



**Greens Public Advocate (Official Visitors)  
Amendment Bill 2012  
Feedback on Exposure Draft**

**Women's Centre for Health Matters Inc.,**

**Women and Mental Health Working Group,**

**and**

**ACT Women And Prisons Group**

February 2012

The Women and Mental Health Working Group, ACT Women And Prisons Group and the Women's Centre for Health Matters acknowledge the Ngunnawal people as the traditional owners and continuing custodians of the lands of the ACT, and we pay our respects to the Elders, families and ancestors.

We acknowledge that the effect of forced removal of Indigenous children from their families as well as past racist policies and actions continues today.

Women's Centre for Health Matters Inc., Women and Mental Health Working Group, and ACT Women And Prisons Group, 2012.

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## INTRODUCTION

***The Women's Centre for Health Matters Inc. (WCHM)*** is a community-based organisation that works in the ACT and surrounding region to improve women's health and wellbeing.

WCHM believes that health is determined not only by biological factors, but by a broad range of social, environmental and economic factors known as the 'social determinants of health'. WCHM acknowledges that the environment and life circumstances that each woman experiences have a direct impact on her health, and in many cases, women's poor health is rooted in social disadvantage. For these reasons, WCHM is committed to taking a whole-of-life and social approach to women's health that is also firmly situated within a human rights framework.

WCHM focuses on groups of women who experience disadvantage, social isolation and marginalisation (women with disabilities, institutionalised women, women living with mental health issues, women from culturally and linguistically diverse backgrounds (CALD), and older women) and uses social research, community development, advocacy and health promotion to:

- provide women with access to reliable and broad ranging health-related information which allows informed choices to be made about each woman's own health and wellbeing, and
- advocate to influence change in health-related services to ensure responsiveness to women's needs.

***The ACT Women And Prisons Group (WAP)*** is made up of women with lived experience of prison, including ex-prisoners and those currently detained in the criminal justice system, as well as ACT women's services and other interested women. WAP provides emotional and practical support both during and after incarceration, and advocates for the human rights of all women involved in the criminal justice system.

WAP's advocacy role is focussed on educating stakeholders about the needs of women with lived experience of the criminal justice system. WAP sees the criminal justice system as not just about Justice or Corrections, but as requiring a whole of Government approach.

WAP uses peer support as a vehicle to build relationships and trust with women and to identify service gaps within the system. WAP is guided by women with lived experience of prison and provides opportunities and support for these women to actively contribute to the Group's work.

**The Women and Mental Health Working Group** comprises local service providers, Government representatives, other community organisations and peak bodies, and women living with mental health issues, and was established in 2007 to provide a regular forum in which members could work together on matters impacting on women in order to provide improved outcomes for them, and to develop and maintain a full range of women friendly services.

## **Response to the Green's Exposure Draft of the Public Advocate (Official Visitors) Amendment Bill 2012.**

WCHM is an organisation that works with women who may experience, or are experiencing disadvantage, and works to ensure that these women's views and experiences are heard. We welcome the opportunity to provide feedback on the Green's Exposure Draft of the Public Advocate (Official Visitors) Amendment Bill 2012.

In writing this submission WCHM has chosen to limit its responses to those areas in which it has the most knowledge – the views, preferences, aspirations and concerns of ACT women, especially in relation to those who have special needs and who are vulnerable to exploitation or abuse within institutions. This response is therefore informed the views and concerns of our partners (including Women With Disabilities ACT, the Women and Mental Health Working Group and the ACT Women And Prisons group) with whom we work closely on the specific issues for and needs of ACT women, as well as a variety of ACT women and service providers, and WCHM's research and consultations.

WCHM, WAP, and WMHWG would like to indicate their support for the Public Advocate (Official Visitors) Amendment Bill 2012 (the Bill).

