPA has more control over demand for service. Some advocacy work has been redirected elsewhere and some matters are more appropriately handled through complaints mechanisms such as the Aged Care Complaints Investigation Scheme and the Office of the Health and Community Services Complaints Commissioner. My office has made a number of referrals to the latter organisation during this reporting period.

The average time taken in Section 28 investigations ordered by the Board (from case open to case closed) was 11.2 weeks (median 8 weeks). Some of this timeline is within the control of the Guardianship Board but the responsiveness of OPA investigators is important in terms of the Board's timely resolution of matters.

The OPA reviews all applications before the Board which nominate the Public Advocate as guardian. The OPA Investigating Officer now coordinates the screening of these applications and ensures that a representative attends the hearings whenever this is practical. This presence obviates the need for the Board to seek investigative reports in more simple matters. The OPA representative can comment on the application, advise the Board of alternative strategies to guardianship and indicate whether or not an investigation by the OPA would be of benefit or not. On average, screening matters are open for 4 weeks.

### ***Policy and procedural development***

This year Policy and procedural documents have been rewritten for guardianship, investigation, screening and enquiry functions. This work was triggered by several historical concerns about our performance and the need to better describe key practice expectations to assist new staff in understanding and performing the roles and functions of the office. The work coincided with the development of a new case management system within which standardised report templates are imbedded.

Procedures for the development of decision making plans and new documentation practices on reasons for decisions in selected guardianship cases are being implemented over time.

Further policy work is planned on the advocacy function. We will also review practice guidelines for common and complex guardianship decisions.

### ***Case management system***

The Guardianship Board and the Office of the Public Advocate were required to replace outdated databases. Considerable work has been undertaken in the past 2 reporting periods to develop and implement a shared system. SBC, a private software development company was engaged to design the shared system to suit the needs of both organisations. SBC had previously developed programs for several GB tribunals interstate and these modules were used as a starting point. Key benefits of the new system for this office are the sharing of client screens and demographic information with the Board, work scheduling functions and the enquiry system. The reports function will enable OPA to develop better information on its clients and trends in service utilisation.

The new system was in use for 8 months of the reporting period and development work will continue into next year to enhance its reliability and identify additional features for future development work.

### ***Due process and the separation of functions***

OPA staff members have been concerned about the potential conflicts created by individual staff members being required to perform more than one key function with respect to an individual client matter. For example, for pragmatic reasons, a staff member may take an initial enquiry, then conduct a formal investigation on behalf of the Board and then take on the role of guardian. In cases where conflicting opinions between interested parties do not arise, this practice does not cause issues. However, where conflicts exist, the perceived objectivity and independence of the worker is important to interested parties. From the public's perspective, due process needs to be followed to ensure that all parties feel that they have received appropriate consideration of their views. Several complaints have arisen during this reporting period where, from an outsider's viewpoint, this objectivity has not been demonstrated.

As a result, the organisation is working towards greater separation of its functions through the creation of separate teams with discrete functions. In the meantime additional care is being taken to declare potential conflicts in process.

### ***Staff supervision, support and professional development***

During this reporting period, there has been a number of staff on contracts and turnover has been an issue. The Attorney General's Department made additional funds available for 2 temporary staff in November 2006. As a result, a temporary supervisory position for guardians was established in order to ensure better orientation, support and supervision for new staff and to improve practice in accordance with the new policy and procedural guidelines. Feedback about the enhanced support from new and existing staff has been very positive and it has been decided to continue the position into the next financial year.

A number of OPA staff members have taken advantage of corporately funded or managed training opportunities provided through the AGD. These have included matters such as complaints management, cultural awareness training and accrual accounting.

### ***Appeals***

The OPA is involved in a small number of appeals before the District Court each year. Historically this has involved me representing the OPA where necessary, requiring my attendance at all preliminary hearings and full hearings if they eventuate. Negotiations with the Crown Law have resulted in the Crown providing representation, in some cases, by the same officer who represents health service providers who are an interested party in the appeal. This has provided the OPA with independent representation and freed the staff and me. We now appear only where the Crown requires immediate access to information and advice.

### ***Public Information and Accessibility***

OPA's new website was implemented in August of 2007. The website enables improved access to OPA fact sheets and links to other websites. A generic information sheet translated into 14 languages is now available on the web. Many public enquirers are now referred to the website rather than posting information to them. The Guardianship Board application forms have been available to download for the first time. Hopefully this is making the application process easier for members of the public and in particular for service providers. The Guardianship Board now has its own website which offers the same facilities.

In response to feedback from some advocacy groups, the OPA developed a new fact sheet that explains the allocation and decision making processes used by this office when individuals come under my guardianship. The intention is that this information be made available at Board hearings so that family and friends are better informed on our processes from the beginning of the guardianship process.

During this period, the OPA negotiated with its landlord (the ABC) and the local council a disabled parking facility in front of the building.

Once again, I wish to record my thanks for the immense and thoroughly professional services provided to me by the Assistant Public Advocate Margaret Farr, the Senior Guardian Suzanne Bull, and the rest of my staff. I am indeed most fortunate to have their support and friendship.

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

## ***The challenge: Asperger Syndrome***

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Asperger disorder or syndrome is commonly referred to as one of the autism spectrum disorders. Characteristics of dysfunction leading to this diagnosis are similar to those described for autism generally - impaired social interaction, impaired communication and restrictive and repetitive patterns of behaviour . However, in the case of Asperger, individuals generally have normal intelligence but are developmentally impaired by other facets of their disorder.

It is understood that there are approximately 1400 people in South Australia who are diagnosed with this disorder; the vast majority are still children. This diagnosis is being used more frequently. The literature suggests that there are many reasons for this, the chief ones being a greater awareness of the condition, a change in the diagnostic criteria used by clinicians and increasing prevalence. Whatever the reasons, these young South Australians will face many challenges within society as they enter adulthood and families are already experiencing the difficulties of assisting their children to survive amongst their peers and within the education system.

Like other service providers, this office has been grappling with its role in the lives of young adults with Asperger syndrome. In the past few years, there have been a small group of men who have exhibited a range of behaviours including aggression, preoccupation with self harming, obsessions with weapons, other risky and antisocial behaviours or have been isolative and unable to commit to programs designed to help them. Guardianship had been requested for a variety of reasons including advocacy for services, provision of legal authority to direct the living circumstances of the individual and for substituted decision making around lifestyle matters. In most cases there are distressed family members who have struggled for some years with a child who is “out of control”. Their distress is exacerbated by the loss of support which is available whilst their child remains in school and the lack of adult employment, recreation and support services to replace this. When families are seeking to relinquish care responsibility, there are few alternatives on hand and it is hard for guardians to deliver a timely and appropriate decision in the interests of the protected person and their families.

The state government response to clients with this disorder now rests with Disability SA. Over the past year the Public Advocate and his staff have received a number of requests for assistance from often desperate parents who believe that they are not receiving any (let alone adequate) support for their family. In response, we are told by representatives of Disability SA that there are inadequate resources to address the specialised support needs of this group and that many of their mainstream programs are not suitable. The anticipated growth in demand for services as this population reaches adulthood is a cause for major concern. We are advised that, without proper structure and support, a significant proportion of these clients will develop symptoms of psychiatric disorders and additional behavioural issues and few will be able to enter the mainstream workforce.

