

# Chapter Nine

## Official visitors

### *An old idea revisited*

Tasmania's first official visitors scheme commenced in 1885, when the official visitors were appointed to review facilities at New Norfolk and the Cascades. They made recommendations to the Governor and facilitated some positive changes in the practices of the day. The new Act re-introduces an official visitors scheme, following the recommendation in the *Human Rights Report on Mental Illness*.

Official visitors have an 'oversight' role under the new Act – that is, they will visit mental health facilities to examine the physical environment and standard of care of people with a mental illness. Official visitors will also be able to investigate suspected breaches of the Act and complaints by consumers, and may also be able to assist people to apply for a review by the Tribunal. This chapter will explain the functions and powers of official visitors and provide health practitioners with an understanding of the way the scheme will operate.

### The functions of official visitors

Section 75 of the Act states that official visitors have the following functions:

- to examine the adequacy of the services for the assessment and treatment of mental illnesses in the region or in the approved hospital for which the official visitors are appointed;
- to examine the appropriateness and standard of facilities for the accommodation, assessment, care and treatment of persons with mental illnesses in the relevant region or approved hospital;
- to investigate the opportunities and examine the facilities for the recreation, occupation, education, training and rehabilitation of persons receiving care or treatment for mental illness in the relevant region or approved hospital;
- to investigate any suspected contravention of the Act in the care or treatment of persons with mental illnesses and, in particular, unnecessary bodily restraint, seclusion or other restriction on freedom;
- to visit patients and assess the adequacy of their care and treatment; and
- to investigate complaints made by persons receiving care or treatment for mental illness.

Visitors have a unique opportunity to observe mental health service delivery in action. They can provide valuable feedback to staff, both about the areas where changes could be needed – but also about the things that staff are doing well. Official visitors need to be able to understand the constraints which apply to mental health service delivery, such as staff shortages and financial restraints and because they sit outside of the health system, they may be able to bring about changes from outside the bureaucratic structures.

## Frequency and arrangement of visits

Official visitors can visit individually or in panels of two visitors. They must visit approved hospitals at least once a month and can visit at any other time. This allows the visitors to follow up requests from patients in between the monthly visits. Official visitors have extensive powers within approved hospitals for example, to examine medical records of a patient. These powers are discussed further below.

### ***What is an approved hospital?***

The Act makes frequent references to approved hospitals. An approved hospital means a hospital or part of a hospital approved by the Minister for the care and treatment of involuntary patients with mental illnesses. They do not have to be hospitals as we usually understand them and can include other residential facilities as, under the Act, hospital simply means a place equipped for the care of patients on a live in basis (whether or not provision is also made for the treatment of outpatients). The list of approved hospitals is likely to change, particularly as the new facilities replacing the Royal Derwent Hospital come into effect. A current list can be obtained from the Manager, Mental Health Services.

### ***Visits to other facilities***

Official visitors may also be able to visit private hospitals and other places where people with mental illness are living (eg hostels and boarding houses) at the request of the person, or where there has been concern expressed by the person, their carer or any other person with an interest in the welfare of the person about the care of people with a mental illness in the facility. Official visitors may also visit community mental health centres on the request of the patient, however they have no automatic right to visit or access records in private facilities or community mental health centres, and entrance to these facilities will only take place with the agreement of the management of the facility. If access is denied then the matter could be reported to the Mental Health Tribunal.

### ***Co-operation of staff***

The success of the official visitors scheme will be enhanced with the full co-operation of mental health services staff. The relationship between the staff and visitors should be co-operative, and visitors will also be encouraged to be considerate of the staff needs, for example postponing questions or even a visit if staff are very busy at particular times in a shift or if an incident has recently occurred on the ward.

Staff can also assist official visitors, by identifying any patients who may wish to speak to a official visitor, and by ensuring that the visitors are made aware of any patient who may pose a risk to the official visitor's safety, and providing appropriate assistance. Where a patient is likely to be dangerous, official visitors should still be assisted to talk with the person privately, perhaps in a room where both parties can be observed but not heard, and where the visitor can quickly obtain assistance from the nursing staff should this be required.

