

EXPOSURE DRAFT

(Prepared by Parliamentary Counsel's Office)

Public Advocate (Official Visitors) Amendment Bill 2012

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Legislation amended	2
4 Functions of public advocate	
New section 10 (ia)	2
5 New part 3A	3
6 Parts 3A and 4	20
7 Divisions 3A.1 to 3A.4	20
8 Sections 13A to 18	20
9 Protection of officials from liability	
Section 14 (1), definition of <i>official</i> , new paragraph (ba)	21

Contents

		Page
10	New part 20	21
11	Dictionary, new definitions	22
Schedule 1	Consequential amendments	24
Part 1.1	Children and Young People Act 2008	24
Part 1.2	Corrections Management Act 2007	29
Part 1.3	Disability Services Act 1991	30
Part 1.4	Housing Assistance Act 2007	36
Part 1.5	Mental Health (Treatment and Care) Act 1994	37
Part 1.6	Territory Records Regulation 2009	39

EXPOSURE DRAFT

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Public Advocate (Official Visitors) Amendment Bill 2012

A Bill for

An Act to amend the *Public Advocate Act 2005*, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 Name of Act

This Act is the *Public Advocate (Official Visitors) Amendment Act 2012*.

2 Commencement

(1) The following provisions commence on 1 March 2014:

- schedule 1, amendment 1.21;
- schedule 1, amendment 1.23;
- schedule 1, amendment 1.25;
- schedule 1, amendment 1.27;
- schedule 1, amendment 1.29.

Note The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

(2) The remaining provisions commence on 1 March 2013.

3 Legislation amended

This Act amends the *Public Advocate Act 2005*.

Note This Act also amends other legislation (see sch 1).

4 Functions of public advocate New section 10 (ia)

insert

(ia) exercising the functions in relation to official visitors under division 3A.3;

5 New part 3A*insert***Part 3A Official visitors****Division 3A.1 Definitions and important concepts****13A Definitions—pt 3A**

In this part:

entitled person, for an operational Act, means an entitled person under the operational Act.

investigative entity means an entity with power to require the production of documents or the answering of questions including, for example, the chief police officer, the human rights commission, the public advocate and the ombudsman.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

operating entity, for a visitable place, means—

- (a) if the Territory operates the site—the relevant director-general;
or
- (b) in any other case—the entity that operates the site.

operational Minister, for an operational Act, means the Minister responsible for the operational Act.

relevant director-general, for an operational Act, means the director-general of the administrative unit responsible for the administration of the operational Act.

EXPOSURE DRAFT

visitable place, for an operational Act, means a visitable place under the operational Act.

13B What is an *official visitor*?—Act

For this Act, an *official visitor*, for an operational Act, means a person appointed under section 13D for the Act.

13C What is an *operational Act*?—Act

For this Act, each of the following is an *operational Act*:

- (a) the *Children and Young People Act 2008*;
- (b) the *Corrections Management Act 2007*;
- (c) the *Disability Services Act 1991*;
- (d) the *Housing Assistance Act 2007*;
- (e) the *Mental Health (Treatment and Care) Act 1994*.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see Legislation Act, s 104).

Division 3A.2 Appointment of official visitors

13D Official visitors—appointment generally

- (1) The Minister must appoint the following:
 - (a) for the *Children and Young People Act 2008*—at least 2 official visitors, including one official visitor who is an Aboriginal or Torres Strait Islander;
 - (b) for the *Corrections Management Act 2007*—at least 2 official visitors, including one official visitor who is an Aboriginal or Torres Strait Islander;

EXPOSURE DRAFT

- (c) for the *Disability Services Act 1991*—at least 1 official visitor;
 - (d) for the *Housing Assistance Act 2007*—at least 1 official visitor;
 - (e) for the *Mental Health (Treatment and Care) Act 1994*—at least 1 official visitor.
- (2) The Minister may appoint a person as an official visitor for an operational Act only if—
 - (a) the Minister has consulted with the operational Minister and the public advocate; and
 - (b) satisfied on reasonable grounds that the person has suitable qualifications or experience to exercise the functions of an official visitor for the operational Act.
- (3) However, the Minister must not appoint a person as an official visitor if the person—
 - (a) is a public employee; or
 - (b) has a relevant interest.
- (4) An operational Act may prescribe additional requirements for deciding whether or not to appoint a person as an official visitor for the operational Act.
- (5) In this section:
Aboriginal person or Torres Strait Islander means a person who—
 - (a) is a descendant of an Aboriginal person or Torres Strait Islander person; and
 - (b) identifies as an Aboriginal person or Torres Strait Islander person; and

EXPOSURE DRAFT

- (c) is accepted as an Aboriginal person or Torres Strait Islander person by an Aboriginal community or Torres Strait Islander community.

relevant interest means—

- (a) a direct interest in a contract with a visitable place or an entity providing services to the visitable place; or
- (b) a financial interest in a visitable place.