One of the biggest challenges for this office has been developing knowledge on best practice approaches to supporting these young adults and determining what decisions

guardians should be making. We have discovered that there is not a great depth and breadth of knowledge amongst South Australian practitioners regarding best practice and we have debated some of the benefits and drawbacks of guardianship. We have been fortunate to participate in the development of some intensive packages of care. Outcomes have ranged from tragedy to steady progress measured by reduced offending, drug taking, threatened/self abuse and aggression. Some of the key elements of success seem to be continuity of relationships, creating a sense of safety, providing opportunities for structured choice and self control, and opportunities for developing an active and healthy lifestyle. Disability SA, including the Exceptional Needs Unit, and several non government organisations including Autism SA have provided leadership in these developments. We also note the interest shown by Flinders University to develop specialised clinical, vocational and recreational programs and their plans to offer specialised training for workers to better equip for their work with Asperger clients.

The length of time involved in developing “one off” models and the repeated battle to achieve adequate funding for each individual remains frustrating. We are heartened by the reported growing government interest in the issues faced by young people with autism and hope that this translates into improved program responses for those clients diagnosed with Asperger syndrome and the development of expertise amongst disability service providers. We also look forward to developing a better understanding of the role of guardianship for these clients.

# ***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 2006-2007.

The funded staff positions of the Office of the Public Advocate as at 30 June 2007 are reflected in the organisational chart in the Employment and Human Resources section.

# *Mission, vision 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.”*

## **Principles of the Guardianship and Administration Act**

The OPA practices in accordance with the *Principles of the Guardianship and Administration Act 1993*. The OPA promotes these principles in guiding the practices of other organisations that work with people whose lives are affected by mental incapacity.

- *guardianship or administration order, be given to the adequacy of*

The principles are as follows:

*“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. This is not 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 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.

### **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.

### **Vision statement**

A community which promotes the autonomy, health, wellbeing and participation of those whose lives are affected by mental incapacity whilst protecting them from abuse, exploitation and neglect by self and others.

### **Objectives**

1. Working to increase the quality of adult guardianship services across South Australia.
2. Fostering strong partnerships with service providers and the

community to enhance the lives and potential of OPA's client group.

3. Identifying key areas of unmet, or inappropriately met needs of mentally incapacitated persons and taking action to improve their circumstances.
4. 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 2006-07 highlights*

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- Support provided by the Attorney-General's Department.
- The provision of additional temporary funding resources to assist the OPA in dealing with its workload.
- Implementation of upgraded website.
- Availability of Guardianship and Administration Act application forms on the OPA website.
- Production of information sheet on substitute decision making to provide greater transparency on OPA processes for families and friends of protected people (number 25).
- Shared case management system with the Guardianship Board enabling efficiencies in data entry and sharing of relevant identifying information on clients common to both services.
- Introduction of trial proforma report formats embedded in the case management system.
- Introduction of senior guardian's position to provide improved support and supervision to staff performing the guardianship role.
- Development of new policy and procedural framework for functions of guardianship, investigation, screening and enquiries.
- Managing 500 active guardianships.
- Establishment of SA government committee to develop legislative reforms on advance directives.
- Support of better outcomes for a number of clients under guardianship allowing them to stay in the accommodation of their choice and receive flexible support and lifestyle assistance.
- Effective transitioning of a small group of young people from adolescent services and child guardianship to adult guardianship and structured disability support packages.

## ***Key outcomes***

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The Office of the Public Advocate has four key service areas. During 2006-07, 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 59 individual client advocacy matters during 2006-07, 28 of which were new cases during this year. This compares with a total of 72 active cases in 2005-06 and 77 in 2004-05.

Reduction in numbers is partially explained by introduction of a new case management system and the reclassification of some court related matters as “legal matters”. This is referred to in the section on guardianship in this report. In addition, the OPA has referred on matters that have primarily a complaint content to the Office of the Commissioner for Health complaints.

### *Examples of Advocacy:*

Several young clients who were under the Guardianship of the Minister were referred to the OPA at the age of 16 or 17 years. This was to enable collaboration on planning for transition into adult accommodation and support services and to establish the relevance of adult guardianship and financial administration orders to their ongoing support. OPA attended relevant case conferences with service providers and provided advice on the application process for the Guardianship Board.

An OPA representative attended a number of case conferences pertaining to adults with mental incapacity to contribute to case planning. Knowledge

and understanding of the guardianship and Administration Act and its principles are applied to the circumstances of the person under discussion and guardianship as a last resort strategy of intervention is promoted.

The OPA maintained an advocacy role in several matters where the office was represented at a Guardianship Board hearing and the provision of advocacy services on behalf of a person with mental incapacity was considered more appropriate than the introduction of guardianship orders.

### *Committee Membership:*

Staff members were active within the following external committees during 2006-07:

- 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;
- Disability SA Legal Committee;
- Magistrates Court Diversionary Program Steering Committee;
- Advance Directives Review Steering Committee;
- Member, Advance Directives Review 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, Mental Health Legislation Implementation Committee
- 
- Member, Calvary Hospital Ethics Committee;
- Chair, Human Rights Coalition;
- Deputy Member, Ministerial Advisory Committee on Supported Residential Facilities;
- Member, Street to Home Steering Committee;
- Member, Advocacy Services Forum, Social Inclusion Unit; and
- Member, Law Society of South Australia Professional Standards Committee.



# 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**

In 05/06 the AGD provided additional temporary funding for 2 guardian positions in recognition of growing workload issues. These are now funded on an ongoing basis.

During 06/07 AGD funded an additional 2 temporary PO2 positions which enabled the organisation to deal more effectively with the guardianship workload. At the end of the financial year, there were 9 FTE PSO2 funded positions, 8 FTE being devoted entirely to guardianship work. Because of the expanding team, the influx of inexperienced staff and the objective of improving service consistency and standards, the OPA introduced on a trial basis a Senior Guardian's position to provide more supervision and support to this team.

Intensive/continuity cases and monitoring (stable) cases were managed by PO2 staff. Consensus is that a caseload of approximately 40 clients is a

full time intensive/continuity caseload. Additional assistance was therefore provided to the guardianship team by management and the PO2 investigator because of these caseloads.

The organisation continues to experiment with appropriate ways of managing the stable guardianship caseload in order to ensure adequate monitoring and throughput (revocations of orders when no longer needed). Numbers assigned to monitoring have varied between 80 and 100 this year.

Waiting lists for less urgent new guardianship matters have been applied for much of the year in accordance with an agreed priority rating system.

## **Outcomes**

Note: The introduction of a new case management system midway through 06/07 has resulted in some statistical translation issues and therefore figures below may contain minor inaccuracies (less than 2%).

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

During 2006-07, OPA provided guardianship services under the *Guardianship and Administration Act* on behalf of 499 people (430 in 05/06). This represents a 16% 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.

### **New guardianship appointments**

This year there were 184 new guardianship appointments under the *Guardianship and Administration Act*, a 9% increase on last year's figures (171).

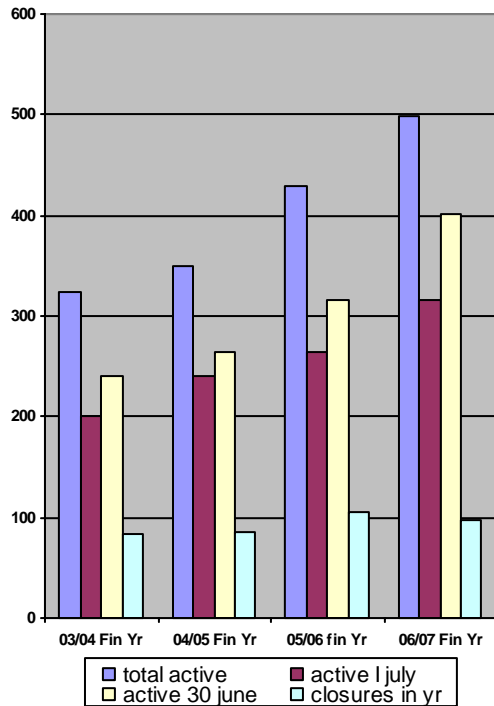
### **End of year caseloads**

Case closures were 98 representing a decrease by 8 (8%) when comparing



06/07 to 05/06. As at 30 June 2007, there were 401 active guardianship cases compared with 315 at the beginning of the year. This represents a 27% increase in active cases for the reporting period.

