

2012

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

---

(As presented)

(Ms Amanda Bresnan)

## Official Visitor Bill 2012 (No 2)

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## **Official Visitor Bill 2012 (No 2)**

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### **A Bill for**

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

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

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Official Visitor Act 2012*.

4 **2 Commencement**

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

- 6 • schedule 1, amendment 1.23
- 7 • schedule 1, amendment 1.25
- 8 • schedule 1, amendment 1.27
- 9 • schedule 1, amendment 1.30
- 10 • schedule 1, amendment 1.32.

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

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

14 **3 Dictionary**

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

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

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

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

25 **4 Notes**

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

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

1   **5           Offences against Act—application of Criminal Code etc**

2           Other legislation applies in relation to offences against this Act.

3           *Note 1   Criminal Code*

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

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

10          *Note 2   Penalty units*

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

1 **Part 2** **Important concepts**

2 **6** **What is an *official visitor*?**

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

5 **7** **What is an *operational Act*?**

6 Each of the following is an *operational Act*:

7 (a) the *Children and Young People Act 2008*;

8 (b) the *Corrections Management Act 2007*;

9 (c) the *Disability Services Act 1991*;

10 (d) the *Housing Assistance Act 2007*;

11 (e) the *Mental Health (Treatment and Care) Act 1994*.

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

15 **8** **What is an *entitled person*?**

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

18 **9** **What is a *visitable place*?**

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



## 1 Part 3 Appointment of official visitors

### 2 10 Appointment

- 3 (1) The Minister must appoint the following:
- 4 (a) for the *Children and Young People Act 2008*—at least  
5 2 official visitors, including one official visitor who is an  
6 Aboriginal or Torres Strait Islander person;
- 7 (b) for the *Corrections Management Act 2007*—at least 2 official  
8 visitors, including one official visitor who is an Aboriginal or  
9 Torres Strait Islander person;
- 10 (c) for the *Disability Services Act 1991*—at least 1 official visitor;
- 11 (d) for the *Housing Assistance Act 2007*—at least 1 official visitor;
- 12 (e) for the *Mental Health (Treatment and Care) Act 1994*—at least  
13 1 official visitor.
- 14 (2) The Minister may appoint a person as an official visitor for an  
15 operational Act only if—
- 16 (a) the Minister has consulted the operational Minister; and
- 17 (b) satisfied on reasonable grounds that the person has suitable  
18 qualifications or experience to exercise the functions of an  
19 official visitor for the operational Act.
- 20 (3) However, the Minister must not appoint a person as an official  
21 visitor if the person—
- 22 (a) is a public employee; or
- 23 (b) has a relevant interest.
- 24 (4) An operational Act may prescribe additional requirements for  
25 deciding whether or not to appoint a person as an official visitor for  
26 the operational Act.

- 1 (5) In this section:  
2 ***Aboriginal or Torres Strait Islander person*** means a person who—  
3 (a) is a descendant of an Aboriginal person or Torres Strait  
4 Islander person; and  
5 (b) identifies as an Aboriginal person or Torres Strait Islander  
6 person; and  
7 (c) is accepted as an Aboriginal person or Torres Strait Islander  
8 person by an Aboriginal community or Torres Strait Islander  
9 community.

10 ***relevant interest*** means—

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

## 14 **11 Conditions of appointment**

- 15 (1) An appointment as an official visitor must not be for longer than  
16 3 years.  
17 (2) The conditions of appointment of an official visitor are the  
18 conditions agreed between the Minister and the person, subject to  
19 any determination under the *Remuneration Tribunal Act 1995*.

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

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

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

1   **12       Ending appointment**

2       (1) The Minister may end a person's appointment as an official  
3       visitor—

4           (a) for misbehaviour; or

5           (b) if the person—

6               (i) does not inspect a visitable place as required under the  
7               complaints guidelines made under section 23; and

8               (ii) continues to fail to inspect the site as required for  
9               4 consecutive weeks; or

10          (c) if an operational Act prescribes requirements that the person  
11          must satisfy to be appointed as an official visitor—if the person  
12          no longer satisfies the criteria.

13       (2) The Minister must end the person's appointment as an official  
14       visitor—

15           (a) for physical or mental incapacity, if the incapacity substantially  
16           affects the exercise of the person's functions; or

17           (b) if the person fails to take all reasonable steps to avoid being  
18           placed in a position where a conflict of interest arises during  
19           the exercise of the person's functions.

