

**2005**

**THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL  
TERRITORY**

**PUBLIC ADVOCATE BILL 2005**

**EXPLANATORY STATEMENT**

Circulated with the authority of  
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## **PUBLIC ADVOCATE BILL 2005**

### **BACKGROUND**

In April 2003, the ACT Government commissioned the Foundation for Effective Markets and Governance (FEMAG) to conduct a Review of Statutory Oversight and Community Advocacy Agencies. The review looked at a broad range of statutory oversight and community advocacy bodies, taking a holistic view of the system so that it could make recommendations on improvements in the system as a whole. The final report was released in December 2003.

In response to the recommendation in the FEMAG report that the name of the Community advocate be changed, the government agreed to change the name to 'Public Advocate'. The Public Advocate Bill 2005 (Public Advocate Bill) changes the name of the statutory position.

Also in response to recommendations in the FEMAG report the Human Rights Commission Bill 2005 (HRC Bill) has been introduced to establish a new structure for statutory oversight in the ACT.

The Human Rights Commission (Children and Young People Commissioner) Amendment Bill 2005 will be introduced to create, within the Human Rights Commission, a Children and Young People Commissioner. To support that role, the Human Rights Commission will be given functions relating to oversight of services for children and young people in the ACT.

Under the *Community Advocate Act 1991* the Community Advocate has a number of functions relating to the protection of vulnerable children and young people. Consistent with the government's policy of separating advocacy on behalf of individuals from promotion of systemic improvement in service provision, some minor changes will be made to clarify that the focus of the Public Advocate will be on advocating for individuals while the broader statutory oversight functions will be the responsibility of the Human Rights Commission.

### **SUMMARY**

The Public Advocate Bill contains re-written provisions from the *Community Advocate Act 1991* and changes the name of the statutory position from Community Advocate to Public Advocate. As the amendments necessary to accomplish the change of name are so extensive, the opportunity has been taken to re-write the provisions in a more modern style and to include some standard provisions that are in legislation for other, similar statutory roles. In addition, statutory provision has been made for delegation of functions relating to appointment as a guardian or manager under the *Guardianship and Management of Property Act 1991* to senior officers within the Office of the Public Advocate.

## REVENUE/COST IMPLICATIONS

There are no cost implications.

## SUMMARY OF CLAUSES

### Formal Clauses

#### Part 1 Preliminary

Clause 1 sets out the name of the Act.

Clause 2 provides for the Act to commence on the same day as the Human Rights Commission (Children and Young People Commissioner) Bill 2005 commences operation.

Clause 3 says that the definitions for the Act are in the dictionary at the end of the Act.

Clause 4 says that notes can be included to explain provisions in the Act but they are not part of the Act itself.

Clause 5 mentions other legislation that applies to offences against the Act. The Criminal Code relates to offences and the *Legislation Act 2001* sets out what penalty units are.

#### Part 2 Office of public advocate

This part contains a re-write of the provisions in part 2 of the *Community Advocate Act 1991*. The new provisions are consistent with current drafting practice in relation to appointment to statutory offices of a similar sort.

Clause 6 provides for the appointment of the Public Advocate by the Executive. The term provided is five years, rather than three years as in provisions being replaced. The change to five years is to make the appointment consistent with the terms of the members of the Human Rights Commission. The government expressed its intention that the terms should be similar in its position paper *The Right System for Rights Protection*.

Clause 7 provides for the ending of an appointment. The Executive has the option of ending the appointment of a person as Public Advocate in certain circumstances but must end the appointment in other circumstances. The provisions are consistent with the provisions relating to the members of the Human Rights Commission.

Acting appointments are provided for in the *Legislation Act 2001*.

Clause 8 provides for the staff of the Public Advocate to be public servants.

Clause 9 allows the Public Advocate to delegate functions to staff of the office. A new provision has been included to allow senior officers to be appointed as Deputy Public Advocate and to be delegated functions in relation to acting as guardian or manager for another person. Previously those functions could not be delegated at all and special

instruments of acting appointment had to be made to allow for urgent decisions to be made for people for whom the Community Advocate was guardian or manager if the Community Advocate was ill or away or could not be contacted. The new provision does not change policy or practise but provides a more workable administrative process to achieve the necessary objective of providing for urgent action to be taken when necessary for a person for whom the Public Advocate is guardian or manager.

### **Part 3            Functions of the public advocate**

This part contains a re-write of the provisions in part 3 of the *Community Advocate Act 1991*.

Clause 10 sets out the functions of the Public Advocate. It makes only minor changes to the functions provided in the previous provisions. The functions have been re-written to make it clear that they relate to advocacy for either children and young people or people with a disability. Consistent with the provisions in the Human Rights Commission (Children and Young People Commissioner) Amendment Bill, definitions of “child” and “young person” have been included in the dictionary for the Public Advocate Bill. Following from that, the definition of “disability” no longer includes a legal disability due to age. As a result, the functions utilise the new definitions to make it clear which relate to children and young people and which relate to people with a disability.