**Active Guardianship Caseloads Compared over 03/04 to 06/07:**



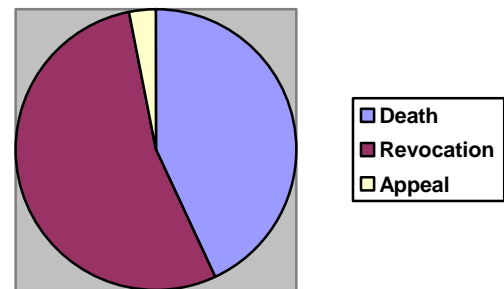
**Guardianship case closures:**

Of the 98 closures, 51 were due to revocation of orders, 44 due to death, and 3 due to appeals against orders being upheld in the District Court.

It is notable that our revocation rate has not kept pace with increases in active caseloads this reporting period. 19.6% of the active caseload was closed in 06/07 in comparison with 24.4% to 26% in the three previous financial years. It is hoped that rate of closures can be increased during this reporting period without compromising the wellbeing of those individuals under guardianship.

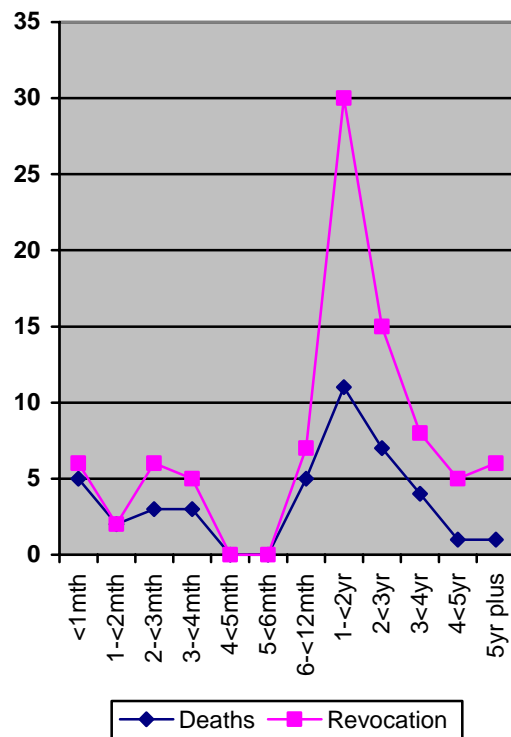
For those clients still under guardianship as at 30 June 2007, the length of involvement is as follows: 37.2% have been under guardianship for less than 12 months, 26% for 1 to 2 years and 36.8% for more than 2 years.

**Reasons for Guardianship closures in 06/07:**



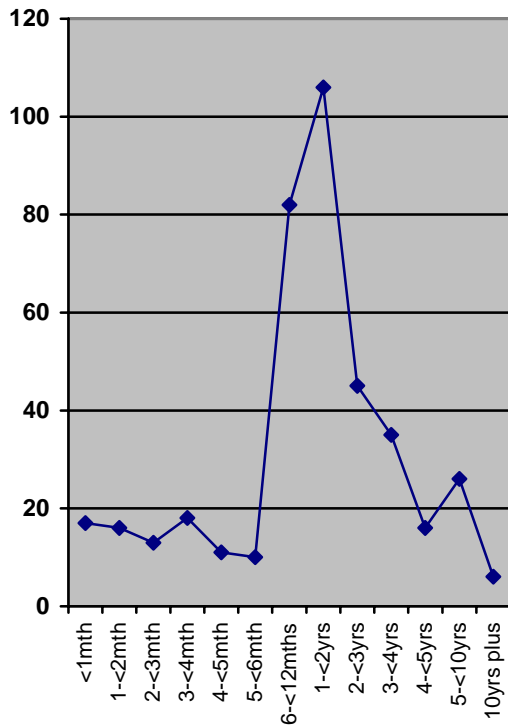
**06/07 Closures by length involvement:**

Death: N=42, Average =1.4 yrs, Median =1.1 yrs  
 Revocation: N=51, Average =2.4yrs. Median= 1.7yrs



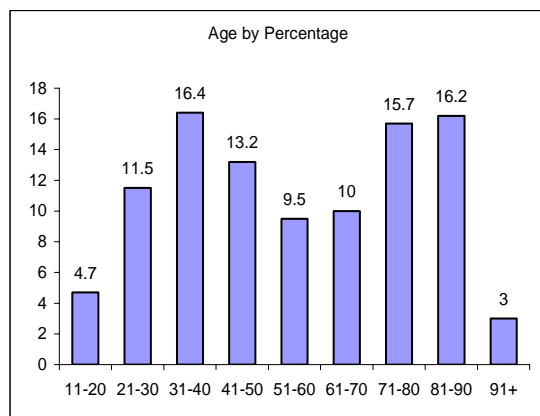
**Active Guardianship Cases as at 30 June 2007 by length case open:**

N=401, average length = 1.9 yr, median length 1.3 yr

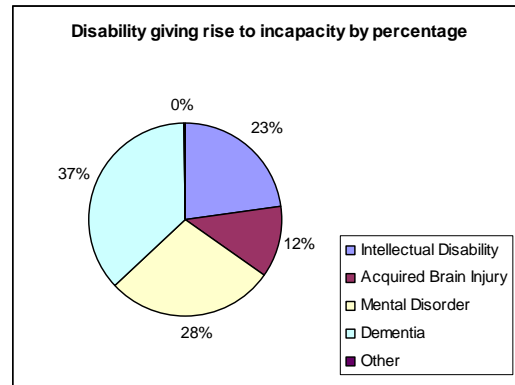


**Age, gender and disability profile**

Active guardianship cases as at 30 June 2007 broke down into approximately one third under 41 years, one third between 41 and one third over 71 years of age. 46.% were females and 54% males. 30 June 2006 age breakdown is represented below:



Diagnostic grouping of guardianship cases active as at 30 June 2007 show little change in the make up of our caseloads over reporting periods. In this pie chart, acquired brain injuries and neurological disorders have been grouped together.



**Guardianship and Court Matters**

OPA has continued to provide a service in cases where people are involved in court proceedings where their mental incapacity affects their ability to instruct legal counsel. 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, 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.

This year the OPA has adopted the generic term of “legal case” to describe matters which are before a court and where the OPA is appointed under court rules (eg as litigation guardian/ case guardian, guardian ad litem/ next friend).

This term is reflected in the new case management system.

13 matters have been classified as legal cases during this reporting period, 11 of which were opened during the reporting period.

## **Issues in Guardianship**

### ***Jurisdiction:***

A small number of clients placed under guardianship have subsequently had orders revoked because ongoing mental incapacity had not been established. In some matters, particularly with younger clients, this is an indication that intervention has facilitated their personal growth and decision making capabilities to the point where their health and safety is no longer at risk. In other cases, such as those people who have signs of frontal lobe dementia or alcohol related mental impairment, assessments of incapacity may differ over time or between clinicians. The provision of shelter, structure and support under the directions of a guardian may also lead to an improved mental and physical state. This can enable an individual to regain control over their own decision making.

In some cases, conflict and undue influence surrounding the vulnerable adult can cause that person to appear confused and indecisive; symptoms may also be transient because of medical conditions. Once these influences are removed or controlled, there may be no evidence of incapacity.

One challenge for guardians and financial administrators is to factor in this possibility, and to ensure that substitute decisions, wherever possible, do not close out future opportunities for the protected person to pursue their own chosen lifestyle.

