



Australian Capital Territory

Disability Services Amendment Act 2018

A2018-50

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Australian Capital Territory

Disability Services Amendment Act 2018

A2018-50

An Act to amend the *Disability Services Act 1991*

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

1 Name of Act

This Act is the *Disability Services Amendment Act 2018*.

2 Commencement

This Act commences on the day after its notification day.

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

3 Legislation amended

This Act amends the *Disability Services Act 1991*.

4 Parts 3 and 4

substitute

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 visiting 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 Definitions—pt 3

In this part:

associated—a specialist disability service provider is *associated* with a visitable place if the provider—

- (a) is the operating entity for the place; or
- (b) owns or rents the place; or
- (c) provides a specialist disability service at the place.

entitled person means a person with disability.

official visitor means an official visitor for this Act appointed under the [Official Visitor Act 2012](#), section 10.

operating entity, for a visitable place—see the [Official Visitor Act 2012](#), dictionary.

8B Meaning of *visitable place*—pt 3

(1) In this part:

visitable place—

- (a) means accommodation provided to an entitled person for respite or long-term residential purposes; and
- (b) includes—
 - (i) accommodation that is owned, rented or operated by a specialist disability service provider; and
 - (ii) accommodation at which a specialist disability service provider provides a specialist disability service; and
 - (iii) a residential aged care facility that accommodates the entitled person.

(2) However, a ***visitable place*** does not include the following accommodation provided to an entitled person:

- (a) a private home if the person receives a specialist disability service at the home only from a person who is not a specialist disability service provider;
- (b) a private home if the person lives in the home with at least 1 adult family member who does not receive a specialist disability service from a specialist disability service provider at the home;
- (c) accommodation if the only specialist disability service the person receives at the accommodation is a type of service declared by the Minister not to require visitation;

- (d) a residential aged care facility if the person is 65 years old or older when they first receive a specialist disability service (whether at the facility or elsewhere).

- (3) A declaration for subsection (2) (c) is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

- (4) In this section:

family member, of a person, means—

- (a) a domestic partner of the person; or
- (b) a relative of the person; or
- (c) a child of a domestic partner or former domestic partner of the person; or
- (d) a parent of a child of the person.

Note A ***domestic partner*** need not be an adult (see [Legislation Act](#), s 169).

relative, of a person—

- (a) means the person's—
 - (i) father, mother, grandfather, grandmother, stepfather, stepmother, father-in-law or mother-in-law; or
 - (ii) son, daughter, grandson, granddaughter, stepson, stepdaughter, son-in-law or daughter-in-law; or
 - (iii) brother, sister, half-brother, half-sister, stepbrother, stepsister, brother-in-law or sister-in-law; or
 - (iv) uncle, aunt, uncle-in-law or aunt-in-law; or
 - (v) nephew, niece or cousin; and

- (b) if the person has or had a domestic partner (other than a spouse or civil union partner)—includes someone who would have been a relative mentioned in paragraph (a) if the person had been married to or in a civil union with the domestic partner; and
- (c) if the person is an Aboriginal or Torres Strait Islander person, includes the following people:
 - (i) someone the person has responsibility for, or an interest in, in accordance with the traditions and customs of the person's Aboriginal or Torres Strait Islander community;
 - (ii) someone who has responsibility for, or an interest in, the person in accordance with the traditions and customs of the person's Aboriginal or Torres Strait Islander community.

residential aged care facility means a residential facility that provides residential care within the meaning of the *Aged Care Act 1997* (Cwlth), section 41-3 (Meaning of *residential care*) to residents at the facility.

8C Entitled person may request not to be visited

- (1) An entitled person may at any time ask the official visitor, in writing, not to be visited at a visitable place.
- (2) On receipt of a request under subsection (1), the official visitor must not visit the entitled person other than under section 8D.

8D 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 specialist disability service that is provided—
 - (a) at a place other than a visitable place; or

- (b) if the person has asked the official visitor not to visit the person at a visitable place under section 8C—at the visitable place.

