

Australian Capital Territory

# Official Visitor (Corrections Management) Visit and Complaint Guidelines 2018

Disallowable instrument DI 2018 - 269

made under the

*Official Visitor Act 2012, section 23 (Visit and Complaint Guidelines)*

---

## **1 Name of instrument**

This instrument is the *Official Visitor (Corrections Management) Visit and Complaint Guidelines 2018*.

## **2 Commencement**

This instrument commences on the day after notification.

## **3 Declaration**

As the operational Minister for the *Corrections Management Act 2007* and the responsible Minister I make the Official Visitor (Corrections Management) Visit and Complaint Guidelines at Attachment 1.

Shane Rattenbury MLA  
Minister for Justice, Consumer Affairs and Road Safety

27 November 2018

## Attachment 1

### Official Visitor (Corrections Management) Visit and Complaint Guidelines

#### Purpose

These Guidelines refer to the visit processes and handling of complaints by an official visitor appointed under the *Official Visitor Act 2012* for entitled people under the *Corrections Management Act 2007*.

These Guidelines should be read in conjunction with the *Official Visitor Act 2012* and the *Corrections Management Act 2007*.

#### Legislative framework

*Official Visitor Act 2012*

*Corrections Management Act 2007* (the operational Act)

The Minister for Corrections (the operational Minister)

#### Statement of intent

The Official Visitor (*Corrections Management*) Visit and Complaints Guidelines sets out how an official visitor appointed under the *Corrections Management Act 2007* will perform their functions.

The official visitors play a vital role in safeguarding and promoting the interests of vulnerable people in our community who find themselves in difficult circumstances. The official visitors seek to identify, monitor and resolve service issues locally, using early intervention and resolution practices, and with a view to improve service quality.

#### Definitions

The *Corrections Management Act 2007* provides the following definitions:

- an **entitled person** (section 57) means a detainee at a correctional centre; or a person prescribed by regulation.
- a **visitable place** (section 57) means a correctional centre; or a place outside a correctional centre if a detainee is, or has been, directed to work in an activity at the place.

The *Official Visitor Act 2012* provides the following definition:

- an **operating entity** for a visitable place means
  - a) if the Territory operates the place, the relevant director-general; or
  - b) in any other case, the entity that operates the place.

For the purpose of these guidelines, the operating entity is the person in charge of the entity, namely, the Executive Director, ACT Corrective Services.

## Functions of the official visitor

Section 14 (1) of the *Official Visitor Act 2012* requires an official visitor to:

- visit visitable places for the operational Act (see also section 15);
- report to the operational Minister (see also sections 16 and 17);
- receive and consider complaints from entitled people, and others on their behalf;
- be available to talk with entitled people and anyone else who has a concern about an entitled person or a visitable place; and
- exercise any other function given to an official visitor under the *Official Visitor Act 2012*, the operational Act or another territory law.

Section 14 (2) states that in exercising their functions, an official visitor must deal with an entitled person with sensitivity, including in relation to a person's gender, their religion or faith, as well as their wishes about how the official visitor may visit a visitable place.

Section 20 states that the operating entity is obliged to inform entitled persons at the visitable place about the functions of an official visitor and how the official visitor may be contacted.

Section 66 of the *Corrections Management Act 2007* states that as soon as practicable after a detainee is admitted to a correctional centre, the director-general must ensure that reasonable steps are taken to explain, among other things, the role of the official visitors.

## Assistance to official visitors

Section 18 (1) of the *Official Visitor Act 2012* specifies that official visitors may be assisted by other official visitors for another operational Act in the exercise of the responsible official visitor's functions.

Section 18 (2) states that an operating entity for a visitable place must give an official visitor any reasonable assistance the official visitor asks for to exercise their functions, in a reasonable timeframe. This may include access to documents and records relating to a complaint, answering reasonable questions about the facts of a complaint or giving reasonable access to facilities.

Section 19 states that it is an offence for a person in charge of an operating entity (as defined in subsection (4)) to fail to provide assistance to the official visitor, without reasonable excuse. Failure to assist an official visitor in their functions includes:

- refusing or neglecting to render assistance if asked;
- failing to answer questions if asked; and/or
- obstructing or hindering an official visitor in exercising their functions.

## Visits

An official visitor may make two types of visits to a visitable place:

- Scheduled visits, as outlined by section 23 of the *Official Visitor Act 2012* (see the Schedule of Visitable Places and Frequency of Visits attached to these guidelines); and
- Ad hoc visits following a complaint or at the official visitor's own initiative, as outlined in section 15 (1) of the *Official Visitor Act 2012*.

## Conditions of entering a visitable place

An official visitor may, at any reasonable time, enter a visitable place in accordance with the frequency schedule, following a complaint or at the official visitor's own initiative.

Visits will generally occur during normal operating hours and at a reasonable time. Prior arrangements between an official visitor and the operating entity may be made to visit an entitled person after hours and at other times.

An official visitor will comply with the safety procedures of the visitable place.