The experience of official visitors schemes in other States has been that official visitors can also raise concerns of staff through channels outside mental health services, for example where staff have concerns about the adequacy of a facility or unreasonably high bed numbers and so on.

## Powers of official visitors in approved hospitals (sections [77\(3\)](#) and [78](#))

As mentioned above, official visitors have a number of powers in approved hospitals. They may require the senior approved medical practitioner of an approved hospital (or another member of staff who appears to be in a position to do so) to:

- facilitate inspection of the approved hospital by the official visitor or the panel; and
- produce for inspection by the official visitor or the panel, records relating to the admission, care and treatment of patients in the hospital; and
- arrange interviews between the official visitor or the panel and patients in the hospital; and
- answer questions about the care or treatment of patients.

### *Access to medical records*

[Section 77\(b\)](#) gives official visitors power to inspect the records relating to the admission, care and treatment of patients in the hospital. It can be expected that official visitors will routinely inspect the restraint and seclusion registers being maintained by the hospital. In addition, the official visitors may access a patient's record if they reasonably believe that the record will clarify or resolve the complaint. Official visitors will only seek access to that part of the record that relates to the specific incident of which the person has complained. Official visitors should read the relevant part of the file with a clinical staff member to assist them in interpreting the record, or to answer any queries.

On accessing the medical record, a staff member should note that access has been given to an official visitor and this will be countersigned by the official visitor. The content of the medical record may only be discussed with the patient insofar as this relates to the operation of the *Mental Health Act* (eg whether the person is on an involuntary hospitalisation order and whether this order is valid) or can provide an explanation for decisions about the care of the person. Clinical information, such as treatment and diagnosis, as well as information relating to third parties is not to be disclosed to the client. The official visitor may, however, wish to arrange an interview with treating staff and the client to assist in clarifying queries.

### *Requests to see visitors*

[Section 78](#) of the Act states that if a patient in an approved hospital asks a member of staff to arrange a visit by an official visitor, the controlling authority of the hospital must pass on details of the request to an official visitor as soon as practicable after it is made. The controlling authority of a hospital maintained and operated by the State is the Secretary of the Department of Health and Human Services, unless that responsibility has been delegated to a staff member such as the manager of the facility or the senior approved medical practitioner.

### *Offences created*

If an official visitor requires the assistance of the senior approved medical practitioner or other staff member for any of the functions specified in [section 77](#) (discussed above), the practitioner or staff member must comply with the request. Failure to comply could result in a fine of up to \$2000. The Act also provides that the controlling authority can be fined a maximum of \$1000 for failing to pass on a request from a patient to see an official visitor.

## The complaints management process

It is to be expected that official visitors will receive complaints and queries from patients arising from their involuntary hospitalisation. Sometimes this will be a simple matter, like checking whether someone is on an initial order or continuing care order, or whether they are at the hospital as a voluntary patient. Other complaints may be more serious, and could include such things as allegations of harassment from other patients, or allegations that they were assaulted by police during the course of being taken to hospital. Official visitors will seek to resolve complaints at the lowest level first, but will also refer complaints to external complaints bodies of necessary. A decision to refer a matter to an external agency like the Health Complaints Commissioner or Anti Discrimination Commissioner should only be made by the coordinating official visitor. A draft complaints form is included in Chapter 12.

### ***Reports following visits***

Official visitors will complete a report form which provides a record of the visit. The report will be signed by each official visitor on the panel, and will clearly state the outcome of any discussions/issues taken up with staff at the hospital. If the matter has not been resolved it will be documented so that further action can be taken. Feedback from the visits will be provided to each approved hospital.

## The appointment process

Official visitors are appointed by the Governor on the recommendation of the Minister. An appointment may be made for a region specified in the instrument of appointment; or for a nominated approved hospital. The Act also specifies that for each region or hospital, one of the official visitors is to be appointed as coordinator. The coordinator arranges the visits and exercise of the other functions of the official visitors.

### ***Official visitors must be independent***

It is important that official visitors are independent of the direct provision of services. They must be, and be seen be, independent and should have no personal interest in the resolution of any of the issues they are dealing with. The Act states that a person is not eligible for appointment if the person:

- holds an office in the Department of Health and Human Services; or
- has an interest in a contract with the Crown or an approved hospital; or
- has a financial interest in an approved hospital.