### ***Risk management:***

In our role as guardian, we often refer to the “dignity of risk”. Guardians work daily with the notion that it is reasonable to accept some risk to and on behalf of a protected person when the decision that the guardian wishes to make aligns most closely with the past lifestyle of the protected person and their current expressed wishes. In proposing such decisions, the guardian may well be faced with significant opposition from interested parties, some of whom may seek greater protective measures to reduce risks and others who may be concerned about the impact of an adverse event on their own organisation’s reputation. This is understandable in a climate where risk management is a prime consideration for businesses and litigation a real consideration.

We take the view that, in accordance with the Principles of the Guardianship and Administration Act 1993, we would not be performing adequately if we did not err on the side of “taking a chance”. However, these decisions are not made in isolation. The nature of the risk and the counter measures available are established through independent assessments and discussions amongst interested parties.

In accordance with this view, a number of older people in residential care or for whom residential care was proposed have returned to their homes with supports for trial periods. Some remain happily in their homes. The availability of EACH and CACP packages and Transitional Care funding has been a major factor in these successes.

### ***Transition into adulthood:***

Young people with disabilities and challenging behaviours do not necessarily have a smooth transition into adulthood. Two factors affecting this are the separation between childhood and adult services and the differing philosophies underpinning our approaches to service provision for children and for adults. This means that significant work must be undertaken by service providers and families to achieve a smooth transition, particularly for those clients requiring substantial support. In some cases, supports available in childhood are not there for adults with disability.

For young people with disabilities who are leaving the care of the Minister and Families SA funded accommodation and support, it can be extremely difficult to find appropriate accommodation and support packages. Some require guardianship and administration orders as adults and OPA is working closely with Families SA in an endeavour to identify these individuals well before they turn 18yrs.

OPA has become guardian for a small number of these clients each year. Some have had borderline mental incapacity and maturation issues; with well structured support in the first few years of adulthood, most have done well.

### ***Alternatives to residential care:***

The increasing availability of intensive support packages such as TCP, EACH, Strategy Six funded programs has produced good results for a number of our guardianship clients over the past 12 months. We have noted for those able to access such support, less reliance on general and psychiatric inpatient care, improved quality of life and greater opportunity to remain in the community rather than requiring residential or congregate care. This has been especially the case for some of our clients who have chronic mental illnesses. The availability of good key workers and continuity in skilled support workers has assisted them to move within the community with less conflict and disruption.

In contrast, one client with significant and chronic mental health problems refuses any sort of support. She was resident in an SRF and in constant conflict and disruptive to others. With the guardian's assistance she moved into the community without support services and so far, appears to have productive relationships with her neighbours.



# 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 most of this reporting period, one worker has fulfilled the role of investigator. This role is conducting enquiries and writing reports when the Guardianship Board has directed an investigation under Section 28 of the Guardianship and Administration Act 1993. In addition, that worker has coordinated the OPA's involvement in matters before the Guardianship Board which may result in the Public Advocate's appointment as guardian.

## Outcomes

### Section 28 investigations

The OPA has responded to 57 requests from the Guardianship Board to investigate a matter which is before the Board. 40 of these requests were received during the reporting period with 7 remaining open as at 30 June 2007.

Of the 50 closed cases, the average time that files were open was 2.6 months or 11.25 weeks. The median time was 1.8 months or 8 weeks. The files remain open until the matter has been finalised by the Guardianship Board, therefore OPA does not control totally the throughput in this area. However, the speed with which an investigation is completed impacts on both organisations' performance. It is generally preferred to resolve matters as quickly as possible.

Standard reporting frameworks have been introduced as part of the new case management system and feedback from the Board has generally been positive regarding the organisation's approach to investigations.

There were two sterilisation investigations commenced this year.

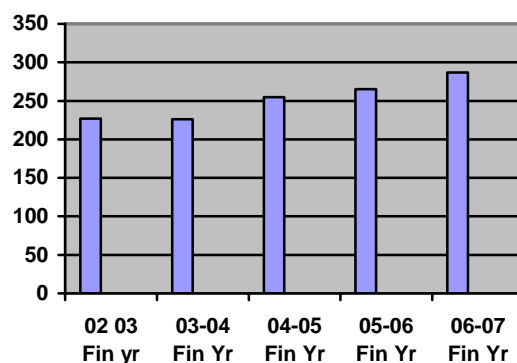
## Pre-hearing screenings

Again the introduction of the new case management system midway through this reporting period has produced some difficulties in data analysis. Over time, the new case management system will provide better facilities for capturing demographic information on those people with mental incapacity for whom the appointment of the guardian of last resort has been considered.

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. It is estimated that the OPA reviewed over 230 applications where the Public Advocate could have been appointed. Screening matters are generally open for a brief period pending the Board's hearing and decision. This year, the average length that a screening matter was open was 26.7 days or 3.8 weeks and the mean was 21.5 days or 3 weeks.

Combining the number of investigative activities performed in each year the following picture emerges:

### Numbers of Investigations and Screenings in 5 reporting periods





# 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 continued to provide a reactive education service responding to a number of requests within metropolitan and country South Australia. The teleconferencing facilities of the Guardianship Board have also been used for several sessions for country workers. OPA has been represented at a number of education activities organised by other bodies.

The responsibility has been shared amongst staff.

In an attempt to promote self education, wherever possible, service providers are also referred to the website to obtain on line information, particularly where requests for face to face sessions are or very small groups and on simple subject matter.

## **Outcomes**

### ***Education sessions***

OPA has continued to respond to requests from organisations and individuals and participate in a range of activities. OPA accepted 42 of 50 invitations to speak at conferences and meetings.

### **2005 -06 Annual Report**

During the 2006-07 period, the 2005-06 Annual Report was produced and made available on the website.

### **Website**

OPA's upgraded website was launched in August 2006. This site includes a

search function to assist users to find information specific to their needs.

In time it is hoped to place self education tools on the website.

## **Fact Sheets**

Several of the OPA fact sheets have been upgraded to reflect changes in the Guardianship and Administration Act and the new provisions for Domestic Partners which impinge on the definition of relative within the Guardianship and Administration Act.

A new Fact Sheet (number 25) has been written for the assistance of the families and friends of individuals for whom the Public Advocate has recently been appointed as guardian of last resort. This Fact Sheet describes the case allocation and decision making processes employed by the Office of the Public Advocate and the mechanisms available for internal review of those decisions.

## ***Education Planning***

The OPA held several meetings with key Justice organisations to discuss opportunities for collaboration in education activities. The Legal Services Commission, the Guardianship Board and Public Trustee in particular share common territory and overlap in education subject matter. Others involved included OCBA, the Ombudsman's Office and SAPol. These discussions will continue into the 07/08 year.





# 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 the last 3 months of 2006-07, the OPA utilised 1.2FTE PO1 staff in public enquiry management. Other staffing strategies were in place before that. The least effective system appears to be provided when enquiries are rostered across a number of people within the office as it creates competing demands in their workloads and continuity of advice to repeat callers can be negatively affected.

The current resourcing means that responses to enquiries are usually well within the 24 hour response time benchmark and fewer callers are “lost” because of inability to contact them. (10% this year as opposed to 17% in the previous reporting period)

In addition to the Enquiry Service, OPA 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 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.

## New case management system

The introduction of a new enquiries recording system occurred in November 2006. All enquiries can now be entered directly into the database making it a largely paperless system. Enhanced search functions mean that return callers can be identified readily and any staff member can

access the system and establish what calls are outstanding, urgent or currently being handled. If complex matters arise an “enquiry client” can be registered within the case management system and all calls relating to that client can be linked so that a comprehensive picture of issues and actions taken can be developed.

As a result of the new system, the number of discrete enquiry callers recorded has dropped significantly because repeat callers are linked back to their original enquiry wherever possible.

