

1991
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Community Advocate Bill 1991

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81077 1991/02882 (T77/91)

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Community Advocate Bill 1991

A BILL

FOR

**An Act to provide for the appointment of a
Community Advocate and for related matters**

The Legislative Assembly for the Australian Capital Territory enacts as follows:

PART I—PRELIMINARY

Short title

- 5 1. This Act may be cited as the *Community Advocate Act 1991*.

Commencement

2. (1) Section 1 and this section commence on the day on which this Act is notified in the *Gazette*.
- 10 (2) The remaining provisions commence on a day, or respective days, fixed by the Minister by notice in the *Gazette*.

(3) If a provision referred to in subsection (2) has not commenced before the end of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, that provision, by force of this subsection, commences on the first day after the end of that period.

5 Interpretation

3. In this Act, unless the contrary intention appears—

“Community Advocate” means the Community Advocate appointed under section 4;

“disability” means any of the following conditions:

- 10 (a) a legal disability due to age;
- (b) a physical, mental, psychological or intellectual condition;
- (c) a condition which would render a person a forensic patient; which gives rise to a need for protection from abuse, exploitation or neglect;

15 “forensic patient” includes a person who has been—

- (a) apprehended by a police officer where that person's behaviour or statements indicate to the officer that the person may be suffering from a mental dysfunction;
- 20 (b) found by a court to be unfit to be tried by reason of a mental dysfunction;
- (c) acquitted of a criminal charge on the grounds of insanity; or
- (d) found guilty of a criminal offence and is mentally ill, or has become mentally ill while serving a sentence of imprisonment;

25 “staff”, in relation to the Community Advocate, means the public servants referred to in section 11;

30 “Tribunal” means the Guardianship and Management of Property Tribunal established by the *Guardianship and Management of Property Act 1991*;

“unfit to be tried” includes unfit to plead.

PART II—OFFICE OF COMMUNITY ADVOCATE

Community Advocate

35 4. (1) There shall be a Community Advocate appointed by the Executive.

(2) The Advocate holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are prescribed.

Term of office

5 5. Subject to this Act, the Community Advocate holds office for the period (not exceeding 3 years) specified in the instrument of appointment, but is eligible for reappointment.

Remuneration and allowances

6. (1) The Community Advocate shall be paid such remuneration and allowances as are prescribed.

10 (2) Subsection (1) does not apply—

- (a) in relation to remuneration—if there is in force a determination relating to the remuneration to be paid to the Advocate; or
 - (b) in relation to an allowance of a particular kind—if there is in force a determination relating to an allowance of that kind to be paid to the Advocate.
- 15

(3) In subsection (2)—

“determination” means a determination of the Remuneration Tribunal of the Commonwealth.

Leave of absence

20 7. The Minister may grant leave of absence to the Community Advocate on such terms and conditions as to remuneration or otherwise as the Minister determines.

Resignation

25 8. The Community Advocate may resign by writing given to the Minister.

Termination of appointment

9. (1) The Minister may terminate the appointment of the Community Advocate for misbehaviour or physical or mental incapacity.

30 (2) The Minister shall terminate the appointment of the Advocate if the Advocate—

- (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit;
 - (b) is absent from duty, except on leave under section 7, for 14 consecutive days or for 28 days in any 12 months; or
- 35

- (c) engages in paid employment without the consent of the Minister outside the duties of office.

(3) The Advocate shall not be removed from office except in accordance with this section.

5 Acting appointments

10. (1) The Executive may appoint a person to act as Community Advocate—

- (a) during a vacancy in the office of Advocate, whether or not an appointment has previously been made to the office; or
- 10 (b) during any period, or during all periods, when the Advocate is or is expected to be absent from duty or from Australia or is, for any reason, unable to perform the duties of office;

but a person appointed to act during a vacancy shall not continue to act for more than 12 months.

15 (2) Anything done by or in relation to a person purporting to act as Advocate is not invalid merely because—

- (a) the occasion for the appointment had not arisen;
- (b) there was a defect or irregularity in connection with the appointment;
- 20 (c) the appointment had ceased to have effect; or
- (d) the occasion to act had not arisen or had ceased.

Staff

11. The staff required to assist the Community Advocate shall be public servants.

25 Delegation

12. The Community Advocate may, in writing, delegate to a member of his or her staff any power or function under this Act, other than the functions under paragraph 13 (1) (j) or (m) or 15 (b).