20       (3) A person's appointment as an official visitor ends, by force of this  
21       section, if the person becomes a public employee.

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

1 **13 Handover of records by official visitors**

2 (1) This section applies if a person's appointment as an official visitor  
3 ends.

4 (2) The person must, not later than 7 days after the day the appointment  
5 ends, give any official visitor record held by the person to another  
6 official visitor.

7 (3) In this section:

8 ***official visitor record*** held by a person, means—

9 (a) a record made or received by the person because of the  
10 person's functions as an official visitor; or

11 (b) information held by the person because of the person's  
12 functions as an official visitor.

1 **Part 4** **Functions of official visitors**

2 **14** **Functions**

3 (1) An official visitor for an operational Act has the following  
4 functions:

5 (a) to inspect visitable places for the operational Act;

6 (b) to report to the operational Minister under section 16 and  
7 section 17;

8 (c) to receive and consider complaints from entitled people, and  
9 others on their behalf;

10 (d) to be available to talk with entitled people and anyone else who  
11 has a concern about an entitled person or a visitable place;

12 (e) to exercise any other function given to an official visitor under  
13 this Act, an operational Act or another territory law.

14 (2) An official visitor must, in exercising the official visitor's functions,  
15 deal with an entitled person with sensitivity, including in relation to  
16 the person's—

17 (a) gender; and

18 (b) religion or faith; and

19 (c) wishes about how the official visitor may inspect a visitable  
20 place.

21 **Examples—par (c)**

22 1 an entitled person may not wish to meet with or talk to an official  
23 visitor

24 2 an entitled person may ask that the official visitor inspect the visitable  
25 place only at certain times

1 3 an entitled person may ask that an official visitor not go into areas in a  
2 visitable place that the person considers to be private

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

6 **15 Inspection of visitable places**

7 (1) An official visitor for an operational Act may, at any reasonable  
8 time, enter a visitable place for the operational Act following a  
9 complaint or at the official visitor's own initiative.

10 **Example—time that would not be reasonable**

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

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

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

19 **16 Official visitor must report non-compliant visitable places**

20 (1) This section applies if an official visitor for an operational Act  
21 believes on reasonable grounds that any of the following is not in  
22 accordance with the operational Act:

23 (a) the care and other services provided to an entitled person at a  
24 visitable place for the operational Act;

25 (b) the living conditions and activities of an entitled person at the  
26 visitable place;

27 (c) if an entitled person for the operational Act is detained under  
28 that Act at the visitable place—the detention of the person at  
29 the place (including any aspect of the treatment, living  
30 conditions, work or activities of the detainee).

- 1           (2) The official visitor—  
2                 (a) must report the belief to the operational Minister; and  
3                 (b) may report the belief to—  
4                         (i) the relevant director-general; and  
5                         (ii) the public advocate.  
6           (3) An operational Act may prescribe other reporting requirements for  
7                 the operational Act.

8   **17           Reporting of complaints**

- 9           (1) An official visitor for an operational Act must give the operational  
10                 Minister, as soon as practicable after the end of each quarter, a  
11                 written report for the quarter summarising—  
12                         (a) the number and kinds of complaints received by the official  
13                         visitor; and  
14                         (b) the action taken on the complaints received; and  
15                         (c) the number and kinds of matters referred by the official visitor  
16                         to an investigative entity.  
17                 *Note     Quarter*—see the Legislation Act, dictionary, pt 1.  
18           (2) The official visitor may give a copy of the report to—  
19                         (a) the relevant director-general; and  
20                         (b) the public advocate.  
21           (3) The report may include comments by the official visitor about  
22                 anything in relation to a complaint mentioned in the report.  
23           (4) For each financial year, the operational Minister must present a  
24                 report of the information given to the Minister under subsection (1)  
25                 to the Legislative Assembly within 6 sitting days after the end of the  
26                 3-month period after the end of the financial year.

1 **18 Assistance to official visitors**

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

5 **Example**

6 assistance to prepare reports

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

10 (2) An operating entity for a visitable place for an operational Act must  
11 give an official visitor for the Act any reasonable assistance the  
12 official visitor asks for to exercise the official visitor's functions at  
13 the place.

