



Women With Disabilities ACT
WWDACT

Position Paper

Implementation of the Official Visitor Scheme in the ACT

Issues for Consideration

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strong women, strong voices

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Winner of the 2012 International Women's Day Award—Community Category

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Implementation Issues

Action1 Set up a register of visitable places

It is a matter of public record that at least 190 women with disabilities currently reside in institutions in the ACT (See Question 2666, *Legislative Assembly Notice Paper No 145 of 2 May 2012*).

It is imperative to publish a register of “visitable places” that will operate under the OVS prior to the commencement of the scheme. Where an Official Visitor must conduct an inspection and/or from whom an Official Visitor may receive a complaint will be governed by five different operational Acts; viz. the *Children and Young People Act 2008*; the *Corrections Management Act 2007*; the *Disability Services Act 1991*; the *Housing Assistance Act 2007* and the *Mental Health (Treatment and Care) Act 1994* (See ss 8 & 9 *Official Visitor Act 2012*). The demarcation between the ‘public’ and the ‘private’ domain for women and girls with disabilities requires close scrutiny. Women with disabilities reside in group houses, hostels, psychiatric facilities, nursing homes, aged care facilities and prisons as well as private homes where support services are provided for them through ACT Government funding.

It is a simple matter of equity that any other entity - such as a boarding house or hostel or private home - be allowed to “opt in” to the OVS and be placed on the “visitable places” register.

It is a matter of operational efficiency to attach an obligation on a “service provider” under the OVS to advise clients of their right to access an Official Visitor. For example, section 95 of the *Human Rights Commission Act 2005* (ACT) attaches a similar obligation in relation to Commission complaints. Other jurisdictions have developed easy English pamphlets to this end: see, for example, http://www.publicadvocate.vic.gov.au/file/file/Volunteers/Easy_English_Poster_08.pdf and/or <http://www.justice.qld.gov.au/justice-services/guardianship/community-visitor-program>

Action2 Identify Official Visitor qualifications

The *Official Visitor Act 2012* specifies that at least one Official Visitor must be appointed under to the OVS under the *Disability Services Act 1991*. WWDACT would like your assurance that two appointments to the position of Official Visitor will be made under the *Disability Services Act 1991*. WWDACT understands that, for reasons of budgetary constraint, it may be necessary to fractionalise these two appointments in the short term. However, we would like your assurance that both positions will be identified positions to be filled by a person with a disability: and that at least one of those positions will

be specifically identified for a woman with a disability. Identified positions have two important, interrelated functions:

- they help ensure the effective development and delivery of policies and programs for people with a disability; and
- they provide an important source of appointment of people with a disability with the appropriate skills and knowledge.

Importantly, identified positions provide an opportunity for the community to benefit from the skills and talents of people with a disability.

Action3 Support Official Visitors

Official Visitors need some sort of on-going and structured collegiate support mechanism. In other jurisdictions where these schemes operate (e.g. NSW and Victoria) this support is provided in the form of training and development. The *Official Visitor Act 2012* allows for administrative flexibility in this regard. Part of the solution may be to provide Official Visitors with a central office location/meeting place. A centralised location would make communication and cross-fertilisation amongst Official Visitors (for young people, prisoners, etc) easier and reduce (but does not eliminate) the risk of creating an artificial “disability visitor silo” or “prisoner silo” and so forth. It maximizes the likelihood that the multiple and nuanced needs of women and girls with disabilities who seek assistance under the OVS will be recognised and met. Official Visitors also need access to clinical support (protocols and procedures are already available from Victoria/NSW).

Action4 Develop common working practices for all Official Visitors

4.1 Methods of engaging with clients.

Currently, for example, Children’s and Young Person’s Official Visitors operate under an entirely different model to the Mental Health Scheme Official Visitor Team. These differences are largely historic. They were not formulated in response to the needs of clients. The introduction of the OVS is the opportunity to refine this situation and allow for collaboration amongst Official Visitors so as to better meet client needs.

Under the OVS, an Official Visitor operating under the *Disability Services Act* can investigate a complaint from an entitled person who receives a government funded service. If that service is provided at a visitable place, the Official Visitor has a statutory obligation to receive and consider the complaint and must subsequently report the matter (*Official Visitor Act Part 4*). If that service is provided at a place other than a visitable place, the Official Visitor “may” investigate the complaint and inspect the place where the service is provided (*Disability Services Act 8B*). It is unclear under the operational legislation if

the Official Visitor has any power to act on a complaint about services received in a place that is not visitable. It would be unconscionable and inequitable to create such an anomaly between these two situations. Women and girls with a disability who receive services in a place other than a visitable place are often extraordinarily isolated and vulnerable.