13E Official visitors—conditions of appointment

- (1) An appointment as an official visitor must not be for longer than 3 years.
- (2) The conditions of appointment of an official visitor are the conditions agreed between the Minister and the person, subject to any determination under the *Remuneration Tribunal Act 1995*.

Note 1 For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

Note 2 Certain Ministerial appointments require consultation with an Assembly committee and are disallowable (see Legislation Act, div 19.3.3).

Note 3 A person may be reappointed to a position if the person is eligible to be appointed to the position (see Legislation Act, s 208 and dict, pt 1, def *appoint*).

EXPOSURE DRAFT

13F Ending appointment of official visitors

- (1) The Minister may end a person's appointment as an official visitor—
 - (a) for misbehaviour; or
 - (b) if the person—
 - (i) does not inspect a visitable place as required under the complaints guidelines made under section 13L; and
 - (ii) continues to fail to inspect the site as required for 4 consecutive weeks; or
 - (c) if an operational Act prescribes requirements that the person must satisfy to be appointed as an official visitor—if the person no longer satisfies the criteria.
- (2) The Minister must end the person's appointment as official visitor—
 - (a) for physical or mental incapacity, if the incapacity substantially affects the exercise of the person's functions; or
 - (b) if the person fails to take all reasonable steps to avoid being placed in a position where a conflict of interest arises during the exercise of the person's functions.
- (3) A person's appointment as official visitor ends, by force of this section, if the person becomes a public employee.

Note A person's appointment also ends if the person resigns (see Legislation Act, s 210).

EXPOSURE DRAFT

Division 3A.3 Coordination etc of official visitors

13G Functions of public advocate in relation to official visitors

The public advocate has the following functions:

- (a) to oversee and coordinate the activities of official visitors;
- (b) to meet with the official visitors at least once every year;
- (c) to represent official visitors;
- (d) to prepare and circulate publications explaining the role of official visitors;
- (e) to supervise the training of official visitors;
- (f) to report to the Minister on the work and activities of official visitors.

Division 3A.4 Functions of official visitors

13H Official visitors—functions generally

An official visitor for an operational Act has the following functions:

- (a) to inspect visitable places for the operational Act;
- (b) to report to the people mentioned in section 13K and section 13ZA;
- (c) to receive and consider complaints from entitled people, and others on their behalf;
- (d) to be available to talk with entitled people;
- (e) to exercise any other function given to an official visitor under this Act, an operational Act or another territory law.

EXPOSURE DRAFT

13I Official visitors—inspection of visitable places

- (1) An official visitor for an operational Act may, at any reasonable time, enter a visitable place for the operational Act.

Example—time that would not be reasonable

a time that would hinder a search, or coincide with an escape attempt, at a visitable place

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) Without limiting subsection (1), the operational Act may prescribe minimum requirements for a visit by the official visitor to the visitable place.

13J Assistance must be provided to official visitors

An operating entity for a visitable place for an operational Act must give an official visitor for the Act any reasonable assistance the official visitor asks for to exercise the official visitor's functions at the place.

Examples

- 1 giving access to documents and records relating to a complaint
- 2 answering reasonable questions about the facts of a complaint
- 3 giving reasonable access to facilities

Note 1 The Legislation Act, s 170 deals with the application of the privilege against self-incrimination.

Note 2 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

EXPOSURE DRAFT

13K Official visitors—reporting to operational Minister etc

- (1) This section applies if an official visitor for an operational Act believes on reasonable grounds that any of the following is not in accordance with the operational Act:
 - (a) the care and other services provided to an entitled person at a visitable place for an operational Act;
 - (b) the living conditions and activities of an entitled person at the visitable place;
 - (c) if an entitled person for an operational Act is detained under that Act at the visitable place—the detention of the person at the place (including any aspect of the treatment, living conditions, work or activities of the detainee).
- (2) The official visitor must report the belief to—
 - (a) the operational Minister; and
 - (b) the relevant director-general; and
 - (c) the public advocate.
- (3) An operational Act may prescribe other reporting requirements for the operational Act.

