



OFFICE OF THE
PUBLIC ADVOCATE

Annual Report 2005

The Office of the Public Advocate is an independent statutory office,
accountable to the Victorian Parliament.



**OFFICE OF THE
PUBLIC ADVOCATE**

15 September 2005

The Hon R Hulls MP
Attorney-General
Department of Justice
55 St Andrews Place
MELBOURNE 3002

Dear Minister

I have much pleasure in presenting you with the Annual Report of the Office of the Public Advocate for the 2004–05 financial year.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Julian Gardner', with a long horizontal flourish extending to the right.

JULIAN GARDNER
Public Advocate

Contents

Charter of the Office of the Public Advocate.....	2
Executive summary	3
Report overview	5
PART ONE: SERVICES	11
Guardianship	12
Investigations	18
Advocacy.....	21
Duty officer at VCAT	26
Systemic advocacy	28
Legislative reform	35
Advice Service	36
Community education	39
PART TWO: PROGRAMS	44
Community Visitors Program	45
Independent Third Person Program.....	51
Community Guardianship Program	53
PART THREE: CORPORATE SERVICES	54
Corporate governance	55
Organisation chart	58
PART FOUR: FINANCE.....	59

This Annual Report is published by
Office of the Public Advocate
5th floor 436 Lonsdale Street Melbourne 3000
Telephone (03) 9603 9500 or 1300 309 337
FAX (03) 9603 9501 TTY 9603 9529 DX 210293
Email publicadvocate@justice.vic.gov.au
Website www.publicadvocate.vic.gov.au

Charter of the Office of the Public Advocate

Our vision is a Victorian society that is just, celebrates diversity, and in which the rights, dignity and safety of people with a disability are promoted and protected.

Our mission is to provide a responsive and accessible service that informs and engages with Victorians to promote and protect the human rights and dignity of people with a disability, and reduce exploitation, abuse and neglect.

Our core values

We recognise the equal value and dignity of all persons.

We promote the best interests of people with a disability and seek options which are least restrictive of their freedom of action and decision.

We endeavour to support people with a disability to reach their individual potential and promote their involvement as active members of our community.

Our position is independent of care givers and service providers. It is on the side of people with a disability. It actively encourages, supports or takes their part to ensure that their voice is heard – to develop, present and sustain their case where their choices, interests or rights are threatened. It has an active watching brief on the decision-makers to improve the service system for people with a disability.

Our manner and conduct will be open and accountable, vigorous and thorough. We will negotiate and conciliate. We will know our facts and will be just and fair and ethical in all our actions.

We value our staff and volunteers, and will respect, support and inspire them to fulfil the Office of the Public Advocate Mission by working together, acting with integrity and achieving positive outcomes.

Executive summary

- The Treasurer approved the undertaking of a price review of the Office of the Public Advocate. This involved an intensive examination of the volume of services provided; the changes in demand in recent years; the efficiency of the Office; and whether the level of funds provided to the Office were sufficient to provide the services. As a consequence, the 2005 state budget provided a very significant increase in funding.
- Demand for public guardianship services levelled out after three consecutive years of sharp growth. While total orders for guardianship made by VCAT rose by 4%, all of this increase involved appointments of private guardians.
- The success of the Private Guardian Support Program was seen, with 28.9% of all guardianship appointments being of a private guardian compared to 21.3% three years ago.
- At the end of the year there were 568 Victorians under statutory guardianship and an estimated 384 with private guardians.
- Investigations undertaken at the request of the Guardianship List of the Victorian Civil and Administrative Tribunal rose sharply as resources became available with the slowing in the rate of increase in demand for guardianship. Investigations conducted were up by 29% to 506 cases.
- Individual advocacy was provided in 255 cases, a 3% increase from the previous year. In addition, advocacy was provided to 89 residents of Kew Residential Services as part of the redevelopment of that facility. Short-term advocacy was provided in 842 cases.
- The Advice Service, either in person or by telephone, assisted a record number of 13,167 persons, a rise of 14.3% on the previous year. Demand has now risen by 34% in four years.
- Community education activities were on a par with last year. These activities included 205 presentations with audiences totalling an estimated 8,726.
- The Office's website – AAA-rated for disability access – was maintained and enjoyed a sharp increase in usage.
- An ongoing program of continuous improvement was maintained with a number of operational reviews and changes to increase efficiency and effectiveness.
- Support was provided to a record 599 Community Visitors who conducted 6,105 visits, an increase of 2.1%.
- Independent Third Persons attended 1,059 police interviews, consistent with last year.

- The importance of the guardianship role and the quality of the Office's role and its decision-making processes came under intense public scrutiny as a consequence of an end-of-life decision in a case that attracted a high level of media interest.
- The Office was successful in promoting widespread awareness of the negative impact of risk minimisation practices upon the rights of people with a disability.
- Submissions by the Office led to the setting up of the Government Elder Abuse Prevention Project.
- The Office launched its Reconciliation Statement.

Report overview

Increased resources

What seemed to be an inexorable and unsustainable increase in the levels of demand for guardianship and advice services has been recorded in recent annual reports. It is therefore particularly pleasing to report that in the 2005 budget the state government, as part of its 'Fairer Victoria' policy, provided a significant increase in funding for the operations of the Office of the Public Advocate.

In the three years to 2003–04 there was a 50% increase in the number of new guardianship orders in which the Public Advocate was required to provide services. This increase was experienced despite a legislative change in 2000 which reduced guardianship for some medical treatment decisions. The cases in which orders were subsequently made were inevitably more complex and costly. In the five years to 2003–04 the number of volunteers trained and supported increased by 46% and the number of advice and information services provided increased by 104%. The method of calculating outputs of advocacy and investigations changed during the period but in the three years since the introduction of the new measure, outputs increased by 21%.

The growth in guardianship services was particularly problematic given that this activity absorbs 40% of the Office's resources. The growth occurred despite an effective and sustained demand management strategy. In part the strategy reflects the requirements within the *Guardianship and Administration Act 1986* to minimise intrusion into the lives of individuals by finding solutions that require the least possible level of restriction of a person's freedom of decision and action. The success of the Office is reflected by the finding that – adjusted on a per capita basis – Victoria has the lowest rate of adult guardianship in Australia.

Following a request by the Attorney-General to the Treasurer, a review was undertaken of the operations of the Office. The review was conducted by a committee with representatives from the departments of Justice, Treasury and Finance, Premier and Cabinet, and Human Services. The Public Advocate was also a member of the committee. The objectives of the review included examining whether the output price was efficient and sustainable (that is, whether the funds provided by the government to the Office to provide the services described in this annual report were sufficient, taking into account levels of efficiency and effectiveness within the Office).

The review found that the Office is an efficient provider of resources. It achieved significant productivity improvements (through business process redesign and workforce flexibility). The Office was also found to have redirected resources by radically changing the mix of services that it was providing. In particular, to cope with the increase in demand for guardianship services, resources had been redirected away from the provision of investigative services and advocacy services.

The review also confirmed that there is escalating demand – for mandatory services in particular – that is outside the Office's ability to influence. A critical factor driving demand is the ageing of the population and the consequential increase of dementia. In addition, there is an increased incidence of acquired brain injuries and the impact of risk aversion within service delivery agencies with the result that guardians are sought to make risky or controversial decisions affecting safety and liberty.

The principal features of the increased resourcing of the Office as a result of the review and the budget decision are:

- one-and-a-half positions to meet the anticipated future increases in demand for guardianship
- five positions to conduct investigations primarily into allegations of abuse, neglect or exploitation and provide reports to VCAT (As a consequence of the redirection of resources in the four years to 2003–04, the proportion of originating applications to VCAT that were investigated by the Office fell from 34% to 13%.)
- two positions to provide systemic advocacy
- one position for the Advice Service
- one-off funding to redevelop the case management system.

The review was comprehensive and exhaustive. It absorbed a major part of senior management time over a period of almost four months. The outcome of the review represents recognition by government of the importance of the Office's role in protecting and promoting the rights of people with a disability; the quality and professionalism of the Office's staff and services, including guardianship, advocacy, advice and education; and the valuable community contribution of volunteer Community Visitors, Independent Third Persons and community guardians.

Bringing about change

The Office has continued to promote positive change in a range of systems affecting the lives of people with disability. The section in this annual report entitled 'Systemic Advocacy' gives details of some of the major areas of activity.

In particular the Office has been able to raise awareness within the service sector of the negative impacts on the rights of people with a disability of risk minimisation practices. Its agitation for there to be action in the area of elder abuse led to the announcement by the Minister for Aged Care of an Elder Abuse Prevention Project. The involvement of the Office with Corrections Victoria in the actions that it is taking to pursue coordinated programs addressing the needs of people with a disability within the Corrections system is particularly pleasing.

The Public Advocate, Julian Gardner, who is currently the Chair of the Australian Guardianship and Administration Committee, was nominated by that Committee for appointment by the National Health and Medical Research Council to a working party of the Australian Health Ethics Committee that is to prepare guidelines on the management of Post-Coma Unresponsiveness. The inclusion of a guardian in this national committee recognises the role of substitute decision-makers, including guardians, in issues surrounding end-of-life care. The case reported below is directly relevant to the work of that committee.

Protecting the rights of the dying

One case in which the Public Advocate was appointed as a guardian received extensive media coverage both nationally and internationally. Even though the critical events occurred shortly after the end of the year covered by this report, it is timely to record the case now. It would

normally be quite inappropriate to use a represented person's name or to disclose details of their medical condition. However, so extensive is the public knowledge through media reports that it would be a pointless gesture not to use the name of Mrs Maria Korp in this report. The information below is already on the public record.

The case serves to illustrate:

- The circumstances in which the Public Advocate is appointed as a guardian.
- The soundness of statutory provisions for guardianship in providing a mechanism and structure to protect vulnerable citizens with a disability.
- The importance of having a statutory office independent of government.
- The seriousness and complexity of decisions that may be required of a guardian.

The Public Advocate was appointed guardian for Mrs Korp on 28 April 2005. Mrs Korp was severely disabled with no response to her environment, nor to stimuli, and with no language comprehension or expression. She exhibited wake-sleep cycles and had sufficient brain stem function to maintain respiration and circulation. Her disabilities were the result of an attempted strangulation and the result of her lying undiscovered in a car boot for four days. Her husband and a woman with whom he had allegedly been having an affair had been charged with attempted murder (the woman subsequently pleaded guilty to and was convicted of this charge).

The application for the appointment of a guardian was made by the social worker at the Alfred Hospital where Mrs Korp was being treated. The application was heard by Justice Morris in his capacity as President of the VCAT.

There was ample evidence for VCAT to conclude that a guardian should be appointed. It was required to be satisfied a) that Mrs Korp was a person with a disability; b) that she was unable by reason of her disability to make reasonable judgements in respect of any of the matters relating to her person or circumstances; and c) was in need of a guardian in that decisions needed to be made.

The question of who would be suitable to be the guardian was the main issue to be determined under the *Guardianship and Administration Act 1986*. (A significant proportion of VCAT's time was taken up with submissions in relation to what information and pictures could or could not be used by the media). Mrs Korp's husband – through his lawyer – had stated that any attempt to cease medical treatment would be strenuously opposed. Given that her death may have resulted in the charges against him being changed to that of murder, it was reasonable to infer that he would be seen as having a conflict of interests and therefore be unable to place Mrs Korp's best interests above any others. Mrs Korp's adult daughter, although accepting appointment as an administrator to manage her mother's financial and legal affairs, declined to be appointed guardian because of the gravity of the decisions that potentially had to be made. Counsel for Mr Korp proposed that one of his relatives be appointed.

When the application was first received, VCAT required the Public Advocate to conduct an investigation and to provide a report to VCAT. In that report it was recommended that a guardian should be appointed with powers to make decisions about medical treatment; about accommodation – given that the possibility should not be excluded of Mrs Korp's condition stabilising or improving sufficiently to allow her to be discharged from hospital

into a nursing home; and about access to persons. It was evident from the report that relations between Mrs Korp's daughter (who was from an earlier marriage) and the relatives of Mr Korp were conflictual.

The decision by VCAT to appoint the Public Advocate illustrates the protective importance of the legislation in ensuring that a substitute decision-maker is able to act solely in accordance with the best interests of the person with a disability.

It is the practice for the Public Advocate to delegate his powers and duties as a guardian to a member of the staff of the Office. In this case, because of imminent leave, the Public Advocate made a delegation to Mr Fred Wright, Manager Advocacy and Guardianship, Eastern Region. Among the early decisions made by the guardian were those relating to access to Mrs Korp by other persons. To avoid conflicts at the hospital, family members were allocated different times at which they could visit. Secondly, as a consequence of media publication of a photograph of Mrs Korp in her current condition, visitors were required to produce identification, and to sign a privacy statement and a guest book.

It is not uncommon for guardians within the Office to have to make decisions regulating visits to a represented person. Not infrequently, those decisions are vigorously opposed by one of more family members or interested parties and lead to complaints about the guardian's actions.

Subsequently, a decision was required by the guardian on the question of whether, following the decision to cease medical treatment, Mrs Korp's husband, who had been charged with her attempted murder, should be allowed to visit her. This was a particularly complex decision given Mrs Korp's lack of awareness of whether or not anyone was visiting her let alone the identity of that person. It therefore raised the question of how any visit could benefit her or could be considered to be in her best interests. The Public Advocate decided to allow a supervised visit. He did so having regard to the presumption of innocence and taking into account evidence of Mrs Korp's desire to maintain her marriage and evidence of her religious beliefs which could be presumed to include the values of forgiveness and compassion.

The principal role of the guardian for Mrs Korp was that of making decisions about medical treatment.

The guardian obtained a list of all known family members from the family and spoke to them (in the case of the husband through his lawyers). The goal was to obtain evidence of Mrs Korp's wishes and about her values and beliefs and, at the same time, to seek family members' views about medical treatment decisions. In addition, the guardian spoke to friends of Mrs Korp, to work colleagues and to her priest.

There was no evidence of her wishes about medical treatment. Her husband, through his lawyers, argued that Mrs Korp, as a devout and practising Catholic, would expect treatment decisions to be consistent with the official teachings of the Church.

The guardian obtained information about the medical condition, the tests and clinical observations upon which medical advice was based, her prognosis, the options for treatment and the risks associated with all options. In addition to written reports, numerous meetings were held with various specialists including neurologists, physicians and

palliative care specialists as well as with nursing staff. At these meetings the medical opinions were questioned and tested.

The first critical decision was the removal of the tracheotomy. Both the husband and daughter were closely consulted prior to the decision to remove the tube. This was performed successfully with Mrs Korp continuing to breathe independently. She continued to receive nutrition and hydration through a tube surgically inserted into her stomach.

The clinical team advised that Mrs Korp's condition was continuing to deteriorate and that despite periods of stability at a lower level than before, it had not ever been possible to achieve ongoing stability. It was their advice that medical treatment was futile. Despite maximal artificial nutrition and hydration she was continuing to lose weight and her muscles were wasting, leading to severe contractions of her limbs and difficulties in maintaining a number of internal functions. It was the medical team's advice that resuscitation would not take place in the event of a cardiac arrest, that antibiotics would not be provided in the event of a major infection and that further medical treatment in the form of artificial nutrition and hydration should be withdrawn.

Medical practitioners are not required to provide futile medical treatment. In a strict legal sense, therefore, this was a decision that could be made by the treating team and did not require the guardian to exercise powers either under the *Guardianship and Administration Act* or under the *Medical Treatment Act* in the form of a refusal of treatment. However, just as medical practitioners seek consensus from family members (who in almost all such cases are the substitute decision – makers) that consensus was sought with the guardian.

Although not making a decision under the *Medical Treatment Act*, the Public Advocate used the provisions of that Act as a guide. Under that Act medical treatment can only be refused by a guardian (or, if relevant, an agent under an enduring power of attorney for medical treatment) if the medical treatment would cause unreasonable distress to the patient or there are reasonable grounds for believing that the patient, if competent, and after giving serious consideration to her health and wellbeing, would consider that the medical treatment is unwarranted.

The Public Advocate found both conditions to be satisfied. Not only was the feeding not sustaining Mrs Korp, it had started to be rejected with occasional vomiting. Medication was commenced to reduce the vomiting and the phenomena of distress that it caused. In addition, Mrs Korp's limbs had become so contracted that a basic task of washing required two nurses to use force to stretch the limbs. This procedure involved risk of injury and alternatives explored with the treating team were unacceptably severe. Assessing distress in a person who is unresponsive to stimuli and who displays no indicators of cognition is difficult. However, it was concluded that the phenomena of distress were unreasonable when placed in the context of the lack of benefit being derived from the treatment as she was dying and the treatment was futile.

In considering the second condition, the Public Advocate took into account the claim made by her husband that Mrs Korp would have determined whether or not treatment was unwarranted by the application of the official policies and practices of the Catholic Church. Whether or not this was so, the Public Advocate decided, as a matter of caution, to proceed as if this were the case. Advice was obtained from a Catholic priest who had worked as a hospital ethicist and whose expertise is recognised by his membership of the Australian

Health Ethics Committee. Details were provided to him of the medical advice. It was his opinion that given her medical condition, treatment in the form of artificial nutrition and hydration could be withdrawn within the terms of the Church's policies and practices. This opinion was subsequently confirmed by another Catholic ethicist in a letter that was sent by the Vicar General of the Archdiocese of Melbourne to all members of the priesthood.

As a consequence of being satisfied that the legislative spirit of the *Medical Treatment Act* had been complied with, and after further consultation with both the daughter and husband of Mrs Korp, the Public Advocate advised the treating team that he agreed with their decision to withdraw artificial nutrition and hydration. Mrs Korp died slightly less than 10 days later.

While the account above serves to illustrate many aspects of the role of guardians within the Office of the Public Advocate, it does not fully describe, for obvious reasons, some of the work done in providing emotional support for family members or in managing conflict or in dealing with hostility. Too often, these are demanding aspects of a guardian's role.

The case does illustrate the importance of having a professional guardian who is able to place the best interests of the persons with a disability above all others, including their own. It illustrates the care and expertise with which the most onerous of decisions are made.