## Outcomes

During the financial year, two databases were in operation and data has been combined to produce figures below. As noted above a direct comparison between past years’ figures and this reporting period is difficult because of the differences in recording methodology.

This year 3,798 discrete enquiry callers contacted the office on matters. The vast majority of enquiries were via telephone however 84 involved personal presentations to the office and 64 written enquiries requiring written responses.

### Comparison of total numbers of enquiry calls

Year	Total enquiries
<b>1999-2000</b>	<b>3063</b>
<b>2000-01</b>	<b>3229</b>
<b>2001-02</b>	<b>3642</b>
<b>2002-03</b>	<b>3611</b>
<b>2003-04</b>	<b>4594</b>
<b>2004-05</b>	<b>4955</b>
<b>2005-06</b>	<b>5227</b>
<b>2006-2007</b>	<b>3798</b>

## Enquiry types

Changes in data systems and the numbers of people involved in enquiries in the reporting period have led to some inconsistencies in data collection and therefore number of issues recorded has fallen. However the spread of issues is indicative of the public's interest in advice from this office.

Some enquiries include more than one issue.

- 10% of enquirers could not be contacted/had resolved their queries by the time contact was made;
- 17% sought information on advance directives
- 23% enquired about administration orders
- 21% enquired about guardianship issues

## Comparison of recorded enquiry types for past four years

Enquiry category	03-04	04-05	05-06	06-07**
Potential Administration	1038	1096	1147	866
Potential Guardianship	920	806	836	772
Advance directives	739	894	1058	663
Guardianship Board process /appeals	184	290	225	28
Information/ Education	548	943	680	226
Mental health	282	277	157	173
Consent to treatment	213	147	240	74
Other calls	1072	539	410	166
No action/ withdrawn		439	900	367
Complaint		46	84	30
Duty of Care		82	49	50
Advocacy				32
Case consult				12
Informal Arrangements				181
Inter Jurisdiction				5
Legal matter				53
Private Guardians				16
Wills and estates				13

\*\*Note some data missing

# Consolidated Data 2006-2007

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

## 1. Comparison 03-04 through to 06-07 client activity

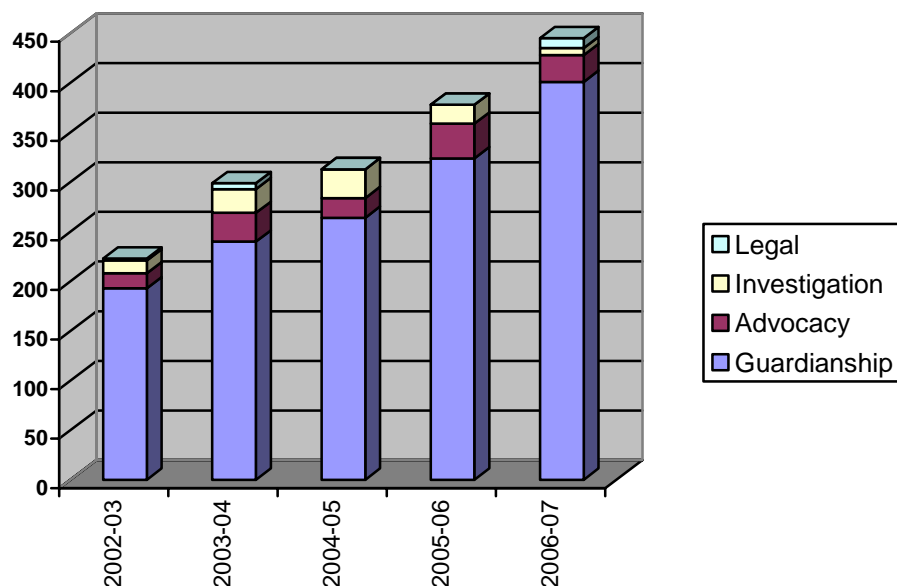
### 1.1 Summary of episodes of service by episode type

Note: data could not be totally reconciled between years due to timing issues, transfer to new database in 06/07 and changes in client classification system.

Episode type	Year	Open at beginning of year	Opened in year	Open at yr end	Close d in year	Revocation	Death	Other guardians/ quashed	Total Active
<b>Guardianship</b>	03/04	193	131	240	84	52	26	6	324
	04/05	236	113	264	85	58	22	5	349
	05/06	259	171	324	106	56	42	8	430
	<b>06/07</b>	<b>315</b>	<b>184</b>	<b>401</b>	<b>98</b>	<b>51</b>	<b>44</b>	<b>3</b>	<b>499</b>
<b>Advocacy</b>	03/04	15	47	29	33				62
	04/05	29	48	20	57				77
	05/06	18	54	35	37				72
	<b>06/07</b>	<b>31</b>	<b>28</b>	<b>27</b>	<b>32</b>				<b>59</b>
<b>Investigation</b>	03/04	13	69	24	58				82
	04/05	22	53	29	46				75
	05/06	22	66	19	69				88
	<b>06/07</b>	<b>17</b>	<b>40</b>	<b>7</b>	<b>50</b>				<b>57</b>
<b>Legal cases</b>	03/04	2	10	6	6				12
	04/05	6	4	0	10				10
	05/06	0	4	0	4				4
	<b>06/07</b>	<b>2</b>	<b>11</b>	<b>10</b>	<b>3</b>				<b>13</b>
<b>Total Active Cases</b>	03/04	223	257	299	181	52	26	6	480
	04/05	293	218	313	198	58	22	5	511
	05/06	299	295	378	216	56	42	8	594
	<b>06/07</b>	<b>365</b>	<b>263</b>	<b>445</b>	<b>183</b>	<b>51</b>	<b>44</b>	<b>3</b>	<b>628</b>
<b>Percentage shift</b>	03/04 to 04/05	+31%	-15%	+5%	+9%	+6%	-15%	-16%	+6%
	04/05 to 05/06	+2%	+35%	+21%	+9%	-3%	+91%	+60%	+16%
	05/06 to 06/07	+22%	-11%	+18%	-15%	-11%	+5%	-63%	+6%

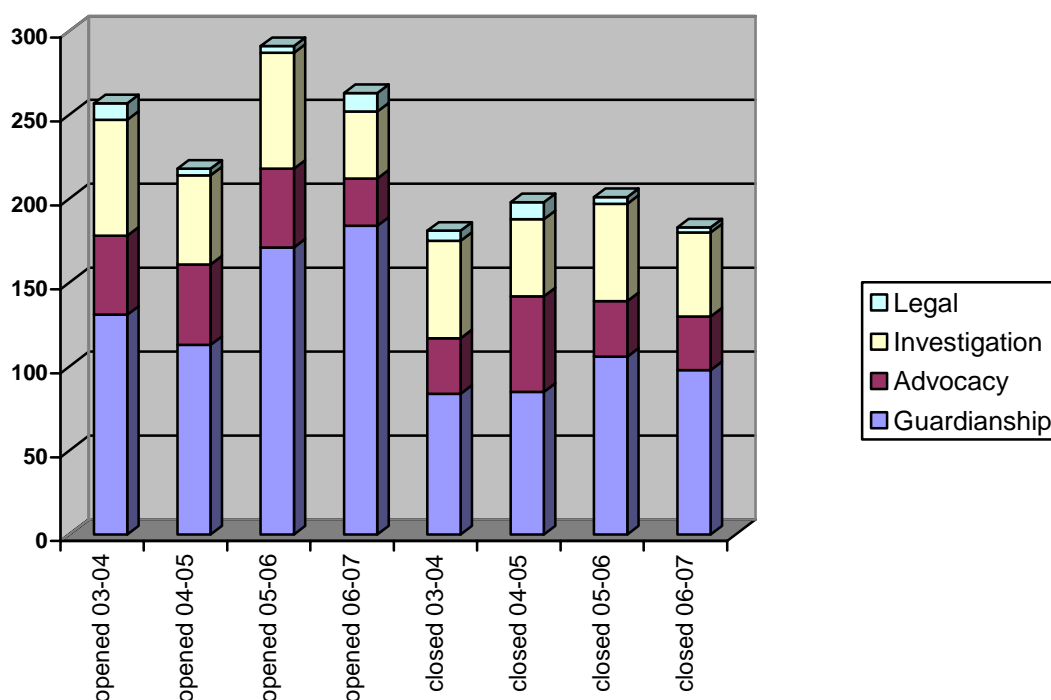
## 1.2 End of Financial year active caseload comparisons.