13L Complaints guidelines

- (1) The Minister may, after consulting the operational Minister for an operational Act, make guidelines, consistent with this part, about the handling of complaints by an official visitor for the operational Act.
- (2) The guidelines must include a schedule that sets out—
 - (a) each visitable place that an official visitor must inspect; and
 - (b) how often the official visitor must inspect the place.

- (3) A guideline is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

13M Complaints to official visitors

- (1) An entitled person for an operational Act, or anyone else, may complain to an official visitor for that Act about any aspect of the person's accommodation including—
- (a) the conditions of accommodation of an entitled person; or
 - (b) the care or services provided to an entitled person at a visitable place; or
 - (c) how a visitable place is conducted.
- (2) The entitled person may make the complaint to the official visitor personally or through someone else.
- (3) The entitled person may ask the official visitor to hear the complaint with no-one else present and, if so—
- (a) the official visitor must comply; and
 - (b) the operating entity must provide reasonably private facilities for the official visitor to hear the complaint.
- (4) In this section:
- accommodation***, of an entitled person, includes, if an entitled person is detained or confined under an operational Act at a visitable place, the person's detention or confinement.

EXPOSURE DRAFT

13N Requests to see official visitor

- (1) This section applies if an entitled person for an operational Act tells the operating entity that the person wants to see an official visitor for that Act.
- (2) The operating entity must ensure that an official visitor for an operational Act is told of the request as soon as practicable, but not later than 12 hours after the request is made.
- (3) An operating entity must not ask an entitled person, and the person need not explain to the operating entity, why the person wants to see an official visitor.

13O Notice of complaints

- (1) This section applies if an official visitor for an operational Act receives a complaint about a visitable place under section 13M.
- (2) The official visitor must tell the relevant director-general, in writing, that a complaint has been made and the name of the place to which it relates.

13P Official visitors must try to resolve complaints

- (1) After receiving a complaint under section 13M, an official visitor for an operational Act must take all reasonable steps to promptly and efficiently resolve the complaint with the operating entity for the visitable place.
- (2) To resolve a complaint, the official visitor may—
 - (a) make inquiries about any matter raised in and incidental to the complaint; and
 - (b) exercise any other function given to an official visitor under this Act or the operational Act.

EXPOSURE DRAFT

- (3) The official visitor may also—
 - (a) make a recommendation about the complaint to the operating entity for the visitable place; or
 - (b) give the relevant director-general or the operational Minister a report about the complaint or any inquiries made about a matter raised in the complaint.
- (4) This section is subject to the following sections:
 - (a) section 13Q (Withdrawal of complaints);
 - (b) section 13R (Complaints may be closed—referral to other entity);
 - (c) section 13S (Complaints may be closed—other entity investigating);
 - (d) section 13T (Complaints closed—frivolous, etc);
 - (e) section 13U (Complaints closed—resolved);
 - (f) section 13V (Complaints closed—complainant left visitable place).

13Q Withdrawal of complaints

- (1) At any time, a complainant may, by written notice given to an official visitor for an operational Act, withdraw a complaint.
- (2) If a complaint is withdrawn, the official visitor to whom the complaint was made must close the complaint if satisfied on reasonable grounds that the complaint—
 - (a) is about a minor issue; or
 - (b) has been resolved appropriately.

EXPOSURE DRAFT

- (3) If the official visitor suspects on reasonable grounds that it is in the public interest that a withdrawn complaint be considered, the official visitor must—
 - (a) refer the complaint to an appropriate investigative entity; and
 - (b) close the complaint; and
 - (c) tell the complainant about the referral and closure of the complaint.
- (4) If the official visitor refers the complaint to an investigative entity, the official visitor must give the entity any information that the official visitor has in relation to the complaint.