PART ONE : SERVICES

Guardianship

Investigations

Advocacy

Duty Officer at VCAT

Systemic advocacy

Legislative reform

Advice service

Community education

Guardianship

Services delivered under the *Guardianship and Administration Act 1986*

The current service delivery model for the provision of guardianship and advocacy services delivered by advocate/guardians at the Office of the Public Advocate has been operating for a number of years now. It is an integrated regional model of service delivery in which staff are located into teams servicing the east and west of the state. Both the Eastern and the Western regional teams conduct investigations for the Victorian Civil and Administrative Tribunal (VCAT) – Guardianship List, undertake advocacy for people with a disability within the region, and provide guardianship of last resort when appointed by VCAT. The management of each team is undertaken through a structure which consists of a manager and a deputy manager for each region.

In last year's annual report, the regional structure was promoted as being simple and easily understood outside of the Office. The structure has also resulted in more efficient communications, both inside and outside the Office. A further benefit that was identified was that this structure enabled a more cohesive and flexible approach to casework to develop in which, in appropriate situations, workers could follow through cases that commence in the Office as a notification of exploitation or abuse, and progress through to an application to VCAT and the subsequent appointment of the Public Advocate as guardian.

- This annual report has identified that an increase in funding for 2005–06 has been provided to enable the service delivery model to grow to meet the increasing demands. This increase in funding will provide for a number of

new advocate/guardian positions, as well as replacing two deputy manager positions with four team leader positions – two in each region. The integrated, regional model of service delivery will, however, remain. Two teams will be set up in each region to flexibly respond to ongoing demands within the east/west structure.

About guardianship

The experience of guardianship for most people in our community is as a child under the guardianship of parents or as a parent acting a guardian for their child.

It is rare for a guardian to be appointed for an adult and the decision of VCAT to appoint a guardian for an adult is a serious one, taken when there are decisions to be made which the person is unable to make for himself/herself and where alternatives to resolve the situation are not available.

A guardian for an adult makes decisions about the person's life: the person's accommodation, the health treatment, community services and assistance the person will receive, the people with whom he/she will have contact, and any other matters as set out in the guardianship order. A guardian does not make decisions about financial or legal matters. These are the responsibility of an administrator who can also be appointed by VCAT.

For most people with a disability that affects their ability to make decisions, the experience of guardianship will be relatively brief with the average order made for a year or less. At the end of that time VCAT will review the order and if the issues have been resolved the order will be revoked. VCAT will always look for a family member or friend to take on the responsibility of guardianship and such

people are referred to in this report as private guardians. Where there is no suitable person to take on this role, VCAT may appoint the Public Advocate as guardian. The Public Advocate is a statutory officer appointed by parliament and may delegate this responsibility to a guardian working within the Office of the Public Advocate or to a community guardian working on a voluntary basis.

All guardians appointed by VCAT are accountable to VCAT for their decisions. A guardian must act in the best interests of the represented person: act as an advocate for him/her; encourage him/her to participate as much as possible in the life of the community; encourage and assist him/her to become more independent, in such a way as to protect that person from abuse, exploitation and neglect; and, in consultation with the represented person, take his/her wishes into account as far as possible.

The ethics of intervention

All people upon reaching the age of eighteen years are presumed by society to be capable of making their own decisions and of taking responsibility for their own actions. For people who are not capable of doing this the state has a *parens patriae* (parent of the nation) role in which the state takes on the responsibility of protecting and acting in the best interests of the citizen. Traditionally this responsibility has been exercised through the courts and in most other countries this is still exercised through the courts with the court responsible for appointing a guardian or administrator for an adult when necessary. Australia led the world in setting up guardianship tribunals to decide upon these matters.

It is important to consider the basis on which the state may take the serious step of intervening in the life of one of its citizens. Guardianship is not the only area in which

the state exercises its *parens patriae* responsibilities and there is remarkable similarity in the ethical principles which guide intervention in quite disparate areas. The ethics of military intervention provide an interesting comparison. As an example, the guiding principles for deciding whether a war is just, dating back to St Augustine and St Thomas Aquinas, bear a striking similarity to the principles guiding the appointment and conduct of a guardian for an adult with a disability.

According to just war theory, the war must be declared by a legitimate authority, the cause itself must be just, the motive must be good, force may only be used after all other reasonable methods of resolution have failed and must be proportional to the threat being faced, there must be a reasonable hope of achieving a just outcome and the outcome should bear a very close relationship to the cost of the intervention.

In guardianship similar principles apply: a guardian can only be appointed by a properly constituted tribunal acting under legislation (or by a person before he/she becomes incapacitated); the only valid reason for the appointment of a guardian is to promote the best interests of the person with a disability and a guardian should only be appointed when less restrictive ways of resolving a problem have failed; and finally, the wishes of the person should be adhered to wherever possible and positive outcomes must be achievable for the represented person in order to justify the appointment of a guardian.

The principles upon which guardianship operates are grounded in values which respect the dignity of all persons, promote autonomy and self-determination and are reflective of the wider values inherent in the manner in which the state carries out its *parens patriae* responsibilities across a range of situations.

Year in review

In the previous year (2003–04) an increase of 12.4% in the number of guardianship orders was reported, with an increase of 26.4% over the previous two years. The Office of the Public Advocate takes seriously its responsibility to ensure that guardianship orders are a last resort and developed a demand management strategy to ensure that, where possible, people with a disability receive the assistance they need without the necessity for a guardianship order to be made. It is pleasing to report

that the number of people for whom the Public Advocate was appointed as guardian has reached a plateau and the number of new orders made by VCAT in 2004–05 fell slightly from 571 to 564.

The table below refers to cases where the Public Advocate was appointed as guardian and delegated his authority either to a stipendiary guardian working in the Office or to a community guardian who is a volunteer recruited, trained and supported by the Office.

Guardianship services – provided 1 July 2004–30 June 2005				
	Total	Standard orders up to 3 years	Temporary orders – 21 days	Total
Delegated to OPA guardian				
	2003–04	2004–05	2004–05	2004–05
1. Cases open and carried over from last year	467	486	7	493
2. New cases opened for the year	542	455	67	522
Total services provided	1009	941	74	1015
Delegated to community guardian				
1. Cases open and carried over from last year	39	31		31
2. New cases opened for the year	29	42		42
Total services provided	68	73		73
Total guardianship services				
1. Cases open and carried over from last year	506	517	7	524
2. New cases opened for the year	571	497	67	564
Total services provided	1077	1014	74	1088

Closure of guardianship cases – 1 July 2004–30 June 2005				
	Total	Standard orders	Temporary orders	Total
Delegated to OPA Guardian				
	2003–04	2004–05	2004–05	2004–05
1. Cases finalised for the year	516	405	71	476
2. Cases open to be carried over to next year	493	522	5	527
Delegated to community guardian				
1. Cases finalised for the year	37	34		34
3. Cases open to be carried over to next year	31	41		41
Total number of cases to be carried over to next year	524	563	5	568

Note: There is a small discrepancy arising from adjustments in the computerised case management system in relation to the number of cases reported as carried over from the last year and the number to be carried over into the next year.

Profile of guardianship

An analysis of new orders appointing the Public Advocate as guardian during 2004–05 reveals that in 40.6% of cases the represented person has dementia. This is 2% below last year but still the largest category with brain injury (17.9%), mental disorder (15.8%) and intellectual impairment (10.5%) following in descending order.

The largest age cohort is the 71–90 age group, with 50.2% of new orders made for people in this age group. The gender distribution was 56% female and 44% male.

Huntington's disease

Last year's report highlighted the needs of people with Huntington's disease and the lack of appropriate services for these people and their families. Nothing has changed during the past twelve months and guardianship continues to be seen as a possible solution to their problems with a disproportionately large number of people with Huntington's disease under a guardianship order. Tragically, the genetic passage of the condition means that families may be dealing with several members who have or have had the disease, and the pressures under which they must live are extreme. It is imperative that adequate services and supports for people with Huntington's disease are provided as a matter of urgency.

Jess's story

Jess is a young woman with Huntington's disease who has a child aged two. She was diagnosed with the condition during the course of the pregnancy when the symptoms of the disease first emerged. Unable to cope with the pressure of the situation, her husband is now caring for the child on his own. Jess has had several admissions to psychiatric hospital and it was suggested that she should live in a

supported residential service in order to receive the care she now needs. A guardian was appointed to make the decision.

Jess was adamantly opposed to living with 'all old people' as she described them and was desperate to retain contact with her child. The guardian made the decision that she should live in an independent villa unit and worked very hard to ensure that Jess received as much assistance as possible to make this successful, including arrangements for her to continue to part of her child's life. The guardian came to the conclusion that, whilst there were considerable risks involved, the benefits to Jess of leading as normal a life as possible for as long as possible justified those risks.

Mental health and guardianship

The intersection between the *Guardianship and Administration Act 1986* and the *Mental Health Act 1986* (MHA) continues to throw up challenges in practice as reported upon last year. The Office has worked constructively with mental health services and with the Office of the Chief Psychiatrist (OCP) and a formal understanding between the Office and the OCP is close to completion.

A particular challenge arises in relation to people with a personality disorder. The reluctance of psychiatrists to use the relevant sections of the MHA which allow them to contain and treat people with personality disorders who are a risk to themselves or others means that many people with a personality disorder remain untreated and unsupported and at considerable risk of becoming involved with the criminal justice system.

Multiple and complex needs

The government's multiple and complex needs initiative is now underway. Through this initiative, people who meet the criteria

for admission to the program may have a thorough assessment of their particular situation conducted and care plans will be developed and implemented to ensure that the people receive appropriate care, treatment and services. A significant number of those accepted into the program to date have also been under guardianship and it seems that the outcomes for clients have been extremely positive. The case planning draws upon both generic and specialised services and appears to be successful in cutting across the ‘silo’ structure and mentality of the service system for people with a disability in Victoria.

James’ story

James is a 25-year-old man who has a brain injury and a mild intellectual disability and is currently in prison, nearing completion of a medium-term sentence. He is eligible for parole but adequate community services to support him upon release have not been available. His guardian believes that it would be in his best interests to be released on parole so that supervision can be provided for him as part of the terms of his parole. James has now been accepted as a multiple complex needs (MCN) client and a care plan has been developed for him which includes case management, counselling and assistance to reconnect with his family from whom he has become estranged. Accommodation and services have also been arranged in the area where his family is living, despite the fact that James himself has not lived there for 10 years. Ordinarily, this would be very difficult to achieve. James is looking forward to his release on parole and is very motivated to turn his life around. So far the MCN process has been very beneficial for him but guardianship will continue to be necessary for a period of time as he is still unable to make reasonable decisions for himself and the next six months will be crucial as he adjusts to life outside prison.

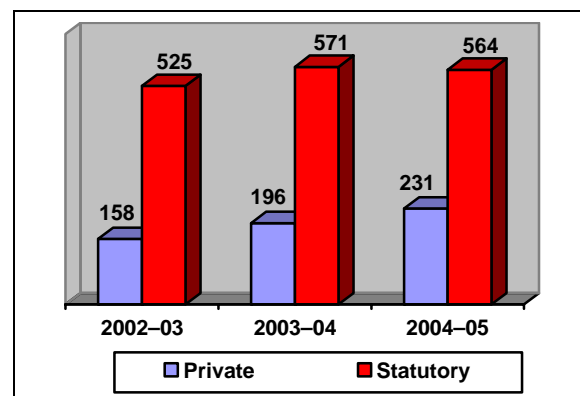
Private Guardian Support Program

The Private Guardian Support Program provides support to members of the public who are appointed by VCAT as guardians for people with a disability. The program reflects the commitment of the Office to the importance of family and friends in the lives of people with a disability.

The program offers information and support for private guardians who are appointed by VCAT. It also provides advice across a wide range of issues including the authority and responsibility of guardians; disability-related issues and working with service providers.

The Guardianship and Administration Act provides for the appointment of private guardians for people with a disability wherever possible and it is pleasing to report that the number of private guardians appointed as a percentage of total new guardianship orders increased this year to 28.9%, a rise from 25.6% in 2003–04.

New private/statutory guardian appointments



During the past year VCAT appointed 231 new private guardians. This is a 15% increase on the previous year. Whilst the percentage of private guardian appointments as compared with statutory appointments has increased, it is still well below the Office target of 40%. This year the total number of private guardians

supported by the program has increased by 90 to 384 as at June 2005.

The program has been reviewing how information can be more effectively provided to guardians. Consequently, the previous publication for guardians: *Guardianship: A Guide for people appointed as guardians under the Guardianship and Administration Act 1986* was substantially revised and updated. The revised guide, *Good Guardianship: A guide for people appointed as guardians under the Guardianship and Administration Act 1986* is designed to be more accessible and is now provided to all newly appointed private guardians. The publication was officially launched at VCAT on the 23 June 2005 by a private guardian, with staff from the Office and VCAT members in attendance. The following is an extract from the guardian's speech at the launch of *Good Guardianship*:

Guardianship is a particularly challenging volunteer job. I have used this book as a ready reference....One day I found that it did not have the answer to the current

*conundrum. Even then, all was not lost as [the guide] provided phone numbers to someone who could provide the answer or they were able to ask others and relay the answer back to me. This booklet is tangible evidence of a support for that segment of our community which is so often overlooked. It is a guide on the proper implementation of the serious role of Guardianship. I am delighted to recommend **Good guardianship – A guide for guardians** as a practical support handbook for all those who work with optimistic and caring ... guardians who may not yet understand the magnitude nor the challenges of their new role.*

In response to the evaluation of the program a pilot project was undertaken to see if a call to private guardians would increase the likelihood that guardians would contact the program in the future. The pilot project found that the introductory call did not increase usage of the program by those private guardians contacted and so the introductory calls will no longer be made as there is minimal benefit in doing so.

Investigations

About investigations

The Public Advocate undertakes investigations at the request of VCAT. These investigations occur following an application to VCAT. Applications to VCAT can be made for the appointment of a guardian and/or an administrator, for the revocation of an enduring power of attorney following dispute about its use, or for the consent of VCAT for the conduct of a 'special procedure', as defined in section 42 of the *Guardianship and Administration Act 1986* (the Act). Where evidence has been provided that a person with a disability is being unlawfully detained, or is likely to suffer serious damage to physical, emotional or mental health or wellbeing unless action is taken, applications may also seek authorisation for the Public Advocate to visit the person with a disability and take him/her to a place for further assessment (Section 27 of the Act).

Following the receipt of an application, VCAT may refer a matter to the Office of the Public Advocate at any stage of the process, up to the time of and during the hearing of the application. VCAT regularly asks the Office to obtain further information to assist VCAT in its decision-making or to explore the least restrictive way to resolve a dispute. Given that the appointment of a guardian or an administrator for a person with a disability results in that person losing the right to make decisions about his/her life, the intervention is considered to be very restrictive and therefore only to be used as a last resort when no other less restrictive options for resolution are available.

It is in this way that the investigation program is part of the Office demand management strategy in which the main goal is to ensure that people with a disability are not placed under inappropriate guardianship (Section 16

(1)(h) of the Act). The resolution of matters without appointing a substitute decision-maker is also consistent with those sections of the Act which require VCAT to consider 'whether the needs of the person in respect of whom the application is made could be met by other means less restrictive of the person's freedom of decision and action.' (Section 22(2)(a) of the Act).

The Office's duty officer at VCAT reviews all application to VCAT to identify whether significant issues of concern are raised that would warrant the intervention of the Office or whether there are matters that can be resolved less restrictively. The duty officer may recommend to VCAT Registrar that the matter be referred to the Office for investigation (see duty officer at VCAT section).

Year in review

Investigation services provided by the Office of the Public Advocate

Investigation services	2002-03	2003-04	2004-05
Cases open and carried over from last year	71	76	59
New cases opened during the year	349	249	310
Investigations for urgent temporary orders	53	68	137
Total investigation services Provided	473	393	506
Cases finalised for the year	395	329	440
Cases open to be carried over to next year	78	64	66

(Note: there is a slight discrepancy arising from adjustments in the computerised case management system in relation to the number of cases closed at the end of a year and the number opened at the beginning of the next year.)

The total number of investigation services provided by the Office increased by almost 29% from last year. The Office also finalised almost 34% more investigation matters during the year than last year, up from 329 matters to 440 matters.

The main reason for the increase in investigations is the fact that advocate/guardians have generic responsibilities for guardianship and advocacy matters, as well as investigation matters. This means that changes in the demand in one area impact upon the capacity for service provision in other areas. A look through the guardianship section will indicate that guardianship numbers stabilised after years of steadily increasing. This stabilisation enabled some resources to be directed towards investigation services.

As indicated above, investigation services form part of the demand management strategy that the Office set up to respond to increasing numbers of a guardianship services. The increased capacity to respond to applications to VCAT has enabled the Office to hold in check the rising demand for guardianship.

It is noted that the number of investigation reports prepared in relation to urgent applications doubled. (Urgent investigations are given a high priority within the Office and as a result, they take precedence over most of the other work within the Office.)

The Office continued its communication strategy with VCAT in an attempt to manage the investigation workload and keep VCAT informed of the progress of cases referred for investigation. Over the year this strategy included, at times of significant stress, directing the Office duty officer at VCAT to cease identifying applications considered appropriate for early intervention by this Office. It also dictated that where the Office is not able to

allocate an investigation matter expeditiously, the deputy manager writes to VCAT to advise of a delay in allocating that particular matter.

The Office is optimistic that, given the additional funding announced in the current budget, the capacity of the Office to undertake investigations in matters before VCAT will increase substantially.

Mrs Z's story

Mrs Z was a 50-year-old woman who did not speak English. She was an inpatient in a metropolitan hospital. She had an infection in her leg and the treating team recommended that it be amputated. The infection was as a result of poorly controlled diabetes and neglect.

Two months earlier Mrs Z had come into hospital with an infection that required amputation of some toes, but Mrs Z refused to consent. She was subsequently discharged without treatment.

