



Australian Capital Territory

Community Advocate Act 1991

A1991-64

Republication No 3

Effective: 24 February 2005 – 28 February 2006

Republication date: 24 February 2005

Last amendment made by A2005-7

Authorised by the ACT Parliamentary Counsel

About this republication

The republished law

This is a republication of the *Community Advocate Act 1991* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 24 February 2005. It also includes any amendment, repeal or expiry affecting the republished law to 24 February 2005.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at www.legislation.act.gov.au):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication does not include amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



Australian Capital Territory

Community Advocate Act 1991

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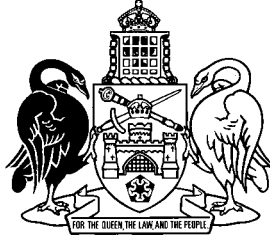
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24/02/05

Community Advocate Act 1991
Effective: 24/02/05-28/02/06

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Australian Capital Territory

Community Advocate Act 1991

An Act to provide for the appointment of a community advocate, and for related matters

Part 1 Preliminary

1 Short title

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

3 Definitions for Act

In this Act:

Note A definition applies except so far as the contrary intention appears (see *Legislation Act 2001*, s 155).

community advocate means the Community Advocate appointed under section 4.

disability means any of the following conditions:

- (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.

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; or
- (b) found by a court or the mental health tribunal to be unfit to plead; or
- (c) acquitted of a criminal charge on the grounds of mental illness; or

(d) found guilty of a criminal offence and is mentally dysfunctional, or has become mentally dysfunctional while serving a sentence of imprisonment.

guardianship tribunal means the Guardianship and Management of Property Tribunal established by the *Guardianship and Management of Property Act 1991*.

mental dysfunction means a disturbance or defect, to a substantially disabling degree, of perceptual interpretation, comprehension, reasoning, learning, judgment, memory, motivation or emotion.

mental health tribunal means the Mental Health Tribunal established by the *Mental Health (Treatment and Care) Act 1994*.

staff, in relation to the community advocate, means the staff referred to in section 11.

Part 2 Office of community advocate

4 Community advocate

- (1) There shall be a Community Advocate appointed by the Executive.
- (2) The community advocate holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are prescribed.

5 Term of office

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.

7 Leave of absence

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.

8 Resignation

The community advocate may resign by writing given to the Minister.

9 Termination of appointment

- (1) The Minister may terminate the appointment of the community advocate for misbehaviour or physical or mental incapacity.
- (2) The Minister shall terminate the appointment of the community advocate if the community 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; or

- (b) is absent from duty, except on leave under section 7, for 14 consecutive days or for 28 days in any 12 months; or
 - (c) engages in paid employment without the consent of the Minister outside the duties of office.
- (3) The community advocate shall not be removed from office except in accordance with this section.

10 Acting appointments

- (1) The Executive may appoint a person to act as community advocate—
- (a) during a vacancy in the office of community advocate, whether or not an appointment has previously been made to the office; or
 - (b) during any period, or during all periods, when the community 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.
- (2) Anything done by or in relation to a person purporting to act as community advocate is not invalid merely because—
- (a) the occasion for the appointment had not arisen; or
 - (b) there was a defect or irregularity in connection with the appointment; or
 - (c) the appointment had ceased to have effect; or
 - (d) the occasion to act had not arisen or had ceased.

11 Staff

- (1) The staff assisting the community advocate shall be employed under the *Public Sector Management Act 1994*.

- (2) The *Public Sector Management Act 1994* applies in relation to the management of the staff assisting the community advocate.

12 Delegation

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 section 13 (1) (k) or 15 (b).

Part 3 Functions and powers of community advocate

13 Functions

- (1) The community advocate has the following functions:
- (a) to foster the provision of services and facilities for persons who have a disability;
 - (b) to support the establishment of organisations which support such persons;
 - (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 monitor the provision of services for the protection of children;
 - (g) to act as advocate for the rights of children;
 - (h) to represent such persons at inquiries before the guardianship tribunal;
 - (i) to deal, on behalf of such persons, with persons or bodies providing services;
 - (j) to investigate, report and make recommendations to the Minister on any matter relating to the operation of this Act referred to the community advocate by the Minister;
 - (k) to act as a guardian or manager when so appointed by the guardianship tribunal;

- (l) to disseminate information concerning—
 - (i) the functions of the community advocate; and
 - (ii) the operation of this Act; and
 - (iii) the functions of the guardianship tribunal;
 - (m) to represent forensic patients before the guardianship tribunal or any court;
 - (n) the functions given to the community advocate by the *Children and Young People Act 1999*, *Guardianship and Management of Property Act 1991* and *Mental Health (Treatment and Care) Act 1994*;
 - (o) any other function assigned to the community advocate by a law of the Territory.
- (2) The community advocate has power to do all things necessary or convenient to be done in connection with the performance of his or her functions.

14 Investigations

- (1) The community advocate may investigate complaints and allegations concerning—
 - (a) the administration of this Act; or
 - (b) the provision of services for the protection of children; or
 - (c) 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 guardianship tribunal, the community advocate shall report to the guardianship tribunal in relation to a matter the subject of an inquiry before the guardianship tribunal.

15 Guardian etc of last resort

Where the community advocate is appointed as a guardian or manager under the *Guardianship and Management of Property Act 1991*, the community advocate shall—

- (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 guardianship tribunal for the appointment of that person as guardian or manager.

16 Engagement of legal practitioner

The community advocate may engage a legal practitioner to appear before the guardianship tribunal or a court in relation to the performance of the community advocate's functions under this Act.