13R Complaints may be closed—referral to other entity

- (1) This section applies if an official visitor for an operational Act—
 - (a) receives a complaint; and
 - (b) after considering the complaint, is satisfied on reasonable grounds that the complaint would be better dealt with by an investigative entity with power to investigate the complaint.
- (2) The official visitor may refer the complaint to the investigative entity.
- (3) If the official visitor refers the complaint to the investigative entity, the official visitor—
 - (a) must give the entity any information that the official visitor has in relation to the complaint; and
 - (b) must tell the complainant about the referral; and
 - (c) may close the complaint.

EXPOSURE DRAFT

13S Complaints may be closed—other entity investigating

- (1) This section applies if an official visitor for an operational Act—
 - (a) receives a complaint; and
 - (b) after considering the complaint, is satisfied on reasonable grounds that the substance of the complaint has been, is being or will be investigated by an appropriate investigative entity.
- (2) The official visitor must—
 - (a) give the investigative entity any information that the official visitor has in relation to the complaint; and
 - (b) close the complaint.

13T Complaints closed—frivolous, etc

- (1) This section applies if an official visitor for an operational Act—
 - (a) receives a complaint about a visitable place; and
 - (b) after considering the complaint, is satisfied on reasonable grounds that the complaint is frivolous, vexatious or not made honestly.
- (2) The official visitor must close the complaint.

13U Complaints closed—resolved

- (1) This section applies if an official visitor for an operational Act—
 - (a) receives a complaint about a visitable place; and
 - (b) is satisfied on reasonable grounds that the complaint is resolved—
 - (i) with the operating entity for the place; and
 - (ii) to the satisfaction of the complainant.

EXPOSURE DRAFT

- (2) The official visitor must close the complaint.

13V Complaints closed—complainant left visitable place

- (1) This section applies if an official visitor for an operational Act—
 - (a) receives a complaint about a visitable place; and
 - (b) is satisfied on reasonable grounds that the complainant—
 - (i) has left the visitable place; and
 - (ii) cannot be found after reasonable enquiry.
- (2) The official visitor must close the complaint.
- (3) However, if the official visitor suspects on reasonable grounds that it is in the public interest that the complaint be considered, the official visitor must refer the complaint to an appropriate investigative entity.
- (4) If the official visitor refers the complaint to an investigative entity, the official visitor must give the entity any information that the official visitor has in relation to the complaint.

13W Complainant must be told if complaint closed

- (1) This section applies if an official visitor for an operational Act closes a complaint, other than under section 13Q (Withdrawal of complaints) or section 13V (Complaints closed—complainant left visitable place).
- (2) The official visitor must tell the complainant—
 - (a) that the official visitor has closed the complaint; and

- (b) the reasons why the official visitor has closed the complaint.

Example—reason for closing complaint

the complaint has been referred to an investigative entity

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

13X Information about complaints being investigated elsewhere

- (1) This section applies if an official visitor for an operational Act has—
 - (a) referred a complaint under section 13Q (3) (a) or section 13R (2); or
 - (b) given an investigative entity information under section 13S in relation to a complaint.
- (2) The official visitor may ask the entity investigating the complaint about the investigation of the complaint.
- (3) The entity must tell the official visitor about the investigation of the complaint.
- (4) The official visitor may tell the complainant about progress of the investigation of the complaint.

13Y Reopening complaints

- (1) This section applies if—
 - (a) a complaint about a visitable place for an operational Act is resolved with the operating entity for the place; and
 - (b) as part of resolving the complaint, the operating entity agrees to do, or not do, something; and

EXPOSURE DRAFT

- (c) an official visitor for the operational Act is satisfied on reasonable grounds that the operating entity has not done what was agreed.
- (2) The official visitor may reopen the complaint.
- (3) If the official visitor reopens a complaint, the official visitor must try to resolve the complaint under section 13P.

13Z Other matters of concern—referral to other entity

- (1) This section applies if—
 - (a) an official visitor for an operational Act becomes aware of a matter that may be the subject of a complaint to an official visitor under section 13M; and
 - (b) no complaint is made under section 13M about the matter; and
 - (c) the official visitor is satisfied on reasonable grounds that the matter should be dealt with by an investigative entity with power to investigate the matter.
- (2) The official visitor may—
 - (a) tell the relevant director-general about the matter; or
 - (b) refer the matter to the investigative entity.
- (3) If the official visitor refers the matter to the investigative entity, the official visitor must give the entity and the relevant director-general any information that the official visitor has in relation to the matter.