### ***Terms and conditions of appointment***

An appointment as an official visitor is made for a term for up to 3 years, and may be on terms and conditions specified by the Governor.

An appointment as official visitor terminates if the official visitor:

- resigns by written notice of resignation given to the Minister; or
- is convicted of an indictable offence, or an offence which, if committed in Tasmania, would be an indictable offence; or

- becomes incapable of performing the duties of an official visitor; or
- is removed from office as an official visitor by the Governor.

## Code of ethics for visitors

Upon appointment, official visitors will be asked to sign a code of conduct. The code reads as follows:

### *The code*

As an official visitor my main responsibility is to make enquiries into the standards of treatment and care and the rights and dignity accorded to people being treated under the *Mental Health Act (Tasmania) 1996* while maintaining an independent community perspective.

In performing my duties as an official visitor I am guided by the following principles, namely that:

- the welfare and interest of the patients are my main priority, but I will also consider the needs of the patients' families and the community;
- I will be guided by the objects and principles set out in [sections 6 & 7](#) of the *Mental Health Act*;
- the cultural needs of patients are specifically addressed;
- as an official visitor I am independent of the public and private mental health care systems;
- I must remain impartial when dealing with issues raised and not let my personal beliefs influence my function as an official visitor;
- the patient/official visitor relationship is strictly confidential and in accordance with section 90 of the *Mental Health Act*, I must not disclose any information unless:
  - (a) the disclosure is authorised by the person to whom it relates; or
  - (b) the disclosure is reasonably required for the care or treatment of the person to whom the information relates or for the administration of this Act; or
  - (c) the disclosure is authorised or required by the Guardianship and Administration Board or the Mental Health Tribunal.

I undertake to perform my duties as an official visitor and report on my findings in accordance with the principles and objectives set out in this Code.

---

(Name in block letters)

---

(Signature)

---

(Date)

*Official visitors*

**For further information on official visitors contact:**

Mental Health Services  
Department of Health and Human Services  
Second Floor, 34 Davey Street  
GPO Box 125B  
HOBART TAS 7001  
Telephone: (03) 6233 2830  
Facsimile: (03) 6233 3023

## Key points

# Official visitors

### Functions of the official visitors

- Official visitors have the following functions:
  - (a) to examine the adequacy of the services for the assessment and treatment of mental illnesses;
  - (b) to examine the appropriateness and standard of facilities for the accommodation, assessment, care and treatment of persons with mental illnesses;
  - (c) to investigate the opportunities and examine the facilities for the recreation, occupation, education, training and rehabilitation of people receiving care or treatment for mental illness;
  - (d) to investigate any suspected contravention of the Act in the care or treatment of people with mental illnesses and, in particular, unnecessary bodily restraint, seclusion or other restriction on freedom;
  - (e) to visit patients and assess the adequacy of their care and treatment;
  - (f) to investigate complaints made by persons receiving care or treatment for mental illness.
- Visits will be organised by the coordinating official visitor – [section 77\(1\)](#).
- Official visitors can visit individually or in panels of two visitors.
- Approved hospitals must be visited at least once a month but official visitors may visit at any other time.
- Visitors will liaise with staff and try to foster a co-operative relationship with each mental health service.

### Powers of official visitors

- Official visitors may require the senior approved medical practitioner or other staff member to:
  - (a) facilitate inspection of the approved hospital by the official visitor or the panel; and
  - (b) produce for inspection by the official visitor or the panel, records relating to the admission, care and treatment of patients in the hospital; and
  - (c) arrange interviews between the official visitor or the panel and patients in the hospital; and
  - (d) answer questions about the care or treatment of patients.
- The Act also creates an offence if a request for assistance is refused.

### Requests to see official visitors

- If a patient requests to see an official visitor, the controlling authority must pass on the request to a official visitor as soon as possible;
- If the controlling authority fails to pass on the request, they may be guilty of an offence and fined.

**Complaints management**

- Official visitors will attempt to resolve complaints at the lowest level in the first instance.
- A decision to refer a complaint to an external complaints body will only be made by the coordinating official visitor.
- Official visitors will provide feedback to each approved hospital following visits.