



Australian Capital Territory

Official Visitor Act 2012

A2012-33

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Australian Capital Territory

Official Visitor Act 2012

A2012-33

An Act to provide for the appointment of official visitors, and for other purposes

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

Part 1 Preliminary

1 Name of Act

This Act is the *Official Visitor Act 2012*.

2 Commencement

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

- schedule 1, amendment 1.23
- schedule 1, amendment 1.25
- schedule 1, amendment 1.27
- schedule 1, amendment 1.30
- schedule 1, amendment 1.32.

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 July 2013.

3 Dictionary

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere in this Act.

For example, the signpost definition '*operational Act*—see section 7.' means that the term 'operational Act' is defined in that section.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

4 Notes

A note included in this Act is explanatory and is not part of this Act.

Note See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

5 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 Criminal Code

The Criminal Code, ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

Note 2 Penalty units

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

Part 2 Important concepts

6 What is an *official visitor*?

An *official visitor*, for an operational Act, means a person appointed under section 10 for the Act.

7 What is an *operational 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).

8 What is an *entitled person*?

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

9 What is a *visitable place*?

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

Part 3 Appointment of official visitors

10 Appointment

- (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 person;
 - (b) for the *Corrections Management Act 2007*—at least 2 official visitors, including one official visitor who is an Aboriginal or Torres Strait Islander person;
 - (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 the operational Minister; 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 or Torres Strait Islander person 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
- (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.

11 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***).

12 Ending appointment

- (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 23; 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 an 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 an 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).

13 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 another official visitor.

- (3) 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.

Part 4 Functions of official visitors

14 Functions

- (1) 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 operational Minister under section 16 and section 17;
 - (c) to receive and consider complaints from entitled people, and others on their behalf;
 - (d) to be available to talk with entitled people and anyone else who has a concern about an entitled person or a visitable place;
 - (e) to exercise any other function given to an official visitor under this Act, an operational Act or another territory law.
- (2) An official visitor must, in exercising the official visitor's functions, deal with an entitled person with sensitivity, including in relation to the person's—
 - (a) gender; and
 - (b) religion or faith; and
 - (c) wishes about how the official visitor may inspect a visitable place.

Examples—par (c)

- 1 an entitled person may not wish to meet with or talk to an official visitor
- 2 an entitled person may ask that the official visitor inspect the visitable place only at certain times

- 3 an entitled person may ask that an official visitor not go into areas in a visitable place that the person considers to be private

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).

15 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 following a complaint or at the official visitor's own initiative.

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.

16 Official visitor must report non-compliant visitable places

- (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 the operational Act;
 - (b) the living conditions and activities of an entitled person at the visitable place;
 - (c) if an entitled person for the 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—
 - (a) must report the belief to the operational Minister; and
 - (b) may report the belief to—
 - (i) the relevant director-general; and
 - (ii) the public advocate.
- (3) An operational Act may prescribe other reporting requirements for the operational Act.

17 Reporting of complaints

- (1) An official visitor for an operational Act must give the operational Minister, 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.

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

- (2) The official visitor may give a copy of the report to—
 - (a) the relevant director-general; and
 - (b) the public advocate.
- (3) The report may include comments by the official visitor about anything in relation to a complaint mentioned in the report.
- (4) For each financial year, the operational Minister must present a report of the information given to the Minister under subsection (1) to the Legislative Assembly within 6 sitting days after the end of the 3-month period after the end of the financial year.

18 Assistance to official visitors

- (1) The public advocate may give an official visitor for an operational Act any reasonable assistance the official visitor asks for to exercise the official visitor's functions.

Example

assistance to prepare reports

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

- (3) An operating entity must not give an official visitor access to an entitled person's health record without the entitled person's consent.
- (4) In this section:

health record—see the *Health Records (Privacy and Access) Act 1997*, dictionary.