This graph illustrates the end of year active cases for the past 5 financial years by type categories of cases. Note that guardianship accounts for the increase in active caseload.



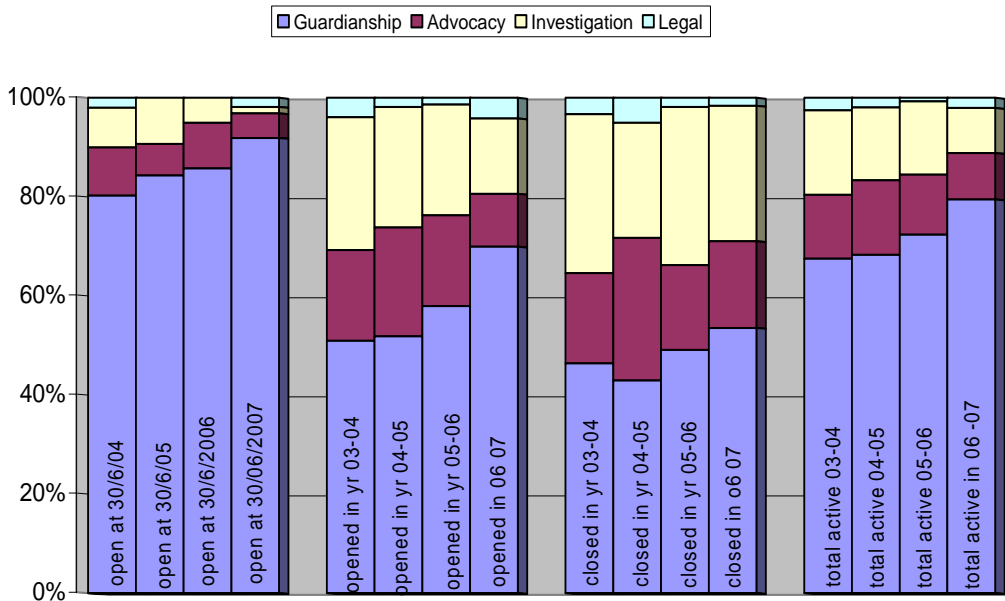
## 1.3 Comparison of case opening and closures 2003/04 to 2006/07

The graph below compares opening and closure of cases across 4 financial years. Note that the number of closures is less than cases opened in each year and drop in rate of closure.



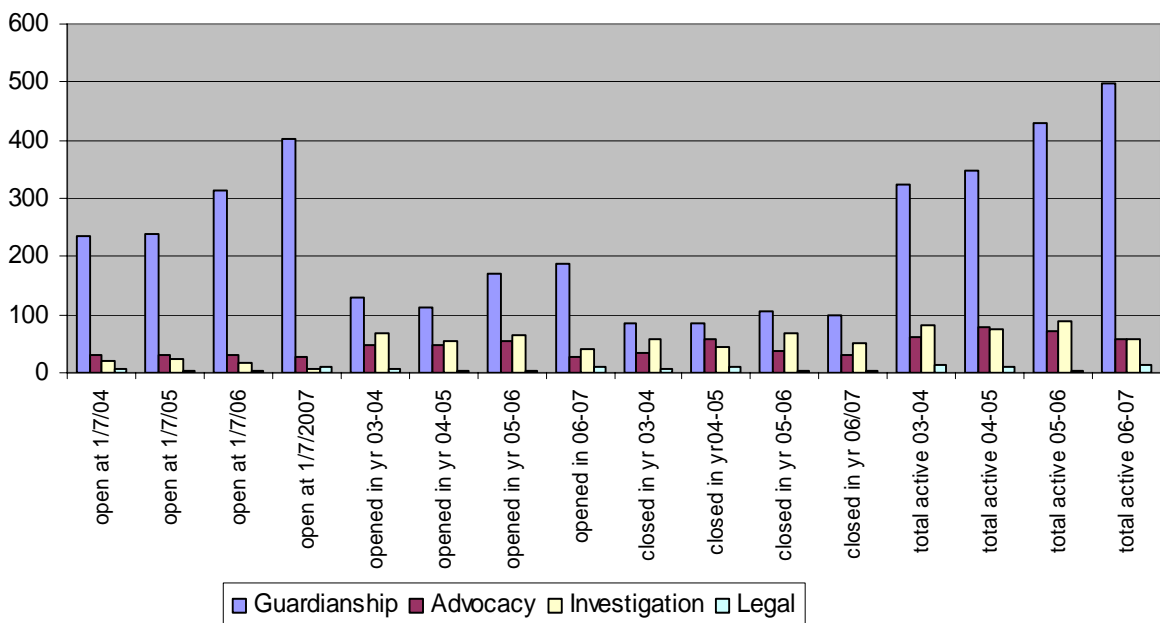
### 1.4 Case type as a percentage of total case activity 2003-2004 to 2006-2007

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



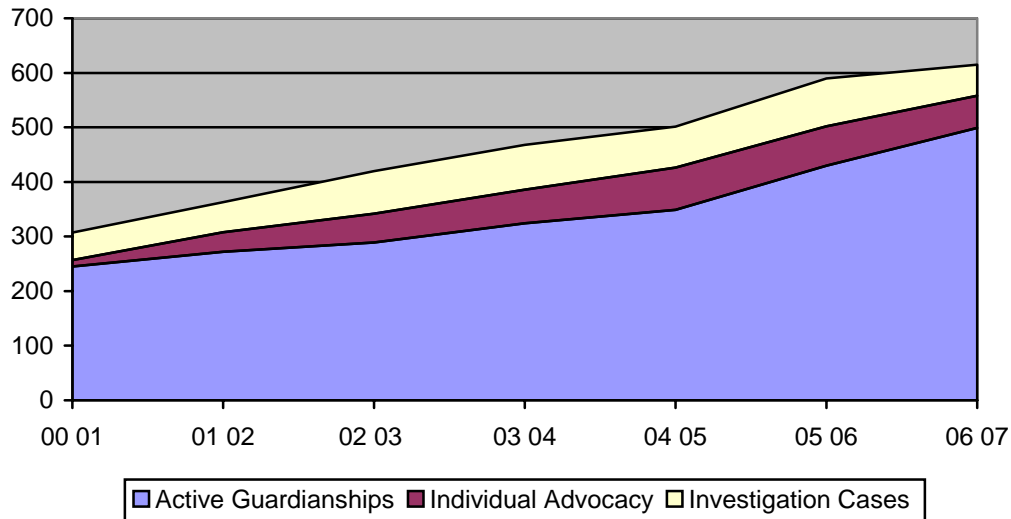
### 1.5 Comparison of case numbers and types 2003-2004 to 2006-2007 financial years