Example—place other than a visitable place

a private home where a specialist disability service is provided to an entitled person only by a close relative of the person

- (2) The official visitor may—
 - (a) investigate the complaint; and
 - (b) visit the place where the service is provided.
- (3) However, the official visitor may only visit a place mentioned in subsection (1)—
 - (a) if the entitled person consents to the visit; and
 - (b) at a reasonable time, unless the owner of, or entity operating, the place otherwise consents; and
 - (c) either—
 - (i) after giving the owner of, or entity operating, the place reasonable notice; or
 - (ii) without giving notice if the official visitor reasonably believes that an entitled person at the place is at risk of harm.

8E Register of visitable places

- (1) The director-general must keep a register of visitable places.
- (2) The register must include—
 - (a) the address of each visitable place; and
 - (b) the name of each entitled person living at each visitable place; and
 - (c) each specialist disability service provider associated with each visitable place; and

- (d) if a specialist disability service provider associated with a visitable place is not an individual—the name, phone number and email address of the following:
 - (i) an employee or volunteer based at the visitable place;
 - (ii) 2 employees of the specialist disability service provider.
- (3) The director-general must give information on the register to—
 - (a) an official visitor; and
 - (b) the public advocate.
- (4) The director-general may, on request, give the address of a visitable place on the register to any of the following people, if satisfied giving the information is reasonable in the circumstances:
 - (a) a person exercising a function under this Act;
 - (b) a member of the emergency services under the *Emergencies Act 2004*;
 - (c) an entitled person;
 - (d) a carer or legal representative of an entitled person;
 - (e) anyone else approved by the director-general.
- (5) In this section:

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

legal representative, of an entitled person, means—

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

8F Provider to give information about visitable place

- (1) A specialist disability service provider associated with a visitable place must give the director-general, in writing, the information mentioned in section 8E (2) within 5 days after becoming associated with the visitable place.

Maximum penalty: 10 penalty units.

- (2) If any information given to the director-general under subsection (1) changes, the specialist disability service provider must give the director-general, in writing, the new information within 5 days after the information changes.

Maximum penalty: 10 penalty units.

5 New part 10

insert

**Part 10 Transitional—Disability Services
Amendment Act 2018**

50 Definitions—pt 10

associated, with a visitable place—see section 8A.

commencement day means the day the *Disability Services Amendment Act 2018*, section 3 commences.

old register means the register of places approved as disability accommodation under section 8F immediately before the commencement day.

new register means the register of visitable places under section 8E.

51 Register of approved disability accommodation

- (1) A place listed on the old register immediately before the commencement day is taken, on the commencement day, to be a visitable place on the new register.
- (2) Any specialist disability service provider associated with a visitable place mentioned in subsection (1) must give the director-general, in writing, any of the following information that was not held on the old register:
 - (a) the address of each visitable place;
 - (b) the name of each entitled person living at each visitable place;
 - (c) each specialist disability service provider associated with the visitable place;
 - (d) if a specialist disability service provider associated with the visitable place is not an individual—the name, phone number and email address of the following:
 - (i) an employee or volunteer based at the visitable place;
 - (ii) 2 employees of the specialist disability service provider.
- (3) A specialist disability service provider commits an offence if the specialist disability service provider fails to give the director-general, in writing, the information mentioned in subsection (2) within 3 months after the commencement day.

Maximum penalty: 10 penalty units.

52 Expiry—pt 10

This part expires 6 months after the commencement day.

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).

6 Dictionary, note 2

insert

- domestic partner

7 Dictionary, definition of *applicant*

omit

8 Dictionary, new definition of *associated*

insert

associated, with a visitable place, for part 3 (Official visitors)—see section 8A.

9 Dictionary, definition of *disability accommodation*

omit

10 Dictionary, definitions of *entitled person* etc

substitute

entitled person, for part 3 (Official visitors)—see section 8A.

official visitor, for part 3 (Official visitors)—see section 8A.

operating entity, for a visitable place, for part 3 (Official visitors)—see section 8A.

11 Dictionary, definition of *reviewable decision*

omit

12 Dictionary, definition of *visitable place*

substitute

visitable place, for part 3 (Official visitors)—see section 8B.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 30 October 2018.

2 Notification

Notified under the [Legislation Act](#) on 6 December 2018.

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 Disability Services Amendment Bill 2018, which was passed by the Legislative Assembly on 27 November 2018.

Clerk of the Legislative Assembly

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