14 **Examples**

15 1 giving access to documents and records relating to a complaint

16 2 answering reasonable questions about the facts of a complaint

17 3 giving reasonable access to facilities

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

20 (3) An operating entity must not give an official visitor access to an  
21 entitled person's health record without the entitled person's consent.

22 (4) In this section:

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



1     **19           Offences—failure to provide assistance etc**

2           (1) A person in charge of an operating entity for a visitable place must  
3           not, without reasonable excuse—

4                   (a) refuse or neglect to render assistance if asked by an official  
5                   visitor under section 18; or

6                   (b) fail to answer any question if asked by an official visitor in the  
7                   exercise of the official visitor’s functions.

8           Maximum penalty: 50 penalty units.

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

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

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

17           Maximum penalty: 5 penalty units.

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

19           (4) In this section:

20           ***person in charge***, of an operating entity, means—

21                   (a) if the operating entity is the relevant director-general—the  
22                   relevant director-general; and

23                   (b) in any other case—the person in charge of the entity.

1                      **Part 5                                      Complaints**

2                      **20                      Operating entity must let entitled people know about**  
3                      **official visitors**

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

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

9                      **21                      Requests to meet official visitor**

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

13                      (2) The operating entity must ensure that an official visitor for an  
14                      operational Act is told of the request as soon as practicable, but not  
15                      later than 12 hours after the request is made.

16                      (3) An operating entity must not ask an entitled person, and the person  
17                      need not explain to the operating entity, why the person wants to  
18                      meet an official visitor.

19                      **22                      Complaints to official visitors**

20                      (1) An entitled person for an operational Act, or anyone else, may  
21                      complain to an official visitor for that Act about any aspect of the  
22                      person's accommodation including—

- 23                      (a) the conditions of accommodation of an entitled person; or  
24                      (b) the care or services provided to an entitled person at a visitable  
25                      place; or

- 1 (c) the activities available to an entitled person at a visitable place;  
2 or  
3 (d) how a visitable place is conducted.
- 4 (2) The entitled person may make the complaint to the official visitor  
5 personally or through someone else.
- 6 (3) The entitled person may ask to make a complaint—  
7 (a) to the official visitor with no-one else present; and  
8 (b) to an official visitor of the same gender.
- 9 (4) If the official visitor agrees that the complaint may be made with  
10 only the entitled person present, the operating entity must provide  
11 reasonably private facilities for the complaint to be made.
- 12 (5) In this section:  
13 *accommodation*, of an entitled person, includes, if an entitled  
14 person is detained or confined under an operational Act at a visitable  
15 place, the person's detention or confinement.

## 16 **23 Complaints guidelines**

- 17 (1) The Minister may, after consulting the operational Minister for an  
18 operational Act, make guidelines, consistent with this part, about the  
19 handling, and referral of complaints to investigative entities, by an  
20 official visitor for the operational Act.
- 21 (2) The guidelines must include a schedule that sets out—  
22 (a) each visitable place that an official visitor must inspect; and  
23 (b) how often the official visitor must inspect the place.
- 24 (3) A guideline is a disallowable instrument.

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

1 **Part 6** **Miscellaneous**

2 **24** **Protection of officials from liability**

3 (1) An official is not civilly liable for anything done or omitted to be  
4 done honestly and without recklessness—

5 (a) in the exercise of a function under this Act; or

6 (b) in the reasonable belief that the act or omission was in the  
7 exercise of a function under this Act.

8 (2) Any civil liability that would, apart from subsection (1), attach to an  
9 official attaches instead to the Territory.

10 (3) In this section:

11 *official* means—

12 (a) an official visitor; or

13 (b) a person authorised under this Act to do or not to do a thing.

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

17 **25** **Offences—use or divulge protected information**

18 (1) A person to whom this section applies commits an offence if—

19 (a) the person uses information; and

20 (b) the information is protected information about someone else;  
21 and

22 (c) the person is reckless about whether the information is  
23 protected information about someone else.