19 Offences—failure to provide assistance etc

- (1) A person in charge of an operating entity for a visitable place must not, without reasonable excuse—
- (a) refuse or neglect to render assistance if asked by an official visitor under section 18; or
 - (b) fail to answer any question if asked by an official visitor in the exercise of the official visitor's functions.

Maximum penalty: 50 penalty units.

- (2) A person in charge of an operating entity for a visitable place must not, without reasonable excuse, obstruct or hinder an official visitor in the exercise of the official visitor's functions.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (3) A person in charge of an operating entity for a visitable place must keep a record of each visit by an official visitor to the visitable place.

Maximum penalty: 5 penalty units.

Note If a form is approved under s 26 for a record, the form must be used.

- (4) In this section:

person in charge, of an operating entity, means—

- (a) if the operating entity is the relevant director-general—the relevant director-general; and
- (b) in any other case—the person in charge of the entity.

Part 5 Complaints

20 Operating entity must let entitled people know about official visitors

An operating entity for a visitable place must tell an entitled person at the visitable place, or a person acting on the entitled person's behalf, about—

- (a) the functions of an official visitor; and
- (b) how the official visitor may be contacted.

21 Requests to meet official visitor

- (1) This section applies if an entitled person for an operational Act tells the operating entity for a visitable place that the person wants to meet 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 meet an official visitor.

22 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) the activities available to an entitled person at a visitable place;
or
 - (d) 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 to make a complaint—
 - (a) to the official visitor with no-one else present; and
 - (b) to an official visitor of the same gender.
 - (4) If the official visitor agrees that the complaint may be made with only the entitled person present, the operating entity must provide reasonably private facilities for the complaint to be made.
 - (5) 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.

23 Complaints guidelines

- (1) The Minister may, after consulting the operational Minister for an operational Act, make guidelines, consistent with this part, about the handling, and referral of complaints to investigative entities, 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 disallowable instrument.

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

Part 6 Miscellaneous

24 Protection of officials from liability

- (1) An official is not civilly liable for anything done or omitted to be done honestly and without recklessness—
 - (a) in the exercise of a function under this Act; or
 - (b) in the reasonable belief that the act or omission was in the exercise of a function under this Act.
- (2) Any civil liability that would, apart from subsection (1), attach to an official attaches instead to the Territory.
- (3) In this section:

official means—

- (a) an official visitor; or
- (b) a person authorised under this Act to do or not to do a thing.

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

25 Offences—use or divulge protected information

- (1) A person to whom this section applies commits an offence if—
 - (a) the person uses information; and
 - (b) the information is protected information about someone else; and
 - (c) the person is reckless about whether the information is protected information about someone else.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) A person to whom this section applies commits an offence if—
- (a) the person does something that divulges information; and
 - (b) the information is protected information about someone else; and
 - (c) the person is reckless about whether—
 - (i) the information is protected information about someone else; and
 - (ii) doing the thing would result in the information being divulged to someone else.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (3) Subsections (1) and (2) do not apply if the information is used or divulged—
- (a) under this Act or another territory law; or
 - (b) in relation to the exercise of a function, as a person to whom this section applies, under this Act or another territory law; or
 - (c) in a court proceeding.
- (4) Subsections (1) and (2) do not apply to the using or divulging of protected information about a person with the person's consent.

Note The defendant has an evidential burden in relation to the matters mentioned in ss (3) and (4) (see Criminal Code, s 58).

- (5) A person to whom this section applies need not divulge protected information to a court, or produce a document containing protected information to a court, unless it is necessary to do so for this Act or another law applying in the territory.

(6) In this section:

court includes a tribunal, authority or person having power to require the production of documents or the answering of questions.

divulge includes—

- (a) communicate; or
- (b) publish.

person to whom this section applies means—

- (a) a person who is or has been an official visitor; or
- (b) anyone else who has exercised a function under this Act.

produce includes allow access to.

protected information means information about a person that is disclosed to, or obtained by, a person to whom this section applies because of the exercise of a function under this Act by the person or someone else.

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).

use information includes make a record of the information.