Institutions (including correctional facilities, mental health inpatient units, homeless/housing services, and supported accommodation such as group homes for people with disabilities) exist ostensibly to support and/or rehabilitate some of the most disadvantaged people in our society. However, the institutional environment can also heighten the vulnerability of these people. For example, women are at higher risk of experiencing sexual violence when they are institutionalised, and this risk is compounded for women who possess other facets of disadvantage, such as women with disabilities.<sup>1</sup> In addition, many women housed in institutions have a history of violence, abuse, and/or sexual assault (some studies estimate

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<sup>1</sup> Women With Disabilities Australia, Submission to the UN Analytical Study on Violence against Women and Girls with Disabilities, December 2011. <http://www.wwda.org.au/WWDASubUNStudyViolenceWWDDec2011.pdf>

up to 89% of women in prison have experienced sexual violence prior to their incarceration),<sup>2</sup> and an institutional environment characterised by mechanisms of control and discipline can prove re-traumatising for women with these backgrounds. While some women are institutionalised because they have been legally mandated to reside in a correctional facility, or because they are in need of specialist care, other women find themselves living in institutional environments because their circumstances have left them with no other choice. Women who are escaping domestic violence, who are homeless, or who are living in poverty, often have no other resort than to access homelessness and domestic violence/crisis services. It is therefore essential that Government ensures that people in 'institutions' – in particular, women – are protected through appropriate access to advocacy and complaints channels.

The Bill is a positive step towards protecting the rights of some of the most vulnerable people in our community and ensuring that institutions remain accountable for the standard of care they provide. In particular, it should be commended for including homelessness services, refuges, and supported accommodation within the Official Visitor's mandate.

#### Official Visitors in the Office of the Public Advocate

It is positive that the Public Advocate Amendment Bill situates the Official Visitor within the Office of Public Advocate. This will ensure the independence of Official Visitors not only from the agencies who are responsible for facilities, but also from the Community Services Directorate. Placing Official Visitors under the jurisdiction of the Public Advocate ensures that they are more consistently supported and coordinated, which potentially means that they will be able to provide a higher standard of advocacy and investigation of complaints.

However, it is essential that the Office of the Public Advocate is adequately funded and resourced to cope with the expansion of its role, given that this will involve developing policies, consulting widely, as well as providing training and support. It is vital that there are a number of properly resourced, supported and trained Mental Health Official Visitors, to ensure that the Official Visitor's complaints and advocacy processes can be completed to a high standard and that all complaints are given full attention. It is especially vital for Mental Health Official Visitors to be properly resourced with a reasonable workload due to the expansion of the role to non-Government and community care facilities.

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<sup>2</sup> Kilroy D 'When Will They See the Real Us: Women in Prison' Australian Institute of Criminology Conference 2000

### **Recommendation**

1. *That, should the Bill pass, the Office of the Public Advocate be adequately funded and resourced to cope with the expansion of its role.*
2. *That there are an adequate number of Mental Health Official Visitors to properly resource the expansion of their role to non-Government and other services, and ensure they fulfil the Official Visitor role to a high standard.*

### Identified Official Visitors

The appointment of identified Aboriginal and Torres Strait Islander visitors under the *Corrections Management Act* and the *Children and Young People Act* is a positive step towards ensuring that official complaints and advocacy channels are culturally sensitive.

However, consideration should also be given to the mandatory appointment of female Official Visitors, or at least to ensuring that consumers are able to request to see an Official Visitor of the same sex. Through our work we have highlighted gaps within, and variable implementation of, existing policy in institutions and their subsequent impact on women when they do not take account of gender sensitivity or the vulnerability and safety for women in the settings and models of care implemented in institutions. For example in our submission to the Independent Review of the AMC we highlighted concerns that since the official AMC visitor was male, the women prisoners may be reluctant and/or uncomfortable to talk about certain issues specific to their needs as women (i.e. maternity, trauma, violence, allegations of sexual assault etc). And since women only make up a small proportion of the total prison population, the prison focusses many of its procedures on male prisoners and the gender-specific needs of women are overlooked. This same issue is equally relevant to the young women in Bimberi, the women in the PSU and women with disabilities in group homes.

Women and men (as population groups) have vastly different support needs, and their health, mental health, and wellbeing issues are quite distinct. For example, research has found that the prevalence of psychiatric disorders is greater in women than in men.<sup>3</sup> There are also differences in the biological, psychological and social factors which cause the illness; impact on the course and expression of the illness; and impact on age of onset, symptoms and co-morbidity with other illnesses.<sup>4</sup> Another example is that many women who are accommodated in institutions are survivors of sexual/gendered violence and abuse; the

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<sup>3</sup> F Judd, S Armstrong & J Kulkarni, 'Gender-sensitive mental health care', *Australasian Psychiatry*, vol. 17, no. 2, 2009

<sup>4</sup> Judd, Armstrong & Kulkarni.