If Mrs Z's leg was not amputated, the infection would spread and she would eventually die. Mrs Z indicated that she wanted to die. The hospital made application for the appointment of a guardian to consent to the procedure but provided very little detail about the nature of Mrs Z's disability. The matter was referred to the Office of the Public Advocate for investigation to ascertain further information about Mrs Z's situation and the reason for her failure to consent. If Mrs Z did not have a disability, then the hospital would be required to accept her refusal to consent.

The investigator worked with the hospital and ensured that a range of assessments was undertaken to understand better Mrs Z's situation, including whether she had a disability that impacted upon her capacity to make informed decisions about her health.

Mrs Z was assessed as having a psychiatric disability and a recommendation was made by the investigator that the Public Advocate be appointed as guardian.

Advocacy

About advocacy

The advocacy services provided by the Office of the Public Advocate have developed from the Office's interpretation of the *Guardianship and Administration Act 1986* (the Act). These services can be distinguished from other forms of advocacy in that the principles that underlie advocacy practice and the framework for its implementation are contained in the Act.

The three main principles that frame the Office's advocacy service are:

- that wishes of the person must be considered
- that the best interests of the person must be pursued
- that the least restrictive option must be sought.

(Reference s16(1)(e) and s22(2)(a) of the Act)

Whilst this is different from other forms of advocacy, which is generally focused upon empowerment and often based solely upon the instructions of the person, both Office advocacy and advocacy practised by community-based agencies share common values including the promotion of individual autonomy and personal liberty.

Some fundamental principles of our democratic society are that, wherever possible, people have autonomy to decide how they live their lives in terms of the decisions that they make in implementing their wishes. As a matter of principle, members of a free and democratic society should also have the freedom to associate with whomever they wish and, within limits, the freedom to act in whichever way they choose without interference from the state.

However, there are circumstances where the state exercises its right to intervene in a

person's life, even against the wishes of that person. Within the jurisdiction of the Act, this occurs where people are deemed as not having the capacity to make informed decisions because of a disability, and their choices, their actions or the actions of others place them at serious risk if the state did not intervene.

Individual advocacy matters are generally referred to the Office by members of the community, by disability support agencies, and by government and non-government agencies. Some advocacy matters are also referred to the Office by VCAT. Whilst the Office has a mandate to provide advocacy for all Victorians with a disability, the main focus of the advocacy work within the Office is on the needs of adults with cognitive disabilities who are at risk of or are experiencing exploitation, abuse and neglect.

The closure of Kew Residential Services and new homes for residents

Since November 2001 the Office has provided relocation advocacy for the women and men living at Kew Residential Services (KRS) who have no advocates, or whose families requested assistance in this task from the Office. The advocacy relates to ensuring that upon the closure of Kew Residential Services – now due to be completed in November 2006 – each resident of KRS obtains maximum benefit from his/her move into the community.

Between 2003 and 30 June 2005, 38 new homes were built by the Department of Human Services in different suburbs of Melbourne and in some country areas. The houses are now occupied by approximately 170 former residents of KRS, and 51 clients of the Office are amongst those who have

moved. Each house has been purpose built to accommodate around five people.

After each Office client moved to his/her new home, the Office continued to check, as in the previous year, that the individuals living together were compatible with each other; that the houses and bedrooms were homely, friendly and comfortable; that the staffing was adequate and appropriate; and that medical and like services had been arranged. Suitable day programs and/or other regular activities for each resident based on his/her needs and capacities were also checked. As in the previous year, for the majority of people who moved the outcome measured by these criteria was very positive.

An important part of the closure of KRS and relocation process is that residents are assisted to engage in local community activities and to use local facilities and amusements such as tenpin bowling, swimming, parks and cafes according to residents' individual abilities and interests. Initially this presents challenges for many of the staff of new houses and others involved in the relocation, including those who provide the services, but over time they become more familiar with the process of engaging former KRS residents in their community's activities.

In relation to health care, many people had expressed fears before the move to new houses began that residents of KRS would be disadvantaged by losing the dedicated services of the on-site Smorgon Health Centre, which catered for most of their health needs. Since moving, however, most residents have found satisfactory medical and ancillary care services in their areas. The major difficulty has been in providing timely dental care. Many former residents have been booked into the Royal Dental Hospital which has long delays. These delays occur even though people with intellectual disabilities are given priority of

service. It is hoped that this situation will be redressed in the coming year.

Overall, it is clear that for nearly everyone the move into new houses away from KRS has been a major improvement in their lives, and the benefits of living 'in the community' are quickly felt.

Year in review

Advocacy services provided by the Office of the Public Advocate

Advocacy services – client advocacy	2002–03	2003–04	2004–05
Cases open and carried over from last year	174	159	178
New cases opened for the year	144	161	166
Total services provided	318	320	344
Cases finalised for the year	164	146	196
Cases open to be carried over to next year	155	174	148
Short-term advocacy			
New cases opened for the year	687	1033	842

(Note: there is a slight discrepancy arising from adjustments in the computerised case management system in relation to the number of cases closed at the end of last year and the number opened at the beginning of this year. It should also be noted that the statistics in the above table include 89 cases of advocacy that were provided throughout the year as part of the Kew Residential Services Relocation Project. See section relating to this project for further explanation.)

Previous annual reports have expressed ongoing concern about the impact of increasing numbers of new guardianship cases upon the program's capacity to provide a viable advocacy service. Given these demands, it is pleasing to report that efforts of the Office to maintain a reasonably resourced advocacy service during the year were successful.

The major challenges identified for the advocacy program in last year's annual report were not only to ensure that advocacy services are maintained in the

face of the continuing rise in the demand for guardianship services, but also to consolidate fixed-term funding to ensure that the capacity of the advocacy program to continue to respond to demands for this service will not be substantially diminished. The ongoing increase in funding reported in this year's annual report ensures that the advocacy program will be able to continue to provide advocacy services of last resort in serious matters involving the exploitation, abuse and neglect of people with a disability. This funding will also enable the Office to intervene in cases alleging elder abuse.

The statistics identify a small increase (3%) in the number of new advocacy cases opened during the year. These results are pleasing in the light of high demands for both guardianship and investigation services. It is also an interesting fact, not discernable in the statistics reported above, that people with intellectual disabilities comprise almost 60% of all advocacy matters handled during the year. This is by far the largest group for which advocacy was provided, and is consistent with previous years. The Office understands this statistic as demonstrating that the issues that arise for people with intellectual

disabilities are more appropriately resolved through advocacy than by the appointment of a guardian.

The Office continues to respond to requests for advocacy by way of a system of prioritisation. Requests are triaged by the manager and deputy manager to assess and identify matters that should be pursued, with priority given to matters that highlight broader issues of a systemic nature or where the person with a disability is deemed to be at serious risk. Matters that do not fall into this category are referred to other agencies for assistance and support.

The Office undertook a project during the year to review and analyse those requests for advocacy that the Office had not been able to directly respond to. The goal of the project was to ensure that advocacy services are appropriately targeted and that the system of assessment, classification and referring on of matters that are not being picked up, is optimal. The project enabled the Office to obtain a greater understanding of the nature of those rejected requests and reviewed and recommended principles and processes to assist in the assessment process.

The case for staying involved – Bill’s story

Bill is a 21-year-old man with a severe intellectual disability and a number of challenging behaviours. He was living in a caravan with his parents in a caravan park in the western suburbs of Melbourne, when his situation was referred to the Office of the Public Advocate by a Salvation Army homelessness worker.

The homelessness worker was concerned because Bill did not come out of the caravan very often and his parents always looked tired and talked of the enormous strain of taking care of Bill in a caravan. An urgent guardianship application was made by the worker in consultation with the Office of the Public Advocate as people were concerned for Bill’s health and welfare.

During the process of the application for urgent guardianship, the parents of Bill raised objections about the application and asked the question, How could they possibly care for Bill more appropriately, given they were living with in a caravan? The Office felt this was a valid objection and began to negotiate with the parents about how to change this situation.

In partnership with the Community Outreach Service of the Salvation Army, Disability Services and Kew Supported Housing, a three bedroom house was found for the family and the parents agreed to allow Disability Services and the SANS Intensive Support Program to begin working with Bill in order to provide him with necessary medical interventions, access to day programs and community-based activities and respite care. The negotiations included the withdrawal of the guardianship application; however, the Office of the Public Advocate remained involved to advocate for Bill where necessary.

Over the next five months Disability Services, SANS and the Office worked with the family to improve Bill’s health and welfare. It was a ‘one step forward, three steps back’ situation as Bill’s parents were often critical of the service delivery and wary of allowing direct service access to Bill. This situation often caused agencies involved to voice their concerns and wonder about the need for guardianship rather than just advocacy. However, it was felt that whilst agencies were able to continue to access the home, the status quo would continue.

Recently, Bill’s care again became the cause of concern as domestic violence between the parents increased. Unfortunately, the situation became critical and it was necessary for the Office to make an urgent guardianship application which involved removing Bill from the family home and into the care of Disability Services. Bill is currently living in accommodation provided through Disability Services and his mother and father continue to see him through supervised access visits.

Short-term advocacy

Short-term advocacy cases are defined as cases that involve more than simply the giving of advice but which do not justify the opening of a client advocacy file. These matters may range from making a number of phone calls on behalf of a person, conducting correspondence or arranging a meeting. Where the level of time devoted to a particular matter exceeds more than a

couple of hours, a formal advocacy matter is recorded.

There was a decrease in the number of short-term advocacy matters handled by the Office during the year, down from 1033 last year to 844 this year. This reflects an almost 25% decrease in short-term advocacy matters undertaken by the Office. Last financial year short-term advocacy was used to more expediently resolve a

range of matters, without an ongoing commitment of scarce resources. This year the Office was able to commit more resources to a greater intervention in matters brought before it.

Short-term advocacy – Kate’s story

Kate was living alone in her own home. She was bed bound and had a history of mental illness. Kate had given her credit card details over the phone to pay \$5,000 in up-front fees for an advocacy service which she had found in the White Pages.

The following day Kate thought she may have made a mistake and told her neighbour. The neighbour went to a solicitor and the solicitor then referred the matter to the Office’s advice service.

The Office advisor phoned Kate at home to discuss the matter. Kate told the advisor she had previously signed enduring powers of attorney (financial) to her friend, Joan. During the call the advocate arrived. The advisor spoke to the advocate and asked him to explain the exorbitant fees charged to a woman with mental health issues and who had enduring powers of attorney.

The advocate claimed to be a ‘management consultant’ who charged \$220 per hour. He refused to provide his qualifications to this Office and said repeatedly that Kate was not able to cancel the contract. The advisor informed the advocate that he did not believe Kate had capacity to enter into any contracts and that she had given enduring powers of attorney to someone who represented her financial and legal interests. The advisor informed the advocate that he would be taking the matter further.

The advisor rang Joan to discuss the situation and Joan explained how difficult it had been for her trying to manage Kate’s finances. She said she didn’t want to hold the enduring powers of attorney anymore. The advisor explained how she could make an application to VCAT for the appointment of an administrator for Kate, with Joan disclaiming the enduring powers of attorney.

The advisor faxed a VCAT application form and medical proforma to Joan and then helped her to complete the paperwork.

The State Trustees were appointed to manage Kate’s affairs and they contacted the Office to discuss how they could pursue the advocate with the aim of getting Kate’s money back.

Duty officer at VCAT

The Public Advocate has, since 2000, provided a full-time duty officer service based at the Victorian Civil and Administrative Tribunal (VCAT). While complementary to other advocacy and investigation roles of the Office of the Public Advocate, the duty officer role is unique in that it provides an on-site, on-duty advocate – available to VCAT as well as to persons who are the subject of an application – to assist VCAT in solving problems and avoiding the appointment of guardians and administrators where other solutions are available.

Year in review

In the current reporting period there were 445 matters referred to the duty officer. This is a slight increase on the number of matters dealt with by the duty officer last year (434) and it reflects the importance of the role and the consistency of its use by a diverse range of people including VCAT members. The service response to referrals falls into the following categories:

Short-term advocacy

The duty officer is available to advise and advocate on behalf of people who are attending VCAT hearings. This short-term advocacy can take the form of:

- direct advocacy where the duty officer attends the hearing with and speaks on behalf of the person who is the subject of an application. This will often involve work with parties and or their representatives in exploring pre-hearing solutions
- advice to assist in preparation for the hearing.

Advice

The duty officer's role extends to providing immediate, on-site advice to VCAT members sitting on the Guardianship List on matters including:

- specialist and generic support services which may be a viable and less restrictive alternative to an order of guardianship or administration
- the pros and cons of an adjournment of the matter pending the involvement of, and report by, an Office investigator or advocate
- whether the appointment of the Public Advocate as guardian is likely to be a solution to the presenting application
- alternative support service systems or responses where VCAT does not have jurisdiction.

In addition, the duty officer is also available to provide advice to:

- parties to the proceedings. This can take the form of pre-hearing advice or, following a hearing, advice on the implications of an order made or to assist with the transfer of information or delegation in matters of urgency
- members of the public and service providers in relation to the legislation and practice implications.

Support to Office staff

The duty officer has a role in supporting Office staff, particularly in the conduct of their business before VCAT. To that end, the duty officer has worked with the Office legal officer in the last 12 months to jointly develop and deliver professional development on topics dealing with various aspects of legislation and practice.

In addition to other support functions listed herein, the duty officer's role involves several miscellaneous functions

which provide a benefit to both the Office and VCAT, and to users of their services. These functions include:

- daily screening of all originating applications to the Guardianship List. These screenings result in earlier identification of matters requiring advocacy, investigation or clarification of issues
- regular liaison with the Registrar of the Guardianship List on matters of urgency, complexity, jurisdiction, Office internal practices or policy or legislation
- a reduced allocation of guardianship, investigation and advocacy matters.

Victor's story

An application to VCAT was made seeking the appointment of both a guardian and an administrator for Victor, a 33-year-old Tasmanian who had fled his home state because of paranoid beliefs concerning his family. After arriving in Victoria, Victor soon came to the attention of police and ultimately had been admitted to a mental health inpatient unit with a diagnosis of paranoid schizophrenia.

Victor disclosed to the mental health team that he had given away his car and his possessions before leaving Tasmania and that he had instructed a real estate agent to sell his only remaining asset – his home. Concerned that his lack of insight and the decisions he had made when unwell would seriously jeopardise his recovery and his

social and familial circumstances, the applicant social worker sought an urgent response to the application.

In an attempt to clarify the issues and the urgency of the situation, the duty officer:

- spoke by telephone with the Tasmanian real estate agent, and while protecting Victor's privacy, secured an undertaking that he not proceed with the sale pending further advice and authority
- learnt from the social worker applicant that Victor had left the inpatient facility three days previously and had not returned. It was believed that he had returned to Tasmania.
- confirmed that Victor had returned to Tasmania and that an application seeking administration had since been made to the Tasmanian Guardianship and Administration Board who had prioritised the hearing
- established a link between the real estate agent and the Tasmanian Guardianship and Administration Board.

Having clarified that Victor had left Victoria and that the Tasmanian Guardianship and Administration Board was protecting Victor's interests, the duty officer assisted the social worker to withdraw her application to VCAT.

Systemic advocacy

About systemic advocacy

The program area of Policy and Education brings together the various community education and support functions of the Office of the Public Advocate, which include publications, a speaking engagement program, a private guardian support program, the advice service and reception. The program also has responsibility for identifying and responding to a broad range of systemic issues identified through the work of the Office.

The Office has continued to promote positive change in a range of systems affecting the lives of people with a disability. Systems can be defined as community values, standards and attitudes, power relationships, political processes, laws, legislation, policies, programs and structures, resource allocation, and services that affect the quality of life experienced by people with a disability. In the three-year policy plan for the Office, four areas were identified as priorities:

- improving the response of the criminal justice system to the needs of people with a disability
- the need for a greater range and availability of accommodation options
- the need for a more effective service response to clients with complex needs
- improving the support and assistance offered to parents with a disability.

The program has continued to address these issues as systemic advocacy priorities for the Office.

Year in review

Risk and rights

The practice of *risk minimisation* within the human services sector has been of growing concern for the Office as it is having a profound impact upon the nature of the service provided to older people and to people with a disability. This is occurring at a time when the service system has shifted to a model of community care, which promotes people being cared for in their own homes or in community settings. This shift has created challenges for service providers managing issues of occupational health and safety, and duty of care.

As a consequence of the trend to manage these challenges through risk minimisation, the Office of the Public Advocate is increasingly concerned that the rights of the person being cared for are considered secondary. Providers and agencies place limits on the nature of the service offered, or indeed refuse to offer a service at all.

In response to this, the Office hosted a forum to promote discussion of this issue and to seek to redress the current imbalance which places a greater focus on minimising organisational risks rather than promoting the rights of the client.

The forum was held in October and was heavily oversubscribed, with over 350 people wanting to attend the forum which could only accommodate 113 participants. Participants included people with a disability, direct service practitioners, managers and policy makers across the aged care, disability and mental health fields. The participant numbers were deliberately capped to enable the forum to be kept to a small size so as to promote discussion.

The forum successfully challenged some of the dominant thinking in relation to risk management and risk aversion, with speakers from Worksafe, Phillips Fox (Solicitors) and the Department of Human Services suggesting that the current approach is neither necessary nor indeed appropriate given that the purpose of these services is to support and assist some of the most vulnerable in our community.

As a result of the forum, 'Risk and Rights' has now been accepted into the language of many service providers who have acknowledged the need to change their practices around the issue of risk. Many services both in Victoria and interstate have since conducted similar forums based around local issues, and indeed the Office has presented at some of these forums.

A number of conferences including the National Accommodation and Community Services conference invited the Office to present on the issue, and at the Council of Intellectual Disability Agencies conference, a whole stream was devoted to the issue.

Given the overwhelming response to the forum, the Office will be hosting a second forum in 2005 which will provide an opportunity for direct service staff across the different fields to discuss how they manage risk now and how their practices can be improved so that the rights of the client are promoted.

