

2018

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

**OFFICIAL VISITORS FOR DISABILITY SERVICES
ANNUAL REPORT 2017-2018**

**Presented by
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1 July 2017 to 30 June 2018**

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1. INTRODUCTION

The *Disability Services Act 1991* together with the *Official Visitor Act 2012* provide the legislative authority for the role and functions of the Official Visitors (Disability Services) (OVDS). The OVDS act as the 'eyes and ears' of the Minister for Disability to monitor, detect and remedy problems in residential settings for people with disabilities. The aim of the OVDS is to improve service quality and create better outcomes for people with disability and their families. The OVDS are part of the ACT Official Visitor Scheme and complement other safeguards in place for people with disability by providing an avenue for resolution of complaints in a proactive manner and by facilitating a forum to discuss and address personal concerns.

2. APPOINTMENTS

The OVDS are appointed by the Attorney-General in consultation with the Minister for Disability. There are currently two OVDS:

- Ms Narelle Hargreaves OAM JP was originally appointed on 1 September 2013 for an initial six-month period. Ms. Hargreaves has had successive reappointments and the current appointment expires on 31 August 2019. Ms Hargreaves is also an OV representative on the Official Visitors' Board.
- Ms Mary Durkin PSM was appointed in 2017 for a period of two years, expiring on 31 August 2019. Ms Durkin replaced Ms Sue Salthouse, whose term expired on 28 August 2017.

3. ADMINISTRATION

The *Public Trustee and Guardian* for the ACT is responsible for the administration of the ACT Official Visitor Scheme. The *Public Trustee and Guardian ACT* has made a number of administrative arrangements to facilitate the effective operation of the Scheme. These arrangements are:

- an Official Visitor web page that can be accessed at <https://www.ptg.act.gov.au/resources/visitor-scheme>;
- a centralised phone number for intake of contacts on 1800 150 036;
- provision of business cards and identity cards for each Official Visitor;
- development of a fact sheet and poster about the OVDS;
- management of Official Visitor remuneration arrangements.

The Public Trustee and Guardian in conjunction with the (then) Disability ACT (DACT) commissioned the development of a series of explanatory videos, and along with the Fact

Sheets, these can be accessed at: <http://www.communityservices.act.gov.au/home/quality-complaints-and-regulation/Official-Visitor-Disability-Services>.

This explanatory information has been distributed widely to accommodation service providers and other community organisations.

The *Disability Services ACT 1991* states that a visitable place means:

- (a) accommodation provided for a person with disability for respite or long-term residential purposes other than a private home and*
- (b) any residential age care facility that accommodates a person with disability who is less than 65 years old.*

The ACT Human Services Registrar is responsible for maintaining the Register of visitable places and for overseeing the implementation of recommendations made by the OVDS to the Minister. The Register contains a list of locations and service provider details of visitable places under the Disability Services Act. The register of visitable places provided to the OVDS includes the address/location of the place, the number of individuals at the place, the relevant service provider and contact information. The majority of properties are under the management of Housing ACT, or Havelock Housing Association Inc. (<https://www.havelock.asn.au/>).

The visitable places Register is only updated on a semi-regular basis. Since the introduction of the NDIS, residents are now relocating more frequently, sometimes to accommodation which does not qualify as a visitable place. Knowing where NDIS participants are living depends on closer liaison with service providers, individuals and families/guardians. It is therefore concerning to note that knowledge of the Scheme is waning, at the same time that keeping the visitable places register up to date has become problematic.

With the introduction of a range of new providers in the ACT since the establishment of the National Disability Insurance Scheme (NDIS), a number of different living arrangements have also emerged, with many providers owning houses or renting houses from the private market. These arrangements have introduced some new challenges when private owners may need to be convinced that upgrades of premises are required to adapt to the changing needs of people with disabilities.

4. ACTIVITIES

The OVDS held quarterly meetings with the Human Services Registrar to discuss recommendations arising from the OVDS' quarterly reports to the Minister for Disability. The OVDS keep in regular contact with the Public Trustee and Guardian, and seek advice from the

ACT Disability and Community Services Commissioner at the ACT Human Rights Commission as needed. During the year, matters have also been discussed on a monthly basis with the Office of the Public Advocate. Thanks are due to the officers in these agencies for the assistance and advice given.

