



ACT  
Mental Health  
Consumer Network

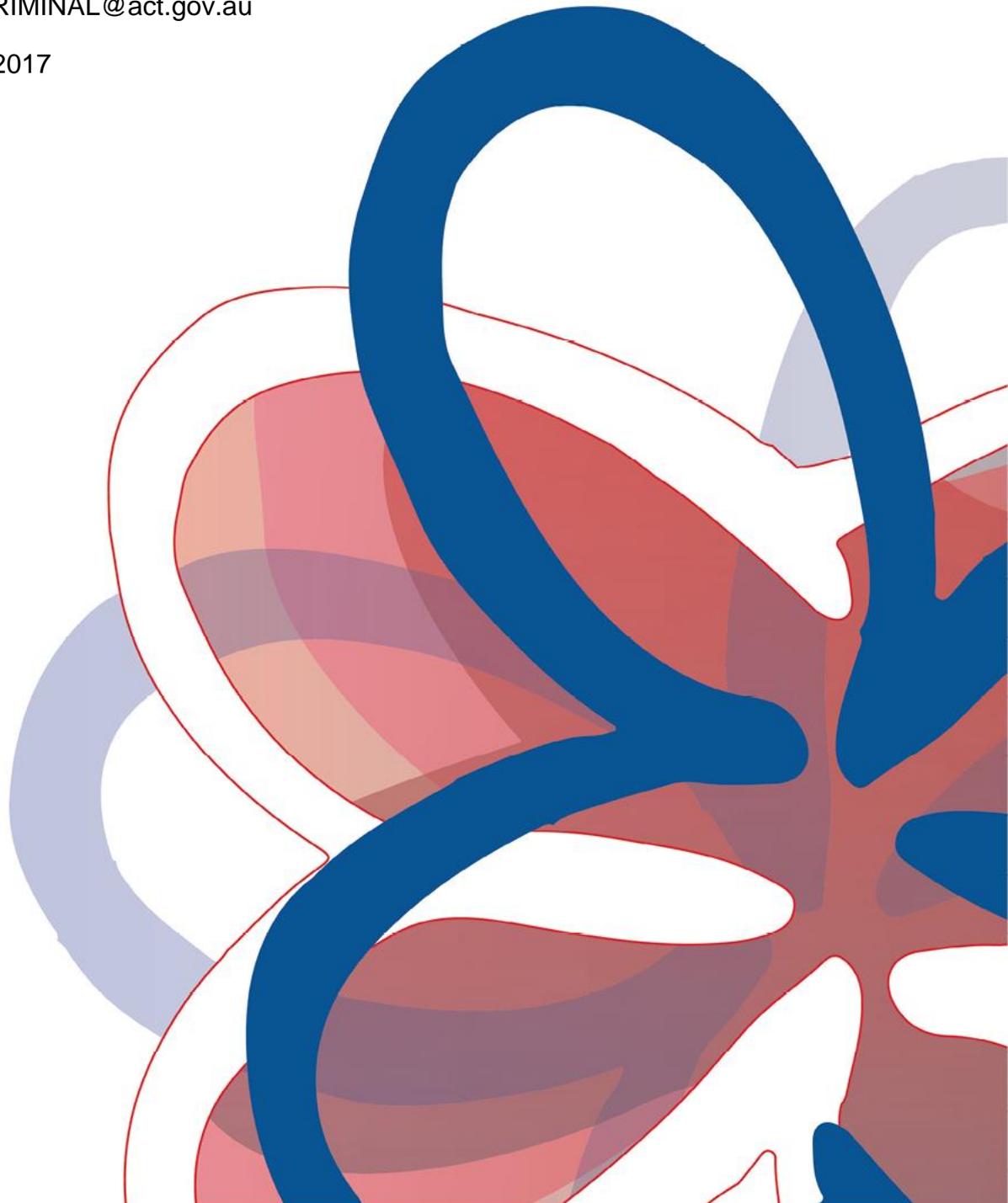
ACT Mental Health Consumer Network Inc.  
The Griffin Centre, Level 2, Room 11  
20 Genge Street, Canberra City, 2601  
P.O.BOX 469, Civic Square, ACT, 2608  
Phone: 02 6230 5796 Fax: 02 6230 5790  
Email: [policy@actmhc.org.au](mailto:policy@actmhc.org.au)  
Website: [www.actmhc.org.au](http://www.actmhc.org.au)

**Submission:**

## Inspector of Correctional Services Bill 2017

Submitted by email to:  
JACSLPPCRIMINAL@act.gov.au

13 October 2017



## **SUBMISSION: INSPECTOR OF CORRECTIONAL SERVICES BILL**

This submission has been prepared by the ACT Mental Health Consumer Network in response to the Parliamentary Counsel's Office.

### **About the ACT Mental Health Consumer Network**

The ACT Mental Health Consumer Network is a consumer-led peak organisation representing the interests of mental health consumers in the ACT in policy and decision-making forums. The Network is a member based organisation committed to social justice and the inclusion of people with lived experience of mental illness. Run by consumers for consumers, our aim is to advocate for services and supports for mental health consumers which better enable them to live fuller, healthier and more valued lives in the community.

The Network sought input from our members who reviewed the draft Inspector of Correctional Services Bill 2017.

