



Submission on

**Exposure Draft of the *Public Advocate
(Official Visitors) Amendment Bill 2012***

February 2012

About ACTCOSS

ACTCOSS acknowledges that Canberra has been built on the traditional lands of the Ngunnawal people. We pay our respects to their elders and recognise the displacement and disadvantage they have suffered as a result of European settlement. We celebrate Aboriginal and Torres Strait Islander cultures and ongoing contribution to the ACT community.

The ACT Council of Social Service Inc. (ACTCOSS) is the peak representative body for not-for-profit community organisations, people living with disadvantage and low-income citizens of the Territory.

ACTCOSS is a member of the nationwide COSS network, made up of each of the state and territory Councils and the national body, the Australian Council of Social Service (ACOSS).

ACTCOSS' objectives are a community in which all people have the opportunities and resources needed to participate in and benefit from social and economic life and the development of a dynamic, collaborative and viable community sector.

The membership of the Council includes the majority of community based service providers in the social welfare area, a range of community associations and networks, self-help and consumer groups and interested individuals.

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Acronyms

ABS	Australian Bureau of Statistics
ACTCOSS	ACT Council of Social Service Inc.
AIHW	Australian Institute of Health and Welfare
AMC	Alexander Machonochie Centre
DVCS	Domestic Violence Crisis Service
OV	Official Visitor
WCHM	Women's Centre for Health Matters
WWDACT	Women With Disabilities ACT

Introduction

ACTCOSS welcomes the opportunity to provide comment on the Exposure Draft of the *Public Advocate (Official Visitors) Amendment Bill 2012* ('the Bill'), as released by the ACT Greens on 10 January 2012. The role of Official Visitors is an important one, seeking to hear the voices and experiences of people detained or voluntarily being cared for in government provided facilities.

The role of the Official Visitor overlaps with the work of the Commissioners established under the *Human Rights Commission Act 2005*. In the discussion following the tabling of the Board of Inquiry into Disability Services in the ACT (the Gallop Inquiry), and preceding the establishment of a number of Commissioners ACTCOSS put forward the position Government must consider:

- Maintaining and promoting a system of advocacy that is separate from oversight and complaints bodies;
- Affirming and, in collaboration with the community sector, articulating the role of non-government agencies as the primary providers of individual and systemic advocacy;
- Improving the independence of advocacy agencies from service funding bodies and service providers; and
- Expanding funding for, and provision of, advocacy in the areas of need identified in the consultants' report (indigenous people, housing and homelessness, discrimination, and children and young people) and in the advocacy system in general.¹

These principles hold today. Expansion of the scope of Official Visitors cannot be done in isolation from the role of Commissioners within the Human Rights Commission. Also, at the heart of any this discussion must remain the needs of vulnerable Canberrans accessing or detained in identified services.

¹ ACTCOSS ACTCOSS Response to the Report of the Review of Statutory Oversight and Community Advocacy Agencies, 2004, p.4.

Independence of Official Visitors

The Bill proposes to:

ensure the independence of Official Visitors by having them resourced by and located within the Office of the Public Advocate, rather than the current scenario where Official Visitors are resourced by the Directorates they investigate.²

Community groups have been calling for this change for a number of years and more recently the July 2011 report into the youth justice system by the ACT Human Rights Commission (known as the Bimberi Report) recommended the Official Visitors be placed in an agency which is independent from the Community Service Directorate.³

Having the Official Visitors sitting outside the directorates they investigate allows for less conflict of interest, perceived or otherwise. ACTCOSS believes it is important, however, the Official Visitors are able to take a case directly to the Minister, and is pleased to note this is included in the Bill.⁴ The proposal to place the OVs in the Public Advocate's Office is appropriate.

² ACT Greens, *Discussion Paper: Exposure Draft: Public Advocate (Official Visitors) Amendment Bill 2012*, 2012, p.4.

³ ACT Human Rights Commission, *The ACT Youth Justice System 2011: A Report to the ACT Legislative Assembly by the ACT Human Rights Commission*, 2011, p.370.

⁴ ACT Greens, *Exposure Draft: Public Advocate (Official Visitors) Amendment Bill 2012*, 2012, p.13.