Three meetings were held with the Minister for Disability and the OVDS during the reporting period.

As well as the regular meetings with oversight agencies, the OVDS implemented a round of meetings with service providers to introduce Ms Durkin as a new OVDS and to ensure that providers are aware of the role of the OVDS. During the reporting period, meetings were held with:

- Project Independence
- Anglicare
- FOCUS ACT, Human Resource Committee
- Marymead
- Hartley Life Care
- Care Plus Services
- The Disability Trust
- Valmar Support Services
- Circles of Life
- Sunnyfield
- House with no Steps
- Greenleaf
- Quest Solutions
- Koomarri
- Rubies Nursing Care.

Contact was also maintained with disability advocacy services in the ACT, including Advocacy for Inclusion and the ACT Disability, Aged and Carer Advocacy Service.

The OVDS have made semi-regular visits to activity centres such as Anglicare Community Centre and Community Link Catholic Care to catch up with a number of residents when they are on outings away from their homes.

The OVDS have also participated in a range of relevant community forums and activities, including:

- The OVDS attended a meeting at CSD regarding the proposed Senior Practitioner position for the ACT.
- Ms Hargreaves attended a seminar, 'Embracing Diversity' organized by the Human Rights Commission at the Legislative Assembly.
- The OVDS contributed to the ACT's submission to the Commonwealth's Inquiry into Quality of Care in Aged Care Facilities.
- The OVDS met with Housing ACT to discuss maintenance programs and priorities, and issues noted when the OVDS visit houses managed by Housing ACT. The OVDS were pleased to advise that the services provided by Havelock House have met with general approval across the sector.
- The OVDS attended a management training day at Valmar Services and presented on the role and functions of the Disability OVs.
- The OVDS participated in a forum to discuss the Review of the Official Visitor Scheme in the ACT.

The OVDS also participated in the annual training day, organised by the Public Trustee and Guardian, for all OVs to network and keep up to date with changes in the environments in which they operate.

5. VISITS

The *Official Visitor (Disability Services) Visit and Complaint Guidelines (No 1)* were issued in 2014 and, at that time, required that the frequency of visits for the OVDS were to include one visit per annum as a minimum to:

- 54 Disability ACT supported accommodation places
- 66 Non-Government supported accommodation places
- 16 Residential aged care provider places (for people with disability under 65 years).

At the time the guidelines were issued, there was therefore an expectation that the OVDS would visit 136 places at least once a year. Since then, Disability ACT has closed and the number of non-Government places has increased. The number of residential aged care facilities where people with disabilities reside, has also reduced (although there may be more people in these facilities who are under 65 but this has not been reported to the OVDS or the Human Services Registrar).

There are currently 144 visitable places in the ACT that the OVDS visit. The minimum of one visit to each place per year was exceeded by the OVDS, with multiple visits made to some residences. The OVDS made 204 visits and saw 551 residents. Visits to other places such as the

Community Hub at Holt, where people might go to undertake activities, resulted in seeing an additional 82 people with a disability.

Table of visits 2017/18

Type of residence/facility	Number of visits	Number of residents visited
Group houses	175	462
Aged care facilities	19	48
Respite houses	10	41
Total	204	551

6. NUMBER AND KINDS OF COMPLAINTS RECEIVED BY THE OVDS

As noted in the 2016/17 Annual Report, the OVDS receive few referrals from residents or their families/guardians, service provider staff or from the community, which could indicate a low community awareness of the Official Visitor Disability Scheme. The rolling program of visits to service providers that the OVDS have undertaken in the current reporting period, may assist in increasing awareness of the OVDS' roles. The OVDS have recommended that a communication strategy on the OV Scheme in the community and specific to the OVDS scheme would assist in addressing this problem.

This does not mean however that the OVDS do not deal with a range of issues on the ground and following visits. While 'complaint' numbers are low, the majority of the matters that the OVDS pursue arise from observations made on visits and from discussions with residents and staff. Those discussions may lead to a number of separate issues being identified that require follow up with a range of authorities. It is difficult, therefore, to accurately quantify the number of 'complaints' dealt with each year.