## Obligations of an operating entity

Section 19 (3) of the *Official Visitor Act 2012* states that a person in charge of an operating entity must keep a record of each visit made by an official visitor to a visitable place.

Section 21 states that where an operating entity is advised an entitled person wants to meet an official visitor, the operating entity must ensure the official visitor is told as soon as practicable and within 24 hours of the request being made.

Notice of a request may be emailed to an official visitor.

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.

Section 22 (4) specifies that should an entitled person request that a complaint be made with no-one else present and the official visitor agrees, the operating entity must provide reasonably private facilities for the complaint to be made.

Sections 51, 103 (5) (b) and 104 (4) (b) of the *Corrections Management Act 2007* state that a communication between a detainee and an official visitor is protected communication.

## Record inspection during a visit

Section 15 of the *Official Visitor Act 2012* states an official visitor may inspect records relating to an entitled person when at a visitable place, providing they have the entitled person's written or oral consent.

Records may include health records and any record required to be kept under the operational Act. An operating entity must not give access to a person's health record without the person's consent.

## **Minimum requirements for a visit**

All endeavours must be made to accommodate a request to visit a visitable place made by an official visitor. Consideration should be given to any disruption a visit might create for an entitled person, other residents at the place, and any resource constraints for the official visitor.

## **Complaints**

Section 22 of the *Official Visitor Act 2012* states an entitled person, or anyone else, may make a complaint to the official visitor personally or through someone else about any aspect of the person's accommodation including:

- the conditions of accommodation of an entitled person;
- the care or services provided to an entitled person at a visitable place;
- the activities available to an entitled person at a visitable place; or
- how a visitable place is conducted.

## **Requests and complaints**

An entitled person or someone acting on their behalf may make a request to meet or make a complaint through another person, including an operating entity, or directly to an official visitor.

If a complaint is made directly to an official visitor, the official visitor should attempt to resolve the complaint locally through a person who has authority to direct some form of resolution. In the first instance, complaints should be referred to corrections staff or the General Manager, Custodial Operations, ACT Corrective Services. If the matter cannot be resolved at a local level, the matter will then be escalated to the Executive Director, ACT Corrective Services.

The official visitor should report any allegations of ACTCS staff misconduct directly to the Executive Director, ACT Corrective Services. Allegations of misconduct by non-ACTCS staff should be reported directly to the agency or directorate with whom the non-ACTCS staff member is employed.

If the official visitor receives a complaint or information which presents a risk to either the security or good order of a correctional centre, the safety of a person within a correctional centre or the safety of a person in the community, that information should be immediately passed on to the Executive Director of ACT Corrective Services and all reasonable efforts made to assist in the investigation.

## **Referral of complaints to another entity**

If the official visitor has received a complaint and considers the complaint would be better dealt with by an investigative entity (e.g. police, Public Advocate, Ombudsman) with the power to investigate the complaint, the official visitor may refer the complaint to the investigative entity.

If a referral to an investigative entity has been made by the official visitor, the official visitor must:

- give the investigative entity all information concerning the complaint;
- advise the complainant of the referral;

- seek written consent for the referral from the complainant; and
- close the complaint.

Note: Information provided in a report must comply with the requirements of legislation regarding privacy including, the Commonwealth's *Privacy Act 1988*, the ACT's *Information Privacy Act 2014*, the *Corrections Management Act 2007*, and the *Health Records (Privacy and Access) Act 1997*.

### **Frivolous, vexatious or dishonest complaints**

If the official visitor receives a complaint and, after due consideration, is satisfied the complaint is frivolous, vexatious or not made honestly, the official visitor may close the complaint. Where reasonable, the official visitor should advise the complainant.

### **Non-compliance of a visitable place**

Section 16 of the *Official Visitor Act 2012* states a visitable place may be considered non-compliant if the official visitor believes on reasonable grounds that any of the following is not in accordance with the operational Act:

- the care and other services provided to an entitled person at a visitable place for the operational Act;
- the living conditions and activities of an entitled person at the visitable place; and
- 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).

If after a visit, an official visitor believes the place is non-compliant, the official visitor must report the belief to the operational Minister and may report the belief to:

- the Executive Director, ACT Corrective Services;
- the relevant director-general;
- the Public Advocate; and
- the official visitors' board.

An operational Act may prescribe other reporting requirements for the operational Act.

### **Resolving complaints**

Initial inquiries made by an official visitor about a complaint should be undertaken with the operating entity or delegate. The operating entity or delegate should respond to such requests promptly and no later than by the date advised by the official visitor.

Where a complaint cannot be immediately resolved, an official visitor may refer the issue to the Executive Director, ACT Corrective Services, to consider how best to resolve the issue prior to escalation through to the operational Minister.

## **Closing complaints**

If the official visitor is satisfied the complaint is resolved with the operating entity to the satisfaction of the complainant, the official visitor must close the complaint. The official visitor must advise the complainant that the complaint has been closed and the reasons for the closure.

## **Withdrawal of a complaint**

A complainant may withdraw a complaint at any time by giving the official visitor written notice. The official visitor or a member of staff of the visitable place may assist a complainant, with their consent, to make a written request to withdraw their complaint.