Some of the functions have been re-cast to make it clear that they relate to advocacy for individuals rather than systemic review. This is to remove any statutory overlap with the functions of the Human Rights Commission in the areas of disability services and children and young people services.

Clause 11 provides for the Public Advocate to conduct investigations. It contains a new provision that will allow the Public Advocate to listen to and investigate concerns from children and young people about services provided for the protection of children and young people. The provision has been included to give children and young people who are under the protection of the Territory an avenue to bring concerns, which might not amount to complaints, to the attention of the Public Advocate. Children and young people often will not be prepared to enter a formal complaint process but, consistent with the Public Advocate’s function of acting as advocate for the rights of children and young people, it is important to allow their concerns to receive attention.

A new requirement has been included for the Public Advocate to refer systemic concerns about matters relating to children and young people and people with a disability to the Human Rights Commission. Under section 48 of the HRC Bill, the Human Rights Commission would be able to commence a commission-initiated investigation on the basis of information received from the Public Advocate.

Other provisions in clause 11 re-write the provisions for conducting investigations into issues relating to the functions of the public advocate or complaints and allegations about the actions of guardians, managers or people acting under enduring powers of attorney and

for providing reports to the Guardianship and Management of Property Tribunal that are presently in section 14 of the *Community Advocate Act 1991*.

Clause 12 re-writes the existing provisions to provide that if the Public Advocate is appointed as guardian or manager of last resort under the *Guardianship and Management of Property Act 1991* the Public Advocate must try to arrange for a suitable replacement in that role to be appointed.

Clause 13 re-states current provisions and allows for the engagement of a lawyer to appear on behalf of the Public Advocate in a court or tribunal in relation to something being done to carry out the functions of the public advocate.

#### **Part 4           Miscellaneous**

This part contains a re-write of the provisions in part 4 of the *Community Advocate Act 1991*.

Clause 14 provides for the Public Advocate, members of the staff of the Public Advocate and other people exercising functions under the legislation to be protected from liability. The provisions are consistent with those in similar legislation.

Clause 15 contains new provisions that protect a person who for genuine reasons gives information to the Public Advocate. The provision comes from section 46 of the *Children and Young People Act 1999* and has been included because it relates to the functioning of the office of the Public Advocate.

Clause 16 contains secrecy provisions that replace the provisions currently in section 19 of the *Community Advocate Act 1991*. The provisions are consistent with secrecy provisions currently being included in similar legislation.

Clause 17 contains provisions about disclosure of information about investigations that are a re-write of the provisions in section 20 of the *Community Advocate Act 1991*.

Clause 18 gives the Executive power to make regulations.

#### **Part 5           Transitional**

This part contains provisions for the legal transition from provisions in the *Community Advocate Act 1991* to provisions in the Public Advocate Bill.

Clause 19 contains definitions that apply only to part 5.

Clause 20 provides that things done by the Community Advocate before the Public Advocate Bill commences are to be treated as if they were done by the Public Advocate. This ensures continuity of activities before and after the new legislation commences operation.

Clause 21 provides for continuity of appointments under the *Guardianship and Management of Property Act 1991*.

Clause 22 extends the protection from liability in clause 16 to people who were the Community Advocate, staff of the Community Advocate or exercised a function under the *Community Advocate Act 1991*.

Clause 23 provides that a reference in legislation to the Community Advocate is to be read as including a reference to the Public Advocate.

Clause 24 provides that the person who is the Community Advocate will become the Public Advocate when the Public Advocate Bill comes into operation. This allows for continuity in the role without the need for an additional appointment process.

Clause 25 allows the Executive to make regulations that deal with issues of transition that occur as a result of changing to the Public Advocate.

Clause 26 provides that legislation is amended as set out in schedule 1. Those amendments are necessary as a consequence of the change of name to Public Advocate and the re-writing of the legislation.

Clause 27 repeals the *Community Advocate Act 1991*.

Clause 28 provides that part 5 expires after one year because it contains transitional provisions that are only required during the period of transition to the new legislative framework.

### **Schedule 1                      Consequential amendments**

This schedule contains the amendments that are necessary as a consequence of repealing the *Community Advocate Act 1991* and changing the name of the statutory office to Public Advocate.

#### *Adoption Act 1993*

Amendment 1.1 omits the definition of ‘Community Advocate’ from section 4 because a definition is provided in the *Legislation Act 2001*.

Amendment 1.2 replaces a reference to ‘Community Advocate’ by a reference to ‘Public Advocate’ in the definition of ‘prescribed person’. This change is the result of changing the name of the Community Advocate to the Public Advocate.