Thirteen complaints came through the Official Visitors centralised phone number. Complaint issues included:

- A concern that a service provider was failing to develop personal care plans for residents – this was taken up with the provider.
- A complaint by a staff member regarding rostering – this matter was referred to the service provider for resolution.
- A concern about the attitudes of a staff member at a house – the OVDS visited the house and raised concerns with the service provider and continues to monitor the house.

- A concern about cleanliness in a house, which resulted in a visit at which further issues arose – a conversation was held with the Senior Advocate at the Office of the Public Advocate who arranged to visit the house.
- A request for a visit to an aged care facility to assist in resolving an issue with a family, which was satisfactorily dealt with.
- Staff in an aged care facility rang concerned that cuts to a resident's NDIS package had severely reduced the woman's access to the community and ability to engage in outside activities, which was resulting in an escalation of behaviours that were previously under control. This call was followed up with a visit to the facility and appropriate referrals.
- A coordination service for people with complex presentations rang with concerns about a resident in a disability group home. The OVDS was familiar with the situation and referred the concerns to the Public Advocate who undertook to attend to the matter.
- A support worker from a house called to raise concerns about the welfare of a resident in the house. The OVDS visited the house and discussed the situation with the house manager. The matter was referred to the service provider. The OVDS is continuing to monitor this situation.

Two referrals were made through the offices of Members of the Legislative Assembly. Two referrals were received from the Office for Disability (via the office of the Minister for Disability). One referral was received from the former Disability Official Visitor. Two referrals were made by the Office of the Public Advocate.

Examples of complaints, referrals, and issues identified by the OV's during visits were:

- Maintenance and gardening continued to be an issue in a number of houses, as well as general cleanliness – these matters are raised during visits, and after visits with service providers and/or housing managers.
- A number of houses require adaptations to manage the changing needs of people with disabilities, particularly as people age-in-place. These might include bathroom modifications, access ramps, larger entry and exit points etc. These issues are discussed with service providers and/or housing managers.
- The OV's noted that a number of properties were inadequate to deal with extreme summer temperatures and that this was unsatisfactory, particularly for residents who had challenges in maintaining temperature control, and cooling systems were recommended.
- Concerns were raised that a woman with a disability was unsafe in an aged care facility. The woman was visited, documents were reviewed, and discussions were held with management. The OVDS concluded that, while the woman was not in an ideal position as she is too young for an aged care facility, she did not at that time appear to be unsafe. The OVDS continues to keep a close eye on this situation.

- Concerns were raised that a resident in a group home may be harming another resident. The OVDS was aware of the concerns and has been monitoring the situation for some time. While the resident was self-harming, there was no evidence that the other resident had been harmed.
- Two meetings were held with service providers and support was given regarding liaison with the NSW Department of Family and Community Services to improve the care of a young boy in long-term residence at Ricky Stuart House.
- A person in a disability group home raised concerns about the welfare of a friend who resided in another group home. Both residents were visited by the OVDS and a follow up discussion was held with the mother of one of the residents. A general issue of restraint was discussed with the provider, including the need for following the organisation's restraint policies and documenting the authority for that restraint. This issue was later discussed with the Senior Practitioner.
- Concerns were raised with the OVDS that a service provider had directed that residents were prohibited from inviting people to their homes without the approval of Executive staff in the organisation. While the OVDS dealt with the issue in two separate houses, the systemic issue of the organisation's policy was referred to the Disability and Community Services Commissioner. At the time of completing this report, the Commissioner's office was continuing to investigate the matter.
- A woman in an aged care facility had an inadequate NDIS package that did not enable her to go out with her support worker – the OVDS provided advice on how to seek a review of the NDIS decision and the woman is now able to access the community.
- A complaint was received from a woman with Down Syndrome who is keen to move out of her house and to another service provider as her current provider is not assisting her to achieve the independence she desires – the OVDS sought the assistance of an advocacy organisation in addressing the woman's issues and resolution of this matter is ongoing.