Proposed New Official Visitors

People with disabilities

ACTCOSS supports the proposal to create an Official Visitor position specifically for people with disabilities who live or stay in group homes or respite accommodation. Australian Institute of Health and Welfare data shows there has been an ongoing shift away from people with disabilities living in institutional care towards accommodation in group home settings.⁵ Although people living in such situations are not detained or mandated to live in such accommodation, their choices are often limited about where they can live, and they may have less opportunities to move to other accommodation should they wish. In such circumstances, an Official Visitor may provide an important service in inspecting group homes or respite accommodation to ensure the facilities are of sound quality. Additionally, people with disabilities may be dependent on the people providing the accommodation to them for their care and treatment, or be unable to advocate on behalf of themselves due to the nature of their disability. As such, an OV could provide an advocacy service and give people an opportunity to have their complaints heard and supported.

Discussions with community organisations groups who work with people with disabilities have raised concerns about the process in which a person may make a complaint to an OV. Currently people may request to see an OV if they wish to make a complaint about the facility in which they are living, or the treatment they are receiving there. It is vital non-verbal people with disabilities are able to request to see an OV, and there should be clauses in the legislation which enable and support this.

People experiencing homelessness

The proposal to create an Official Visitor for people experiencing homelessness is a difficult issue and one which may demand further research and consideration. Any such consultation must take place cognisant of the proposed National Quality Framework for the provision of services for people who are homeless.

During 2010-11 approximately 3500 people received support from government-funded specialist homelessness services in the ACT. This was equivalent to 1 in 101 people accessing services.⁶ There continues to be significant unmet demand in specialist homelessness services across the nation, with government-funded specialist homelessness agencies operating at capacity and unable to completely meet the demand for accommodation.⁷

As homeless services are in high demand in the ACT and there is often a shortage of beds, it could be argued people experiencing homelessness have reduced choice about where they access accommodation. While they are not mandated to stay in such accommodation, this may place people in a

5 AIHW, *Australia's Welfare 2011*, Australia's welfare series no.10. Cat. no. AUS 142, p.148.

6 AIHW, *Government funded specialist homelessness services: SAAP National Data Collection annual report, Australian Capital Territory*, 2011, p.1.

7 AIHW, *People turned away from government-funded specialist homelessness accommodation 2009-10*, 2011, p.v.

vulnerable position where they feel they cannot make a complaint about the facility they are in, or the treatment they are receiving. In such circumstances, an OV type position could provide an important service for people experiencing homelessness to make a complaint about the facility they are in, or the treatment they feel they are receiving.

The report on the second stage consultations regarding a national quality framework finds

Consumers endorsed the idea of a national complaints handling system... [A]t a minimum, they believed a third party should be available to investigate complaints where complaints lodged with service providers were left unresolved. Consumers indicated that they would need to be empowered to make use of such a mechanism.⁸

ACTCOSS is aware however, of the difficulty this may pose for the many non-government homelessness service providers, and the conflict which may arise from complaints being made by people experiencing homelessness who have limited choices available. As such, ACTCOSS recommends a thorough consultation with the homelessness sector, and those accessing such services, in order to gauge their opinion on the creation of an Official Visitor for people experiencing homelessness.

Women

ACTCOSS believes there are other groups of vulnerable people who should be considered in the amendment to the Bill. In particular, ACTCOSS believes consideration should be made to the creation of an Official Visitor for women.

Accounting for a very small percentage in the Alexander Machonochie Centre (AMC), anecdotal evidence points to women being denied similar opportunities and access to educational programs and services as their male counterparts receive.⁹ ACTCOSS believes an OV for women could provide a strong base of support for women who are detained, and give them an opportunity to have their complaints addressed.

A 2009 joint report by the Women's Centre for Health Matters (WCHM), the Domestic Violence Crisis Service (DVCS) and Women with Disabilities ACT (WWDACT), *Women With Disabilities Accessing Crisis Services* found women with disabilities are more likely to experience abuse or violence than women without disabilities.¹⁰ This violence or abuse can occur in a range of domestic settings such as group homes, institutions, hospitals, respite care facilities, or day activity centres.¹¹

8 Ipsos-Eureka Social Research Institute Research and Facilitation Services, *Consultations concerning a National Quality Framework for the Provision of Services to People who are Homeless or at Risk Stage 2 Report - Final Report*, 2011, p.8.