In addition to promoting further discussion and debate of these issues, the Office has also been working with Worksafe on two new initiatives to encourage recognition of the importance of clients' rights in any assessment of risk. The first of these is *Draft Occupational Health and Safety Guidelines for Home Care Workers*. The second is an information pack for small community-based organisations. The aim of the pack is to assist small community organisations to understand their

occupational health and safety obligations to workers.

In order to further advance thinking on the issue of risk management, the Office in partnership with the Department of Human Services and La Trobe University has applied for funding from the Australian Research Council. The purpose of the research will be to understand the impact of risk management on human service delivery and the implications for practitioners.

The Office will also have an opinion piece in the *Journal of Intellectual and Developmental Disability* that further promotes awareness and debate on this issue so that the Office can bring about change to service practices.

Elder abuse

In last year's annual report the Office reported on the submission made to the Minister for Aged Care, the Hon. Gavin Jennings, recommending a more coordinated response to the issue of elder abuse, with the state government taking a lead role. Early in 2005 the Minister for Aged Care announced an Elder Abuse Prevention Project. The main objectives of the project are to:

- develop effective elder abuse prevention strategies
- update existing human services protocols dealing with elder abuse
- strengthen health and community service responses to suspected cases of elder abuse
- ensure appropriate elder abuse information and education strategies are in place.

The project advisory group will make recommendations to government on the most effective way to address this issue by the end of the year, following a period of community consultation. The Office is pleased to be able to contribute as part of

this advisory group along with a number of organisations, some of which were involved in the working party which developed the Office's submission. The Office acknowledges this important initiative by government and look forward to the recommendations of the project and their subsequent implementation.

Community care

The Office continues to have a growing level of concern with the insufficient levels of funding for community care packages. As raised in last year's annual report, the ageing of the population combined with the trend towards more community-based service delivery in the disability field have meant that there is a growing demand for these support services in the community. However, the limited range of these programs means that many people currently have to move prematurely into residential care. This is not only distressing for the individuals, but also means that increased pressure is placed on the residential care system. This can be an inefficient use of resources with some people who could be supported at lower cost in the community having to move into the more expensive option of residential care.

Given the need for increased resources and structural reform of the community care sector, the Office has joined with a number of other agencies as part of the Community Care Coalition. The coalition is a national initiative aimed at lobbying the federal and state governments for greater funding of these services. As part of the coalition the Office participated in the National Community Care Summit. The summit called for:

- substantially increased resourcing to enable people to continue to live in their own community
- a more streamlined system through meaningful reform

- improved linkages between aged care, health, mental health and disability services.

The Office also raised this issue in its submission to the Senate Inquiry into Aged Care. Whilst there were additional resources provided to this area in the federal budget, they still fall well short of current and projected demand.

The Office's guide to the range of community care packages is available on its website; it was recently updated and continues to be well used.

Aged care

As part of the recent Senate Inquiry into Aged Care the Office raised several concerns about the aged care system in addition to deficiencies in the community care service system. The number of young people in nursing homes due to lack of suitable accommodation options continues to be of concern to the Office. The issue of poor discharge planning from acute hospital settings was also raised as an issue which can lead to significant problems for many older people. The frequent failure to ensure appropriate supports are in place for the older person being discharged from hospital can result in repeated admissions to hospital and further deterioration in the person's condition.

Aged care and disability

As a result of improvements in medical treatment, a growing number of people with an intellectual disability are living longer. This has posed a growing challenge to disability services across Australia to be able to respond effectively to the changing care needs of this group. To help examine the policy and practice implications of this for the disability services system, the Office has partnered with a range of other organisations as part of an Australian Research Council grant. The other partners

in this important research are the Queensland Office of the Public Advocate, Endeavour, Queensland Aged and Disability Advocacy Inc., Queensland Department of Housing, Queensland University of Technology, and La Trobe University.

Focus on the criminal justice system

The Office continues to have a significant focus on seeking changes to various aspects of the criminal justice system.

It is very pleasing to report that since the Office presented its research report, *From Corrections to the Community* to the Corrections Commissioner at the start of 2004, a number of developments have occurred.

- Tender specifications for pre-release programs to address the needs of prisoners with a cognitive disability have been revised.
- Corrections Victoria established a strategic policy and diversity unit which will coordinate disability programs and policies across its operations.
- Corrections Victoria implemented a disability framework. This will drive a coordinated program of actions about disabilities across Corrections. The Public Advocate is on this project board.
- Action has been taken to pilot a screening tool to identify all new prisoners with an acquired brain injury or with a hearing impairment. Work is also underway to develop a tool to be used in identifying intellectual disability and borderline intellectual disability.

The Office made a submission in response to the Victorian Law Reform Commission report on the taking of forensic samples. It raised issues relating to taking samples from people who are unable to provide

informed consent and the role of the Independent Third Person in the taking of such samples.

The Victorian Law Reform Commission launched its long awaited report, *Sexual Offences: Law and procedure*. The Office has had substantial input into this report in relation to such matters as seeking to increase the levels of protection for people whose disability makes them unable to provide informed consent to sexual activities. A key recommendation of this report was that: ‘*Victoria Police should develop guidelines for the identification of cognitive impairment in consultation with the Office of the Public Advocate and the Equal Opportunity Commission.*’ A committee has been formed to address this issue. A working party with representation from the Office of the Public Advocate, Victoria Police, Equal Opportunity Commission and the Department of Human Services – Disability Learning Development Unit, is developing a proposal for a practical checklist resource to assist police members to identify people with a cognitive disability. The resource will need to be inclusive of a range of cognitive disabilities and endeavour to assist police members to distinguish between mental illness and other cognitive disabilities (intellectual disability, acquired brain injury or dementia). This will inform police of the different responses that may be required.

There were also recommendations relating to providing increased training to Independent Third Persons in supporting people who report sexual abuse.

The Police Academy, in revising their manual for police recruits, approached the Independent Third Person Program, to assist them in updating the manual in relation to disability. The section primarily focused on mental illness, so with relevant input from Disability Services, Mental Health Legal Centre, Headway and

Alzheimer's Association, the scope of this section was significantly broadened to cover all forms of cognitive disability. Information on the role of the Office and VCAT, particularly in relation to sections 26 and 27 of the *Guardianship and Administration Act 1986* were also included.

As part of a half day seminar organised by the Victorian Judicial College, the Public Advocate chaired a session on the subject of mental disabilities. It is believed that this was the first time training of this type had been provided to judicial officers in Victoria.

The Office is continuing to work closely with the Department of Justice in the development of a disability action plan.

Mental health

The Office has raised a number of concerns about the mental health system. The Office made submissions to two separate inquiries into the mental health system. The first of these inquiries was conducted by the Human Rights and Equal Opportunity Commission and the Mental Health Council of Australia. More recently the Federal Senate Inquiry into Mental Health conducted a separate inquiry. The key issues raised in these submissions included:

- the extent to which the National Mental Health Strategy has been able to achieve its aims and objectives
- the lack of suitable accommodation options
- the inadequacy of services for clients with an intellectual and mental illness
- the overrepresentation and under-servicing of people with a mental illness in the criminal justice system
- the lack of adequate support programs for parents with a mental illness.

It was pleasing to see in the recent state budget that the government had committed

\$180 million to improving the mental health system.

Reconciliation Statement launched

The Office of the Public Advocate celebrated International Human Rights Day 2004 with the launch of its Reconciliation Statement. Frank Guivarra, Chief Executive Officer, Victorian Aboriginal Legal Service and the Hon. Gavin Jennings, Minister for Aboriginal Affairs, spoke at the launch. Representatives from the Indigenous community and justice sector attended the launch.

Public Advocate Julian Gardner said the Reconciliation Statement was an important recognition of the rights of Indigenous Victorians: 'The statement is backed by a plan of action within our Office to ensure that Indigenous Victorians with a disability, their families and their carers, receive the protections provided by the law and that our services are tailored to cultural needs'.

Wheelchair safety at level crossings

Following the Coroner's Inquest into the deaths in 2001 of two people in wheelchairs on level crossings, the Coroner has reported and made recommendations to the Attorney-General under section 21 of the *Coroners Act 1985*. Consequently the Attorney-General has requested a report from the Public Advocate on the progress being made in relation to the recommendations.

Meetings have been held with the Department of Infrastructure and representatives of the disability community and the Office is finalising the report to the Attorney-General.

Review of the *Intellectually Disabled Persons' Services Act 1986*

The legislation review is continuing and the office is awaiting the next stage of the process. In addition to the Office's earlier submission, the Public Advocate has made it clear that he expects the legislation to satisfactorily address the rights of people with a disability who are effectively detained by the Statewide Forensic Service or in other contexts. Such decisions need to be subject to external review. Where these decisions are made there also needs to be an externally monitored care plan. The Office looks forward to the exposure draft of the Bill being released for public comment later this year.

Other issues

In addition to these important initiatives, the Office has also undertaken work in the following areas:

- submission to the Attorney-General seeking the development of a single and simplified enduring power of attorney
- submission to the National Health and Medical Research Council in relation to the review of ethical guidelines for research involving humans.
- involvement in a reference group for the multiple and complex needs initiative
- submission supporting changes to the *Equal Opportunity Act 1985* to prohibit discrimination on the basis of homelessness or employment status
- submission to the Victorian ageing population working group in response to the Productivity Commission research into the impacts of ageing
- participation in the Disability Standards Review reference group
- participation in the Support and Choice reference group
- participation in the personal outcome measures reference group
- a request to the Attorney-General that he appoint a person to the Sentencing Advisory Council with knowledge of and experience in mental health and intellectual disability
- submission to VCAT seeking a review of the \$100 annual fee imposed upon people who are subject to an administration order
- a review of the protocol between the Aged Care Assessment Service and the Office of the Public Advocate
- participation in the National Reference group and chairing of the ethico-legal committee of the Respecting Patient Choices program
- submission to the Commonwealth Attorney-General's Department on the proposed United Nations Convention on the rights of people with a disability
- submission to the dementia framework for Victoria
- submission to the Attorney-General in relation to the *Major Crime (Investigative powers) Act 2004*
- membership of the Department of Justice reference committee on problem solving courts
- membership of the advisory group on Supported Residential Services in the Southern Region.
- membership of the Victorian Disability Advocacy Network
- participation in Mental Health Legal Centre forum on women's safety in psychiatric settings
- development of an agreement with Chief Psychiatrist's Office on how the Office can work more effectively with them
- the making of two submissions as part of the current review of the child protection system
- comments on the Commonwealth Government's proposed changes to the Disability Support Pension and the

impact of these changes on people with cognitive disabilities

- submission to the review of the *Health Act 1958*
- submission to the Victorian Ombudsman's report on improving responses to allegations involving sexual abuse, sexual assault and sexual misconduct
- membership of the Kew Residential Services Evaluation Project Steering Committee.

Legislative reform

About legislative reform

In addition to the broad policy and systemic responses of the Office of the Public Advocate, the Office has participated in work to reform legislation to promote and protect the interests and rights of people with a disability.

Year in review

The Crimes Act in relation to forensic sampling and the DNA database

The Office represented that there be safeguards when taking DNA samples from people who are unable to give informed consent in relation to the investigation of a criminal offence.

Health Act

The Department of Health sought representations regarding consent to the taking of blood samples from people who were unable to give informed consent where there had been a needle-stick type incident. The Office represented that the treatment of people who have a disability should not differ from that of other persons in the community who can be required to provide a blood sample.

Warrants

The Victorian Parliament's Law Reform Committee reviewed powers of entry, search and seizure. This included powers to enforce a guardianship order or to take a person who has a disability to be assessed. The Office represented how these powers are exercised and recommended a change to make the power to obtain an assessment applicable where there is a reasonable

belief that the person concerned has a disability.

Consent to medical research

Where a person who has a disability is unable to provide informed consent to participate in medical research, VCAT's consent is required as this is known as a special procedure. The Office supported proposals to change the *Guardianship and Administration Act 1986* so that medical research is no longer a special procedure and consent can be given by the person responsible for the patient. This is consistent with the role of the person responsible to consent to other medical and dental treatment.

Commonwealth sentencing

The Australian Law Reform Commission is reviewing Part 1B of the Commonwealth *Crimes Act 1914*. This Act looks at cases where a person may be not guilty because of the effect of his/her mental impairment. The Office asked the Australian Law Reform Commission to consider the role of defence counsel who are instructed to conceal their clients' mental impairment.

Advice Service

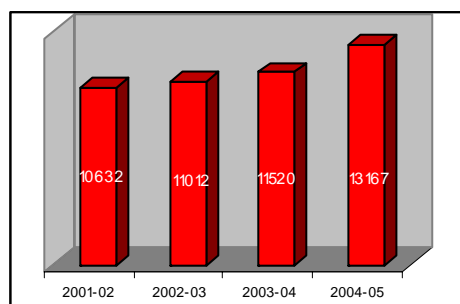
About the Advice Service

The Office of the Public Advocate maintains a 24-hour advice service which plays an integral role as the first point of contact for the Office. The Advice Service provides information and advice on a diverse range of topics affecting people with a disability. Topics range from general information on applications to VCAT, powers of attorney and the processing of s42K registrations, to allegations of financial/physical abuse, and end-of-life decisions. The nature of these calls is often complex, requiring a high level of sensitivity, expertise and sound judgement.

Year in review

This year the Advice Service recorded 13,167 enquiries, by phone or in person, a 14.3% increase from last year.

Advice Service enquiries



The media attention on the Terri Schiavo case in the USA, combined with the Mrs Maria Korp case in Victoria, produced an increased interest in enduring powers of attorney (medical treatment). A significant number of calls (251) and enquiries were responded to on this issue. The Advice Service received 382 after-hours calls, an increase from last year of 17%.

Anne's story

Anne had tried unsuccessfully to commit suicide and was in intensive care in hospital. At the time it occurred, her friend John had received a call from Anne who was very distressed and had asked him to visit. However, he had arrived at her home too late to prevent the attempt.

Having been advised by the doctor that it was futile to continue to keep Anne on life support, John called the Advice Service on behalf of himself and Anne's young adult son for support to prevent this occurring. Neither of them was able to accept the poor prognosis, as they believed she was a 'fighter' and could recover in spite of all the medical evidence to the contrary.

The Advice Service contacted the hospital and confirmed the information given by John. The matter was referred to a senior advocate/guardian and a decision was made that under the circumstances it would be appropriate for an application to be made to VCAT seeking the appointment of a guardian.

The advocate/guardian who handled the call was subsequently appointed as Anne's guardian. He was then able to work with the family, John and the treatment team on exploring all the available options. In consultation with all parties, the guardian was able to make a decision which was in the best interests of Anne in the circumstances – in this case the removal of the artificial support – and to work with the family and friend in coming to terms with this.

Who calls?

For the first time in several years the type of people using the Advice Service has changed. Callers from health services now make up the largest number of callers. They constitute 32% of all calls, an increase of 4% on last year. The increase in calls from health professionals may be the result of high profile cases in the media relating to end-of-life decisions during the year. This conclusion was particularly evident where health professionals were seeking information about 'living wills' for their patients/clients.

Self-referrals have also increased by 2%. Although not significant in number, many of the callers were also seeking information regarding 'living wills'. Family members who traditionally have been the largest group of callers comprised 26% of callers, a drop of 6% compared with last year.

Callers from community support services also increased by 2%. Accommodation Services (7.5%) and the Department of Human Services (6.5%) both recorded a decrease from the previous year. VCAT, advocacy services, legal and financial services and other government departments constituted the remaining 15%.

Calls by type of disability

The largest proportion of enquiries (27%) concerned persons with dementia. This was consistent with last year. The age profile of the persons who were the subject of the enquiry was also consistent with last year. Forty six per cent related to persons aged 70 years and over, with the largest cohort concerning people aged 81 and over (29%). Fifteen per cent of calls related to persons with an intellectual disability, a small decrease from last year. The disabilities that were the subject of the remaining calls were acquired brain injury (10%), mental disorder (13%) and physical disability (3%), each recording a small decrease from the previous year, and dual disability (1%).

'No disability established' (28%) showed a small increase on last year. This generally represents calls regarding powers of attorney, where people are planning for the future. Alternatively, it may be where a person presents as having a disability, but has not been formally assessed.

What were calls about?

As in previous years, enquiries about administration (20%) predominated. These were followed closely by guardianship (19%), a small increase on last year, followed closely by enduring power of attorney (financial) (16%).

Medical or dental treatment where there is no person responsible to consent

In cases where a person requires medical or dental treatment but cannot consent to the treatment, and there is no person responsible available and willing to provide consent for that treatment, a medical or dental practitioner is required to lodge a form under section 42K of the *Guardianship and Administration Act 1986*. This year the Advice Service received 322 s42K forms. The number represents a 14% increase in the number of forms registered last year. Eighty-nine per cent of forms met the legislative requirements, a decrease of 8% from the previous year. After receiving advice from the Advice Service, a large percentage of these forms were then resubmitted by the practitioner and met legislative requirements.

Quality monitoring process commenced

A process of listening in to calls was commenced this year to monitor how well calls are handled and to identify areas for improvement in the quality of the advice provided. The listen-in process involved the

Advice Service coordinator listening in to over 340 calls handled by the various advisors on the Advice Service.

Calls were recorded using a proforma which targeted a number of aspects of the quality of the service provided. It measured the knowledge base of staff with regard to the protocols and processes for applications to VCAT; the requirements for the completion and use of enduring powers of attorney; and the service systems in the disability area. Questions also included technical competence in the use of relevant computer programs and skill level in managing calls.

Preliminary findings reveal a high level of staff knowledge of the Guardianship and Administration Act with regard to all aspects of applications to VCAT and similarly with enduring powers of attorney (financial), particularly with the recent changes to the legislation. Considerable skill was demonstrated in the management of calls. When it was considered appropriate, all advisors demonstrated a commitment to encourage callers to explore the least restrictive options for the person with the disability.

The above findings appear to be consistent with the results of the Advice Service evaluation conducted in 2002 where callers, 'were for the most part very satisfied with their experience of the advice service' Adams and McAloon 2002.