7. NUMBER AND KINDS OF MATTERS REFERRED BY THE OVDS TO AN INVESTIGATIVE ENTITY

Two matters were referred to the Disability and Community Services Commissioner during the reporting period. Another three matters were referred to the Public Advocate. Four matters were referred to the Official Visitors for Mental Health.

8. SYSTEMIC OR SERIOUS ISSUES IDENTIFIED

Residential aged care facilities

The OVDS 2016/17 Annual Report noted that the OVDS had an ongoing issue for the entire year of being denied entry to several residential aged care facilities. Following publicity around this

issue, and correspondence from the Human Services Registrar to all aged care facilities, this issue has been resolved. The OVDS have experienced cooperation from all aged care facilities during the current reporting period.

The OVDS remain concerned that new residents under 65 continue to be admitted to residential aged care facilities. The OVDS have continued to raise this issue and are concerned that insufficient effort appears to have been made to link people to support in the community and ensure that residential aged care facilities are not the default option for people with disabilities. The OVDS hold serious concerns that clients such as these in aged care facilities do not have their needs met appropriately in being part of the community, especially if there is no family support.

Some facilities are not even aware that they have residents under 65 until the OVDS request to see these people. There are consequently no efforts made to cater to the specific needs of this younger age group. The existing oversight mechanisms in the aged care domain do not focus on such issues.

One disability service provider expressed a specific interest in targeting young people in aged care facilities to provide them with more appropriate accommodation and services. The difficulty faced by the organisation is that they are unable to obtain the names and profiles of people who are in aged care facilities, to determine whether or not they have the expertise to assist these individuals. While the OVDS appreciate that privacy considerations need to be managed, it would appear appropriate that some protocol be in place to enable service providers to communicate with people in aged care facilities, and/or their guardians, who are keen to move. The OVDS made a recommendation along these lines to the Minister for Disability.

Database of visitable places

The most significant systemic issue (also noted in last year's Annual Report) is the inability to keep the database of visitable places appropriately updated. Communication strategies do not appear to have been successful. In the current reporting period the OVDS have recommended that legislative amendments are required to compel service providers and residential aged care facilities to notify the Human Services Registrar whenever new premises are established and/or when new clients take up residence.

Legislative amendments

Section 8C of the *Disability Services Act 1991* (ACT) provides:

An official visitor must give the operating entity written notice that the official visitor intends to visit a visitable place at least 24 hours before the official visitor's visit.

The requirement for 24 hours written notice does not appear in the Official Visitors Act or in guidelines for any of the official visitors in other areas. While 24 hours written notice might be manageable for facilities such as the prison or the Adult Mental Health Unit, it is not practical in the disability jurisdiction where there are 144 places to visit. Organizing official visits to group houses will often take a number of phone calls and some negotiation with house managers to ensure that residents will actually be at home at particular times, as they will often be at work or undertaking activities in the community during normal working hours. Written notice to the offices of service providers also represents an additional burden for them as they then need to be a conduit between the OVDS and relevant house managers to organize visits. The OVDS have been advised that they do not want this role. The OVDS have recommended that the Act (and the *Official Visitor (Disability Services) Visit and Complaint Guidelines 2014* which repeat this provision) be amended to provide the flexibility necessary for arranging disability official visits.

Further, the legislation requires that OV's need the consent of the 'entitled person' in a range of areas – to request an OV visit, to access records etc. A significant proportion of the OVDS' clients are non-verbal and many are unable to communicate with their views on such a complex concept without significant time and effort. Without their consent it is difficult for the OVDS to scrutinise whether they have adequate care plans in place, whether dietary requirements are being met, whether activities are being undertaken in accordance with funding etc. The OVDS have recommended removing this requirement to enable them to properly reassure government that matters of concern have not been overlooked in relation to the most vulnerable people with disabilities.