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

- 1           (2) A person to whom this section applies commits an offence if—
- 2               (a) the person does something that divulges information; and
- 3               (b) the information is protected information about someone else;
- 4               and
- 5               (c) the person is reckless about whether—
- 6                     (i) the information is protected information about someone
- 7                     else; and
- 8                     (ii) doing the thing would result in the information being
- 9                     divulged to someone else.
- 10           Maximum penalty: 50 penalty units, imprisonment for 6 months or
- 11           both.
- 12           (3) Subsections (1) and (2) do not apply if the information is used or
- 13           divulged—
- 14               (a) under this Act or another territory law; or
- 15               (b) in relation to the exercise of a function, as a person to whom
- 16               this section applies, under this Act or another territory law; or
- 17               (c) in a court proceeding.
- 18           (4) Subsections (1) and (2) do not apply to the using or divulging of
- 19           protected information about a person with the person's consent.
- 20           *Note*     The defendant has an evidential burden in relation to the matters
- 21           mentioned in ss (3) and (4) (see Criminal Code, s 58).
- 22           (5) A person to whom this section applies need not divulge protected
- 23           information to a court, or produce a document containing protected
- 24           information to a court, unless it is necessary to do so for this Act or
- 25           another law applying in the territory.

- 1 (6) In this section:
- 2 *court* includes a tribunal, authority or person having power to  
3 require the production of documents or the answering of questions.
- 4 *divulge* includes—
- 5 (a) communicate; or
- 6 (b) publish.
- 7 *person to whom this section applies* means—
- 8 (a) a person who is or has been an official visitor; or
- 9 (b) anyone else who has exercised a function under this Act.
- 10 *produce* includes allow access to.
- 11 *protected information* means information about a person that is  
12 disclosed to, or obtained by, a person to whom this section applies  
13 because of the exercise of a function under this Act by the person or  
14 someone else.
- 15 *Note* An example is part of the Act, is not exhaustive and may extend, but  
16 does not limit, the meaning of the provision in which it appears (see  
17 Legislation Act, s 126 and s 132).
- 18 *use information* includes make a record of the information.
- 19 **26 Approved forms**
- 20 (1) The Minister may, in writing, approve forms for this Act.
- 21 (2) If the Minister approves a form for a particular purpose, the  
22 approved form must be used for that purpose.
- 23 *Note* For other provisions about forms, see the Legislation Act, s 255.
- 24 (3) An approved form is a notifiable instrument.
- 25 *Note* A notifiable instrument must be notified under the Legislation Act.

1   **27**       **Regulation-making power**

2               The Executive may make regulations for this Act.

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

5   **28**       **Legislation amended—sch 1**

6               This Act amends the legislation mentioned in schedule 1.

1 **Part 10 Transitional**

2 **50 Definitions—pt 10**

3 In this part:

4 *commencement day* means the day this Act commences.

5 *operational Act* means the following:

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

9 **51 Unfinished complaints to official visitors**

10 (1) This section applies if—

- 11 (a) before the commencement day, an entitled person makes a  
12 complaint to the official visitor under an operational Act; and
- 13 (b) immediately before the commencement day, the investigation  
14 of the complaint had not been finalised or otherwise fully dealt  
15 with.

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

18 **52 Existing appointments**

19 (1) This section applies to a person—

- 20 (a) appointed as an official visitor under an operational Act; and
- 21 (b) who was an official visitor immediately before the  
22 commencement day.

23 (2) The person is taken to have been appointed as an official visitor for  
24 the operational Act under this Act, section 10.



1   **53**       **Transitional regulations**

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

4   **54**       **Expiry—pt 10**

5               This part expires 2 years after the day it commences.

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

1 **Schedule 1 Consequential amendments**

2 (see s 28)

3 **Part 1.1 Children and Young People**  
4 **Act 2008**

5 **[1.1] Part 2.3**

6 *substitute*

7 **Part 2.3 Official visitors**

8 *Note* At least 2 official visitors (including a visitor who is an Aboriginal or  
9 Torres Strait Islander person) must be appointed for this Act under the  
10 *Official Visitor Act 2012* (the **OV Act**).

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

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

16 **37 Meaning of *entitled person* and *visitable place***

17 In this Act:

18 *entitled person*—

19 (a) means a child or young person who is—

20 (i) detained in a detention place; or

21 (ii) confined at a therapeutic protection place; or

22 (iii) accommodated in a place of care; and

23 (b) includes—

24 (i) a young detainee who is 18 years old or older; and

25 (ii) a person prescribed by regulation.

1            ***visitable place*** means—

2            (a) a detention place; or

3            (b) a place outside a detention place if a detainee is, or has been,  
4            directed to work or participate in an activity at the place; or

5            (c) a therapeutic protection place; or

6            (d) a place of care.

7            **38            Appointment of official visitors—additional suitability**  
8            **requirement**

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

11           *Note*        Suitable entities are dealt with in pt 2.4.