26 Approved forms

- (1) The Minister may, in writing, 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.

27 Regulation-making power

The Executive may make regulations for this Act.

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

28 Legislation amended—sch 1

This Act amends the legislation mentioned in schedule 1.

Part 10 Transitional

50 Definitions—pt 10

In this part:

commencement day means the day this Act 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*.

51 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.
- (2) The complaint is taken to be a complaint made by the entitled person under this Act, section 22 (Complaints to official visitors).

52 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 10.

53 Transitional regulations

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

54 Expiry—pt 10

This part expires 2 years after the day it commences.

Note Transitional provisions are kept in the Act for a limited time. A transitional provision is repealed on its expiry but continues to have effect after its repeal (see Legislation Act, s 88).

Schedule 1 Consequential amendments

(see s 28)

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 person) must be appointed for this Act under the *Official Visitor Act 2012* (the **OV Act**).

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

This part defines what is an *entitled person* and a *visitable place* for the OV Act. This part also prescribes other matters for the OV Act.

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

In 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—
 - (i) a young detainee who is 18 years old or older; and
 - (ii) a person prescribed by regulation.

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 *Official Visitor Act 2012*, section 22; 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 *Official Visitor Act 2012*, s 18).

- (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.

(3) In this section:

operating entity, for a visitable place—see the *Official Visitor Act 2012*, dictionary.

40 Frequency of visits by official visitors

For the *Official Visitor Act 2012*, section 15 (Inspection of visitable places), 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 pt 2.3 and *Official Visitor Act 2012*).

[1.3] Section 514, note 3

after

pt 2.3

insert

and *Official Visitor Act 2012*

[1.4] Section 524 (5), note 3

after

pt 2.3

insert

and *Official Visitor Act 2012*

[1.5] Section 525 (6), note 3

after

pt 2.3

insert

and *Official Visitor Act 2012*

[1.6] Section 815 (4), note

after

pt 2.3

insert

and *Official Visitor Act 2012*

[1.7] Section 874 (2) (b)

omit

section 44

substitute

the *Official Visitor Act 2012*, section 22

[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 *Official Visitor Act 2012*, s 24.

[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 *Official Visitor Act 2012*, s 24.

[1.11] Dictionary, note 2

insert

- official visitor

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

omit

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

insert

entitled person—see section 37.

[1.14] Dictionary, definition of *official visitor*

omit

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

insert

visitable place—see section 37.

Part 1.2 Corrections Management Act 2007

[1.16] Sections 57 to 61

substitute

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

In this Act:

entitled person means—

- (a) a detainee at a correctional centre; or
- (b) a person prescribed by regulation.

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 person) must be appointed for this Act under the *Official Visitor Act 2012* (the **OV Act**).

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

This part defines what is an *entitled person* and a *visitable place* for the OV Act. This part also prescribes other matters for the OV Act.

58 Frequency of visits by official visitors

For the *Official Visitor Act 2012*, section 15 (Inspection of visitable places), an official visitor must, if practicable, visit each correctional centre at least once each fortnight.

[1.17] Dictionary, note 2

insert

- official visitor

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

insert

entitled person—see section 57.

[1.19] Dictionary, definition of *official visitor*

omit

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

insert

visitable place—see section 57.

Part 1.3 Disability Services Act 1991

[1.21] New part 1 heading

before section 1, insert

Part 1 Preliminary

[1.22] New part 2 heading

before section 6, insert

Part 2 Financial Assistance

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

insert

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

Note The Minister may make disability services standards under s 9A.

[1.24] New part 3

after section 8, insert

Part 3 Official visitors

Note At least 1 official visitor must be appointed for this Act under the *Official Visitor Act 2012* (the **OV Act**).

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

This part defines what is an *entitled person* and a *visitable place* for the OV Act. This part also prescribes other matters for the OV Act.