The Disability and Community Services Commissioner contacted the OVDS regarding a complaint she had received about a house that provides rehabilitation services for people with mental illness. The Commissioner inquired whether the OVDS had visited the house recently and if any concerns had been identified. The OVDS advised that there did not appear to be any jurisdiction for the OVDS to visit the residence. Relevant legislation provides that the OVDS can visit accommodation provided for people with a disability "*for respite or long-term residential purposes*". While the OVDS do visit some community residences for people with mental illness, this particular house did not meet the criteria that it was accommodation for respite or long-term residential purposes. The Official Visitors for mental health are also unable to visit the residence as it has not been legislatively designated as a facility that comes under their jurisdiction. The OVDS are concerned that this gap in oversight may leave residents in such accommodation vulnerable and that visits by either the mental health official visitors or the

OVDS are warranted. The OVDS recommended that legislative amendments address this gap in official visitors' jurisdictions.

Review of the Official Visitors Scheme

The OVDS have contributed to the review of the Official Visitors' scheme. The OVDS noted that any measure to address perceived concerns needed to sufficiently reflect the breadth of official visitors' different roles and that a "*one size fits all*" solution would not work across all OV functions. The OVDS recommended that a proposed Working Group on the issues would benefit from including OV representation. This would enhance the Government's ability to consider the practical implications of any proposals that are discussed.

Working with Vulnerable People Scheme

During visits to the managers of service provider organisations, the OVDS have been advised that organisations are generally reluctant to report to the Commissioner for Fair Trading (responsible for implementing Working with Vulnerable People checks) when they hold serious concerns about staff and/or have terminated a person's employment because of failures to meet adequate standards. In such circumstances the managers fear that they may be in breach of privacy legislation, particularly when there is no clear obligation or authority in the legislation to enable them to make such reports. Anecdotal information indicates that managers may share such information with their own networks but this does not provide a failsafe method of ensuring that inappropriate people do not work in the sector. The OVDS recommended that legislative amendments may be warranted to authorise reporting to the Commissioner and provide reporters with protection from any repercussions. Such reports might then trigger the Commissioner's ability to investigate the circumstances and determine the ongoing status of a worker's approval to work with vulnerable people.

People with disabilities and access to health services

Concerns were raised on more than one occasion that the health system has been reluctant to deal with people who present with particularly challenging behaviours and that this can have a negative impact on treating their presenting health symptoms. The OVDS recommended that ACT Health undertake an assessment of measures that it has in place to ensure that people with disabilities are provided with appropriate health treatment and that discussions were warranted between the Office for Disability and ACT Health around the provision of health care to people with disabilities, with a view to developing appropriate policies and procedures around behaviour management.

The National Disability Insurance Scheme

The NDIS has been a wonderful achievement in changing many people's lives, with increased support and access to the community. It is to be expected, however, that introduction of such a significant scheme will experience a range of problems until all aspects of the new model are bedded down. The OVDS' previous Annual Reports have identified a range of challenges related to implementation of the NDIS including:

- the possible forced addition of new residents in group houses, resulting in part from the NDIS' failure to fund 24/7 care for individuals living alone; and
- concerns that there needs to be a separation of personal support and housing provision to ensure that no single organization has an undue amount of influence over an individual's life.

Concerns raised during the current reporting period included:

- that reviews of NDIS packages have seen clients have their entitlements reduced because of a view that their initial funding packages were "too generous" and that, if money in relation to a certain category of support has not been spent, that funding will be removed, regardless of the reason for the under-expenditure
 - one example was cited where a woman with significant behavioural issues was progressing well – her package was reduced on review and her behaviours of concern had re-emerged;
- that NDIS funding in particular categories is insufficient to cover service provider costs and this has had a consequent impact of reducing the market for certain services – this is particularly concerning in relation to support for people to access the community;
- that delays in NDIA decision making e.g. in seeking approval for quotes above inadequate benchmark pricing, has resulted in a number of service providers needing to reduce services to clients or continue to provide services to clients at the service provider's expense – service providers have expressed the view that they are effectively subsidizing the NDIA and that this results in reduced service quality as they are unable to pay staff to go offline and undertake training or attend staff meetings; and
- that NDIS packages are often insufficient for people with mental health issues, in comparison to those with more obvious physical or cognitive disabilities – service providers advise that people with mental illness are getting insufficient funding for the supports they need and that they often are not able to negotiate better packages for themselves.

Narelle Hargreaves
21 September 2018

Mary Durkin
21 September 2018