

Australian Capital Territory

Official Visitor (Children and Young People) Visit and Complaint Guidelines 2019 (No 1)

Disallowable instrument DI2019-147

made under the

Official Visitor Act 2012, s 23 (Visit and complaint guidelines)

1 Name of instrument

This instrument is the *Official Visitor (Children and Young People) Visit and Complaint Guidelines 2019 (No 1)*.

2 Commencement

This instrument commences on the day after its notification day.

3 Revocation

This instrument revokes the *Official Visitor (Children and Young People Services) Visit and Complaint Guidelines 2018 (No 1)* DI2018-218.

Shane Rattenbury MLA
Minister for Justice, Consumer Affairs and Road Safety
25 June 2019

Official Visitor (Children and Young People) 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 *Children and Young People Act 2008*.

These Guidelines should be read in conjunction with the *Official Visitor Act 2012* and the *Children and Young People Act 2008*.

Legislative Framework

- *Official Visitor Act 2012*
- *Children and Young People Act 2008* (the operational Act)
- The Minister for Children, Youth and Families (the operational Minister)

Statement of Intent

The Official Visitor (Children and Young People) Visit and Complaints Guidelines sets out how an official visitor appointed under the *Children and Young People Act 2008* 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 *Children and Young People Act 2008* provides the following definitions:

- ***an entitled person*** (s37) means a child or young person who is detained in a detention place; or confined at a therapeutic protection place; or accommodated in a place of care; and includes a young detainee who is 18 years old or older; and a person prescribed by regulation.
- ***a visitable place*** (s37) means a detention place; or 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 a therapeutic protection place; or a place of care.
- ***a detention place*** means a place declared to be a detention place under section 142. On 26 August 2008, the Minister declared the Bimberi Youth Justice Centre as a detention place.
- ***a therapeutic protection place*** (s535) means a place declared to be a therapeutic protection place under section 625. There is no declared therapeutic protection place under the operational Act.
- ***a place of care*** means a place approved as a place of care under section 525.

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 obligated to inform entitled persons at the visitable place about the functions of an official visitor and how the official visitor may be contacted.

Section 356 of the *Children and Young People Act 2008* states that an official visitor is a mandated reporter. As such, an official visitor must make a mandatory report to Child and Youth Protection Services if, on reasonable grounds, they believe that a child or young person has experienced or is experiencing sexual abuse or non-accidental physical injury.

Assistance to Official Visitors

Section 18 (1) of the *Official Visitor Act 2012* specifies that an official visitor 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. 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 in 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.

Where the official visitor reasonably believes that notification of their visit would compromise the investigation of a complaint, the official visitor may visit without providing prior notice.

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 179, 200 and 201 of the *Children and Young People Act 2008* stipulate communication between an official visitor and a detainee is protected communication.

Record inspection during a visit

Section 15(2) 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, any record required to be kept under the operational Act, any other record relating to an entitled person, behavioural plans, individual plans, restrictive practice arrangements, staffing rosters, carers, and other allied health professionals.

An operating entity must not give access to a person's health record without the person's informed consent. Information secrecy and sharing provisions of the *Children and Young People Act 2008* apply.

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.

Referral of 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 to a complainant must comply with the requirements of legislation regarding privacy including, the *Information Privacy Act 2014*, the *Children and Young People Act 2008*, 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 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

When seeking to resolve a complaint, an official visitor may seek approval from the operating entity for an agreed action plan to resolve the issues of the complaint. This would include relevant information sharing, timeliness of response and agreed actions to address issues raised in a complaint.

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

If the official visitor is not satisfied with the response to a complaint by the operating entity (including timeliness, actions taken, etc), the official visitor may contact the head of service of the operating entity 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. Other written forms of communication may also be used. The form must be signed by the complainant.

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

- is about a minor issue;
- has been resolved appropriately; or
- 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 must:

- refer the complaint to the Human Rights Commission and provide all information about the complaint to the Commission 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. 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 for each visitable place;
- 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, and 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 report must not include material that may be adverse to, or critical of, a person if the official visitor has not given the person or operating entity an opportunity to be heard/respond. This applies whether the adverse or critical material is express or implicit or by way of opinion or otherwise.

Note: Information provided in a report must comply with the requirements of legislation regarding privacy including, the *Information Privacy Act 2014*, the *Children and Young People Act 2008*, 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 *Information Privacy Act 2014*, the *Children and Young People Act 2008*, and the *Health Records (Privacy and Access) Act 1997*.

Schedule of Visitable Places and Frequency of Visits

Schedule to the Official Visitor (Children and Young People) 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

Children and Young People Act 2008 (the operational Act)

The Minister for Children, Youth and Families (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	Maximum number of residents at visitable places	Frequency of scheduled visits per annum (financial year)
Detention Place	1	40	12 visits (minimum) Once per month
Place of care (residential)	28	6	At least once each month if a child or young person under 18 years of age is being cared for at the place
Therapeutic Protection Place	0	0	At least once each week if a child or young person is being cared for at the place

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 of visits in order to respond to ad hoc matters arising.