'trauma-informed care' model seeks to see that services are delivered in a way which is sensitive to women and men's histories of trauma.

Gender-blind service delivery ignores these differences and assumes that one size will fit all, perpetuating gendered inequalities. On the other hand, gender sensitive service delivery is informed by an understanding of the biological, cultural, social, economic, and environmental factors that result in men and women having different needs. It is a principle of gender-sensitive, trauma-informed care that institutionalised women be given access to female support staff where needed.

For these reasons, and in order to act as an advocate and to promote the proper resolution of issues for women it is essential that Official Visitors have at a minimum a genuine understanding of the principles of gender sensitivity.

#### **Recommendations**

3. *That consideration be given to reserving some Official Visitor positions as identified for women.*
4. *That Official Visitors be supported/undertake training to provide gender sensitive services.*

#### General advocacy role of the Official Visitor

The Government recognises that "it is Official Visitors' responsibility to not only assist in the complaints process, but also to advocate on behalf of vulnerable people, similar to the advocacy role taken by the Public Advocate".<sup>5</sup> WCHM recommends that more emphasis be placed on this advocacy role. A major responsibility of Official Visitors should be to investigate and draw attention to issues where no complaint has been made, but where the issue could give rise to a complaint. This is important because people accessing services and living in institutions are generally more vulnerable than the wider population, and may not have access to the support, resources or information they need to make a complaint to the Official Visitor. Or they may, because of the risks posed by internal procedures for written complaints, be dissuaded from the formal complaints system.

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<sup>5</sup> Ibid. P. 14

### **Recommendation**

4. *That the Public Advocate (Official Visitors) Amendment Bill place more emphasis on the responsibility of Official Visitors to investigate and advocate for issues where no complaint has been made.*

### Obligation for services to advertise standards of care and complaints mechanisms

The Government acknowledges that Official Visitor complaints mechanisms should be easily accessible;<sup>6</sup> current national standards for accessibility exist, and it is widely expected of services that they comply. However, there is no obligation enshrined in legislation (the Public Advocate Amendment Bill) to ensure that this is the case. People (consumers, carers and the wider community) must be informed of the standards of service and care and their right to complain, otherwise they may not be aware that their rights are not being upheld.

For example, WCHM research shows that a lack of gender sensitive information and lack of awareness of existing services is a significant barrier for women in the ACT, particularly from disadvantaged groups such as women living with mental health issues.<sup>7</sup> Information about Official Visitor complaints processes is especially vital for women because they are often the primary seekers of wellbeing information, not only for themselves, but also as carers for their children and other family members.

It is acknowledged that in line with best practice, several services already provide information about rights and feedback mechanisms to consumers. However, there is no way of ensuring this happens across the board. Therefore, the Public Advocate Amendment Bill could include an obligation on the part of service providers to make known to consumers and carers both the standards of service and care with which they must comply, as well as complaints mechanisms and Official Visitor processes.

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<sup>6</sup> Exposure Draft: Public Advocate (Official Visitors) Amendment Bill 2012.

<sup>7</sup> Carnovale, A & E Carr, *It goes with the Territory! ACT women's views about health and wellbeing information*, Women's Centre for Health Matters, Canberra, July 2010.



**Recommendation**

*5. That the Public Advocate (Official Visitors) Amendment Bill include an explicit obligation for service providers to inform consumers of service standards and complaint mechanisms.*

**Exiting Institutions and 'Throughcare'**

Within the current legislative framework, Official Visitors can only receive and act on complaints from people who are presently accommodated within institutions. These complaints can be about “the care and other services” provided to them at the institution; the “living conditions and activities” at the institution; and the “detention” of the institutionalised person. However, it is increasingly recognised that comprehensive rehabilitation requires a coordinated approach, where people are supported before, during, and after their institutionalisation by a variety of different services that can collectively address their complex needs – otherwise known as ‘throughcare’. Women in prison, for example, are a population group with very high support needs, with backgrounds characterised by trauma, homelessness, unemployment, mental illness, poor general health outcomes, and high rates of drug and alcohol use; no one service can meet all of these needs, and many of these women will continue to need high levels of support for some time after being released back into the community. Official visitors need to be able to visit places where vulnerable people are being held or live, and advocate on their behalf if they have complaints or problems including refuges or religious organisations delivering services to women who are homeless. While women may not be there against their will they have little or no choice because of no other possibilities. And there is currently no link between the public advocate role and those non-government organisations which may deliver support to them when they are at their most vulnerable.