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

In this Act:

entitled person means a person—

- (a) with disability who is staying in a visitable place; or
- (b) with disability that receives a service funded under this Act; or
- (c) prescribed by regulation.

visitable place—

- (a) means disability accommodation for respite or long-term residential purposes; and
- (b) includes a residential aged care facility that accommodates a person with disability who is less than 65 years old.

8B Complaint about disability service provided at place other than visitable place

- (1) An entitled person may make a complaint to an official visitor under the *Official Visitor Act 2012*, section 22 about a service funded under this Act that is provided at a place other than a visitable place.
- (2) The official visitor may—
 - (a) investigate the complaint; and
 - (b) inspect the place where the service is provided.
- (3) However, the official visitor may only inspect a place that is not a visitable place—
 - (a) with the entitled person’s consent; and
 - (b) after giving the owner of, or entity operating, the place at least 24 hours written notice; and
 - (c) at a reasonable time, unless the owner of, or entity operating, the place otherwise consents.

8C Official visitors must give notice of inspection

- (1) An official visitor must give an operating entity for a visitable place written notice that the official visitor intends to inspect the place at least 24 hours before the official visitor’s inspection.

- (2) However, the official visitor may inspect a visitable place without giving notice to the operating entity if—
- (a) the official visitor reasonably believes, or has been given a complaint, that an entitled person at the visitable place is at risk of harm; and
 - (b) the entitled person agrees to the inspection.
- (3) In this section:
- operating entity*, for a visitable place—see the *Official Visitor Act 2012*, dictionary.

[1.25] New part 4

insert

Part 4 Disability accommodation

8D Definitions—pt 4

In this part:

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

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

8E 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 8G and s 8H).

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

8F Register of approved disability accommodation

- (1) The director-general must keep a register of places approved as disability accommodation.
- (2) The director-general—
 - (a) must provide information on the register to—
 - (i) an official visitor; and
 - (ii) the public advocate; and
 - (b) may provide information on the register to—
 - (i) a person with disability; and
 - (ii) a carer or legal representative of a person with disability; and
 - (iii) a person exercising a function under this Act; and
 - (iv) anyone else approved by the director-general.

- (3) In this section:

carer—see the *Guardianship and Management of Property Act 1991*, section 6.

legal representative, of a person with disability, means—

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

8G Reviewable decision notice

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

Note 1 The director-general 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*.

8H 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.

[1.26] New part 5 heading

before section 9, insert

Part 5 Miscellaneous

[1.27] 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.

[1.28] 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.

[1.29] Dictionary, note 2

insert

- official visitor

[1.30] Dictionary, new definition of *applicant*

insert

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

[1.31] Dictionary, new definitions

insert

disability accommodation means accommodation for a person with disability provided by the Territory or a grantee.

entitled person—see section 8A.

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

insert

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

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

insert

visitable place—see section 8A.

Part 1.4 Housing Assistance Act 2007

[1.34] New part 4B

insert

Part 4B Official visitors

Note At least 1 official visitor must be appointed for this Act under the *Official Visitor Act 2012* (the **OV Act**).

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

This part defines what is an *entitled person* and a *visitable place* for the OV Act. This part also prescribes other matters for the OV Act.

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

In this Act:

entitled person means a person—

- (a) who is homeless or at risk of homelessness who is staying in a visitable place; or
- (b) prescribed by regulation.

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.

25W Official visitors must give notice of inspection

- (1) An official visitor must give an operating entity for a visitable place written notice that the official visitor intends to inspect the place at least 24 hours before the official visitor's inspection.
- (2) However, the official visitor may inspect a visitable place without giving notice to the operating entity if—
 - (a) the official visitor reasonably believes, or has been given a complaint, that an entitled person at the visitable place is at risk of abuse or harm; and
 - (b) the entitled person agrees to the inspection.
- (3) In this section:

operating entity, for a visitable place—see the *Official Visitor Act 2012*, dictionary.

[1.35] Dictionary, note 2

insert

- official visitor

[1.36] Dictionary, new definitions

insert

entitled person—see section 25V.

visitable place—see section 25V.

