

1989-90-91

AUSTRALIAN CAPITAL TERRITORY LEGISLATIVE ASSEMBLY

COMMUNITY ADVOCATE BILL 1991

EXPLANATORY MEMORANDUM

**Circulated by Authority of
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Attorney General**

COMMUNITY ADVOCATE BILL 1991

1. Outline: This Bill establishes the statutory office of Community Advocate.
2. The primary functions of the Community Advocate are to represent and protect the interests of persons who have certain disabilities (e.g. legal, intellectual or mental) which prevent them from effectively representing themselves. The Office of Community Advocate will provide advocacy services in the following areas:

Office of Community Advocate

I	I	I
<i>Guardianship and Management of Property</i>	<i>Youth Advocacy</i>	<i>Mental Health Advocacy</i>
		I
		<i>(forensic patients and Prescribed Representative)</i>

3. The Bill authorises the Executive to appoint a Community Advocate and specifies that the Community Advocate will perform a variety of functions including:

- . act as guardian or manager of last resort for an incapacitated person who is either subject to, or who may need, an order of the Guardianship and Management of Property Tribunal;
- . receive and act upon reports of possible abuse, neglect or abandonment of an incapacitated person;
- . represent the interests of an incapacitated person at any inquiry before the Guardianship and Management of Property Tribunal;
- . advocate for improvements in the services and facilities available for incapacitated persons;
- . assume responsibility for Youth Advocacy matters, as specified in the *Children's Services Act 1986* (i.e. the existing function is absorbed);
- . act, when necessary, as Prescribed Representative for a mental health patient who is involuntarily detained, or in respect of whom a treatment order is sought under the *Mental Health Act 1983*; and
- . represent the interests of a forensic patient.

4. Financial Considerations: Funding for Youth Advocacy services is already provided under existing arrangements. Expenditure on advocacy for guardianship matters is estimated at \$130,000 per annum. Revenue, in terms of minor charges for Community Advocate services, is estimated at \$7,000 per annum.

CLAUSES OF THE BILL

PART I - PRELIMINARY

Clause 1: Short title

This clause states that this Act may be cited as the *Community Advocate Act 1991*.

Clause 2: Commencement

This clause provides that the short title of the Act becomes effective on the date of notification in the Gazette. The remainder of the Act comes into effect when proclaimed. Where no proclamation is made, the provisions in the Act automatically commence 6 months after notification of the Act in the Gazette.

Clause 3: Interpretation

This clause provides the definitions for certain words and terms used in the legislation.

PART II - OFFICE OF COMMUNITY ADVOCATE

Clause 4: Community Advocate

This clause establishes the statutory office of Community Advocate.

Clause 5: Term of office

The purpose of this clause is to specify that the Community Advocate holds office for a period of up to 3 years and is eligible for reappointment.

Clause 6: Remuneration and allowances

This clause specifies that the remuneration and allowances of the Community Advocate are as determined by the Commonwealth Remuneration Tribunal.

Clause 7: Leave of absence

This clause provides that the Minister may grant leave of absence to the Community Advocate and on such terms and conditions as the Minister determines.

Clause 8: Resignation

This clause provides that the Community Advocate may resign by notice in writing given to the Minister.

Clause 9: Termination of appointment

This clause provides the Minister with the power to terminate the appointment of the Community Advocate in specified circumstances. The purpose of the clause is to provide the standard grounds for removing the Community Advocate from office i.e. for misbehaviour or because of physical or mental incapacity. Further grounds include bankruptcy or unauthorised absence for specified periods in any 12 months.

Clause 10: Acting appointments

This clause empowers the Executive to appoint an acting Community Advocate, provided such an appointment does not exceed 12 months.

Clause 11: Staff

This clause specifies that staff required for the purposes of the legislation shall be public servants.

Clause 12: Delegation

This clause allows the Community Advocate to make necessary delegation of powers or functions other than the responsibilities as a guardian or manager, or prescribed representative.

PART III - FUNCTIONS AND POWERS OF THE COMMUNITY ADVOCATE

Clause 13: Functions

This clause specifies the functions to be performed by the Community Advocate. The purpose of the clause is to identify the three main areas of activity of the Community Advocate. The three main areas are:

- . advocacy for incapacitated persons in guardianship and management matters;
- . responsibility for existing Youth Advocacy services under the *Children's Services Act 1986* (see paragraph 13(o) of the Bill and the separate but related *Children's Services (Amendment) Bill 1991*); and
- . acting as Prescribed Representative for a mental health patient under the *Mental Health Act 1983*, and protection of the interests of forensic patients.

Advocacy in the area of guardianship and management of property is conducted in conjunction with the establishment of the Guardianship and Management of Property Tribunal. The Community Advocate is guardian or manager of last resort. The Community Advocate also performs a monitoring role over other guardians and managers and may act on information received to protect the health, welfare and property interests of an incapacitated person.

There is already a Youth Advocate in the Australia Capital Territory. The Community Advocate merely absorbs the existing function.

There exists an overlap between guardianship and mental health advocacy. For example, a person who is detained on an involuntary basis as a mental patient still requires someone to act to protect his or her personal and property rights. At present, these protections are provided by the appointment of a Prescribed Representative, and by ultimate supervision by the Courts. A further consideration is the need for special advocacy for forensic patients (those caught up in the criminal justice system).

Clause 14: Investigations

This clause empowers the Community Advocate to investigate complaints and allegations about guardianship and management matters and, where necessary report to the Tribunal.

Clause 15: Guardian etc. of last resort

This clause authorises the Community Advocate to identify a person who is suitable for appointment as a guardian or manager and to apply to the Tribunal for that appointment. This clause covers those situations when the Community Advocate is the guardian or manager of last resort.

Clause 16: Conflict of interest

This clause authorises the Community Advocate to engage a private legal practitioner in situations where there is likely to be a conflict of interest between advocacy functions and his or her role as guardian or manager.

PART IV - MISCELLANEOUS

Clause 17: Annual report

This clause stipulates that the Community Advocate shall furnish to the Minister for presentation to the Legislative Assembly, an annual report .

Clause 18: Protection of Community Advocate etc.

This clause provides that the Community Advocate (or a person acting under the direction or authority of the Community Advocate) is immune from legal suit where an act done or omitted to be done pursuant to the legislation is done in good faith .

Clause 19: Secrecy

This clause stipulates that the Community Advocate (including other officers or persons acting under the direction or authority of the Community Advocate) shall

not disclose information obtained in the course of duty. The clause imposes a penalty of \$5000 or imprisonment for 6 months, or both.

The clause provides a necessary exemption to allow disclosure in the performance of duties including when authorised to do, or with the consent of the person who provided the information.

Clause 20: Disclosure of information concerning investigations

This clause allows the Community Advocate to disclose information about a matter which is the subject of an investigation where disclosure is in the public interest.

Disclosure of information is, however, subject to certain qualifications including the necessity to inform a person or body in advance of any criticism and to allow the opportunity for an answer to such criticism.

The purpose of the clause is to allow the Community Advocate to perform an Ombudsman-type role by making public, where necessary, constructive criticisms in guardianship and management matters.

Clause 21: Regulations

This clause empowers the Executive to make regulations for carrying out or giving effect to the provisions of the legislation.