For these reasons, the Public Advocate Bill needs to recognise the needs for advocacy for people leaving institutions and receiving assistance within non-government organisations when they have no other choice.

**Recommendation**

6. *That consideration be given to the linking of Public Advocates to organisations that provide throughcare for consumers re-entering the community.*

**Increased clarity around Mental Health facilities**

The expansion of the role of the Mental Health Official Visitor will play a significant role in protecting the rights of women living with mental health issues in the ACT. It is positive that the Public Advocate Amendment Bill allows Official Visitors to investigate:

- Mental health services where people are obliged to use them under community care orders through the Mental Health (Treatment and Care) Act 1994.
- Community run facilities (non-Government) in addition to Government facilities.

It is also positive that in the Bill Official Visitors have been provided with additional powers to request information from facilities they visit including patient records. With the consumer's consent, access to this information will build a more transparent advocacy process and aid in complaint resolution.

However, more clarity needs to be provided into what services will be visited by the Mental Health Official Visitor. For example, consumers can be ordered to access services from a wide range of community services, not only mental health services, and some consumers also receive mandated treatment in their homes.

**Recommendation**

7. *It must be clarified as to what services are visitable by Mental Health Official Visitor where people are accessing services under a mental health treatment order.*

**Inclusion of carers in Official Visitors processes**

It is important that carers are informed of the Official Visitors complaints process and are included in investigations and resolutions. Care-giving is a gendered phenomenon, and

women are the predominant care-givers in contemporary Australian society.<sup>8</sup> Women who are mental health carers experience significant disadvantage both as a result of their gender, and persistent community stigma and misinformation relating to mental illness. They face distinct barriers in relation to gaining access to appropriate and sensitive support services, and moreover, women mental health carers in the ACT identify that they are often excluded from the care of those living with mental health issues when they are in institutions.

#### **Recommendation**

8. *That the Public Advocate (Official Visitors) Amendment Bill should include an obligation for Official Visitors to inform carers of their rights and involve carers where possible and as appropriate.*

#### Aged Care Institutions

We understand that it is not possible for the Bill to legislate for Official Visitors to aged care institutions (given that they fall under the jurisdiction of the Commonwealth Government). However, it is vital that the ACT Government come to an arrangement with Commonwealth in order to ensure that men and women who are housed in aged care facilities have access to some form of independent complaints and advocacy mechanism, whether or not this comes under the jurisdiction of the Office of the Public Advocate. WCHM research shows that older women in the ACT are a fast-growing population group, and are at risk of suffering disadvantage as a result of social isolation, risk of disability, mental illness, and poor health outcomes, and are generally excluded from participation in community life and decision-making.<sup>9</sup> Given the vulnerability of this population group, it is important that independent, accessible advocacy and complaints mechanisms exist for the aged care sector, and that consumers are supported with the information and resources they need to access them.

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<sup>8</sup> Disability, Aging and Carers Australia: Summary of Findings ", ed. Australian Bureau of Statistics (Canberra: Australian Bureau of Statistics, 2004). p. 11.

<sup>9</sup> Report on the Findings of a Roundtable and Survey conducted by Women's Centre for Health Matters with Older Women in the ACT about their involvement in decision making aspects of service provision. WCHM, May 2010.

**Recommendation**

9. *That ACT Government ensures that residents of aged care institutions in the ACT have access to an adequate complaints and advocacy mechanism.*

**Conclusion**

This submission to the Exposure Draft *Public Advocate (Official Visitors) Amendment Bill 2012* aims to highlight issues from the perspective of institutionalised women in the ACT. We look forward to learning the outcomes of the consultation and participating further in the process.