Part 1.5 Legislation Act 2001

[1.37] Dictionary, part 1, new definition of *official visitor*

insert

official visitor means an official visitor appointed under the *Official Visitor Act 2012*, section 10.

Part 1.6 Mental Health (Treatment and Care) Act 1994

[1.38] Part 11

substitute

Part 11 Official visitors

Note At least 1 official visitor must be appointed for this Act under the *Official Visitor Act 2012* (the **OV Act**).

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

This part defines what is an *entitled person* and a *visitable place* for the OV Act. This part also prescribes other matters for the OV Act.

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

In this Act:

entitled person means a person—

- (a) receiving treatment or care for mental dysfunction or a mental illness—
 - (i) at a visitable place; or

- (ii) at a place other than a visitable place under an order under this Act; or
- (b) prescribed by regulation.

visitable place means—

- (a) a long-term residential accommodation facility or respite facility at which a person receiving treatment or care for mental dysfunction or a mental illness may stay; or
- (b) a mental health facility; or
- (c) a place in a correctional centre where a detainee may receive treatment or care for mental dysfunction or a mental illness.

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 Official visitor's functions

Without limiting the *Official Visitor Act 2012*, section 14 (Functions), an official visitor must enquire into—

- (a) the adequacy of services provided at a visitable place for the assessment and treatment of people with mental dysfunction or a mental illness; and

- (b) the appropriateness and standard of facilities at a visitable place for the recreation, occupation, education, training and rehabilitation of people receiving treatment or care for mental dysfunction or a mental illness; and
- (c) the extent to which people receiving treatment or care for mental dysfunction or a mental illness at a visitable place are being provided the best possible treatment or care appropriate to their needs in the least possible restrictive environment and least possible intrusive manner consistent with the effective giving of that treatment or care.

122B Frequency of visits by official visitors

For the *Official Visitor Act 2012*, section 15 (Inspection of visitable places), an official visitor must, if practicable, visit each mental health facility conducted by the Territory at least once each month.

122C Complaint about treatment or care provided at place other than visitable place

- (1) An entitled person may make a complaint to an official visitor under the *Official Visitor Act 2012*, section 22 about treatment or care for mental dysfunction or a mental illness that is—
 - (a) funded by the Territory; and
 - (b) provided at a place other than a visitable place.
- (2) The official visitor may—
 - (a) investigate the complaint; and
 - (b) inspect the place where the service is provided.
- (3) However, the official visitor may only inspect a place that is not a visitable place—
 - (a) with the entitled person's consent; and

- (b) after giving the owner of, or entity operating, the place at least 24 hours written notice; and
- (c) at a reasonable time unless the director-general otherwise consents.

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

omit

[1.40] 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 *Official Visitor Act 2012*, s 24.

[1.41] Dictionary, note 2

insert

- official visitor

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

insert

entitled person—see section 121.

[1.43] Dictionary, definition of *official visitor*

omit

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

insert

visitable place—see section 121.

Part 1.7

Territory Records Regulation 2009

[1.45] Dictionary, note 2

insert

- official visitor

[1.46] Dictionary, definition of *official visitor*

omit

Dictionary

(see s 3)

Note 1 The Legislation Act contains definitions and other provisions relevant to this Act.

Note 2 For example, the Legislation Act, dict, pt 1 defines the following terms:

- appoint
- director-general (see s 163)
- exercise
- function
- Minister (see s 162)
- public advocate.

entitled person, for an operational Act—see section 8.

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).

official visitor, for an operational Act—see section 6.

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 Act—see section 7.

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.

visitable place, for an operational Act—see section 9.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 2 May 2012.

2 Notification

Notified under the Legislation Act on 15 June 2012.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Official Visitor Bill 2012, which originated in the Legislative Assembly as the Official Visitor Bill 2012 (No 2) and was passed by the Assembly on 6 June 2012.

Clerk of the Legislative Assembly

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