12           **39            Request for sensitive information by official visitors**

13           (1) This section applies if—

14           (a) a complaint is made to an official visitor in relation to a  
15           visitable place under the *Official Visitor Act 2012*, section 22;  
16           and

17           (b) the visitor intends to ask the operating entity for the visitable  
18           place for assistance in exercising the visitor’s functions at the  
19           place; and

20           (c) the request involves giving sensitive information.

21           *Note*        An operating entity for a visitable place must give an official visitor any  
22           reasonable assistance the official visitor asks for to exercise the official  
23           visitor’s functions at the place (see *Official Visitor Act 2012*, s 18).

24           (2) Before asking the operating entity for assistance, the official visitor  
25           must consider whether the complaint would be better dealt with by,  
26           and should be referred to, an investigative entity.

- 1 (3) In this section:  
2 *operating entity*, for a visitable place—see the *Official Visitor*  
3 *Act 2012*, dictionary.

4 **40 Frequency of visits by official visitors**

5 For the *Official Visitor Act 2012*, section 15 (Inspection of visitable  
6 places), an official visitor must, if practicable, visit—

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

13 **[1.2] Section 153 (1), note**

14 *substitute*

15 *Note* Official visitors must inspect detention places (see pt 2.3 and *Official*  
16 *Visitor Act 2012*).

17 **[1.3] Section 514, note 3**

18 *after*

19 pt 2.3

20 *insert*

21 and *Official Visitor Act 2012*

1 **[1.4] Section 524 (5), note 3**

2 *after*

3 pt 2.3

4 *insert*

5 and *Official Visitor Act 2012*

6 **[1.5] Section 525 (6), note 3**

7 *after*

8 pt 2.3

9 *insert*

10 and *Official Visitor Act 2012*

11 **[1.6] Section 815 (4), note**

12 *after*

13 pt 2.3

14 *insert*

15 and *Official Visitor Act 2012*

16 **[1.7] Section 874 (2) (b)**

17 *omit*

18 section 44

19 *substitute*

20 the *Official Visitor Act 2012*, section 22

- 1 **[1.8] Section 874 (2) (q), note**
- 2 *substitute*
- 3 *Note* The director-general is protected from civil liability for giving  
4 information by s 878 and an official visitor is protected under the  
5 *Official Visitor Act 2012*, s 24.
- 6 **[1.9] Section 878 (1), definition of *official*, paragraph (b)**
- 7 *omit*
- 8 **[1.10] Section 878 (1), new note**
- 9 *insert*
- 10 *Note* An official visitor exercising a function under this Act is protected from  
11 civil liability by the *Official Visitor Act 2012*, s 24.
- 12 **[1.11] Dictionary, note 2**
- 13 *insert*
- 14
  - official visitor
- 15 **[1.12] Dictionary, definition of *entitled child or young person***
- 16 *omit*
- 17 **[1.13] Dictionary, new definition of *entitled person***
- 18 *insert*
- 19 *entitled person*—see section 37.
- 20 **[1.14] Dictionary, definition of *official visitor***
- 21 *omit*
- 22 **[1.15] Dictionary, new definition of *visitable place***
- 23 *insert*
- 24 *visitable place*—see section 37.
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1 **Part 1.2** **Corrections Management**  
2 **Act 2007**

3 **[1.16] Sections 57 to 61**

4 *substitute*

5 **57 Official visitors—meaning of *entitled person* and *visitable***  
6 ***place***

7 In this Act:

8 ***entitled person*** means—

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

11 ***visitable place*** means—

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

15 *Note* At least 2 official visitors (including a visitor who is an Aboriginal or  
16 Torres Strait Islander person) must be appointed for this Act under the  
17 *Official Visitor Act 2012* (the **OV Act**).

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

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

23 **58 Frequency of visits by official visitors**

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

1 **[1.17] Dictionary, note 2**

2 *insert*

- 3 • official visitor

4 **[1.18] Dictionary, new definition of *entitled person***

5 *insert*

6 *entitled person*—see section 57.

7 **[1.19] Dictionary, definition of *official visitor***

8 *omit*

9 **[1.20] Dictionary, new definition of *visitable place***

10 *insert*

11 *visitable place*—see section 57.