4.2 Establish common guidelines and protocols for all Official Visitors.

There need to be core principles and common standards adopted across the entire Official Visitor Scheme. For example, how does one determine a “reasonable belief that ... an entitled person is at risk of abuse or harm”? Work in this area has already taken place in other jurisdictions. For example, the Public Advocate of Victoria has developed protocols for Official Visitors such as

<http://www.publicadvocate.vic.gov.au/file/file/Volunteers/CV%20Program/CV%20Protocol%2009.pdf>

One of the fundamental working principles must be that a client remains the subject (and not the object) of any interaction between the client with an Official Visitor. This is particularly important in the case of women and girls with disabilities who have a carer or guardian, because often it is the carer or guardian who perpetrates the abuse or harm against her. Issues for women and girls with disabilities who lack the capacity to consent under the OVS are as important as they are complex.

4.3 Harmonise the current inconsistencies in the various operational Acts.

There are a number of important inconsistencies between the various operational Acts that could impact negatively on the operation of the OVS. These need to be harmonized.

For example, there is no mandated standard of frequency of visits by Official Visitors under the OVS. Under the *Children and Young People Act 2008* each detention place must be visited at least once a fortnight; under the *Corrections Management Act 2007* an Official Visitor must visit each correction centre once a fortnight, if practicable; under the *Mental Health (Treatment and Care) Act 1994* an Official Visitor must, if practicable, visit each mental health facility at least once each month. In WWDACT’s view, there is no justification why a women with a disability in a mental institution should have less access to an Official Visitor than a women with a disability in prison. Such inconsistencies need to be harmonized. There will be many more “visitable places” in which people with disabilities in the ACT reside, and careful consideration must be given to set up an OVS which enables individuals with disabilities resident in the community to have equitable access to Official Visitors.

Action5 Integrate gender and disability fully into the entire Official Visitor Scheme

Currently, an Official Visitor has no ability to deal with the multiple needs of clients under the OVS. This is a critical issue for WWDACT members. WWDACT believes that integration and inclusion is possible through the adoption of minimalist legislative guidelines that would be supplemented by more specific policy and procedures.

Gender principles will need to be continually monitored and developed under the OVS. Official Visitors will need to be professionally trained to understand the effect that the intersectionality of race, gender, disability, and multiple forms of discrimination have in widening power imbalances for women and girls with disabilities. They will need to be appraised of the close links between violence, sexual abuse, substance abuse and mental health issues for these girls and women.

The services that Official Visitors provide under the OVS will need to be co-ordinated and structured so that the scheme operates in an integrated manner and can deal with the multiple needs of clients. As outlined above, women and girls with disabilities can be young or old; with or without a mental illness; living at home, in a public or private institution or homeless; and either indigenous or from culturally diverse backgrounds. Our needs and rights must be equally protected and promoted whatever our circumstances.

Action6 Clarify the Roles of Human Rights Commission and the Public Advocate

The relationship of the OVS to the work of the Human Rights Commission and the Office of Public Advocate is not defined by the legislation. Section 18 of the *Official Visitor Act 2012* states that: “The public advocate **may** give an Official Visitor for an operational Act any reasonable assistance the Official Visitor asks for to exercise the Official Visitor’s functions” (emphasis added) Prior to the commencement of the OVS, it will be very important to clarify the roles of each stakeholder and develop protocols between all interested stakeholders who monitor and handle human rights complaints and executive irregularities in the ACT. This will avoid duplication and confusion, especially for newly appointed Official Visitors and community members.

Action7 Scope the Implementation of the Official Visitor Scheme as a matter of urgency

WWDACT is looking forward to the advancements that the implementation of the *Official Visitor Act 2012* will make towards equality and social inclusion for women and girls with disabilities in the ACT community. WWDACT appreciates that many steps need to be taken before the implementation of the Official Visitor Scheme can become a reality on 1 July 2013. WDDACT is also critically aware that the caretaker period of government will commence on 14 September of this year. We wish to convey to you our sense of urgency. We foreshadow that it will be necessary for the ACT Government to create a position to overview and co-ordinate the on-going operation of the OVS in the future. For now, WWDACT understands that scoping the implementation of the ACT Official Visitor Scheme – including the immediate appointment of a full-time legal policy officer – needs to take place without delay.