EXPOSURE DRAFT

13ZA Quarterly reports by official visitors

- (1) An official visitor for an operational Act must give the relevant people, as soon as practicable after the end of each quarter, a written report for the quarter summarising—
 - (a) the number and kinds of complaints received by the official visitor; and
 - (b) the action taken on the complaints received; and
 - (c) the number and kinds of matters referred by the official visitor to an investigative entity under section 13Z.

Note **Quarter**—see the Legislation Act, dictionary, pt 1.

- (2) The report may include comments by the official visitor about anything in relation to a complaint mentioned in the report.
- (3) However, an official visitor may only include in a report material that may be adverse to, or critical of, a person if the official visitor has given the person an opportunity to respond to the material.
- (4) This section applies whether or not the adverse or critical material is—
 - (a) express or implicit; or
 - (b) by way of opinion or otherwise.
- (5) In this section:
relevant people means—
 - (a) the operational Minister; and
 - (b) the relevant director-general; and
 - (c) the public advocate.

EXPOSURE DRAFT

13ZB Handover of records by official visitors

- (1) This section applies if a person's appointment as an official visitor ends.
- (2) The person must, not later than 7 days after the day the appointment ends, give any official visitor record held by the person to the public advocate or another official visitor.
- (3) To remove any doubt, an official visitor record received by the public advocate or an official visitor under this section is a record of the activities of the administrative unit responsible for the administration of this section for the *Territory Records Act 2002*.
- (4) In this section:
official visitor record held by a person, means—
 - (a) a record made or received by the person because of the person's functions as an official visitor; or
 - (b) information held by the person because of the person's functions as an official visitor.

6 Parts 3A and 4

renumber as parts 4 and 5

7 Divisions 3A.1 to 3A.4

renumber as divisions 4.1 to 4.4

8 Sections 13A to 18

renumber as sections 14 to 46

EXPOSURE DRAFT

9 Protection of officials from liability
Section 14 (1), definition of *official*, new paragraph (ba)

insert

- (ba) an official visitor who exercises a function under this Act or an operational Act;

10 New part 20

insert

Part 20 Transitional—official visitors

100 Definitions—pt 20

In this part:

commencement day means the day the *Public Advocate (Official Visitors) Amendment Act 2012*, section 3 commences.

operational Act means the following:

- (a) the *Children and Young People Act 2008*;
- (b) the *Corrections Management Act 2007*;
- (c) the *Mental Health (Treatment and Care) Act 1994*.

101 Unfinished complaints to official visitors

- (1) This section applies if—
- (a) before the commencement day, an entitled person makes a complaint to the official visitor under an operational Act; and
 - (b) immediately before the commencement day, the investigation of the complaint had not been finalised or otherwise fully dealt with.

EXPOSURE DRAFT

- (2) The complaint is taken to be a complaint made by the entitled person under this Act, section 13M (Complaints to official visitors).

102 Existing appointments

- (1) This section applies to a person—
- (a) appointed as an official visitor under an operational Act; and
 - (b) who was an official visitor immediately before the commencement day.
- (2) The person is taken to have been appointed as an official visitor for the operational Act under this Act, section 13D.

103 Transitional regulations

A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of this Act.

104 Expiry—pt 20

This part expires 2 years after the day it commences.

11 Dictionary, new definitions

insert

entitled person, for an operational Act, for part 3A (Official visitors)—see section 13A.

investigative entity, for part 3A (Official visitors)—see section 13A.

official visitor, for an operational Act—see section 13B.

operating entity, for a visitable place, for part 3A (Official visitors)—see section 13A.

operational Act—see section 13C.

operational Minister, for an operational Act, for part 3A (Official visitors)—see section 13A.

relevant director-general, for an operational Act, for part 3A (Official visitors)—see section 13A.

visitable place, for an operational Act, for part 3A (Official visitors)—see section 13A.

EXPOSURE DRAFT

Schedule 1 Consequential amendments

(see s 3)

Part 1.1 Children and Young People Act 2008

[1.1] Part 2.3

substitute

Part 2.3 Official visitors

Note At least 2 official visitors (including a visitor who is an Aboriginal or Torres Strait Islander) must be appointed for this Act under the *Public Advocate Act 2005* (the **PA Act**), pt 3A.

The PA Act, pt 3A sets out the functions of the official visitors which includes inspecting visitable places, handling complaints from entitled people and reporting on those matters.

