Submission to ACT Greens:

Exposure Draft:

Public Advocate (Official Visitors) Amendment Bill 2012

Submitted via email to:

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By:

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On: 29 February 2012

ACT Mental Health Consumer Network Submission

This submission has been prepared by the ACT Mental Health Consumer Network (the Network) in response to the request for feedback on the Exposure Draft of the Public Advocate (Official Visitors) Amendment Bill 2012.

The Network is the peak body for mental health consumers in the ACT. 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. We do this through advocacy, representation, lobbying and active involvement in new developments in the mental health sector, as well as in the wider health and community sectors.

The Network commends the ACT Greens for their commitment to improving the position of the most vulnerable in the community, including through the proposals in the draft Bill. The Network welcomes the opportunity to provide comments on the draft Bill.

KEY PROPOSAL 3.1 - INDEPENDENCE OF OFFICIAL VISITORS

The Network acknowledges that the proposal to locate the Official Visitors within the Office of the Public Advocate of the ACT has a long history, and that it has been recommended in a number of reports, as set out in the Explanatory Paper.

The Network is aware of and supports the comments made by the Mental Health Community Coalition of the ACT about this proposal. We support the principle that Official Visitors should be independent of the agency that is responsible for their resources. However, some consumers have raised concerns that moving Official Visitors to the Public Advocate's office may limit the access they have to the relevant directorate staff.

The Network supports the proposal for Official Visitors to be located with the Public Advocate. It will be crucial to the success of this move that Official Visitors are able to continue to access and work with staff within the relevant directorates in an informal as well as formal way.

The Network also has some concern that amendment 5, clause 13G, does more than bring the Official Visitors together for administrative purposes. It also creates a hierarchy, with the Official Visitors being overseen and represented by the Public Advocate. The Network would prefer to see the Official Visitors being part of a collegiate structure. This would enable the Official Visitors to benefit from independence from Directorates and co-location with each other and the Public Advocate, without subordinating the Official Visitors to the Public Advocate.

KEY PROPOSAL 3.2 - GENERAL RESPONSIBILITIES OF OFFICIAL VISITORS

The Network welcomes the move to consolidate the provisions dealing with the general responsibilities of Official Visitors. We agree that clarifying the provisions dealing with complaints is overdue, and will assist both consumers and the Official Visitors themselves.

We have two areas of concern with this aspect of the draft Bill.

First, we are concerned that the extent of the provisions about complaint handling may discourage consumers and Official Visitors from seeking to resolve issues in an informal way, and may push people to focus on formal complaints as the primary means of dealing with concerns. There is, in our view, great value in Official Visitors being able to raise issues and discuss approaches, with a view to resolving concerns, without matters having to be raised in a formal complaint process.

Second, we are concerned that the redrafting of the functions of the Official Visitors may not have picked up all the functions currently conferred on Official Visitors under the *Mental Health (Treatment and Care) Act 1994* (Mental Health Act). Section 122 of the Mental Health Act currently confers functions on Official Visitors appointed under that Act, including:

> **122 Official visitor—functions**
>
> (1) An official visitor—
>
> (b) shall inquire into—
>
> (i) the adequacy of services for the assessment and treatment of persons with mental dysfunction or a mental illness; and
>
> (ii) the appropriateness and standard of facilities for the recreation, occupation, education, training and rehabilitation of persons receiving treatment or care for mental dysfunction or a mental illness; and
>
> (iii) the extent to which people receiving treatment or care for mental dysfunction or a mental illness are being provided the best possible treatment or care appropriate to their needs in the least possible restrictive environment and least possible intrusive manner consistent with the effective giving of that treatment or care; and

The general functions conferred on Official Visitors in amendment 5, clause 13H do not appear to cover this aspect of the existing functions adequately. While it may be that it is implicit in the reporting function in amendment 5, clause 13K, this clause does not provide the specific inquiry function currently contained in s.122. Likewise, the quarterly reports required under clause 13ZA appear to relate only to complaints made under the proposed amendments.