All advisors demonstrated a familiarity with and capacity to access the relevant computer programs with varying skill levels. The recent introduction of a computer database which lists a range of community services is expected to assist staff in making referrals to other agencies where appropriate.

Community education

About community education

A key function of the Office of the Public Advocate is the provision of effective information and community education services. These services are aimed at promoting awareness and understanding of the legislation and systems established to protect people with a disability from abuse and exploitation. The program coordinates a speaking engagement program, manages a website, produces publications, and maintains media relations and collaborative partnerships.

Year in review

This year's focus initiated a more active approach to providing accessible information and education to Victorians, with particular attention to culturally and linguistically diverse communities. Significant progress has been made towards achieving this goal.

Key outcomes have included an evaluation of the speaking engagement program; focus groups to review publications; and the holding of educational events targeted at specific audiences including culturally and linguistically diverse communities.

The result is a program that can deliver clear and consistent information that is promoted to Victoria's diverse population.

Speaking engagement program

Staff from the Office spoke at 205 engagements this year to a total audience of 8,726. These figures were consistent with last year, with a slight reduction (1.5%) in total audience. A range of topics was addressed by speakers, including guardianship and administration, enduring powers of attorney and guardianship, medical consent and end-of-life decision-making.

This year a broad evaluation of the speaking engagement program was undertaken. Its aim was to ensure information provided was consistent and of a high standard, and that the Office's clients felt their information needs had been met.

The evaluation was divided into two parts. The first involved 'sitting in' on staff when providing presentations. The second involved a survey of all people who have requested a speaker over the previous 18 months. The results of this evaluation have been very encouraging. Staff surveyed displayed presentation skills and an understanding of content that rated very satisfactory to highly satisfactory. Eighty per cent of staff engaged the audience to a high or very high level.

This process will continue next year and will inform staff training in areas identified as requiring further improvement.

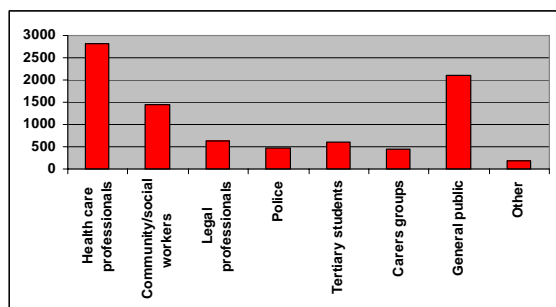
Results of the client survey undertaken evaluated whether the program provided a responsive service, assessed whether the information provided met the clients' needs and expectations, and gauged demand for new presentation topics.

The survey had a 19% response rate. Ninety-two per cent of respondents felt the process for booking a speaker was very to highly efficient. Ninety-two per cent of respondents were either very or highly satisfied with the presenter.

Topics respondents wanted information on for future sessions included client advocacy, managing client rights and organisational risk, applications to VCAT, and working with advocate/guardians from the Office.

The graph below illustrates the diversity of the audience the speaking engagement program catered for this year.

Speaking engagements: audiences



The majority of community education presentations are made upon request of a professional agency or community group. This year, the Office sought to target the program by holding information sessions and inviting relevant groups. The response to these sessions was mixed depending upon the topic. This learning will feed into next year as the Office continues this more active strategy.

VCAT information seminars

The Office in partnership with VCAT began holding joint information seminars involving social work students attending hearings. The seminars are designed to give students a practical understanding of the role and function of both VCAT and the Office, and how they work together to promote the best interests of people with a decision-making disability.

Reaching out to culturally and linguistically diverse communities

Partnerships were forged this year with two peak organisations servicing culturally and linguistically diverse communities: Partners in Culturally Appropriate Care, and Ethnic Communities Council Victoria. As a result of these partnerships, information sessions were held or supported to target different ethnic communities; the translated

information is now being provided at information sessions for senior Victorians in culturally and linguistically diverse communities.

Latrobe Valley Rights Centre

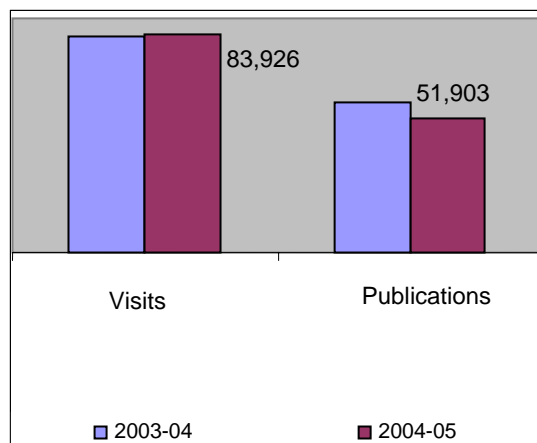
The Latrobe Valley Rights Centre, a Department of Justice three-year pilot to provide regional outreach services, continues to enable the Office to access this part of regional Victoria. The centre has held numerous education talks about the Office, as well as a number of forums and workshops for workers and the general public on enduring powers of attorney and client advocacy. The announcement of ongoing funding for the centre this year will provide an opportunity to further develop the centre to reach audiences in the Gippsland region.

Significant partnerships with the Ministerial Advisory Council of Senior Victorians and Victoria Legal Aid have also assisted, maximising the Office's resources to hold information sessions in the community.

Website

The following graph represents a slight increase in the number of visits (1.3%) and a decline (11%) in the number of publications downloaded. This decline correlates with the increase in hard copy publication distribution with relation to changes in legislation.

Website usage



The Office will continue to promote the website as a major source of information from the Office for both professional and public users.

Publications

The community education program publishes fact sheets, brochures, booklets and reports to support the role of the Office. This year, over 117,000 printed publications were distributed, an increase of 35 % on the previous year.

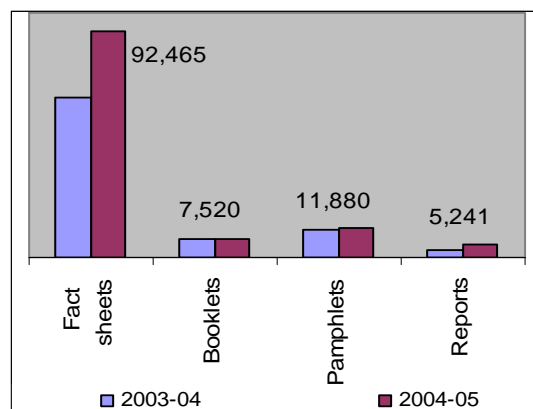
Continuing on from last year's publications review, a number of publications were reviewed, rewritten and redesigned to improve readability. These included the Office's flagship brochure, all Community Visitors brochures and Independent Third Persons training materials.

A number of focus groups were held with parents of children with disabilities to review *Thinking Ahead*. These focus groups identified the need for a title change to *Securing Their Future – For parents with children with a decision-making disability*, and a significant rewrite to better meet parents' needs for information around future financial planning for their children in the event of a parent's death.

The feedback the Office has received from the public has been very positive and

supports the need to maintain publications that keep complex legal information in plain English. Responding to the need to increase distribution of this publication, *Securing Their Future* was launched by Telmo Languiller, Parliamentary Secretary for Human Services, representing the Minister for Children and Community Services, to an audience of parents and peak agencies servicing the parents and their children.

Publications distribution



Media

The Office of the Public Advocate maintained an active voice in the media this year, representing and protecting the rights of people with a disability. This process was assisted by the engagement of a media monitoring service through the Department of Justice.

Key issues the Office promoted or responded to were:

Mental health system

The tabling of the *Community Visitors (Mental Health) Annual Report 2003–04* helped focus media attention on Victoria's mental health system, in particular the lack of accommodation and access to services for people who need care and support. The

Public Advocate and Community Visitor Board member Kathleen Loxton provided media quotes and sound bites for ABC PM, ABC 774 news, 3AW news, 3AW *Drive*, the *Sunday Age* and the *Sunday Herald Sun*: ‘the government, to their credit, are aware of the problem, and when we talk to them we know they have sympathy for the problem, but the issue now is that they’ve got to put their hands in their pockets.’

The exposure led ABC 7.30 Report to follow up the issue of the inadequacy of Bunjil House for patients. The Public Advocate and Community Visitor, Helen Reid, were interviewed about our failure as a community to provide adequate accommodation/care options for people with mental illness.

Not long after, the state government announced a massive injection of \$180 million into the mental health system, including the redevelopment of Bunjil House which the Public Advocate was quoted as condemning for the last five years.

End of life decision-making

The case of Terri Schiavo in the USA provided an opportunity for the Office to promote the use of enduring powers of attorney (medical treatment) among Victorians to ensure that their wishes are respected in the event of them being unable to make medical treatment decisions. The Public Advocate spoke about this issue on ABC 774 with Jon Faine and on Radio National’s *Australia Talks Back* program, and was quoted in *The Age*. The Office had a 500-word editorial published in Seniors Festival special of the *Latrobe Valley Leader* on enduring powers of attorney and guardianship.

As a result of the media publicity, the Office was inundated with requests for information and distributed over 200 enduring powers of attorney (medical treatment) fact sheets and forms in a little

over two weeks. The website was also visited a record number of times (8,502) in April, with a record number of downloads of enduring powers of attorney (medical treatment) fact sheets and forms.

Mrs Maria Korp

The case of Maria Korp is discussed in the overview section of this report. The story was reported heavily over three months on all major print, radio and television outlets, including interstate and international media.

Despite the unfortunate circumstances of the case, the coverage was a positive representation of the role of the guardian. Editorials in all the Melbourne dailies were positive. The goal of media releases and a well attended media conference was to focus on the process of making decisions that were in Mrs Korp’s best interests by investigating what her values, beliefs and wishes might have been. The most difficult challenge was to balance the need to be publicly accountable for a decision of public interest and to answer the ill-informed criticism with the right to privacy of the person with a disability.

Elder abuse

The Office worked hard to highlight the problem of elder abuse through the media; it succeeded with stories in *The Age* and the *Herald Sun*, the latter quoting a David Sykes’ (manager policy and education) presentation which talked of the vulnerability of elderly people, and the dependant nature of their relationship on people who may be abusing them, thus making it difficult for them to request assistance.

It is pleasing to see that the government has since taken action on this issue with the creation of the Elder Abuse Prevention Project.

Federal budget

The Office made a rare entry into federal politics, commenting on the release of the federal government's policy for moving people with a disability off welfare and into the workplace. The Acting Public Advocate said the policy 'ignored the real barrier to people with a disability gaining employment, which was workplace discrimination.'

Future challenges

Website redevelopment

Next year the Office will focus resources on a redevelopment of the website to increase its useability and enable a more efficient process for site management. A significant undertaking, this project will ensure the site continues to be responsive to user needs.

Enduring powers of attorney video

Continuing the awareness-raising activities the Office undertook last year, this year funding was granted from the Victoria Law Foundation for the production of an enduring powers of attorney and guardianship video kit. The kit will comprise a short video and user manual, both to be packaged with the current publication *Take Control*.

The kit will enhance the ability of the Office of the Public Advocate to deliver education which will increase awareness and uptake of enduring powers of attorney and guardianship. The primary audience will be senior Victorians, with solicitors and general practitioners as important secondary audiences.

The production will collaborate with Rotary Melbourne and Victoria Legal Aid who have shared aims and audiences. The kit will be completed next year.

P A R T T W O : P R O G R A M S

Community Visitors Program
Independent Third Person Program
Community Guardianship Program

**Victorians getting involved with people with a
disability living in their community**

**‘Community Visitors made a voluntary contribution of
time worth over \$2.1 million in 2004–05, a significant
contribution to the Victorian community’**

Community Visitors Program

About Community Visitors

Community Visitors are independent appointments by the Governor in Council. They have a unique role as volunteer community representatives in monitoring the quality of services for people who live in eligible facilities. These facilities are defined by the *Mental Health Act 1986*, the *Health Services Act 1988*, the *Intellectually Disabled Persons' Services Act 1986* and the *Disability Services Act 1991*. The Community Visitors Program is accountable to the Public Advocate (through the program manager) and through, to Parliament (through the Community Visitors annual reports).

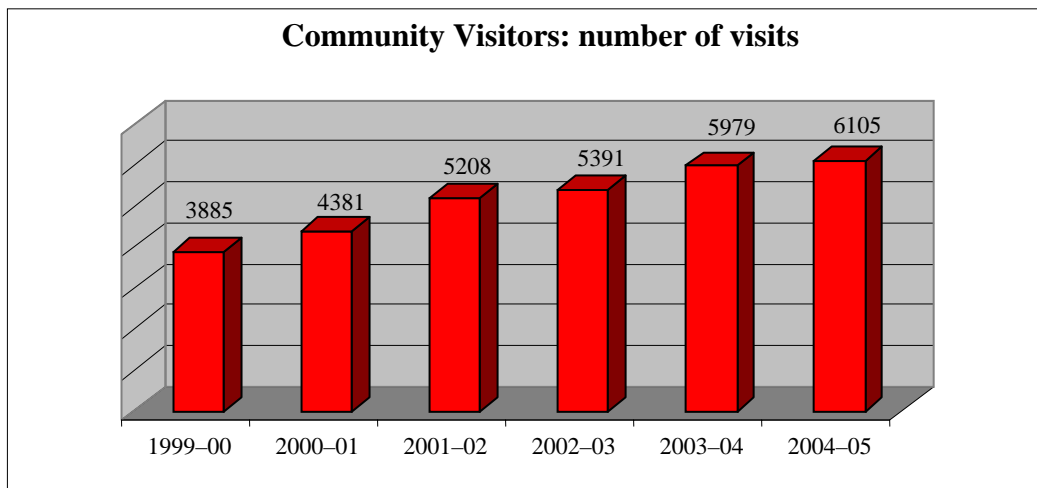
The core role of the Community Visitor is to safeguard the interests and rights of people with a disability. Community Visitors are independent of service providers and through regular visits to facilities are able to assess whether a particular service is observing the rights and needs of individual residents, meeting

quality assurance standards demanded by the Department of Human Services, and meeting expected community standards.

The credibility of the program is central to its capacity to effect positive change and resolve issues as encountered during visits. To a large extent this credibility is dependent on Community Visitors being fair, reasonable and unbiased. There are no formal qualifications for becoming a Community Visitor but volunteers need to demonstrate a commitment to people with a disability enjoying the same rights as other members of the community.

Year in review

The Office of the Public Advocate was responsible for training and supporting 599 volunteer Community Visitors across the state during 2004–05. This support and coordination function was undertaken by the Community Visitors Program Unit within the Office.



Community Visitors made 6,105 visits this year. The issues raised during these visits represent a significant contribution to improving service quality and also contribute to the systemic advocacy undertaken by the program and by the Public Advocate.

The reports of these visits also contribute to the three annual reports submitted to parliament by the respective Community Visitors boards: Disability Services, Mental Health Services, and Supported Residential Services.

Supported Residential Services (SRSs)

There were a number of positive developments during the year including:

- Changes to the Health Services Act, most of which were implemented on 1 January 2005. These changes strengthened legislative requirements in regard to the preparation of care plans and residential statements in Supported Residential Services and also introduced stricter requirements in relation to the management of resident finances.
- Introduction of a pilot program which is trialling the provision of care packages for residents in medium- to high-care requirements in seven pension-level SRSs in Victoria. Community Visitors have reported the positive impact of these packages in some of these SRSs and the Office is hopeful that the program will be expanded if it is evaluated as having a positive impact on residents.
- New quality processes have been introduced by the Department of Human Services and the Office will monitor the new audit processes to see if they have an impact on the quality of care SRSs provide.

- Care plan training sessions have been run around Victoria for the managers and staff of SRSs. Two sessions were also run for Community Visitors and Department of Human Services authorised officers.
- Guidelines have also been introduced for proprietors to ensure that they only employ 'fit and proper' people to work in SRSs.
- An emergency management working group involving representatives of the CFA, local government, the Department of Human Services, the police, and representatives of the Community Visitors Program has been established to pilot a coordinated approach to fire safety and other emergency management issues.
- Community Visitors can take credit for the introduction of many of these initiatives as the previous board had actively pursued many of these issues with government in previous years.

Ongoing issues of concern

Closures of pension-only SRSs and the lack of other options for people with a disability and complex needs who are on low incomes is an ongoing concern. In 2004–05 there was a net loss of 110 pension-level beds. Over the past three years there have been 603 pension-level beds lost to the system.

The 2003 SRS Census undertaken by the Department of Human Services showed that there is now a high number of people with a mental illness (45%), an intellectual disability (14%) or an acquired brain injury (8%) living in pension-level SRSs and too often SRS staff are not adequately trained to support these people effectively.

There is still a concern that people are often discharged from hospital or transferred

from other services without adequate referral information and that ongoing support from external agencies is limited. There are also concerns that there few activities are organised for SRS residents and the residents experience significant boredom.

While there have been some improvements in relation to fire safety, Community Visitors continue to identify fire hazards and to have concerns about the lack of regular fire drills and evacuation plans, and the inadequate staff/resident ratios in facilities where many residents have high support needs.

Disability services

The Office of the Public Advocate welcomed the release of the Victorian Government's plan for the redevelopment of the Kew Residential Services site (formerly Kew Cottages) in June 2005.

Community Visitors are pleased that the government has now progressed with its commitment to provide better care for the hundreds of people with intellectual disabilities still languishing in the 'Dickensian-like' institution that is Kew Residential Services (KRS).

The plan provides the 100 residents who will remain on the Kew site with quality personalised accommodation and care that is the benefit of smaller community-based houses. The Office of the Public Advocate is monitoring houses for ex-KRS residents and is generally happy with outcomes to date.

The Office remains concerned that the continuing debate around the heritage value of the site may be compromising the needs of people with a disability. Any restriction on development of the site through heritage listing will inevitably restrict the funds available for services for people with a disability.

The Office understands that the retention of the current heritage listings represents a loss of \$15 million for people with a disability. The Office is not convinced that the preservation of these buildings respects the interests of residents remaining on the site for whom those buildings represent fear and a reminder of the mistakes of the dark days of institutional care for people with a disability.