9 D Wybron and K Dicker Women's Centre for Health Matters Inc, *ACT Women and Prisons – Invisible Bars: The Stories behind the Stats*, 2009.

10 Women's Centre for Health Matters, Domestic Violence Crisis Service, and Women with Disabilities ACT, *Women With Disabilities Accessing Crisis Services*, 2009.

11 Ibid.

An Official Visitor for women could provide a valuable advocacy service for women with disabilities who are living in group homes or respite care accommodation. As the research indicates, such women are particularly vulnerable and would benefit from having an OV dedicated to investigating the places they are living in and the care and treatment they are receiving.

Aboriginal and/or Torres Strait Islander peoples

ACTCOSS supports the creation of an Official Visitor specifically for children and young people of Aboriginal and/or Torres Strait Islander descent. ACTCOSS also supports the creation of such a position for people of Aboriginal and/or Torres Strait Islander descent who are incarcerated or detained in the ACT.

Children and Young People

Data from 2009-10 shows the level of Aboriginal and/or Torres Strait Islander over-representation in the ACT as higher for detention than for community based supervision (at 39 percent and 19 percent respectively).¹² Of particular concern to ACTCOSS is the data which shows an Aboriginal and/or Torres Strait Islander young person aged 10-17 is 11 times as likely to be under community-based supervision and 22 times as likely to be in detention, when compared to the rest of the young person population.¹³

ACTCOSS takes the view it is of particular importance young people of Aboriginal and/or Torres Strait Islander descent who are detained in Bimberi Youth Justice Detention Centre are granted access to a culturally appropriate advocacy service such as an Official Visitor who identifies as Aboriginal and/or Torres Strait Islander. Amongst other reasons, cultural differences may impede these young people's concerns and interests being enunciated, and an OV could help to bridge this gap and ensure their complaints are being heard.

Having an Aboriginal and/or Torres Strait Islander specific Official Visitor for children and young people is also important in order to fully advocate on behalf of those who are in out-of-home care. Aboriginal and/or Torres Strait Islander children continue to be over-represented in the child protection system, and as of 30 June 2011, the rate of Aboriginal and/or Torres Strait Islander children in out-of-home care nationally was 10 times the rate of other children (rate of 51.7 and 5.1 per 1,000 children, respectively).¹⁴

From 30 June 2007 to 30 June 2011, the rate of Aboriginal and/or Torres Strait Islander children on care and protection orders has increased steadily (from 34.8 to 51.4 per 1,000), while the rate for non Aboriginal and/or Torres Strait Islander children has remained relatively unchanged.¹⁵

Such statistics show a need for an OV who can advocate on behalf of, and provide support to, young people of Aboriginal and/or Torres Strait Islander descent who are in out-of-home care, and ensure they are receiving adequate care and treatment. In addition, the OV would also be playing an important role in giving children an opportunity to maintain a link with their community.

12 AIHW. *Juvenile justice in Australia 2009–10*. Juvenile justice series no. 8. JUV 8. p.186.

13 Ibid.

14 AIHW, *Child protection Australia 2010–11*, Child Welfare series no. 53. Cat. no. CWS 41. 2012, <http://www.aihw.gov.au/publication-detail/?id=10737421016&tab=2>

15 Ibid.

Corrections

Aboriginal and/or Torres Strait Islander peoples are significantly over represented in the criminal justice system. As at 30 June 2011, there were 29,106 prisoners (sentenced and on remand) in Australian prisons.¹⁶ Aboriginal and/or Torres Strait Islander peoples made up 26% of this total.¹⁷ The age standardised imprisonment rate for Aboriginal and/or Torres Strait Islander prisoners was 1,868 per 100,000 adult Aboriginal and/or Torres Strait Islander population. The equivalent rate for the rest of the population was 130 per 100,000. These statistics show a rate of imprisonment for Aboriginal and/or Torres Strait Islander prisoners at 14 times higher than the rate for other prisoners, with no change from the rate in 2010 - an imbalance which is of particular concern to ACTCOSS.¹⁸

In light of the above information, ACTCOSS fully supports the creation of an Official Visitor for Corrections specifically for detainees of Aboriginal and/or Torres Strait Islander descent as a way of ensuring there is a culturally appropriate advocacy service for them.