This part defines what is a **visitable place** and an **entitled person** for the PA Act, pt 3A. This part also prescribes other matters for the PA Act, pt 3A.

37 Meaning of **entitled person** and **visitable place**

For this Act:

entitled person—

- (a) means a child or young person who is—
 - (i) detained in a detention place; or
 - (ii) confined at a therapeutic protection place; or
 - (iii) accommodated in a place of care; and
- (b) includes a young detainee who is 18 years old or older.

EXPOSURE DRAFT

visitable place means—

- (a) a detention place; or
- (b) a place outside a detention place if a detainee is, or has been, directed to work or participate in an activity at the place; or
- (c) a therapeutic protection place; or
- (d) a place of care.

38 Appointment of official visitors—additional suitability requirement

A person must not be appointed as an official visitor unless the person is a suitable entity.

Note Suitable entities are dealt with in pt 2.4.

39 Request for sensitive information by official visitors

(1) This section applies if—

- (a) a complaint is made to an official visitor in relation to a visitable place under the *Public Advocate Act 2005*, section 13M; and
- (b) the visitor intends to ask the operating entity for the visitable place for assistance in exercising the visitor's functions at the place; and
- (c) the request involves giving sensitive information.

Note An operating entity for a visitable place must give an official visitor any reasonable assistance the official visitor asks for to exercise the official visitor's functions at the place (see *Public Advocate Act 2005*, s 13J).

EXPOSURE DRAFT

- (2) Before asking the operating entity for assistance, the official visitor must consider whether the complaint would be better dealt with by, and should be referred to, an investigative entity under the *Public Advocate Act 2005*, section 13R (Complaints may be closed—referral to other entity).
- (3) In this section:
operating entity, for a visitable place—see the *Public Advocate Act 2005*, section 13A.

40 Frequency of visits by official visitors

For the *Public Advocate Act 2005*, section 13I, an official visitor must, if practicable, visit—

- (a) each detention place at least once each fortnight; and
- (b) a therapeutic protection place at least once each week if an entitled person is confined at the therapeutic protection place; and
- (c) a place of care at least once each month if an entitled person is being cared for at the place of care.

[1.2] Section 153 (1), note

substitute

Note Official visitors must inspect detention places (see *Public Advocate Act 2005*, s 13I).

[1.3] Section 514, note 3

after

pt 2.3

insert

and the *Public Advocate Act 2005*, pt 3A

EXPOSURE DRAFT

[1.4] Section 524 (5), note 3

after

pt 2.3

insert

and the *Public Advocate Act 2005*, pt 3A

[1.5] Section 525 (6), note 3

after

pt 2.3

insert

and the *Public Advocate Act 2005*, pt 3A

[1.6] Section 815 (4), note

after

pt 2.3

insert

and the *Public Advocate Act 2005*, pt 3A

[1.7] Section 874 (2) (b)

omit

section 44

substitute

the *Public Advocate Act 2005*, section 13M

[1.8] Section 874 (2) (q), note

substitute

Note The director-general is protected from civil liability for giving information by s 878 and an official visitor is protected under the *Public Advocate Act 2005*, s 14.

[1.9] Section 878 (1), definition of *official*, paragraph (b)

omit

[1.10] Section 878 (1), new note

insert

Note An official visitor exercising a function under this Act is protected from civil liability by the *Public Advocate Act 2005*, s 14.

[1.11] Dictionary, definition of *entitled child or young person*

omit

[1.12] Dictionary, new definition of *entitled person*

insert

entitled person—see section 37.

[1.13] Dictionary, definition of *official visitor*

substitute

official visitor means a person appointed as an official visitor for this Act under the *Public Advocate Act 2005*, section 13D.

[1.14] Dictionary, new definition of *visitable place*

insert

visitable place—see section 37.

Part 1.2 Corrections Management Act 2007

[1.15] Sections 57 to 61

substitute

57 Official visitors—meaning of *entitled person* and *visitable place*

For this Act:

entitled person means a detainee at a correctional centre.

visitable place means—

- (a) a correctional centre; or
- (b) a place outside a correctional centre if a detainee is, or has been, directed to work or participate in an activity at the place.

Note At least 2 official visitors (including a visitor who is an Aboriginal or Torres Strait Islander) must be appointed for this Act under the *Public Advocate Act 2005* (the **PA Act**), pt 3A.