Part 4 Miscellaneous

18 Protection of community advocate etc

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

- (a) the community advocate; or
- (b) a member of the staff of the community advocate; or
- (c) a person acting under the direction or authority of the community 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.

19 Secrecy

- (1) In this section:

client, in relation to protected information, means a person who had a disability at the time the information was received.

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; or
- (b) a member of the staff of the community advocate; or
- (c) a person acting under the direction or authority of the community advocate.

produce includes permit access to.

protected information means information that identifies, or tends to identify—

- (a) a client; or
 - (b) a person who provides information about a client to a person to whom this section applies.
- (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.

Maximum penalty: 50 penalty units, 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.

20 Disclosure of information concerning investigations

- (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 community advocate if the community advocate is satisfied that the disclosure is necessary and reasonable in the public interest.

- (2) The community advocate shall not make a disclosure referred to in subsection (1) that is likely to prejudice the investigation.
- (3) In a disclosure referred to in subsection (1), the community advocate shall not—
 - (a) express an opinion that is (expressly or impliedly) critical of a person or body unless the community 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.

21 Regulation-making power

The Executive may make regulations for this Act.

Note Regulations must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	par = paragraph/subparagraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	pt = part
exp = expires/expired	r = rule/subrule
Gaz = gazette	renum = renumbered
hdg = heading	reloc = relocated
IA = Interpretation Act 1967	R[X] = Republication No
ins = inserted/added	RI = reissue
LA = Legislation Act 2001	s = section/subsection
LR = legislation register	sch = schedule
LRA = Legislation (Republication) Act 1996	sdiv = subdivision
mod = modified/modification	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired

Endnotes

3 Legislation history

3 Legislation history

Community Advocate Act 1991 No 64

notified 31 October 2001 (Gaz 1991 No S119)
s 1, s 2 commenced 31 October 2001 (s 2 (1))
remainder commenced 7 January 1992 (s 2 (2) and Gaz 1991
No S147)

as amended by

Community Advocate (Amendment) Act 1994 No 18

notified 20 May 1994 (Gaz 1994 No S87)
commenced 20 November 1994 (s 2)

Public Sector Management (Consequential and Transitional Provisions) Act 1994 No 38 sch 1 pt 19

notified 30 June 1994 (Gaz 1994 No S121)
s 1, s 2 commenced 30 June 1994 (s 2 (1))
sch 1 pt 19 commenced 1 July 1994 (s 2 (2) and Gaz 1994 No S142)

Mental Health (Consequential Provisions) Act 1994 No 45 pt 4

notified 7 September 1994 (Gaz 1994 No S177)
s 1, s 2 commenced 7 September 1994 (s 2 (1))
pt 4 commenced 6 February 1995 (s 2 (2) and Gaz 1995 No S33)

Annual Reports (Government Agencies) (Consequential Provisions) Act 1995 No 25 sch

notified 5 September 1995 (Gaz 1995 No S212)
sch commenced 5 September 1995 (s 2)

Remuneration Tribunal (Consequential and Transitional Provisions) Act 1995 No 56 sch

notified 20 December 1995 (Gaz 1995 No S313)
sch commenced 21 December 1995 (s 2 and Gaz 1995 No S315)

Statute Law Revision (Penalties) Act 1998 No 54 sch

notified 27 November 1998 (Gaz 1998 No S207)
s 1, s 2 commenced 27 November 1998 (s 2 (1))
sch 9 December 1998 (s 2 (2) and (Gaz 1998 No 49)

Children and Young People (Consequential Amendments) Act 1999 No 64

notified 10 November 1999 (Gaz 1999 No 45)
s 1, s 2 commenced 10 November 1999 (s 2 (1))
remainder 10 May 2000 (s 2 (2))

Legislation (Consequential Amendments) Act 2001 No 44 pt 69

notified 26 July 2001 (Gaz 2001 No 30)
s 1, s 2 commenced 26 July 2001 (IA s 10B)
pt 69 commenced 12 September 2001 (s 2 and see Gaz 2001 No S65)

Crimes Amendment Act 2005 A2005-7 pt 2

notified LR 23 February 2005
s 1, s 2 commenced 23 February 2005 (LA s 75 (1))
pt 2 commenced 24 February 2005 (s 2)

4 Amendment history

Commencement

s 2 om 2001 No 44 amdt 1.775

Definitions for Act

s 3 am 1994 No 38; 1994 No 45
def *forensic patient* am A2005-7 s 4

Community advocate

s 4 am 1994 No 18

Remuneration and allowances

s 6 am 1994 No 18
om 1995 No 56

Termination of appointment

s 9 am 1994 No 18

Acting appointments

s 10 am 1994 No 18

Staff

s 11 sub 1994 No 38

Functions

s 13 am 1994 No 18; 1994 No 45; 1999 No 64 sch 2; R2 LA

Investigations

s 14 am 1994 No 18; 1994 No 45; R2 LA

Guardian etc of last resort

s 15 am 1994 No 18; 1994 No 45

Endnotes

5 Earlier republications

Engagement of legal practitioner

s 16 am 1994 No 45

Notification by community advocate of cases of child abuse

s 16A ins 1994 No 18
om 1999 No 64 sch 2

Annual report

s 17 am 1994 No 18
om 1995 No 25

Protection of community advocate etc

s 18 am 1994 No 18

Secrecy

s 19 am 1994 No 18; 1998 No 54; 1999 No 64 sch 2

Disclosure of information concerning investigations

s 20 am 1994 No 18

Regulation-making power

s 21 sub 2001 No 44 amdt 1.776

5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (*) in column 1. Except for the footer, electronic and printed versions of an authorised republication are identical.

Republication No	Amendments to	Republication date
1	1991 No 56	1 January 1996
2	A2001-44	13 December 2001

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