It is now time to focus on redeveloping the remaining institutions in Victoria: Colanda in Colac, Sandhurst in Bendigo and Plenty Residential Services in Bundoora.

Quality Project – Community Visitors Program

The Department of Human Services – Disability Services provided funding for a 12-month project in order for the Community Visitors Program to review visiting and reporting in the Disability Services stream. The project commenced in late 2004.

The project is in line with the current changes within disability services in Victoria and international approaches to determining the quality of services in disability; that is, through care planning that is 'person-directed', reflects life in the community, is based on the choices of the person with a disability and provides evidence of individually based outcomes.' These trends could be very valuable to the Community Visitors Program and could meaningfully inform visiting and reporting.

The project aims to consider and explore:

1. The current Community Visitor – Disability Services visiting and reporting practices/procedures, and report on the extent to which the Community Visitors' goals, objectives and guidelines for visits/reporting practices promote improved outcomes

and enhanced quality of life for people with a disability.

2. The capabilities and appropriateness of Community Visitors providing reports with subjective and objective elements on whether:
 - disability accommodation providers are delivering person-centred care and that these demonstrate improved quality of life and wellbeing for the residents
 - disability accommodation providers have quality plans and quality improvement activities in place that demonstrate improved quality of life and wellbeing for the residents.

In conjunction with these aims, the project will also:

- consider and explore the principles that underpin the goals and objectives of the Community Visitors Program
- consider how data/information from visiting reports is currently collected
- explore the future capabilities of the Community Visitors Program regarding its role within the new disability legislation and Victorian Disability Standards, and also the Personal Outcome Measures evaluation
- make recommendations to the Community Visitors Program and Disability Services Board based on the outcome of the pilot and project.

Mental health services

In April 2005 the Victorian Government announced a \$180 million funding package for the mental health system.

The Office of the Public Advocate is pleased that the government has now begun the long-term task of addressing the needs of the 'poor cousin' of the health care sector.

The Office was particularly delighted with measures such as the \$8 million to replace Bunjil House; for five years Community Visitors have been calling for closure and redevelopment. This ongoing advocacy reflects the central goals of the Community Visitors Program. Bunjil House at the Austin Hospital has 25 beds for medium- to long-term rehabilitation. As such this 'temporary' facility, which lacks personal privacy and adequate access to outdoor areas, provides an unacceptable quality of life and is therefore an intrusion on the rights of residents with higher level needs.

The Office will now be focusing its efforts on ensuring that the money allocated is spent as soon as possible, and continues to be allocated to areas of need.

The long-term under-funding of the mental health sector, combined with the growing needs of Victorians experiencing mental illness, demands that this \$180 million package be only the beginning.

Community Visitors continue to be particularly concerned about the lack of accommodation and support options for people who are discharged from acute inpatient facilities.

Legislative requirements for visits

Each stream of the Community Visitors Program has different requirements for a minimum number of visits by Community Visitors to each facility. The varying requirements are outlined in the following table.

Community Visitors: number of visits

	1999–2000	2000–01	2001–02	2002–03	2003–04	2004–05
Disability services	1165	1399	2284	2389	2945	3008
Health services	1619	1862	1771	1652	1587	1617
Mental health services	1101	1120	1153	1350	1447	1480
TOTAL	3885	4381	5208	5391	5979	6105

Disability services

There is a legislative requirement for Community Visitors to visit the three gazetted residential institutions (Kew Residential Services, Colanda Centre and Sandhurst Centre) on a monthly basis.

While there is no legislated minimum number of visits to the other 1005 accommodation services, which are generally houses accommodating up to five people, the Disability Services Board set a target of a minimum of two visits each year, but an ideal target of once a quarter – which translates to a minimum target of 4464 visits per year. In 2004–05 Community Visitors visited 1004 of the 1042 services and 3008 visits were conducted, which means the Office was 1456 visits under its ideal target. Of the 3008 visits conducted, 134 were callout visits at the request of a resident or other interested party.

Health services

There is no legislative requirement relating to the regularity of visits to Supported Residential Services. The Health Services Board, however, set a target for this year of an average of eight visits to each supported residential service (as at 30 June 2005 there were 203 Supported Residential Services), which would translate as a requirement of 1624 visits across the state. This year, 1617 visits were made by Community Visitors, representing a shortfall of seven visits. Of the visits conducted, 70 were callout visits at the request of a resident or other interested party.

Mental health services

The *Mental Health Act 1986* requires Community Visitors to visit each approved mental health service on a monthly basis. There are 107 approved services which means that the target of visits for the year is 1284 scheduled routine visits plus visits in response to any requests made directly by individual patients to visit (callout visits). Of the 1480 visits conducted by Community Visitors in 2004–05, 1210 were scheduled routine visits and 270 were callout visits in response to requests from individual patients. On this basis the Office was 74 visits short of the number required by legislation. Of the 107 approved mental health services, 35 were visited less than monthly, but only 10 of those were visited less than 10 times for the year.

Target number of Community Visitors

At 30 June 2005, there were 499 Community Visitors appointed (404) or in training (95). Along with the 100 Community Visitors who resigned during the year (20%), a total of 599 Community Visitors were trained and supported over the course of the year.

The current high number (95) of prospective Community Visitors in training is indicative of the continuing efforts to recruit volunteers during the year. The process for selecting and training Community Visitors is, appropriately, quite an extensive one. It can take six months before recruiting efforts flow through to an increase in the number of Community Visitors. Further recruiting efforts will be

made on an ongoing basis. It is currently estimated that to meet the visiting requirements of the program, some 536 Community Visitors are needed across Victoria (316 in disability services, 120 in health services and 100 in mental health). Coupled with the current resignation/retirement rate of 20% per annum (100 in 2004–05), the Office will need to recruit approximately 140 volunteers in 2005–06.

Training and Development Program

Training is a critical factor in the provision of a high quality Community Visitors Program. Great effort has been put into improving the quality of the training delivered by the program. The feedback provided by Community Visitors who have attended training this year indicates that these efforts have been worthwhile and that the training program in place is of a high standard.

This year, 106 training sessions were conducted for 1,490 attendees. Fifty-three of these days were run centrally for 681 attendees and a further 53 sessions were run locally with 809 attendees. This compares with 13 training days offered in 1999–2000. The high quality of the Office's training program and the commitment of Community Visitors to attend training is fundamentally important to the quality of the program.

Value of the Community Visitors Program

The Community Visitors Program is of invaluable social benefit to the Victorian community and to people with a disability. There is also a very clear economic benefit which derives from the program. It was reported in *A National Agenda on Volunteering: Beyond the international year of volunteers* that based on Australian Bureau of Statistics Time Use data, the

value of volunteering across Australia is estimated to be \$42 billion per year.

The New South Wales Community Visitors Program uses paid sessional staff to conduct visits. The rate of pay is \$25.13 per hour and staff are paid for visits conducted and other related activities such as travel time to visits, and attendance at training and meetings.

Using this rate to calculate the contribution of volunteer Community Visitors in Victoria making 6105 visits, attending meetings to raise concerns and resolve issues, attending training, and the time volunteers spend on administration for the program, the figure is approximately \$2,170,955 for this year – a significant contribution to the Victorian community.

Independent Third Person Program

About the ITP program

The Independent Third Person (ITP) Program is a volunteer program coordinated by the Office of the Public Advocate. It supports approximately 190 volunteers across Victoria who are available to assist people with intellectual disability, mental illness, acquired brain injury or dementia during interviews with Victoria Police. The ITP's role is independent and objective, and facilitates communication between the person interviewed and police. The program is jointly funded by Disability Services Division and Mental Health Branch of the Department of Human Services.

Specifically the program seeks to ensure that a person with a cognitive impairment is not disadvantaged in the police interview situation by reason of his/her impairment by providing an ITP who can:

- facilitate communication between the person and police
- assist the person to understand his/her rights
- support the person throughout the process.

Year in review

The ITP role can be difficult and challenging at times and this year significant effort has been directed to ensuring that the volunteers who perform the role are appropriately trained and supported. This has involved the development of competency-based training packages for new and experienced ITPs. The training focuses on the key skills in applying knowledge of cognitive disability to facilitate effective communication and resolve issues. Six sessions have been conducted since January this year, with a further five sessions to be delivered by December. The employment of several

casual trainers has supported the delivery of the comprehensive training program. In conjunction with the training, the *Practical Guide for ITPs* was produced, providing a detailed reference manual to support effective practice.

Community education has continued to involve regular participation in the training of new police recruits through the Constables Course – Probationary Phase. In addition to the police training, a new promotional video, has been produced which will be a valuable community education tool. The video, *Independent Third Person Program, Skilled volunteers: Supporting People with Disability*, introduces six experienced ITPs and two people with a disability who talk frankly about their experiences during the police interview process. Their comments provide a valuable insight into the ITP role.

The data management system for the program was completed and implemented during the year, providing a much improved capacity for:

- monitoring program usage at a state-wide, regional and local levels
- comprehensive analysis of client data, including disability, offence detail, gender, age range and history of contact with the criminal justice system
- recording volunteer history and monitoring compliance with training requirements.

Whilst a number of quality improvements have been achieved this year, demand for the program has remained stable, with 1059 interviews attended. This is compared with 1081 for the previous year. When compared with the trend over previous years, the comment in last year's annual report that there has been a levelling-out of demand again rings true. However, it is unlikely

that the current rate of usage is reflective of the level of contact between people with a disability and police; improving the uptake of the program is a significant challenge for the future. Two initiatives have been implemented this year towards addressing this issue:

1. The ITP coordinator, in partnership with Victoria Police, the Equal Opportunity Commission and the Department of Human Services, has been working to develop a ready reckoner which will assist Victoria Police members to identify cognitive disability, and therefore better recognise situations where an ITP would be required.
2. To improve access to the program for culturally and linguistically diverse communities, the ITP assistant coordinator has been working closely with the Koori community in Shepparton in a pilot project to improve the use of ITPs for Koories with disabilities.

This year the program has also been placed under increasing pressure to expand the ITP role to incorporate other justice procedures, and in some instances to consider operating

in environments outside of the criminal justice system. Requests to expand the focus and responsibilities of the program reflect positively on the reputation of the program but they also highlight the substantial need to better support people with a disability when they come into contact with authority in its many manifestations. The Office's response will carefully consider the benefits proposed for people with a disability, the appropriateness of an ITP model and the likely costs associated with any potential expansion of the current program. It will also involve consultation with the funding body, the Department of Human Services. This will continue to be a challenge in the year ahead.

Targets for 2005–06

- Develop and implement a strategy to ensure program usage reflects the level of contact between people with a disability and the police
- Further develop competency-based training approach for ITPs.
- Complete and introduce a ready reckoner to assist Victoria Police members in the identification of people with a disability.

Community Guardianship Program

Community guardianship

The Community Guardianship Program has had a successful year with the total number of cases increasing from 68 in 2003–04 to 75 in 2004–05. More particularly the number of new cases opened by community guardians increased from 29 to 42.

An active and vibrant recruitment and training program is conducted each year and the number of community guardians is now over fifty. Community guardianship was set up as a way of involving members of the community in the lives of people with a disability; it is also a way of carrying out the Public Advocate's legislative responsibility to promote family and community responsibility for guardianship. The community guardians make an important contribution towards achieving the Office's mission and make their commitment on a voluntary basis. They do so with enthusiasm and commitment and find the work interesting and meaningful.

The Community Guardianship Program has sought to expand the cultural diversity of the volunteer group to help us to better meet the diverse needs of the community.

In the past year the Office has successfully recruited two Indigenous volunteers, the benefits of which have already been felt. When the Office of the Public Advocate was recently appointed as guardian for an Elder, the Office was able to offer her an Indigenous guardian. This guardian worked tirelessly to try and find the most suitable accommodation for this Elder who was no longer welcomed by her own community. Eventually a good placement was found for her where she could continue to feed her beloved birds and efforts have been made with the local Indigenous community to ensure that the Elder maintains links with her community. There were even plans that a local Indigenous performer might give a performance at the nursing home to welcome her!

During the next year the role of the Community Guardianship Program will be expanded with community guardians taking on advocacy matters in addition to guardianship. This will provide an opportunity to better use the skills and commitment of those involved and provide a valuable service to people with a disability who need assistance.

P A R T T H R E E :
C O R P O R A T E S E R V I C E S

Corporate governance

Organisation chart

Corporate governance

The Corporate Services Unit comprises seven staff that provide services including human resource management, accounting, information technology and communications services, purchasing, accounts payable, motor vehicle fleet management and records management to the Office of the Public Advocate and the Equal Opportunity Commission in accordance with a shared service level agreement.

Highlights for 2004–05 were:

Human Resources

- Training and professional development continued to be provided on a needs basis during 2004–05.
- The new performance management system, introduced on 1 April 2004 detailing job performance measures and career development activities for all VPS staff has now operated successfully for a complete financial year. The new system facilitates regular discussion and feedback on job performance, professionalism, skill development and career enhancement, all of which are considered critical to achieving the Office's strategic objectives.
- The staff induction process with associated package of information and forms continued to be updated. The process provides new starters with an appropriately paced induction process, including meetings with the Public Advocate and branch managers, copies of all forms required to commence employment and ready access to information in hard copy form or via the Office of the Public Advocate or Department of Justice intranet and on-line services.

- During staff forums and branch meetings staff contributed to development of the Charter of the Office of the Public Advocate, a document that summarises its vision, mission, values and the way the staff at the Office conduct themselves; the Office's Three Year Strategic Plan 2005–08; and the Annual Action Plan 2005–06. The input from staff was invaluable and greatly assisted management in finalising the documents.
- The Management and Staff Consultative Committee meetings were scheduled on a monthly basis. The committee continued to work effectively to address issues relating to restructure, introduction of new technology and changes to existing work practices.

Information Technology

- Training and ongoing assistance in the operation of the Case Management Information System (CMIS) and other software applications was provided for all Office of the Public Advocate staff.
- Capital expenditure continued on replacing 18 desktop computers, two laser printers and two laptop computers to ensure that IT hardware complied with operating standards necessary to run new software. Mobile telephones were also upgraded during the year as required.
- Provision of information technology support services and equipment maintenance continued for 30 regional convenors and 20 other volunteers within the Community Visitors Program (CVP). The convenors, located across the Melbourne metropolitan area and throughout regional Victoria, use

PCs to assist in their activities and collect and provide valuable data and statistics to the Office on a regular basis.

- Technical support and programming work was provided on the CMIS and CVP databases to enhance system functionality and data entry. New CMIS reports were developed for the Private Guardian Support Program and the Telephone Advice Service (TAS) and modifications and enhancements were implemented to extend the useful life of CMIS and improve response times.
- Technical advice was provided during implementation of the new Independent Third Person (ITP) database, with the new system operating very successfully during 2005.
- Work also commenced on developing specifications for a new case management system for the Office, with expectations that a new system will be selected by December 2005.

Staffing

At 30 June 2005 there was a total of 65 staff. Of these, 17 were part-time and six were in the Corporate Services Unit which provides a shared service to the Equal Opportunity Commission. Allowing for allocation of the Corporate Services staff on a 50:50 basis and adjusting for part-time staff, there was an effective full-time equivalent of 50.4 staff.

Environmental initiatives

During the reporting period, the Office has continued to be a leader within the Department of the Justice in regards to office-based environmental initiatives. These initiatives aim to reduce energy consumption, promote recycling and raise awareness and change the culture of the office to be more environmentally friendly.

This office has implemented or continued to:

- Pursue and encourage the installation of a waste management system within the Office and the building at 436 Lonsdale St, Melbourne. This was installed in September 2004 by the Waste Management Unit of DOJ, was quickly accepted and was audited in April 2005. The Office was rated at 4 ½ out of 5 and the building reduced its landfill by 8 tonnes or 70%.
- Emphasise the reduction of paper consumption through selective printing of reports, the use of electronic communication, discouraging printing of emails, and the use of double-sided photocopying.
- Ensure that any new printers have a double-sided printing capacity.
- Separately recycle corks and stamps for charities.
- Actively encourage use of public transport, especially close to the CBD or to hospital and courts that have accessible public transport.
- Encourage the use of the power save facility on all desktop computers and printers.

The Office has been a leader in environmental initiatives which has stemmed from the ideas and dedication of a number of staff members. The Office has not previously reported on these matters, so it is worth mentioning that in November 2003 the Office's environment committee received a Partnership Award from the DOJ for the environmental initiatives of the Office.