16 ABS, *Prisoners in Australia*, 4517.0, 2011, p.8.

17 Caution should be exercised when interpreting movements in Aboriginal and Torres Strait Islander prisoner numbers as data movements may be impacted by the willingness of Aboriginal and Torres Strait Islanders to self identify.

18 ABS, *Prisoners in Australia*, 4517.0, 2011, p.50.

Mental Health Consumers

The proposed amendment to the role of the Mental Health Official Visitors to be expanded to include persons subject to community care orders is not without merit. However consultations with the community sector have raised concerns about references to mental health consumers in the amended bill which do not align with the *Mental Health Act (1994)*. In the *Mental Health Act* community care orders relate to people who are classified as having mental dysfunction, or a primary diagnosis of disability with a secondary mental health problem.¹⁹ In such cases people may be housed in a group home, in which case an OV would be an appropriate role to inspect the facility and ensure people there were being treated fairly. At other times however, people on community care orders may be staying in their own home, with a carer, or in the home of a family member. In such circumstances a visit by an OV could be construed as inappropriate and a breach of privacy. The *Human Rights Act (2004)* states

Everyone has the right—

(a) not to have his or her privacy, family, home or correspondence interfered with unlawfully or arbitrarily.²⁰

How this right will be maintained needs to be considered regarding individuals on care orders living in their own home, or with a carer. ACTCOSS recommends this proposal be reviewed to ensure consistent terminology is in place, and human rights issues are considered.

An OV for an operational Act such as the Mental Health Act has the power to, at any reasonable time and without prior notice, enter what is termed a 'visitable place' for the operational Act to undertake a check of the place. In the proposed Bill a visitable place means:

- a community care facility; or
- a mental health facility (including a private mental institution)
- a place outside a community care or mental health facility if a person is, or has been, required to attend the place under a community care or restriction order.²¹

Under the Mental Health Act, the term 'community care facility' relates to a facility, or part of a facility, for the care, protection, rehabilitation or accommodation of mentally dysfunctional persons; or a prescribed psychiatric institution or a prescribed part of a psychiatric institution. The term does not cover correctional centres.²² ACTCOSS recommends a clear definition of the types of places the Official Visitors can visit. In particular 'non-government operated long term accommodation' needs to be clarified, as the majority of this type of accommodation involves the person holding lease for the property.

19 *Mental Health (Treatment and Care) Act 1994*, viewed 17 February 2012, s.36.

20 *Human Rights Act 2004*, s.12.

21 *Public Advocate (Official Visitors) Amendment Bill 2012*, s.121.

22 *Mental Health (Treatment and Care) Act 1994*, Dictionary.

Other Issues

Public Register of Disability Accommodation

ACTCOSS supports the proposed amendment to require the Community Services Directorate to maintain a register of approved disability accommodation places. This will support greater transparency and quality control of such places. ACTCOSS recommends the disability sector of ACT, including advocacy groups such as the ACT Disability, Aged and Carer Advocacy Service be thoroughly consulted during the creation of such a register.

Community Services Commissioner

ACTCOSS would like to take the opportunity to highlight that the role of Commissioner for Community Services, established under the *Human Rights Commission Act (2005)* remains undefined. As outlined by the Community Services Commissioner:

Despite the title of Disability & Community Services Commissioner, the Commissioner has no complaints function in relation [to] community services... As there is no power to investigate complaints about community services and no function of promoting them, it would be preferable for either, the power and functions to be identified and legislatively given to the Commission, or for the Commissioner's title to be changed.

The Commissioner has noted this issue in previous Annual Reports and, while some discussions were held with departmental officers about the issue, it appears that little progress has been made in relation to addressing it.²³

The lack of clarity of the functions of the Commissioner for Community Services is concerning. As some of the proposed amendments in the *Public Advocate (Official Visitors) Bill 2012* seek to engage community services, an understanding of the overlap of potential roles and responsibilities is required – both for community services and their clients.

23 ACT Human Rights Commission *Annual Report 2010-11*, 2011, p.60.