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



## 1.6 Case activity over recent years

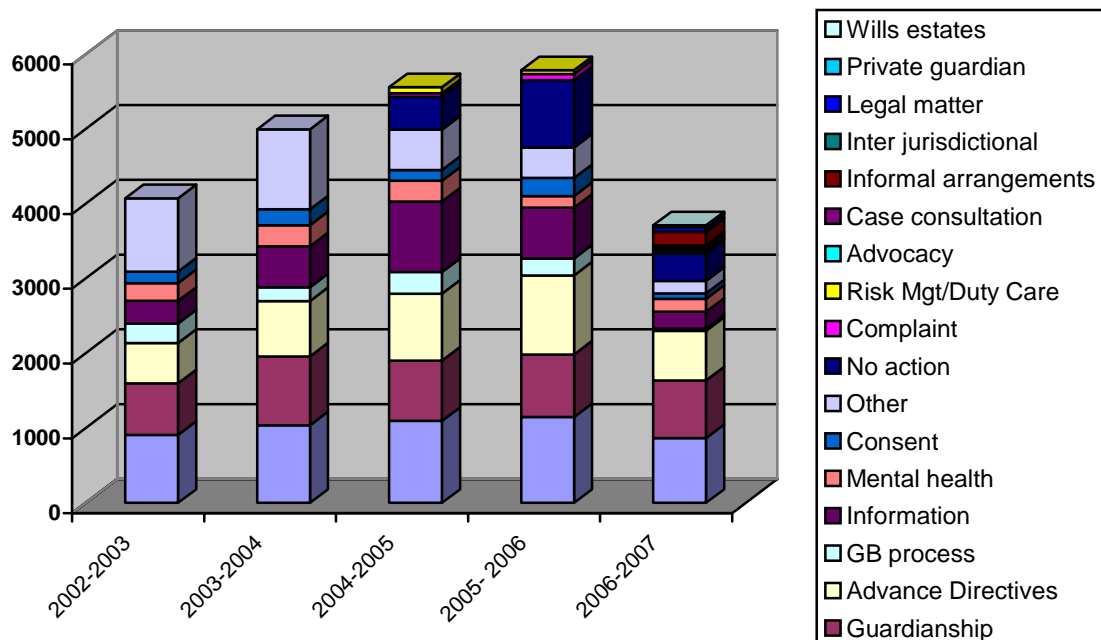
The graph below illustrates the number of active cases over the past 7 financial years and demonstrates the upward trend in numbers.



## 2. Non client activities

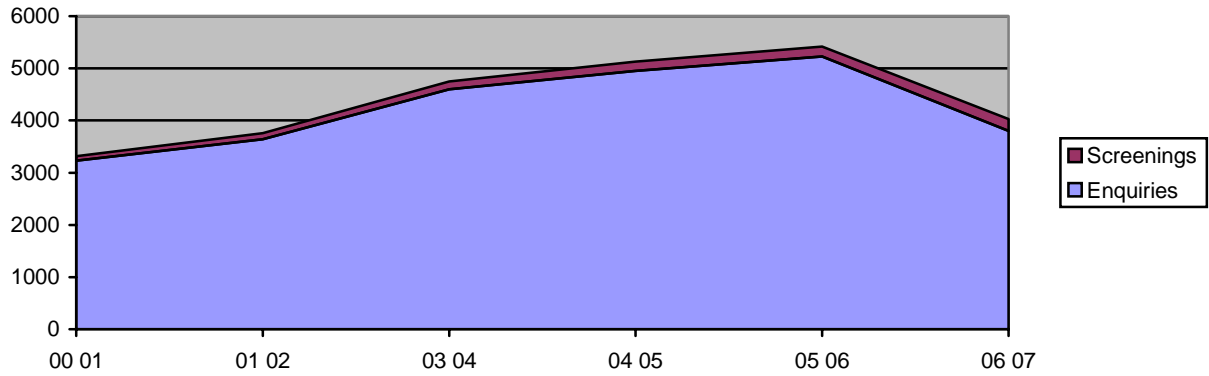
### 2.1 Enquiry Data

The graph below compares enquiries in each recorded category over the past 5 years. Note data missing for 06/07. Recording of issues and diagnostic information requires improvement in the next reporting period.



## 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.

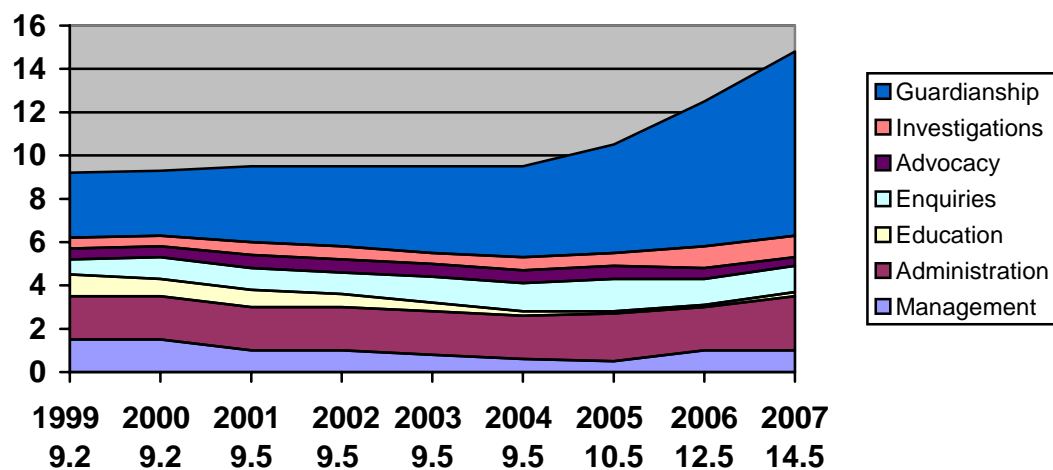


Note: Downturn in numbers is due to fall in unique recording of enquiries

## 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*

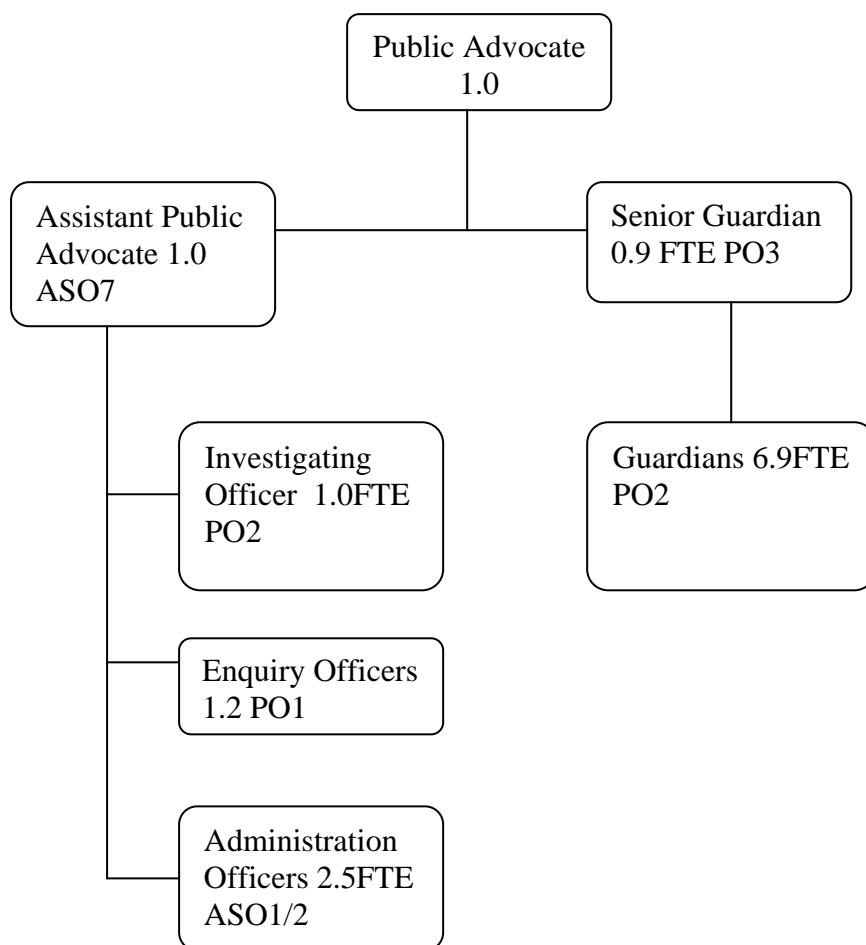
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## **Organisational chart – Funded positions**

As at 30 June 2007

Funded establishment as at 30/6/2007 was 14.7 FTE of which 2 positions are temporarily funded.