### **Overall comments**

Mental health consumers come into contact with the justice system in disproportionate numbers relative to the general population, and contact with the justice system, particularly correctional services, can lead to mental health issues for some people. It is important that mental health consumers have input into legislation that affects them. Our consumers particularly noted the Bill's intention to protect the rights of people in custodial services and the recognition that care and welfare are broader than safety as being positive aspects of the Bill.

Through speaking to consumers and listening to their stories the following issues with the exposure draft have been identified and amendments suggested:

### **Appointment of inspector**

In Section 9 (4), while a person may be reappointed to the position of inspector, it is unclear as to whether an appointment can be renewed without a selection and confirmation process. Section 9, or a related regulation, should articulate the reappointment process to specify whether reappointment entails such processes.

### **Ending appointment**

In Section 12 (1)a, misconduct is identified as grounds for ending an appointment, however misconduct is not defined. Clear guidance regarding what constitutes misconduct as distinct from unprofessional or criminal conduct needs to be included

in the Act or its instruments or regulations.

Ending the appointment for reasons of ‘physical or mental incapacity’ (Section 12 (2)) also requires clarification. There may be circumstances where the incapacity is not permanent and an inspector is able to recommence duties after a period of absence. People with lived experience should not be excluded from undertaking the role as a result of an episodic, transient or temporary condition from which recovery is possible. Physical incapacity also needs to be operationally distinguishable from physical disability, a condition which given reasonable adjustments would not preclude a person from performing the duties of the role. A note providing examples of what does and does not constitute ‘physical or mental incapacity’ would assist in the correct interpretation of this part of the legislation.

### **Contractors**

There is a lack of clarity regarding the difference between engaging a person under a contract and entering into a contract of employment. (The inspector may engage a person under a contract (Section 14 (1)) but may not enter into a contract of employment with a contractor (Section 14 (2)).) A note defining the difference and specifying who does have the power to enter into a contract of employment would justify these stipulations.

### **Inspector’s functions and powers**

Regarding Section 17 (1)a, examining and reviewing correctional centres every two years is insufficient. These centres should be reviewed annually. Additionally, giving the inspector the power to examine and review correctional services on their own initiative (Section 17 (1)b) is nebulous – this power should be exercised at any appropriate time. Finally, regarding Section 17 (1)c, critical incidents should always be reviewed; they should be one of the inspector’s primary concerns. Every incident should be comprehensively reviewed, including reviews of policies and procedures to ensure that critical incidents arising from them do not recur.

The language regarding cultural diversity and vulnerability needs to be much stronger to safeguard against the erosion of detainees’ rights. The inspector must always consult with people using translating and interpreting services if needed or using staff suitable to the cultural background or vulnerability of a detainee. Where diversity and vulnerability are concerned, no compromises should be made. It is always appropriate and no length is too extraordinary to ensure that people are protected and their diversity is respected.

### **Inspector may enter correctional centre etc.**

The language in Section 18 (1) needs to be strengthened to allow the inspector access at any time, or to define what constitutes an unreasonable time and who has

the power to declare a particular time unreasonable. In Section 18 (2), the inspector must also have the power to inspect policy and procedure documents in addition to records kept by the correctional centre.

With respect to interviewing, Section 18 (4) needs to state who the inspector may interview but also specify that those interviews must be conducted privately. At present, it allows for people to be publicly interviewed and this could compromise the safety of individuals and disallow confidential disclosure.

### **Assistance for inspector**

The legislation specifies penalties for individual instances of failure to assist the inspector and obstruction (Section 19 (2) and (3)) but makes no determination regarding consequences for repeated instances. Unless outlined in other legislation, this section needs to state the consequences for recurring obstructions or failures to provide assistance or answer questions.

### **Public interest considerations**

The inclusion of matters that must not be taken into account is important, however, Section 21 (3) can be easily misread. Emphasis needs to be placed on the negation in that section to ensure that all persons reading the legislation interpret it correctly.

### **Draft report to Minister and director-general**

Providing a draft report to the Minister and director-general before the report is seen by the Legislative Assembly creates the possibility for parties to collude to conceal facts from the Assembly. This possibility is of grave concern, especially considering that amendments can be made without attaching the comments that gave rise to the amendments to the report. For the sake of transparency, where amendments are made from comments, those comments must be attached to the report when it is presented to the Legislative Assembly.

### **Inspector may refer matter to investigative entity**

Section 25 (4) allows for no action to be taken on a matter referred by the inspector. Where a referred matter is not investigated by the entity it is referred to, the inspector should be required to investigate.

### **Oversight entities may refer matter to inspector**

Section 27 (4) allows for no action to be taken on a matter referred to the inspector. Where an oversight entity refers a matter to the inspector, the inspector should be required to investigate.

## **Offence – use or divulge protected information**

Section 29 (1) and (2) allow the inspector to commit an offence of this kind and still be eligible to hold the position, as the exclusion criteria for offences is those carrying imprisonment for at least one year. Persons who commit such an offence should be disqualified from holding the position of inspector.

In Section 29 (5), when a person is required under this Act or another territory law to divulge protected information, they should be explicitly informed of which law requires them to do so, and the Act should clearly state this as a requirement.

## **Consequential amendments**

Records of use of force should be required to be given to the inspector and an official visitor. Inspector should not be substituted for an official visitor in Section 142 (3) of the Corrections Management Act 2007.