12 **Part 1.3 Disability Services Act 1991**

13 **[1.21] New part 1 heading**

14 *before section 1, insert*

15 **Part 1 Preliminary**

16 **[1.22] New part 2 heading**

17 *before section 6, insert*

18 **Part 2 Financial Assistance**



1 **[1.23] New section 6 (2) (c)**

2 *insert*

3 (c) if a provider of disability accommodation is to be funded by  
4 the grant—

5 (i) the provider complies with, and is likely to continue to  
6 comply with, the disability services standards; and

7 (ii) the accommodation complies with, and is likely to  
8 continue to comply with, the disability services standards.

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

10 **[1.24] New part 3**

11 *after section 8, insert*

12 **Part 3 Official visitors**

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

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

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

20 **8A Official visitors—meaning of *entitled person* and *visitable***  
21 ***place***

22 In this Act:

23 *entitled person* means a person—

24 (a) with disability who is staying in a visitable place; or

25 (b) with disability that receives a service funded under this Act; or

26 (c) prescribed by regulation.

- 1 *visitable place*—
- 2 (a) means disability accommodation for respite or long-term
- 3 residential purposes; and
- 4 (b) includes a residential aged care facility that accommodates a
- 5 person with disability who is less than 65 years old.

6 **8B Complaint about disability service provided at place other**

7 **than visitable place**

- 8 (1) An entitled person may make a complaint to an official visitor under
- 9 the *Official Visitor Act 2012*, section 22 about a service funded
- 10 under this Act that is provided at a place other than a visitable place.
- 11 (2) The official visitor may—
- 12 (a) investigate the complaint; and
- 13 (b) inspect the place where the service is provided.
- 14 (3) However, the official visitor may only inspect a place that is not a
- 15 visitable place—
- 16 (a) with the entitled person’s consent; and
- 17 (b) after giving the owner of, or entity operating, the place at least
- 18 24 hours written notice; and
- 19 (c) at a reasonable time, unless the owner of, or entity operating,
- 20 the place otherwise consents.

21 **8C Official visitors must give notice of inspection**

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

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

10 **[1.25] New part 4**

11 *insert*

12 **Part 4 Disability accommodation**

13 **8D Definitions—pt 4**

14 In this part:

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

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

19 **8E Approval of disability accommodation**

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

22 *Note 1* A refusal to approve a place as disability accommodation is a  
23 reviewable decision (see s 8G and s 8H).

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

- 1     **8F           Register of approved disability accommodation**
- 2           (1) The director-general must keep a register of places approved as
- 3           disability accommodation.
- 4           (2) The director-general—
- 5               (a) must provide information on the register to—
- 6                     (i) an official visitor; and
- 7                     (ii) the public advocate; and
- 8               (b) may provide information on the register to—
- 9                     (i) a person with disability; and
- 10                    (ii) a carer or legal representative of a person with disability;
- 11                    and
- 12                    (iii) a person exercising a function under this Act; and
- 13                    (iv) anyone else approved by the director-general.
- 14           (3) In this section:
- 15               *carer*—see the *Guardianship and Management of Property*
- 16               *Act 1991*, section 6.
- 17               *legal representative*, of a person with disability, means—
- 18               (a) the person’s legal representative; or
- 19               (b) if the person does not have legal capacity—the person’s parent
- 20               or guardian.

1 **8G Reviewable decision notice**

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

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

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

10 **8H Applications for review**

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

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

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

17 **[1.26] New part 5 heading**

18 *before section 9, insert*

19 **Part 5 Miscellaneous**

20 **[1.27] New section 9A**

21 *insert*

22 **9A Disability services standards**

- 23 (1) The Minister may make standards about services provided to people  
24 with disabilities.

1 (2) A standard is a disallowable instrument.

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

4 **[1.28] New section 11**

5 *insert*

6 **11 Approved forms**

7 (1) The Minister may approve forms for this Act.

8 (2) If the Minister approves a form for a particular purpose, the  
9 approved form must be used for that purpose.

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

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

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

13 **[1.29] Dictionary, note 2**

14 *insert*

- 15
  - official visitor

16 **[1.30] Dictionary, new definition of *applicant***

17 *insert*

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

20 **[1.31] Dictionary, new definitions**

21 *insert*

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

24 *entitled person*—see section 8A.

1 **[1.32] Dictionary, new definition of *reviewable decision***

2 *insert*

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

5 **[1.33] Dictionary, new definition of *visitable place***

6 *insert*

7 *visitable place*—see section 8A.