The official visitor must close the withdrawn complaint if satisfied the complaint is about:

- a minor issue;
- has been resolved appropriately;
- has lapsed (the person has left the place and the complaint is no longer relevant).

If the official visitor considers it is in the public interest that a withdrawn complaint be considered, the official visitor may:

- refer the complaint to the Human Rights Commission or other oversight agency, and provide all information about the complaint to the Commission or oversight agency for consideration;
- close the complaint; and
- tell the complainant about the referral and the closing of the complaint.

In such instances, the official visitor may ask the entity investigating the complaint about the investigation of the complaint. The entity should advise the official visitor about the investigation of the complaint and the official visitor may advise the complainant about the progress of the investigation.

If the official visitor has received a complaint from an entitled person concerning a visitable place and that entitled person no longer resides at the visitable place, the complaint can only be closed if:

- the official visitor is satisfied the substance of the complaint has been addressed; or
- after reasonable inquiries have been made to contact the complainant, the official visitor is not able to gain enough information regarding the complaint to undertake a proper review.

Reasonable inquiries may include attempts to contact the complainant by telephone or at their residential premises. The official visitor may request details from the operating entity to enable such inquiries to be made.

## **Reopening complaints**

Where the official visitor is not satisfied that an operating entity has fully complied with an action or undertaking agreed to in the closing of an original complaint, the official visitor may re-open the complaint. In doing so, the official visitor must try to resolve the complaint by taking all reasonable steps to promptly and efficiently resolve the complaint with the operating entity. In

addition, the official visitor should promptly advise the person in charge of the operating entity in writing of this decision.

The official visitor may resolve the complaint by:

- making inquiries about any matter raised in the complaint; and
- exercising any function given to an official visitor under the relevant legislation.

Before asking for assistance that may involve sensitive information, the official visitor must consider whether the complaint would be better dealt with by and should be referred to an investigating entity.

### **Quarterly reporting**

Section 17 of the *Official Visitor Act 2012* outlines the reporting requirements for official visitors. In particular, an official visitor must give the operational Minister a written report as soon as practicable after the end of each quarter.

Note: A quarter ends on 31 December, 31 March, 30 June or 30 September in any year.

The written report must summarise:

- the number and kinds of complaints received by the official visitor; and
- the action taken on the complaints received, including complaints resolved and closed; and
- the number and kinds of matters referred by the official visitor to an investigative entity.

The official visitor may give a copy of the report to the relevant director-general, the Public Advocate, the official visitors' board.

The report may include comments by the official visitor about anything in relation to a complaint mentioned in the report.

The official visitor should make reasonable efforts to provide a draft report to the Executive Director of ACT Corrective Services, and where possible, allow two weeks to provide clarification on issues raised.

Note: Information provided in a report must comply with the requirements of legislation regarding privacy including, the Commonwealth's *Privacy Act 1988*, the ACT's *Information Privacy Act 2014*, the *Corrections Management Act 2007*, and the *Health Records (Privacy and Access) Act 1997*.

### **End of financial year reporting**

Section 17 of the *Official Visitor Act 2012* states that for each financial year, the operational Minister must present a report of the information presented to the operational Minister by the official visitor to the Legislative Assembly. The report must be presented within 6 sitting days after 30 September every year.

Note: The financial year ends on 30 June of each year.

Note: Information provided in a report must comply with the requirements of legislation regarding privacy including, the Commonwealth's *Privacy Act 1988*, the ACT's *Information Privacy Act 2014*, the *Corrections Management Act 2007*, and the *Health Records (Privacy and Access) Act 1997*.

## Schedule of Visitable Places and Frequency of Visits

### Schedule to the Official Visitor (Corrections Management) Visit and Complaint Guidelines

#### Purpose

This Schedule sets out each of the visitable places an official visitor must visit and how often the official visitor must visit the place.

#### Legislative framework

*Official Visitor Act 2012*

*Corrections Management Act 2007* (operational Act)

The Minister for Corrections (the operational Minister)

#### Statement of intent

The intent of having a schedule of visitable places and frequency of visits provides the terms of agreement for the official visitor to perform their functions and to be held to account by the operational Minister.

Under section 10 of the *Official Visitor Act 2012*, the Minister has responsibility for the appointment of official visitors and ending of appointments (see section 12), which includes provisions for performing visits as required under the Visit and Complaint Guidelines made under section 23.

#### Frequency of scheduled visits

Category of visitable place	Number of visitable places	Frequency of scheduled visits <sup>1</sup> per annum (financial year)
Alexander Maconochie Centre	1	52 visits (minimum) Once per week
ACT Supreme Court and Magistrates Court Cells	1	12 visits (minimum) Once per month

Note: The frequency of visits is intended to be the total minimum number required by the Official Visitor Program and should not be read as the visiting schedule for individual official visitors.

The official visitor may visit a place more than the minimum scheduled number as they deem appropriate or to respond to ad hoc matters arising.