Actual resource utilisation throughout 2006-07 varied considerably due to staff movements, organisational priorities and additional temporary funding.



**14.5 FTE employed as at 30 June 2007**

### **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**

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 and First Aid Officer. OHS matters are routinely discussed in OPA staff meetings.

There were no work related claims during this reporting period.

Loss of work time through sick leave has more than doubled that of the previous reporting period. (12.5 days per FTE vs 5.1 days per FTE in 05/06).

The figures for the year equate to the loss of approximately 3.5 productive working days per week. Whilst the provision of additional staffing had a significant positive impact on staff wellbeing in the 05/06 working year. Workloads and sickness became a substantial issue again in 06/07.

### **Staff Assistance**

OPA continued to provide a temporary placement for a SAPol employee and recruited a sight impaired person in a temporary administrative position in November 2006.

### **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 assisted us in upgrading the major policies and procedures covering OPA's core functions of guardianship, investigation, screening and enquiries.

# *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 2006-07 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.

This year the OPA negotiated the placement of a disabled access car park in front of the ABC Building.

New brochures produced on behalf of the OPA will include accessibility information in their contents. One new brochure (No 25) was produced this year.

*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*.

OPA provides written information on the legislation pertaining to people with mental incapacity and this is available on its website. A longer term ambition is to make this information available in different forms to assist in access .

*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 2007, 4 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 2006-07 financial year.

### **Computing and Case Management**

AGD provided internal funding for the development of a new case management database. This was implemented in November 2006. The database is shared with the Guardianship Board and offers improved support to staff, information sharing and performance monitoring. As with all new systems there have been teething problems which will be resolved overtime.

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 2006-07.

### **Staffing**

The OPA permanent establishment was 12.7FTE at June 2007. 2 additional temporary positions were funded during the latter part of the financial year in recognition of the workloads bringing the establishment to 14.7 FTE.

# *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. .

## *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 2006-07*

OPA FOI matters are reported as part of the Attorney Generals Department statistics. Requests are processed by the Attorney General's Department Freedom of Information Officer on behalf of the OPA.

*FOI applications can be directed to:*  
Office of the Public Advocate  
PO Box 213 Prospect SA 5081

*Alternatively to:*  
The Freedom of Information Officer  
Attorney General's Department  
45 Pirie Street  
Adelaide SA 5000

# *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.

The chart below provides an expenditure summary for OPA for the 2006-07 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>1,000</b>	<b>9,712</b>	<b>8,712</b>
<b>Operating Expenses</b>	<b>1,365,264</b>	<b>1,381,949</b>	<b>(16,685)</b>
<b>Assets</b>	<b>6,000</b>	<b>0</b>	<b>6,000</b>
<b>Surplus/deficit</b>			<b>(1,973)</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
- AGD provided additional one of temporary funding to address budget pressures related to accouchment leave of 2 staff, purchase of a new telephone system and general administrative costs.

# *Appendix 1: Staff changes 2006-07*

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A total of 22 staff had an employee relationship with the OPA in 06/07.

## **Public Advocate**

- Mr John Harley commenced his fourth year in his second term as Public Advocate in 2006-07.

## **Assistant Public Advocate**

- Ms Margaret Farr continued full time for the year.

## **Senior Guardian**

- Ms Suzanne Bull became responsible for the oversight of the guardianship team in November 2006 in addition to her other responsibilities.

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

- Ms Suzanne Bull, Ms Mary Allstrom and Ms Elly Kirk, permanent Public Advocate Officers were employed throughout 2006-07.
- Ms Yvette Gray took leave without pay to work in a promotional position within the DFC for the entire reporting period.
- Mr David Cripps took 12 months leave without pay in October 2006 to care for his child.
- Ms Tarnia White, Enquiry Officer took accouchment leave for 5 months returning to work in April 2007.
- Ms Annelise van Deth took 12 months leave of absence from April 2006 and resigned in April 2007.

- Ms Karen Bowden, and Ms Julie-Anne Dowling who joined the Office on temporary contracts in March/ April 2006 gained permanent employment within the office in June 2007.
- Ms Rosemary Hillard was employed as a permanent part time Enquiry Officer in April 2007.
- Ms Alison Lamshed, Mr Andrew Sarre, Ms Jenny DuChatenier and Ms Janet Kelly were temporarily employed for some or all of the financial year.

## **Administrative staff**

- Ms Jenni Wright retired at the end of 2006
- Ms Trish Bull was employed as the Senior Administrative Officer in December 2006
- Ms Sarah Barry took 12 months accouchment leave in October 2006.
- Ms Michelle Howse and Ms Cheryl Thomas were employed on contracts and remained in the office as at June 2007.
- Ms Kylie Casey was employed on a short term contract in 2006.
- Jeanne Lorraine completed her temporary attachment to this office taking up a position in Country Health in early 2007.

## Appendix 2: Staff profile tables

**Table 1: OPA Public Sector Management Act employees by stream, level, appointment type and gender as at 30 June 2007**

Public Sector Management Act employees by stream, level, appointment type and gender as at 30 June 2007									
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	1	1	0	1	1
ASO2	0	1	1	0	0.5	0.5	0	1.5	1.5
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>	0	2	2	0	1.5	1.5	0	3.5	3.5
<b>Professional</b>									
PSO1	0	1.2	1.2	0	0	0	0	1.2	1.2
PSO2	0	3.9	3.9	1	2	3	1	6.9	7.9
PO3					0.9	0.9		0.9	0.9
<b>Total</b>	0	5.1	5.1	1	2.9	3.9	1	9	10
<b>Executive</b>	0	0	0	0	0	0	0	0	0
EL3	0	0	0	1	0	1	1	0	1
<b>Total</b>	0	0	0	1	0	1	1	0	1
<b>Total all streams</b>	0	7.1	7.1	2	4.4	6.4	2	12.5	14.5

**Table 2: OPA sick leave, family carers leave and special leave with pay for individual needs and responsibilities as at 30 June 2007**

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
2006-07	12.4	0.1	0
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 2007**

<b>OPA workforce diversity as at 30 June 2007</b>				
	<b>Total number of employees</b>	<b>Female</b>	<b>Aboriginal &amp; Torres Strait Islander 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>Senior Managers</b>	<b>1</b>	<b>1</b>	<b>0</b>	<b>0</b>
<b>Middle Managers</b>	<b>1</b>	<b>1</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>Other Administrative</b>	<b>3</b>	<b>3</b>	<b>0</b>	<b>1</b>
<b>Other Professional</b>	<b>9</b>	<b>8</b>	<b>0</b>	<b>0</b>

**Table 4: OPA cultural and linguistic diversity as at 30 June 2007**

<b>OPA cultural and linguistic diversity as at 30 June 2007</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 2007**

OPA age profile as at 30 June 2007					
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	0	0	0%	
25-29	0	2	2	13%	
30-34	0	1	1	7%	
35-39	0	1	1	7%	
40-44	1	2	3	20%	
45-49	0	2	2	13%	
50-54	0	2	2	13%	
55-59	0	3	3	20%	
60-64	1	0	1	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 2007					
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*)
25. Guardianship and the Public Advocate: Information for Families and Friends

## **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>