8 **Part 1.4 Housing Assistance Act 2007**

9 **[1.34] New part 4B**

10 *insert*

11 **Part 4B Official visitors**

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

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

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

19 **25V Official visitors—meaning of *entitled person* and *visitable***  
20 ***place***

21 In this Act:

22 *entitled person* means a person—

23 (a) who is homeless or at risk of homelessness who is staying in a  
24 visitable place; or

25 (b) prescribed by regulation.

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

4 **25W Official visitors must give notice of inspection**

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

8 (2) However, the official visitor may inspect a visitable place without  
9 giving notice to the operating entity if—

10 (a) the official visitor reasonably believes, or has been given a  
11 complaint, that an entitled person at the visitable place is at risk  
12 of abuse or harm; and

13 (b) the entitled person agrees to the inspection.

14 (3) In this section:

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

17 **[1.35] Dictionary, note 2**

18 *insert*

- 19 • official visitor

20 **[1.36] Dictionary, new definitions**

21 *insert*

22 *entitled person*—see section 25V.

23 *visitable place*—see section 25V.



1 **Part 1.5** **Legislation Act 2001**

2 **[1.37] Dictionary, part 1, new definition of *official visitor***

3 *insert*

4 *official visitor* means an official visitor appointed under the *Official*  
5 *Visitors Act 2012*, section 10.

6 **Part 1.6** **Mental Health (Treatment and**  
7 **Care) Act 1994**

8 **[1.38] Part 11**

9 *substitute*

10 **Part 11** **Official visitors**

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

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

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

18 **121 Official visitors—meaning of *entitled person* and *visitable***  
19 ***place***

20 In this Act:

21 *entitled person* means a person—

22 (a) receiving treatment or care for mental dysfunction or a mental  
23 illness—

24 (i) at a visitable place; or

- 1 (ii) at a place other than a visitable place under an order  
2 under this Act; or
- 3 (b) prescribed by regulation.
- 4 *visitable place* means—
- 5 (a) a long-term residential accommodation facility or respite  
6 facility at which a person receiving treatment or care for  
7 mental dysfunction or a mental illness may stay; or
- 8 (b) a mental health facility; or
- 9 (c) a place in a correctional centre where a detainee may receive  
10 treatment or care for mental dysfunction or a mental illness.

11 **122 Appointment of official visitors—additional suitability**  
12 **requirement**

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

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

22 **122A Official visitor's functions**

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

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

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

11 **122B Frequency of visits by official visitors**

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

15 **122C Complaint about treatment or care provided at place**  
16 **other than visitable place**

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

1 (b) after giving the owner of, or entity operating, the place at least  
2 24 hours written notice; and

3 (c) at a reasonable time unless the director-general otherwise  
4 consents.

5 **[1.39] Section 140A (3), definition of *official*, paragraph (d)**

6 *omit*

7 **[1.40] Section 140A (3), definition of *official*, new note**

8 *insert*

9 *Note 1* An official visitor exercising a function under this Act is protected from  
10 civil liability by the *Official Visitor Act 2012*, s 24.

11 **[1.41] Dictionary, note 2**

12 *insert*

- 13
  - official visitor

14 **[1.42] Dictionary, new definition of *entitled person***

15 *insert*

16 *entitled person*—see section 121.

17 **[1.43] Dictionary, definition of *official visitor***

18 *omit*

19 **[1.44] Dictionary, new definition of *visitable place***

20 *insert*

21 *visitable place*—see section 121.

1 **Part 1.7** **Territory Records**  
2 **Regulation 2009**

3 **[1.45] Dictionary, note 2**

4 *insert*

- 5 • official visitor

6 **[1.46] Dictionary, definition of *official visitor***

7 *omit*

## 1 Dictionary

2 (see s 3)

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

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

- 6 • appoint
- 7 • director-general (see s 163)
- 8 • exercise
- 9 • function
- 10 • Minister (see s 162)
- 11 • public advocate.

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

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

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

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

21 ***operating entity***, for a visitable place, means—

22 (a) if the Territory operates the site—the relevant director-general;  
23 or

24 (b) in any other case—the entity that operates the site.

25 ***operational Act***—see section 7.

26 ***operational Minister***, for an operational Act, means the Minister  
27 responsible for the operational Act.

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

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

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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 2 May 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](http://www.legislation.act.gov.au).

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