30 PART III—FUNCTIONS AND POWERS OF THE COMMUNITY ADVOCATE

Functions

13. (1) The Community Advocate has the following functions:

- (a) to foster the provision of services and facilities for persons who have a disability;
- 35 (b) to support the establishment of organisations which support such persons;

- 5 (c) to encourage the development of programs that benefit such persons (including advocacy programs, educational programs and programs to encourage persons to act as guardians and managers);
- (d) to promote the protection of such persons from abuse and exploitation;
- (e) to protect the rights of such persons;
- (f) to represent such persons at inquiries before the Tribunal;
- (g) to deal, on behalf of such persons, with persons or bodies providing services;
- 10 (h) to investigate, report and make recommendations to the Minister on any matter relating to the operation of this Act referred to the Advocate by the Minister;
- (j) to act as a guardian or manager when so appointed by the Tribunal;
- (k) to disseminate information concerning—
- 15 (i) the functions of the Advocate;
- (ii) the operation of this Act; and
- (iii) the functions of the Tribunal;
- (m) to act as the prescribed representative under section 22 or 31 of the *Mental Health Act 1983*;
- 20 (n) to represent forensic patients before the Tribunal or any court;
- (o) any other function assigned to the Advocate by a law of the Territory.

(2) The Advocate has power to do all things necessary or convenient to be done in connection with the performance of his or her functions.

25 **Investigations**

14. (1) The Community Advocate may investigate complaints and allegations concerning—

- (a) the administration of this Act; or
- 30 (b) the actions of a guardian or manager or a person acting or purporting to act under an enduring power of attorney.

(2) If requested to do so by the Tribunal, the Advocate shall report to the Tribunal in relation to a matter the subject of an inquiry before the Tribunal.

Guardian etc. of last resort

15. Where the Community Advocate is appointed as a guardian or manager under the *Guardianship and Management of Property Act 1991*, the Advocate shall—

- 5 (a) endeavour to find a suitable person to be appointed as the guardian or manager; and
- (b) if such a person is found—apply to the Tribunal for the appointment of that person as guardian or manager.

Conflict of interest

- 10 16. The Community Advocate may engage a legal practitioner to appear before the Tribunal in matters in which there is potential for a conflict of interest between the Advocate's advocacy functions and his or her functions as guardian or manager.

PART IV—MISCELLANEOUS15 **Annual report**

17. (1) The Community Advocate shall furnish to the Minister for presentation to the Legislative Assembly a report relating to the activities of the Advocate during each financial year.

- 20 (2) A report under this section is a periodic report for the purposes of section 30A of the *Interpretation Act 1967*.

Protection of Community Advocate etc.

18. No action, suit or proceeding lies against a person who is or has been—

- (a) the Community Advocate;
- 25 (b) a member of the staff of the Advocate; or
- (c) a person acting under the direction or authority of the Advocate;

in relation to an act done or omitted to be done in good faith in the exercise or purported exercise of any power, or the performance of a duty or function, under or in relation to this Act.

30 **Secrecy**

19. (1) In this section—

“court” includes any tribunal, authority or person having power to require the production of documents or the answering of questions;

"person to whom this section applies" means a person who is, or has been—

- (a) the Community Advocate;
- (b) a member of the staff of the Advocate; or
- (c) a person acting under the direction or authority of the Advocate;

"produce" includes permit access to;

"protected information" means information that—

- (a) concerns a person; and
- (b) is disclosed to, or obtained by, a person to whom this section applies because of the exercise of a power or the performance of a duty or function by the person under or in relation to this Act.

(2) Subject to subsection (3), a person to whom this section applies shall not—

- (a) make a record of protected information; or
- (b) directly or indirectly, divulge or communicate to a person protected information concerning another person;

unless the record is made or the information divulged or communicated in relation to the exercise of a power, or the performance of a duty or function, as a person to whom this section applies, under or in relation to this Act or another Act.

Penalty: \$5, 000 or imprisonment for 6 months, or both.

(3) Subsection (2) does not prevent a person to whom this section applies from divulging or communicating protected information to a person about another person with the consent of that other person.

(4) A person to whom this section applies is not required—

- (a) to divulge or communicate protected information to a court; or
- (b) to produce a document containing protected information to a court;

except where it is necessary to do so for the purposes of this Act or another Act.

Disclosure of information concerning investigations

20. (1) Section 19 does not prevent the Community Advocate from disclosing information to a person or to members of the public about a matter the subject of an investigation by the Advocate if the Advocate is

satisfied that the disclosure is necessary and reasonable in the public interest.

(2) The Advocate shall not make a disclosure referred to in subsection (1) that is likely to prejudice the investigation.

5 (3) In a disclosure referred to in subsection (1), the Advocate shall not—

10 (a) express an opinion that is (expressly or impliedly) critical of a person or body unless the Advocate has given the person, or the principal officer of the body an opportunity to answer the criticism; or

(b) identify the complainant (directly or indirectly) unless it is necessary and reasonable to do so.

Regulations

15 21. The Executive may make regulations not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed, for carrying out or giving effect to this Act.