The Network considers that there is value in continuing, and continuing to make explicit, the functions included in s.122(1)(b) and recommends that this provision be included in the new Part 11 of the Mental Health Act.

KEY PROPOSAL 3.3 - NEW OFFICIAL VISITORS

The Network agrees that people with disability and those experiencing homelessness are among the most vulnerable. The creation of new Official Visitors to oversee disability and emergency accommodation may provide greater protection for people accessing these services. In particular, in light of the unmet need for individual advocacy in the ACT, both groups may benefit from the advocacy that Official Visitors may provide. Again, though, the Network considers that too great a focus on formal complaints in the new provisions may reduce the ability of Official Visitors to assist individuals by seeking to resolve their issues informally.

The Network recognises the overrepresentation of Aboriginal and Torres Strait Islander people in youth and adult justice facilities, and supports the measures in the Bill requiring the appointment of Aboriginal and Torres Strait Islander-specific Official Visitors.

KEY PROPOSAL 3.4 – PEOPLE WITH A MENTAL ILLNESS UNDER COMMUNITY CARE OR RESTRICTION ORDERS

The Network agrees that it is appropriate for Official Visitors to be able to oversight services provided to mental health consumers under orders made under the Mental Health Act. However, consumers believe that a very careful line needs to be drawn to ensure that Official Visitors do not have an inappropriate ability to enter people's homes.

The Network refers to and agrees with the concerns raised by the Mental Health Community Coalition ACT about the drafting of the provisions intended to effect the policy outcome.

KEY PROPOSALS 3.5 AND 3.6

The Network has no comment on the proposals regarding frequency of visits and legislative approval for disability accommodation places, other than to note the importance of adequate funding to enable sufficiently frequent visits.

DRAFTING ISSUES

The Network suggests that, in addition to the drafting issues raised above, the drafting of some other aspects could benefit from further refinement.

- Amendment 5, clauses 13K and 13ZA: It appears that both clauses require reporting to the same people. Clause 13K will require reporting related to compliance with the operational Act (for mental health consumers, the Mental Health Act). Clause 13ZA will require quarterly reporting on complaints received and action related to them.

  In both cases, the report is to be provided to the 'operational Minister', 'relevant Director-General' and the Public Advocate. However, confusingly, these three recipients are specified in subclause 13K(2) as the people the Official Visitor must report to, while in clause 13ZA(1) the obligation is to give a report to the 'relevant people', who are then defined in subclause 13ZA(5) as the same people directly listed in subclause 13K(2).

  We suggest it would be clearer if the same drafting approach (either 'relevant people' which is then defined, or listing the people) be used in both clause 13K and clause 13ZA.

- Amendment 5, clause 13M: The bulk of the provisions in the new Division 3A.4 refer to 'visitable places'. We understand the meaning of 'visitable places' for mental health consumers, as defined in Schedule 1, amendment 1.33, clause 121, is intended to be broader than places of accommodation or detention, if a consumer is required to attend a place to receive services under an order from the ACT Civil and Administrative Tribunal.

It is not clear to us why clause 13M enables, instead, a complaint about any aspect of a person's *accommodation*, including the conditions of accommodation. It would assist if the difference, if any, between the scope of complaints about accommodation and the scope of the powers and activities of the Official Visitors in relation to visitable places could be clarified.

- Schedule 1, Amendment 1.33, note to clause 121: The Network agrees that it is important to be clear that a *mental health facility* includes a private mental institution. However, we are concerned that the proposed note to clause 121 may cause confusion in other parts of the Mental Health Act. Under the current definitions in the Dictionary in the Mental Health Act, a 'private mental institution' is, by a convoluted route, included in the definition of mental health facility. The term is used frequently throughout the Act. If there is concern that it is not clear that it includes a private mental institution, any confusion may be exacerbated rather than reduced by including a note with only one instance of use of the term.