The PA Act, pt 3A sets out the functions of the official visitors which includes inspecting visitable places, handling complaints from entitled people and reporting on those matters.

This part defines what is a *visitable place* and an *entitled person* for the PA Act, pt 3A. This part also prescribes other matters for the PA Act, pt 3A.

58 Frequency of visits by official visitors

For the *Public Advocate Act 2005*, section 13I, an official visitor must, if practicable, visit each correctional centre at least once each week.

[1.16] Dictionary, new definition of *entitled person*

insert

entitled person—see section 57.

[1.17] Dictionary, definition of *official visitor*

substitute

official visitor means a person appointed as an official visitor for this Act under the *Public Advocate Act 2005*, section 13D.

[1.18] Dictionary, new definition of *visitable place*

insert

visitable place—see section 57.

Part 1.3 Disability Services Act 1991

[1.19] New part 1 heading

before section 1, insert

Part 1 Preliminary

[1.20] New part 2 heading

before section 6, insert

Part 2 Financial Assistance

[1.21] New section 6 (2) (c)

insert

- (c) if disability accommodation is to be funded by the grant—
- (i) the operator of the accommodation complies with, and is likely to continue to comply with, the disability services standards; and
 - (ii) the place complies with, and is likely to continue to comply with, the disability services standards.

Note The Minister may make disability services standards under s 8C.

[1.22] New part 3

insert

Part 3 Official visitors

8A Official visitors—meaning of *entitled person* and *visitable place*

For this Act:

entitled person means a person with a disability who is staying in a visitable place.

visitable place means disability accommodation provided by the Territory or a grantee.

Note At least 1 official visitor must be appointed for this Act under the *Public Advocate Act 2005* (the **PA Act**), pt 3A.

The PA Act, pt 3A sets out the functions of the official visitors which includes inspecting visitable places, handling complaints from entitled people and reporting on those matters.

This part defines what is a ***visitable place*** and an ***entitled person*** for the PA Act, pt 3A.

EXPOSURE DRAFT

[1.23] New part 4

insert

Part 4 Disability accommodation

8B Definitions—pt 4

In this part:

applicant, in relation to a reviewable decision—see section 8C.

reviewable decision means a decision by the director-general to refuse approval of a place as disability accommodation under section 8C.

8C Approval of disability accommodation

On application by a provider of services (an *applicant*), the director-general may approve a place as disability accommodation.

Note 1 A refusal to approve a place as disability accommodation is a reviewable decision (see s 8E and s 8F).

Note 2 If a form is approved under s 11 for this provision, the form must be used.

8D Register of approved disability accommodation

- (1) The director-general must keep a register of places approved as disability accommodation.
- (2) The director-general may only provide information on the register to the following:
 - (a) a person with a disability;
 - (b) a legal representative of a person with a disability;
 - (c) an official visitor;

- (d) the public advocate;
- (e) a person exercising a function under this Act.

(3) In this section:

legal representative, of a person with a disability, means—

- (a) the person's legal representative; or
- (b) if the person does not have legal capacity—the person's parent or guardian.

8E Reviewable decision notice

If the Minister makes a reviewable decision, the Minister must give a reviewable decision notice to an applicant in relation to the decision.

Note 1 The Minister must also take reasonable steps to give a reviewable decision notice to any other person whose interests are affected by the decision (see *ACT Civil and Administrative Tribunal Act 2008*, s 67A).

Note 2 The requirements for reviewable decision notices are prescribed under the *ACT Civil and Administrative Tribunal Act 2008*.

8F Applications for review

The following may apply to the ACAT for review of a reviewable decision:

- (a) an applicant in relation to the decision;
- (b) any other person whose interests are affected by the decision.

Note If a form is approved under the *ACT Civil and Administrative Tribunal Act 2008* for the application, the form must be used.

EXPOSURE DRAFT

[1.24] New part 5 heading

before section 9, insert

Part 5 Miscellaneous

[1.25] New section 9A

insert

9A Disability services standards

- (1) The Minister may make standards about services provided to people with disabilities.
- (2) A standard is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

[1.26] New section 11

insert

11 Approved forms

- (1) The Minister may approve forms for this Act.
- (2) If the Minister approves a form for a particular purpose, the approved form must be used for that purpose.