Amendment 1.3 omits section 103 because the *Legislation Act 2001* now contains the relevant provisions.

*Children and Young People Act 1999*

Amendment 1.4 and amendment 1.5 change section 405 to include subsection (1) and to put a reference to the *Public Advocate Act 2005* in place of a reference to the *Community Advocate Act 1991*.

Amendment 1.6 inserts a new subsection 405(2), which is a transitional provision. It provides continuing protection to people who have been the Community Advocate from having to disclose information contained in certain reports about children and young people. New subsections 405(3) and (4) are also inserted. Their effect is that subsections 405(2), (3) and (4) will expire after a month but the effect of subsection 405(2) will continue, providing the immunity from disclosing information for as long as is necessary to protect past Community Advocates.

Amendment 1.7 changes references to ‘Community Advocate’ to references to ‘Public Advocate’ in a number of sections and schedule 1. These changes are the result of changing the name of the Community Advocate to the public advocate.

*Crimes (Child Sex Offenders) Act 2005*

Amendment 1.8 removes the definition of ‘forensic patient’ and replaces it with a reference to the dictionary in the *Public Advocate Act 2005*. This will ensure that definitions are consistent in relation to matters that affect the functions of the Public Advocate.

*Domestic Violence and Protection Orders Act 2001*

Amendment 1.9 and amendment 1.10 change references to ‘Community Advocate’ to references to ‘Public Advocate’. These changes are the result of changing the name of the Community Advocate to the Public Advocate.

*Domestic Violence and Protection Orders Regulation 2002*

Amendment 1.11 changes a reference to ‘community advocate’ to references to ‘public advocate’. The change is the result of changing the name of the community advocate to the public advocate.

*Legislation Act 2001*

Amendment 1.12 omits the definition of ‘Community Advocate’ from the dictionary and amendment 1.13 inserts a definition of ‘Public Advocate’ in the dictionary. The dictionary in this Act provides for certain terms to have a particular meaning whenever they are used in legislation. These changes are the result of changing the name of the Community Advocate to the Public Advocate.

*Mental Health (Treatment and Care) Act 1994*

Amendment 1.14 makes an amendment that is required for drafting consistency. It inserts a note in section 4A about the application of the Criminal Code to certain offences under the Act.

Amendment 1.15 changes a reference to ‘Community Advocate’ to a reference to ‘Public Advocate’ in section 20. The provision has been redrafted to update the style. The change is the result of changing the name of the Community Advocate to the Public Advocate.

Amendment 1.16 changes a reference to ‘Community Advocate’ to a reference to ‘Public Advocate’ in section 36I. The provision has been redrafted to update the style. The change is the result of changing the name of the Community Advocate to the Public Advocate.

Amendment 1.17 changes a reference to ‘Community Advocate’ to a reference to ‘Public Advocate’ in section 45. The provision has been redrafted to update the style. The change is the result of changing the name of the Community Advocate to the Public Advocate.

Amendment 1.18 changes a reference to ‘Community Advocate’ to a reference to ‘Public Advocate’ in section 122B(3). The provision has been redrafted to update the style. The change is the result of changing the name of the Community Advocate to the Public Advocate.

Amendment 1.19 changes references to ‘Community Advocate’ to references to ‘Public Advocate’ in a number of sections. These changes are the result of changing the name of the Community Advocate to the Public Advocate.

#### *Remuneration Tribunal Act 1995*

Amendment 1.20 omits a reference to the Community Advocate from the Schedule 1 in the Act and amendment 1.21 inserts a reference to the Public Advocate in its place. The change is the result of changing the name of the Community Advocate to the public advocate.

### **Dictionary**

The dictionary contains definitions of terms used in the Public Advocate Bill. It contains a re-write of the definitions in section 3 of the *Community Advocate Act 1991*.

A new definition of ‘child’ and a new definition of ‘young person’ have been included. Those definitions are consistent with those used in the Human Rights Commission (Children and Young People Commissioner) Amendment Bill 2005 and the *Children and Young People Act 1999*.

The definition of ‘disability’ has been changed so that it no longer includes a person under a legal disability due to age. The inclusion of definitions of ‘child’ and ‘young person’ have enabled provisions to be re-drafted to specifically refer to children, young people and people with a disability as appropriate. The definition of ‘disability’ has been re-cast to clarify and update its drafting style.

The definition of ‘forensic patient’ has been changed to include a reference to mental illness as well as mental dysfunction. A definition of ‘mental illness’ has been included. These changes simply make the provisions of the Public Advocate Bill consistent with the provisions in the *Mental Health (Treatment and Care) Act 1994*. As the staff of the office



of the Public Advocate have to work with the provision of that Act as well as their own it is useful to have the definitions consistent where they deal with the same matters.