Finance

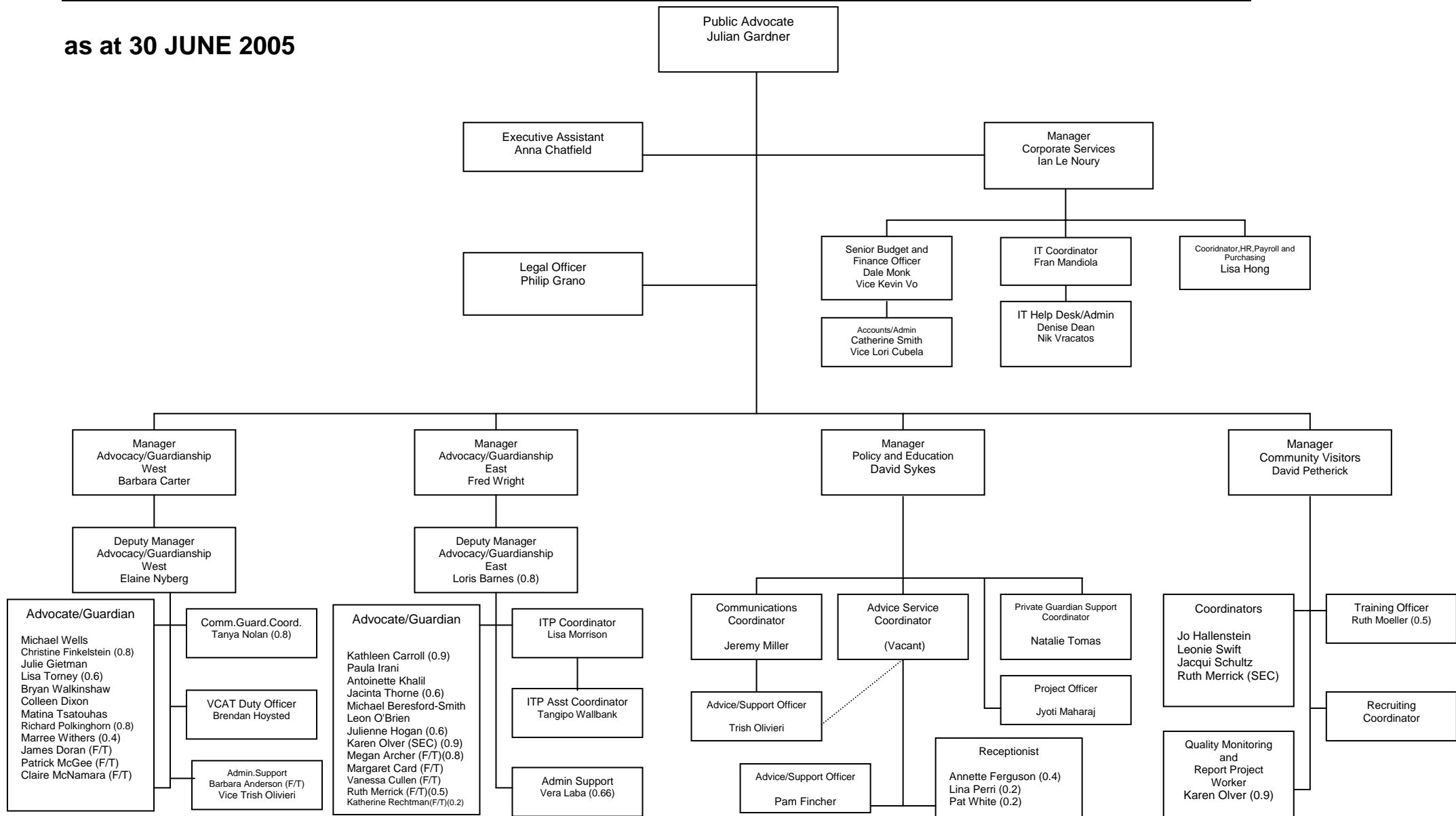
- Monthly expenditure statements were provided to managers on a timely basis. In consultation with managers, the statements continued to be refined during the year to provide concise information in an understandable format relating to line item expenditure and expenditure by each program.
- In accordance with the Whole-of-Government Financial Management Compliance Framework, work was undertaken to ensure that the Office met its obligations and that there was effective monitoring and review of overall performance in respect to financial management. As part of the framework an independent audit committee comprising members from the Equal Opportunity Commission, the Law Reform Commission and the Office continued to meet to oversee continuous assurance processes and overall corporate governance.
- Expenditure approval and purchasing procedures were carefully monitored to ensure compliance with Department of Justice policies, procedures and conferrals.
- A detailed analysis of the Office of the Public Advocate's financial results is contained in the Financial Report and Accompanying Statements 2004–05.

Whistleblowers Protection Act 2001

The *Whistleblowers Protection Act 2001* encourages and facilitates disclosure of improper conduct by public officers and public bodies. For the 12 months ending 30 June 2005, the Public Advocate did not receive any disclosures covered by the Whistleblowers Protection Act. The Public Advocate is committed to the aims and objectives of the Whistleblowers Protection Act, and a copy of the Public Advocate's Whistleblower Procedure Manual is available on the Office of the Public Advocate website at www.publicadvocate.vic.gov.au or from the Office of the Public Advocate.

Organisation chart

as at 30 JUNE 2005



PART FOUR: FINANCE

Financial report and accompanying notes

Office of the Public Advocate

Financial Notes

For the year ended 30 June 2005

	Notes	2005 \$	2004 \$
Revenue from ordinary activities			
Grants from Department of Justice	2	4,400,921	4,066,550
Revenue from other government entities	2	795,092	616,533
		5,196,013	4,683,083
Expenses from ordinary activities			
Employee benefits	3	(3,766,922)	(3,351,282)
Depreciation and amortisation	3	(82,444)	(111,860)
Capital assets charge		(13,599)	(12,867)
Supplies and services	4	(1,312,674)	(1,180,252)
Loss on sale of assets			(516)
		(5,175,639)	(4,656,777)
Result from ordinary activities	11(b)	20,374	26,306
Net result for the reporting period		20,374	26,306
Total changes in equity other than those resulting from transactions with Victorian State Government in its capacity as owner on behalf of the Crown	11(b)	20,374	26,306

The above statement of financial performance should be read in conjunction with the accompanying notes.

	Notes	2005 \$	2004 \$
Current assets			
Cash assets	5	500	500
Receivables	6	305,341	289,437
Total current assets		<u>305,841</u>	<u>289,937</u>
Non-current assets			
Receivables	6	153,235	
Property, plant and equipment	7	297,568	197,965
Total non-current assets		<u>450,803</u>	<u>197,965</u>
Total assets		<u>756,644</u>	<u>487,902</u>
Current liabilities			
Payables	8	38,743	38,993
Interest bearing liabilities	9	24,819	
Provisions	10	316,570	270,604
Total current liabilities		<u>380,132</u>	<u>309,597</u>
Non-current liabilities			
Interest bearing liabilities	9	107,566	
Provisions	10	565,950	493,016
Total non-current liabilities		<u>673,516</u>	<u>493,016</u>
Total liabilities		<u>1,053,648</u>	<u>802,613</u>
Net Assets		<u>(297,004)</u>	<u>(314,711)</u>
Equity			
Contributed capital	11(a)	47,281	49,947
Accumulated deficit	11(b)	(344,285)	(364,658)
Total equity		<u>(297,004)</u>	<u>(314,711)</u>

	Notes	2005 \$	2004 \$
Cash flows from operating activities			
Receipts from Government		4,297,782	3,982,846
Receipts from other entities		729,092	616,533
Payments to suppliers and employees	20	(4,842,160)	(4,487,418)
Net cash inflow from operating activities		184,714	111,961
Cash flows from investing activities			
Payments for property, plant and equipment		187,380	(158,887)
Net cash (outflow) from investing activities		187,380	(158,887)
Cash flows from financing activities			
Proceeds from capital contributed by State Government		(2,666)	47,026
Net cash inflow from financing activities	5	(2,666)	47,026
Net increase (decrease) in cash held			100
Cash at the beginning of the financial year		500	400
Cash at the end of the financial year		500	500

Note 1. Summary of significant accounting policies

This general purpose financial report has been prepared on an accrual basis in accordance with the *Financial Management Act 1994*, Australian Accounting Standards, Statements of Accounting Concepts and other authoritative pronouncements of the Australian Accounting Standards Board, and Urgent Issues Group Consensus Views.

It is prepared in accordance with the historical cost convention, except for certain assets and liabilities which, as noted, are at valuation. The accounting policies adopted, and the classification and presentation of items are consistent with those of the previous year, except where a change is required to comply with an Australian accounting standard or Urgent Issues Group Consensus View, or an alternative accounting policy permitted by an Australian accounting standard is adopted to improve the relevance and reliability of the financial report. Where practicable, comparative amounts are presented and classified on a basis consistent with the current year.

For interim and annual reporting periods ending on or after 30 June 2005, AASB 1047 *Disclosing the Impacts of Adopting Australian Equivalents to International Financial Reporting Standards* requires disclosure of any known or reliably estimable information about the impacts on the financial report had it been prepared using the A-IFRS or if the impacts are not known or reliable estimable, a statement to that effect. Refer to Note 21 for further information.

(a) Reporting entity

The financial statements include all the controlled activities of the Office of the Public Advocate. The Office has no controlled entities.

(b) Objectives and funding

The Office's objectives are to promote the rights and dignity of people with disabilities, to strengthen their position in society, and to reduce their exploitation, abuse and neglect.

The Office is predominantly funded by grants from the Department of Justice for the provision of outputs.

(c) Acquisition of assets

The cost method of accounting is used for all acquisitions of assets. Cost is measured as the fair value of the assets given up or liabilities undertaken at the date of acquisition plus incidental costs directly attributable to the acquisition.

Assets acquired at no cost, or for nominal consideration, are initially recognised at their fair value at the date of acquisition.

Where settlement of any part of cash consideration is deferred, the amounts payable in the future are discounted to their present value as at the date of the acquisition. The discount rate used is the incremental borrowing rate, being the rate at which a similar borrowing could be obtained from an independent financier under comparable terms and conditions.

(d) Revenue recognition

All revenue received by the Office is generally required to be paid into the Consolidated Fund.

Revenue becomes controlled by the Office when it is granted from the Department of Justice. Additionally, the Office is permitted under section 29 of the *Financial Management Act 1994* to have certain receipts annotated to the annual grant. The receipts which form part of a section 29 agreement are received by the Department and paid into the Consolidated Fund as administered revenue. At that point, section 29 provides for an equivalent amount to be added to the annual grant.

Amounts disclosed as revenue are, where applicable, net of returns, allowances and duties and taxes. Revenue is recognised for each of the Office's major activities as follows:

(i) *Output revenue*

Revenue from the outputs the Office provides to Government is recognised when those outputs have been delivered and the relevant Minister has certified delivery of those outputs in accordance with specified performance criteria.

(ii) *Consultancy revenue*

Revenue from the provision of consultancy services to other Governments and the private sector (refer note 1(b)) is recognised in accordance with the percentage of completion method. The stage of completion is measured by reference to labour hours incurred to date as a percentage of total labour hours incurred to date as a percentage of estimated total labour hours for each contract.

(e) **Receivables**

All debtors are recognised at the amounts receivable as they are due for settlement at no more than 30 days from the date of recognition.

Collectability of debtors is reviewed on an ongoing basis. Debts which are known to be uncollectable are written off. A provision for doubtful debts is raised when some doubt as to collection exists.

(f) **Revaluations of non-current assets**

Subsequent to the initial recognition as assets, non-current physical assets, other than plant and equipment, are measured at fair value. Plant and equipment are measured at cost. Revaluations are made with sufficient regularity to ensure that the carrying amount of each asset does not differ materially from its fair value at the reporting date. Revaluations are assessed annually and supplemented by independent assessments, at least every three years. Revaluations are conducted in accordance with the Victorian Government Policy – *Revaluation of Non-Current Physical Assets*.

Revaluation increments are credited directly to the asset revaluation reserve, except that, to the extent that an increment reverses a revaluation decrement in respect of that class of asset previously recognised as an expense in net result, the increment is recognised immediately as revenue in the net result.

Revaluation decrements are recognised immediately as expenses in the net result, except that, to the extent that a credit balance exists in the asset revaluation reserve in respect of the same class of assets, they are debited directly to the asset revaluation reserve.

Revaluation increments and decrements are offset against one another within a class of non-current assets.

(g) Depreciation of property, plant and equipment

Depreciation is calculated on a straight line basis to write off the net cost of each item of property (excluding land) over its expected life to the Office. Estimates of the remaining useful lives for all assets are reviewed at least annually. The expected useful lives and depreciation rates for property, plant and equipment have remained unchanged from the previous year. For the financial years ending 30 June 2005 and 30 June 2004, the expected useful lives for the following assets are:

Computers and communication equipment 3 years

Plant and equipment 5-10 years

Where items of plant and equipment have separately identifiable components which are subject to regular replacement, those components are assigned useful lives distinct from the item of plant and equipment to which they relate.

Major spares purchased specifically for particular plant are capitalised and depreciated on the same basis as the plant to which they relate.

(h) Leasehold improvements

The cost of improvements to or on leasehold properties is amortised over the unexpired period of the lease or the estimated useful life of the improvement to the Office, whichever is the shorter. Leasehold improvements held at the reporting date are being amortised over a period of up to 10 years.

(i) Leased non-current assets

A distinction is made between finance leases which effectively transfer from the lessor to the lessee substantially all the risks and benefits incidental to ownership of leased non-current assets, and operating leases under which the lessor effectively retains substantially all such risks and benefits.

Finance leases are capitalised. A lease asset and liability are established at the present value of minimum lease payments. Lease payments are allocated between the principal component of the lease liability and the interest expense.

The lease asset is amortised on a straight line basis over the term of the lease, or where it is likely that the Office will obtain ownership of the asset, the expected useful life of the asset to the Office. Lease assets held at the reporting date are being amortised over periods up to 5 years.

Incentives received on entering into operating leases are recognised as liabilities. Lease payments are allocated between interest (calculated by applying the interest rate implicit in the lease to the outstanding amount of the liability), rental expense and reduction of the liability.

Other operating lease payments are charged to the statement of financial performance in the periods in which they are incurred, as this represents that pattern of benefits derived from the leased assets.

(j) Restrictive nature of cultural assets

During the reporting period, the Office may hold cultural assets.

Such assets are deemed worthy of preservation because of the social rather than financial benefits they provide to the community. The nature of these assets means there are certain limitations and restrictions imposed on their use and/or disposal.

(k) Payables

These amounts represent liabilities for goods and services provided to the Office prior to the end of the financial year and which are unpaid. These amounts are unsecured and are usually paid within 30 days of recognition.

(l) Employee benefits

(i) Wages, salaries and annual leave

Liabilities for wages and salaries, including non-monetary benefits, annual leave and accumulating sick leave expected to be settled within 12 months of the reporting date are recognised in respect of employees' services up to the reporting date and are measured as the amounts expected to be paid when the liabilities are settled. Liabilities for non-accumulating sick leave are recognised when the leave is taken and measured at the rates paid or payable.

(ii) Long service leave

The liability for long service leave expected to be settled within 12 months of the reporting date is recognised in the provision for employee benefits and is measured in accordance with (i) above. The liability for long service leave expected to be settled more than 12 months from the reporting date is recognised in the provision for employee benefits and measured as the present value of expected future payments to be made in respect of services provided by employees up to the reporting date. Consideration is given to unexpected future wage and salary levels, experience of employee departures and periods of service. Expected future payments are discounted using interest rates on national Government guaranteed securities with terms to maturity that match, as closely as possible, the estimated future cash outflows.

(iii) Superannuation

The amount charged to the statement of financial performance in respect of superannuation represents the contributions made by the Office to the superannuation fund in respect of current Office staff (see note 18).

(iv) Employee benefit on-costs

Employee benefit on-costs, including payroll tax, are recognised and included in employee benefit liabilities and costs when the employee benefits to which they relate are recognised as liabilities.

(m) Capital asset charge

The capital asset charge is imposed by the Department of Treasury and Finance and represents the opportunity cost of capital invested in the non-current physical assets used in the provision of outputs. The charge is calculated on the carrying amounts of non-current physical assets (excluding cultural assets and the Whole of Government Motor Vehicle finance lease).

(n) Contributed capital

Consistent with UIG Abstract 38 *Contributions by Owners Made to Wholly-Owned Public Sector Entities* appropriations for additions to net assets have been designated as contributed capital. Other transfers that are in the nature of contributions or distributions have also been designated as contributed capital.

(o) Rounding

Amounts in the financial report have been rounded to the nearest dollar.

(p) Going concern basis

The Office of the Public Advocate is ultimately part of the State Government of Victoria which guarantees payment of the Office's debts as and when they are due. Accordingly, these accounts have been prepared on a going concern basis.

Note 2. Revenue

Revenue by source

	2005	2004
	\$	\$
Revenue from Government		
Grant from Department of Justice	4,400,921	4,066,550
Revenue from other Department of Human Services	795,092	616,533
Total revenue	5,196,013	4,683,083

Note 3. Result from ordinary activities

	2005	2004
	\$	\$
Net expenses		
Result from ordinary activities includes the following specific net expenses:		
Expenses		
Employee benefits		
Salary and wages	2,924,105	2,584,440
Superannuation	276,433	248,851
Annual leave and long service leave expense	368,614	280,488
Other on-costs (fringe benefits tax, payroll tax and Workcover levy)	197,770	237,503
Total employee costs	3,766,922	3,351,282
Depreciation		
Computer and communication equipment	51,570	63,730
Plant and equipment	12,175	11,895
Total depreciation	63,745	75,625
Amortisation		
Leasehold improvements	9,821	36,235
Motor vehicles (leased)	8,878	-
Total amortisation	18,699	36,235
Total depreciation and amortisation	82,444	111,860
Net loss on disposal of property, plant and equipment		
Rental expense relating to operating leases	253,015	225,297

Note 4. Supplies and services

	2005	2004
	\$	\$
Travel, carparking and accommodation	261,419	196,788
Printing, stationery and office consumables	174,232	152,498
Postage and communication	130,117	140,944
Contractors and professional services	33,353	52,831
Ex-gratia and honorarium payments	150,269	173,909
Information technology	114,558	103,403
Other expenses	448,726	359,879
Total	1,312,674	1,180,252

Note 5. Cash assets

	2005	2004
	\$	\$
Cash at bank and on hand	500	500
	500	500

The above figure is reconciled to cash at the end of the financial year as shown in the statement of cash flows as follows:

Balances as above	500	500
Balances as per statement of cash flows	500	500

Note 6. Receivables

	2005	2004
	\$	\$
Current		
Amounts owing from Department of Justice Debtors	239,341	289,437
	66,000	-
	305,341	289,437
Non-current		
Amounts owing from Department of Justice	153,235	-
	-	-
	153,235	-
Aggregate carrying amount of receivables		
Current	305,341	289,437
Non-current	153,235	-
	458,576	289,437

Note 7. Property, plant and equipment

	2005	2004
	\$	\$
Buildings		
Leasehold improvements - at cost	98,208	98,208
Less: Accumulated amortisation	(66,868)	(57,047)
Total buildings	<u>31,340</u>	<u>41,161</u>
Plant and equipment		
At cost	131,388	124,553
Less: Accumulated depreciation	(80,623)	(64,667)
Total plant and equipment	<u>50,765</u>	<u>59,886</u>
Computers and communication equipment		
At cost	297,071	293,357
Less: Accumulated depreciation	(213,549)	(196,439)
Total computers and communication equipment	<u>83,522</u>	<u>96,918</u>
Motor vehicles under lease		
Motor vehicles under lease	140,819	-
Less: Accumulated amortisation	(8,878)	-
Total motor vehicles under lease	<u>131,941</u>	<u>-</u>
Total property, plant and equipment	<u>297,568</u>	<u>197,965</u>

Reconciliation

Reconciliations of the carrying amounts of each class of property, plant and equipment at the beginning and each of the current financial year are set out below.