Note For other provisions about forms, see the Legislation Act, s 255.

- (3) An approved form is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

[1.27] Dictionary, new definition of *applicant*

insert

applicant, in relation to a reviewable decision, for part 4 (Disability accommodation)—see section 8C.

[1.28] Dictionary, new definitions

insert

disability accommodation means accommodation for people with disabilities.

entitled person—see section 8A.

official visitor means a person appointed as an official visitor for this Act under the *Public Advocate Act 2005*, section 13D.

[1.29] Dictionary, new definition of *reviewable decision*

insert

reviewable decision, for part 4 (Disability accommodation)—see section 8B.

[1.30] Dictionary, new definition of *visitable place*

insert

visitable place—see section 8A.

EXPOSURE DRAFT

Part 1.4 Housing Assistance Act 2007

[1.31] New part 4B

insert

Part 4B Official visitors

25V Official visitors—meaning of *entitled person* and *visitable place*

For this Act:

entitled person means a person who is homeless or at risk of homelessness who is staying in a visitable place.

visitable place means temporary or short-term supported accommodation for people who are homeless or at risk of homelessness, provided by an entity funded under this Act.

Note At least 1 official visitor must be appointed for this Act under the *Public Advocate Act 2005* (the **PA Act**), pt 3A.

The PA Act, pt 3A sets out the functions of the official visitors which includes inspecting visitable places, handling complaints from entitled people and reporting on those matters.

This part defines what is a *visitable place* and an *entitled person* for the PA Act, pt 3A.

[1.32] Dictionary, new definitions

insert

entitled person—see section 25V.

visitable place—see section 25V.

EXPOSURE DRAFT

Part 1.5 Mental Health (Treatment and Care) Act 1994

[1.33] Part 11

substitute

Part 11 Official visitors

Note At least 1 official visitor must be appointed for this Act under the *Public Advocate Act 2005* (the **PA Act**), pt 3A.

The PA Act, pt 3A sets out the functions of the official visitors which includes inspecting visitable places, handling complaints from entitled people and reporting on those matters.

This part defines what is a **visitable place** and an **entitled person** for the PA Act, pt 3A. This part also prescribes other matters for the PA Act, pt 3A.

121 Official visitors—meaning of **entitled person** and **visitable place**

For this Act:

entitled person means a person receiving treatment or care for mental dysfunction or a mental illness at a visitable place.

visitable place means—

- (a) a community care facility; or
- (b) a mental health facility; or
- (c) a place outside a community care or mental health facility if a person is, or has been, required to attend the place under a community care or restriction order.

Note A **mental health facility** includes a private mental institution.

EXPOSURE DRAFT

122 Appointment of official visitors—additional suitability requirement

A person must not be appointed as an official visitor unless the person—

- (a) is a legal practitioner who has not less than 5 years practising experience; or
- (b) is a medical practitioner; or
- (c) has been nominated by a body representing consumers of mental health services; or
- (d) has experience and skill in the care of persons with a mental dysfunction or mental illness.

122A Frequency of visits by official visitors

For the *Public Advocate Act 2005*, section 13I, an official visitor must, if practicable, visit each visitable place conducted by the Territory at least once each month.

[1.34] Section 140A (3), definition of *official*, paragraph (d)

omit

[1.35] Section 140A (3), definition of *official*, new note

insert

Note 1 An official visitor exercising a function under this Act is protected from civil liability by the *Public Advocate Act 2005*, s 14.

[1.36] Dictionary, new definition of *entitled person*

insert

entitled person—see section 121.

[1.37] Dictionary, definition of *official visitor*

substitute

official visitor means a person appointed as an official visitor for this Act under the *Public Advocate Act 2005*, section 13D.

[1.38] Dictionary, new definition of *visitable place*

insert

visitable place—see section 121.

Part 1.6 Territory Records Regulation 2009

[1.39] Dictionary, definition of *official visitor*

substitute

official visitor means an official visitor appointed under the *Public Advocate Act 2005*, section 13D.

Endnotes

- 1 Presentation speech**
Presentation speech made in the Legislative Assembly on 2012.
 - 2 Notification**
Notified under the Legislation Act on 2012.
 - 3 Republications of amended laws**
For the latest republication of amended laws, see www.legislation.act.gov.au.
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EXPOSURE DRAFT