

**LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY**

**OFFICIAL VISITOR BILL 2012 (No 2)**

**EXPLANATORY STATEMENT**

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## Introduction

This explanatory statement relates to the Official Visitor Bill 2012 (No 2) (the Bill) as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.

The Statement must to be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

## Overview of changes

The Official Visitor Bill 2012 (No 2) proposes an improved monitoring and complaints system for people who are being held in government institutions or are staying in a community facility and are dependent on the service provider or accommodation manager supporting them.

Currently the ACT has official visitors for corrections, mental health and children and young people who are staying in institutions owned and operated by the ACT Government. Each official visitor is funded by the appropriations made to the Directorate whose institutions they inspect. The official visitors' roles are provided for through the *Corrections Management Act 2007* (sections 57 to 61), the *Mental Health (Treatment and Care) Act 1993* (sections 121 to 122B), and the *Children and Young People Act 2008* (sections 37 to 59).

The Bill proposes to expand the official visitor scheme so that it is available to people in community settings who, while not being detained against their will, cannot move elsewhere if there is a problem with their accommodation or the responsible service provider.

The Bill creates new official visitor roles which have not previously existed for:

- people with disabilities;
- people experiencing homelessness; and
- children and young people who are from an Aboriginal and Torres Strait Islander background and in a juvenile justice or care and protection facility.

The Bill also creates a specific statutory requirement that there must be an official visitor for corrections who is an Aboriginal and Torres Strait Islander to ensure such an official visitor is always appointed.

Furthermore, the Bill seeks to increase the level of certification and safety of disability accommodation places, by requiring the Community Services Directorate to maintain a register of approved disability accommodation places, and providing that ACT Government funding may not be used to pay for clients to stay at accommodation services that are not on the approved register.

To increase the independence official visitors have from the Directorates whose facilities they inspect, the Bill proposes that official visitors are located collegiately and provided with assistance from the Office of the Public Advocate. Official visitors

will continue to report directly to their relevant Ministers.

## **Human rights**

The Bill better protects the human rights of vulnerable people by facilitating their access to an independent complaints process and providing improved oversight of the accommodation and services which they are dependent on.

### *Optional Protocol of the Convention against Torture*

The proposals assist the ACT Government to meet the requirements of the Optional Protocol of the Convention against Torture (OPCAT) which the Australian Government is a signatory to and is expected to soon ratify. OPCAT requires governments to prevent torture and ill treatment of people deprived of their liberty by ensuring inspections of all places of detention. While the ACT Government appears to meet its obligations in the fields of mental health, corrections, and children and young people, there are other accommodation places in the community (such as disability group homes) where clients are not being technically detained but cannot easily move elsewhere if suffering torture or ill treatment. The Bill seeks to protect the rights of vulnerable people in community settings by providing an additional harm prevention measure in the form of inspections for those facilities.

### *The right to privacy*

The issues of the right to privacy and right to home are also raised by the Bill. Facilities in the community setting such as a group home which an official visitor will be able to inspect are a person's permanent home. There is a balance to be achieved between the need to respect vulnerable peoples' right to privacy while ensuring that they are protected from harm.

To address these issues the Bill requires official visitors to provide people in community settings with a notification and consent process to ensure individuals' rights are protected.

If an official visitor is to visit a site that is not an institution, such as a disability group home or emergency accommodation for people experiencing homelessness, the official visitor must provide the owner or operator with at least 24 hours notification. The owner or operator may not stop a visit occurring, but an entitled person, the person with disabilities, mental illness, or who is homeless, does retain the right to refuse entry to the official visitor to what they consider to be their personal space, and the official visitor must respect any such refusal. Further in exercising their functions under the Bill official visitors are bound to do so in a manner that responds to a person's wishes about how the official visitor may inspect a visitable place.

Existing official visitors do have right of entry without notification powers for government run institutions. The Bill expands this power to the community setting when the official visitors for people with disabilities and the official visitors for people experiencing homelessness believe that a person is at risk of harm. These two official visitors will have the power to visit a visitable place without notification if it they reasonably believe that a resident of those places is at risk of harm. In such a situation the official visitors would not have to give the owner or operator of a facility

24 hours notice, however the entitled person, the one who is considered to be at risk, retains the right to refuse the official visitor entry.