	Leasehold improvements	Plant & equipment	Computers & communication equipment	Motor vehicles under lease	Total
	\$	\$	\$	\$	\$
2005					
Carrying amount at start of year	41,161	59,886	96,918	-	197,965
Additions	-	3,055	40,839	140,819	184,713
Disposals	-			-	
Transfers	-	-	(2,665)	-	(2,665)
Depreciation/amortisation expense (note 3)	(9,821)	(12,175)	(51,570)	(8,878)	(82,444)
Carrying amount at end of year	<u>31,340</u>	<u>50,766</u>	<u>83,522</u>	<u>131,941</u>	<u>297,569</u>

Note 8. Payables

	2005	2004
	\$	\$
Current		
Creditors	15,100	5,505
Accruals	23,643	33,488
	<u>38,743</u>	<u>38,993</u>
Non-current		
	-	-
	-	-
Total payables	<u><u>38,743</u></u>	<u><u>38,993</u></u>

Note 9. Interest bearing liabilities

	2005	2004
	\$	\$
Current		
Secured		
Lease liabilities (note 17)	24,819	-
	<u>24,819</u>	<u>-</u>
Non-current		
Secured		
Lease liabilities (note 17)	107,566	-
	<u>107,566</u>	<u>-</u>
Aggregate carrying amount of interest bearing liabilities		
Current	24,819	-
Non-current	107,566	-
	<u>132,385</u>	<u>-</u>

Lease liabilities are effectively secured as the rights to the leased assets revert to the lessor in the event of default.

Assets pledged as security

The carrying amounts of non-current assets pledged as security are:

Finance lease

Plant and equipment under finance lease (note 7)	131,941	-
Total non-current assets pledged as security	<u>131,941</u>	<u>-</u>

Note 10. Provisions

	2005	2004
	\$	\$
Current		
Employee benefits (note 18)	<u>316,570</u>	270,604
Non-current		
Employee benefits (note 18)	<u>565,950</u>	493,016
Aggregate carrying amount of provisions		
Current	316,570	270,604
Non-current	565,950	493,016
	<u>882,520</u>	<u>763,620</u>

Note 11. Equity and movements in equity

	2005	2004
	\$	\$
(a) Contributed capital		
Balance 1 July	49,947	2,921
Capital contribution during the year by Department of Justice		51,497
Equity transfer within Government	(2,666)	(4,471)
Balance 30 June	<u>47,281</u>	<u>49,947</u>
(b) Accumulated surplus/(deficit)		
Accumulated surplus/(deficit) at the beginning of the financial year	(364,658)	(390,964)
Net result for the reporting period	20,374	26,306
Accumulated surplus/(deficit) at the end of the financial year	<u>(344,284)</u>	<u>(364,658)</u>
Total equity at the end of the financial year	<u>(297,003)</u>	<u>(314,711)</u>

Note 12. Financial instruments

(a) Credit risk exposures

The credit risk on financial assets of the Office which have been recognised on the statement of financial position is generally the carrying amount, net of any provisions for doubtful debts. Recognised financial assets of the Office are non-interest bearing.

(b) **Interest rate risk exposures**

The Office's exposure to interest rate risk and the effective weighted average interest rate by maturing periods is set out in the following table. For interest rates applicable to each class of asset or liability refer to individual notes to the financial statements.

Fixed interest maturing in:								
2005	Notes	Weighted average interest rate	Floating interest rate	1 year or less	Over 1 to 5 years	More than 5 years	Non-interest bearing	Total
			\$	\$	\$	\$	\$	\$
Financial assets								
Cash and deposits	5	-	-	-	-	-	500	500
Receivables	6	-	-	-	-	-	458,576	458,576
			-	-	-	-	459,076	459,076
Financial liabilities								
Creditors	8	-	-	-	-	-	38,743	38,743
Lease liabilities	9	6.29%	-	24,819	107,566	-	-	132,385
			-	24,819	107,566	-	38,743	171,128
Net financial assets (liabilities)			-	(24,819)	(107,566)	-	420,333	287,948

Fixed interest maturing in:								
2004	Notes	Weighted average interest rate	Floating interest rate	1 year or less	Over 1 to 5 years	More than 5 years	Non-interest bearing	Total
			\$	\$	\$	\$	\$	\$
Financial assets								
Cash and deposits	5	-	-	-	-	-	500	500
Receivables	6	-	-	-	-	-	289,437	289,437
			-	-	-	-	289,937	289,937
Financial liabilities								
Creditors	8	-	-	-	-	-	38,993	38,993
			-	-	-	-	38,993	38,993
Net financial assets (liabilities)			-	-	-	-	250,944	250,944

(c) **Net fair value of financial assets and liabilities**

The net fair value of cash and cash equivalents and non-interest bearing financial assets and financial liabilities of the Office approximates their carrying values.

	2005		2004	
	Carrying amount \$	Net fair value \$	Carrying amount \$	Net fair value \$
On-balance sheet financial instruments				
Financial assets				
Cash	500	500	500	500
Receivables	458,576	458,576	289,437	289,437
	459,076	459,076	289,937	289,937
Financial liabilities				
Creditors	15,175	15,175	38,993	38,993
Lease liabilities	132,385	132,385	-	-
	147,560	147,560	38,993	38,993

Note 13. Responsible persons

In accordance with the Ministerial Directions issued by the Minister for Finance under the *Financial Management Act 1994*, the following disclosures are made regarding responsible persons for the reporting period.

Names

The persons who held the positions of Ministers and Accountable Officers in the Department of Justice are as follows:

Attorney-General	The Hon. Rob Hulls, MP	1 July 2004 to 30 June 2005
Acting Attorney-General	The Hon. Bob Cameron, MP	1 July 2004 to 5 July 2004
	The Hon. John Pandazopoulos, MP	6 July 2004 to 12 July 2004
	The Hon. Bob Cameron, MP	7 August 2004 to 17 August 2004
	The Hon. Bob Cameron, MP	25 September 2004 to 3 October 2004
	The Hon. Bob Cameron, MP	3 November 2004 to 5 November 2004
	The Hon. Bob Cameron, MP	8 January 2005 to 30 January 2005
	The Hon. John Pandazopoulos, MP	21 March 2005 to 1 April 2005
	The Hon. John Pandazopoulos, MP	21 June 2005 to 26 June 2005

Secretary to the Department of Justice	Penny Armytage	1 July 2004 to 30 June 2005
Acting Secretary to the Department of Justice	David Cousins Roslyn Kelleher Alan Clayton	28 July 2004 to 12 August 2004 5 January 2005 to 26 January 2005 12 June 2005 to 25 June 2005

Accountable Officer, Office of the Public Advocate:

Public Advocate	Julian Gardner	1 July 2004 to 30 June 2005
Acting Public Advocate	David Sykes Fred Wright David Petherick	17 July 2004 to 29 July 2004 24 December 2004 to 16 January 2005 6 May 2005 to 14 June 2005

Remuneration

Remuneration received or receivable by the Accountable Officer in connection with the management of the Office of the Public Advocate during the reporting period was in the range: \$150,000 – \$159,999 (\$140,000 to \$149,999 in 2004).

Remuneration received or receivable by Ministers are reported in the financial statements of the Department of Premier and Cabinet.

Remuneration received or receivable by the Secretary and Acting Secretary to the Department of Justice are reported in the financial statements of the Department of Justice.

Note 14. Remuneration of executives

There are no Executive Officers employed by the Office.

Note 15. Remuneration of auditors

	2005	2004
	\$	\$
Audit fees paid or payable to the Victorian Auditor-General's Office for the audit of the Commission's financial report:		
Payable as at June 30 2005	10,050	9,800

Note 16. Contingent liabilities and contingent assets

There are no contingent liabilities or contingent assets as at balance date.

Note 17. Commitments for expenditure

	2005	2004
	\$	\$
Lease commitments		
Commitments in relation to leases contracted for at the reporting date but not recognised as liabilities, payable:		
Within one year	268,936	276,774
Later than one year but not later than 5 years	794,108	903,259
Later than 5 years	-	-
	<u>1,063,044</u>	<u>1,180,033</u>
Representing:		
Cancellable operating leases	-	-
Non-cancellable leases	1,050,830	1,180,033
Future finance charges on finance leases	12,214	-
	<u>1,063,044</u>	<u>1,180,033</u>
Operating leases		
Commitments for minimum lease payments in relation to non-cancellable operating leases are payable as follows:		
Within one year	236,400	276,774
Later than one year but not later than 5 years	681,997	903,259
Later than 5 years	-	-
Commitments not recognised in the financial statements	<u>918,397</u>	<u>1,180,033</u>
Finance leases		
Commitments for minimum lease payments in relation to non-cancellable finance leases are payable as follows:		
Within one year	32,536	-
Later than one year but not later than 5 years	112,111	-
Later than 5 years	-	-
Minimum lease payments	<u>144,647</u>	-
Less: Future finance charges	(12,262)	-
Recognised as a liability	<u>132,385</u>	-
Add: Lease incentives on non-cancellable leases included in lease liabilities	-	-
Total lease liabilities	<u>132,385</u>	-
Representing lease liabilities:		
Current (note 9)	24,819	-
Non-current (note 9)	<u>107,566</u>	-
	<u>132,385</u>	-

The weighted average interest rate implicit in the leases is 6.29 per cent.

There were no capital commitments for the acquisition of plant and equipment as at 30 June 2005 (2004 – nil).

Note 18. Employee benefits

	2005	2004
	\$	\$
Provision for employee benefits		
Current		
Annual leave	191,179	159,830
Long service leave	78,005	54,779
Salary accrual	47,386	55,995
	<u>316,570</u>	<u>270,604</u>
Non-current		
Long service leave	565,950	493,016
	<u>565,950</u>	<u>493,016</u>
Aggregate employee benefit liability	<u>882,520</u>	<u>763,620</u>
Employee numbers		
Average number of employees during the financial year	<u>49</u>	<u>48</u>

As explained in notes 1(l)(ii) and (iii), the amounts for long service leave and superannuation are measured at their present values. The following assumptions were adopted in measuring present values:

	2005	2004
Long Service Leave		
Weighted average rates if uncrease in annual employee entitlements to settlement of the liabilities	3.80%	4.50%
Weighted average discount rates	5.15%	5.64%
Weighted average terms to settlement of the liabilities	13 years	13 years

Government Employees' Superannuation Fund

No liability is recognised in the statement of financial position for the Office's share of the State's unfunded superannuation liability. The State's unfunded superannuation liability has been reflected in the financial statements of the Department of Treasury and Finance.

However, superannuation contributions for the reporting period are included as part of salaries and associated costs in the statement of financial performance of the Office.

The name and details of the major employee superannuation funds and contributions made by the Office are as follows:

Fund	Contribution	Contribution	Contribution	Contributions
	for the Year	for the Year	Outstanding	Outstanding at
	2005	2004	at Year End	Year End
	\$	\$	\$	\$
Government Superannuation Scheme - revised and new	96,071	94,739	-	-
Victorian Superannuation Fund - Accumulation	164,666	148,358	-	-
Various other	15,696	5,754	-	-
Total	276,433	248,851	-	-

The bases for contributions are determined by the various schemes.

All employees of the Office are entitled to benefits on retirement, disability or death from the Government Employees' Superannuation Funds. This Fund provides defined lump sum benefits defined lump sum benefits based on years of service and final average salary.

The above amounts were measured as at 30 June of each year, or in the case of employer contributions they relate to the years ended 30 June.

Note 19. Events occurring after reporting date

There were no material events occurring after reporting date to be reported. (2004 – nil).

Note 20. Reconciliation of net result for the reporting period to net cash inflow from operating activities

	2005	2004
	\$	\$
Net result for the reporting period	20,374	26,306
Loss from extraordinary items		
Results from ordinary activities	20,374	26,306
Depreciation and amortisation	82,444	111,860
Write-down values of non-current assets disposed		516
Decrease (increase) in receivables	(169,139)	(83,704)
Increase (decrease) in payables	132,135	14,505
Increase (decrease) in provisions	118,900	42,478
Net cash inflow from operating activities	184,714	111,961

Note 21. Impacts of adopting AASB 1047 equivalents to IASB standards

Following the adoption of Australian equivalents to International Financial Reporting Standards (A-IFRS), the Office will report for the first time in compliance with A-IFRS when results for the financial year ended 30 June 2006 are released.

An A-IFRS compliant financial report will comprise a new statement of changes in equity in addition to the three existing financial statements, which will all be renamed. The Statement of Financial Performance will be renamed as the Operating Statement, the Statement of Financial Position will revert to its previous title as the Balance Sheet and the Statement of Cash Flows will be simplified as the Cash Flow Statement. However, for the purpose of disclosing the impact of adopting A-IFRS in the 2004-05 financial report, which is prepared under existing accounting standards, existing titles and terminologies will be retained.

With certain exceptions, an entity that has adopted A-IFRS must record transactions that are reported in the financial report as though A-IFRS had always applied. This requirement also extends to any comparative information included within the financial report. Most accounting policy adjustments to apply A-IFRS retrospectively will be made against accumulated funds at the 1 July 2004 opening balance sheet date for the comparative period. The exceptions include deferral until 1 July 2005 of the application and adjustments for:

- AASB 132 *Financial Instruments: Disclosure and Presentation*; and
- AASB 139 *Financial Instruments: Recognition and Measurement*.

The comparative information for transactions affected by these standards will be accounted for in accordance with existing standards.

The Office has taken the following steps in conjunction with the Department of Justice and the Department of Treasury and Finance in managing the transition to A-IFRS and has achieved the following scheduled milestones:

- established a steering committee to oversee the transition to and implementation of the A-IFRS;
- established an A-IFRS project team to review the new accounting standards to identify key issues and the likely impacts resulting from the adoption of A-IFRS and any relevant Financial Reporting Directions as issued by the Minister for Finance;
- participated in an education and training process to raise awareness of the changes in reporting requirements and the processes to be undertaken; and
- initiated reconfiguration and testing of user systems and processes to meet new requirements.

This financial report has been prepared in accordance with current Australian accounting standards and other financial reporting requirements (Australian GAAP). The Office has not, to date, identified any differences between Australian GAAP and A-IFRS which are expected to have a material impact on the financial position and financial performance following the adoption of A-IFRS. This view may change as a result of:

- a) a change in facts and circumstances;
- b) ongoing work being undertaken by the A-IFRS project team;
- c) potential amendments to A-IFRS and Interpretations; and
- d) emerging accepted practice in the interpretation and application of A-IFRS and UIG Interpretations.

Accountable officer's and chief finance and accounting officer's declaration

We certify that the attached financial statements for the Office of the Public Advocate have been prepared in accordance with Standing Direction 4.2 of the *Financial Management Act 1994*, applicable Financial Reporting Directions, Australian accounting standards and other mandatory professional reporting requirements.

We further state that, in our opinion, the information set out in the statement of financial performance, statement of financial position, statement of cash flows and notes to and forming part of the financial statements, presents fairly the financial transactions during the year ended 30 June 2005 and financial position of the Office as at 30 June 2005.

We are not aware of any circumstances which would render any particulars included in the financial statements to be misleading or inaccurate.



Dale Monk
Chief Finance and Accounting Officer
Equal Opportunity Office
Melbourne
22 September 2005



Julian Gardner
Public Advocate
Office of the Public Advocate
Melbourne
22 September 2005



AUDITOR GENERAL
VICTORIA

INDEPENDENT AUDIT REPORT

Office of the Public Advocate

To the Members of the Parliament of Victoria and the Public Advocate

Scope

The Financial Report

The accompanying financial report for the year ended 30 June 2005 of the Office of the Public Advocate consists of the statement of financial performance, statement of financial position, statement of cash flows, notes to and forming part of the financial report, and the supporting declaration.

Public Advocate's Responsibility

The Public Advocate is responsible for:

- the preparation and presentation of the financial report and the information it contains, including accounting policies and accounting estimates
- the maintenance of adequate accounting records and internal controls that are designed to record the Office's transactions and affairs, and prevent and detect fraud and errors.

Audit Approach

As required by the *Audit Act 1994*, an independent audit has been carried out in order to express an opinion on the financial report. The audit has been conducted in accordance with Australian Auditing Standards to provide reasonable assurance as to whether the financial report is free of material misstatement.

The audit procedures included:

- examining information on a test basis to provide evidence supporting the amounts and disclosures in the financial report
- assessing the appropriateness of the accounting policies and disclosures used, and the reasonableness of significant accounting estimates made by the Public Advocate
- obtaining written confirmation regarding the material representations made in conjunction with the audit
- reviewing the overall presentation of information in the financial report.

These procedures have been undertaken to form an opinion as to whether the financial report is presented in all material respects fairly in accordance with Accounting Standards and other mandatory professional reporting requirements in Australia, and the financial reporting requirements of the *Financial Management Act 1994*, so as to present a view which is consistent with my understanding of the Office's financial position, and its financial performance and cash flows.

The audit opinion expressed in this report has been formed on the above basis.



AUDITOR GENERAL
VICTORIA

Independent Audit Report (continued)


Independence

The Auditor-General's independence is established by the *Constitution Act 1975*. The Auditor-General is not subject to direction by any person about the way in which his powers are to be exercised. The Auditor-General and his staff and delegates comply with all applicable independence requirements of the Australian accounting profession.

Audit Opinion

In my opinion, the financial report presents fairly in accordance with applicable Accounting Standards and other mandatory professional reporting requirements in Australia, and the financial reporting requirements of the *Financial Management Act 1994*, the financial position of the Office of the Public Advocate as at 30 June 2005 and its financial performance and cash flows for the year then ended.

MELBOURNE
22 September 2005


J.W. CAMERON
Auditor-General