In terms of section 28 of the *Human Rights Act 2004* any limitation on the right to privacy is demonstrably justified in a free and democratic society because:

- the legitimate purpose of the limitation, to protect vulnerable people from the risk of physical or psychological harm, is particularly important and responds to a very significant risk for the group of people concerned;
- the limitation is limited to circumstances either where some notice is provided or in the absence of notice there is an immediate concern of harm and in either case individuals retain the right to refuse an inspection; and
- there is no alternative less restrictive means to achieve the legitimate purpose. In order to protect against harm occurring a proactive inspection regime is required and acts as a much more effective prevention measure than simply responding to allegations of harm once they have occurred.

### *Equality before the law*

The *Human Rights Act 2004* also protects equality before the law and protects against discrimination on any ground. The Bill also potentially engages this right. The premise of the concern is that it is because of a person's disability or other circumstance (such as homelessness) that they will fall within the official visitor inspection scheme and that because of this they are having their rights limited, or perhaps conversely that they are being given additional rights, discriminatorily by virtue of their disability or circumstance.

Whilst it is true that legal requirements are being created and applied to people because of their disability or circumstances, it should be noted that in doing so a range of other human rights are being protected. An analogy may be made to measures provided for Aboriginal and Torres Striate Islander people to address historic disadvantage and respond to their particular cultural needs. Similarly in this instance the protections being created for people with disability are necessary to protect other human rights and any minor limitation that is created has been limited to the greatest extent possible.

The scheme is the least restrictive and reasonably available means of addressing the legitimate and recognised purpose of protecting personal safety and other human rights. Rather than being characterised as a burden or legal discrimination the Bill is better characterised as a protection for particular groups within the community. Governments will often and inevitably take action for, or to the detriment of, particular groups in the community. The fact that the group concerned in this instance is people with disabilities, a group that historically has needed protection from discrimination, should not be seen as limiting the ACT Legislative Assembly's ability to legislate for the provision of an additional service. It is of course important to evaluate the content of that service to ensure that it is a positive initiative that overall protects rights and prevents harms, something which is certainly the case here.

Further discussion of the specific operation of relevant clauses is set out below under notes on clauses.

## NOTES ON CLAUSES

### Clause 1 — Name of Act

This is a technical clause and sets out the name of the new Act as the Official Visitor Act 2012.

### Clause 2 — Commencement

This clause enables the Act to commence on 1 March 2013, except for those amendments which relate to the creation of disability service standards and a disability accommodation register which are to commence on 1 March 2014 (see Schedule 1, amendments 1.23, 1.25, 1.27, 1.30 and 1.32).

### Clause 3 — Dictionary

This is a technical clause identifying the dictionary and explaining conventions used to define words and terms for the purposes of the Act.

### Clause 4 — Notes

This is a technical clause explaining the status of notes in the Act.

### Clause 5 — Offences against Act – application of Criminal Code etc

This clause clarifies that other legislation applies to this Bill and in particular notes operation of the *Criminal Code 2002*, which applies to all offences against the Bill, and the *Legislation Act 2001*, which provides for interpretation, common definitions, and legislative machinery for the Bill.

Under section 133 of the *Legislation Act 2001*, the current value of a penalty unit is \$110 if the person charged is an individual or \$550 if the person charged is a corporation.

### Clause 6 — What is an *official visitor*?

This clause defines an official visitor for an operational Act as a person appointed under clause 10 of the Bill. See notes below on clause 10 for the specific official visitor roles which are created by the Bill.

### Clause 7 — What is an *operational Act*?

This clause defines the operational Acts as the:

- *Children and Young People Act 2008*;
- *Corrections Management Act 2007*;
- *Disability Services Act 1991*;
- *Housing Assistance Act 2007*; and
- *Mental Health (Treatment and Care) Act 1994*.

The operational Acts set out the specific framework under which each of the official visitors will operate. For example how often official visitors must inspect visitable places and the criteria for appointment in the particular roles.

### **Clause 8 — What is an *entitled person*?**

This clause defines an entitled person for an operational Act as an entitled person defined under an operational Act. An entitled person under each of the operational Acts is a person who is entitled to make a complaint to an official visitor in the particular circumstances covered by the operational Act, for example a detainee in a prison may complain to an official visitor about any aspect of the detainee's detention or treatment in detention under the *Corrections Management Act 2007*. Note that schedule 1 makes a number of amendments to operational Acts including in relation to entitled persons.

### **Clause 9 — What is a *visitable place*?**

This clause defines a visitable place for an operational Act as a visitable place defined under the operational Act. A visitable place under each of the operational Acts is a place which an official visitor can inspect. For Example the official visitor for children and young people may visit 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 *Children and Young People Act 2008*. Note that schedule 1 makes a number of amendments to operational Acts including in relation to visitable places.

### **Clause 10 — Appointment**

This clause requires the Minister for the Act, being the Attorney General, to appoint at least:

- For the *Children and Young People Act 2008*: two official visitors for children and young people, one of whom is to be an Aboriginal or Torres Strait Islander person.
- For the *Corrections Management Act 2007*: two official visitors for corrections, one of whom is to be an Aboriginal or Torres Strait Islander person.
- For the *Disability Services Act 1991*: one official visitor for people with disabilities.
- For the *Housing Assistance Act 2007*: one official visitor for people experiencing homelessness.
- For the *Mental Health (Treatment and Care) Act 1994*: one official visitor for mental health.

Note that the requirements set out are the minimum number of official visitors required for each of the respective operational Acts and nothing in this Bill or the

operational Acts prevents the Attorney General from appointing additional official visitors.

Requiring the appointment of an official visitor for Aboriginal and Torres Strait Islander children and young people in correctional settings recognises the continuing over representation of Aboriginal and Torres Strait Islander people within the justice system and assists in appropriately responding to their unique cultural needs.

The Attorney General must consult with the Minister responsible for an operational Act before appointing an official visitor for that operational Act. For example, the Attorney General must consult with the Minister for Health before appointing an official visitor for the *Mental Health (Treatment and Care) Act 1994*.

The Attorney General may only appoint a person as an official visitor if they have suitable qualifications or experience. The operational Act may specify additional criteria that a person must meet before being appointed as an official visitor for that operational Act.

Sub clause (3)(a) excludes public servants from being eligible to be an official visitor. Given the nature of the role and the responsibility placed on official visitors to monitor the way public employees exercise their functions, it is not appropriate to have an official visitor who is not completely independent of the body they are entrusted with monitoring.

The definition under sub clause (5) of who is considered to be a person of Aboriginal and Torres Strait Islander descent has been taken from the *Aboriginal and Torres Strait Islander Elected Body Act 2008*.

Clause 10 also provides that a person cannot be appointed as an official visitor if they have an interest in a contract with a visitable place for the operational Act under which they will be appointed and a person cannot be appointed as an official visitor if they have a financial interest in a place or service they might inspect.

### **Clause 11 — Conditions of appointment**

This clause provides that an appointment as an official visitor is for no longer than 3 years. This however does not prevent the same person being appointed for a subsequent term.

The conditions of remuneration and other terms of appointment are to be agreed between the Minister and the person, subject to any determination under the *Remuneration Tribunal Act 1995*.

### **Clause 12 — Ending appointment**

This clause outlines when the Minister has discretion or is required to end an official visitor's appointment.

The Minister may end a person's appointment as an official visitor for:

- misbehaviour;

- if the person does not inspect a visitable place according to the required visitation frequency set out in the operational Acts (requirements for visits are set out in amendments to operational Acts in schedule 1 and the guideline making power in clause 23, for example the official visitor for corrections is required to visit corrections facilities fortnightly) and then continues to fail to inspect the place as required for 4 consecutive weeks; or
- if the person is no longer a suitable entity.

The Minister must end the person's appointment as official visitor for physical or mental incapacity, if the incapacity substantially affects the exercise of the person's functions or if the person fails to take all reasonable steps to avoid being placed in a position where a conflict of interest arises during the exercise of the person's functions. If the official visitor becomes a public servant, the appointment is automatically ceased. By section 210 of the *Legislation Act 2001*, an official visitor may also resign their appointment.

### **Clause 13 — Handover of records by official visitors**

If a person's appointment as an official visitor ends, the person must, not later than 7 days after the day the appointment ends, give any official visitor record held by the person to another official visitor.

The intention of this clause is to ensure that the official visitor's records are adequately protected, in view of the sensitive nature of the material likely to be contained in the records.

### **Clause 14 — Functions**

This clause outlines the functions of an official visitor which are to:

- inspect visitable places for an operational Act;
- report to the operational Minister;
- 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 this Act (the *Official Visitor Act 2012*), an operational Act or another territory law.

When an official visitor undertakes their functions, they must have respect for an entitled person's gender and faith.

An official visitor must also respect an entitled person's wishes about how the official visitor is to inspect a visitable place, including:

- whether or not an entitled person wants to speak to an official visitor;
- what times it is preferred that the official visitor visit; and
- which physical areas an entitled person considers to be private and does not want an official visitor to inspect or enter into.



### **Clause 15 — Inspection of visitable places**

An official visitor for an operational Act may enter a visitable place at any reasonable time. An example is provided of a time that would not be reasonable.

An operational Act may prescribe additional minimum requirements for visit by an official visitor including for example the minimum frequency with which an official visitor must visit a visitable place. See schedule 1 for amendments to requirements for visits and the guideline making power in clause 23 which also provides for additional visitation frequency if the Minister determines it appropriate.

### **Clause 16 — Official visitor must report non-compliant visitable places**

This clause requires an official visitor to report to a Minister for an operational Act if they believe 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 an 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).

An official visitor may also report their belief to the relevant director-general and the public advocate.

This clause also provides that an operational Act may prescribe other reporting requirements for an official visitor.

### **Clause 17 — Reporting of complaints**

This clause requires an official visitor to provide an operational Minister with a written report after each quarter summarising the:

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

An official visitor may also provide a copy of their report to the relevant director-general and the public advocate.

At the end of each financial year the operational Minister must present a summary of the official visitor's quarterly reports to the Legislative Assembly within 6 sitting days after the end of the 3-month period after the end of the financial year.

### **Clause 18 — Assistance to official visitors**

Clause 18 (1) specifies that an official visitor may ask the public advocate for assistance and the public advocate may provide that assistance. It is envisaged that the official visitors will be collegiately located and provided with funding and

administrative support through the Office of the Public Advocate. The public advocate will not be able to direct official visitors, but can provide them with assistance.

Clause 18 (2) requires the operating entity of a visitable place to provide an official visitor with any reasonable assistance the official visitor asks for to exercise the official visitor's functions. This includes providing things such as access to documents and facilities within the visitable place.

An operating entity cannot provide an official visitor with an entitled person's health record unless the entitled person has provided their permission.

### **Clause 19 — Offences—failure to provide assistance etc**

This clause outlines that if a person in charge of an operating entity without reasonable excuse refuses or neglects to provide an official visitor with the assistance requested under clause 18, or fails to answer any question asked by an official visitor in the exercise of the official visitor's functions, the person faces a maximum penalty of 50 penalty units.

If a person in charge of an operating entity, without reasonable excuse, obstructs or hinders an official visitor in the exercise of the official visitor's functions, the person faces a maximum penalty of 50 penalty units, imprisonment for 6 months or both.

If a person in charge of an operating entity does not keep a record of each visit by an official visitor, the person faces a maximum penalty of 5 penalty units.

These clauses have been taken from those which applied to the official visitor for mental health under the *Mental Health (Treatment and Care) Act 1994* and are proposed to be applied across all five operational Acts.

The criminal penalties apply only to the person in charge of an entity as it is appropriate that should an official visitor encounter any difficulty accessing material, they first contact the person in charge directly to access any material they need and the criminal penalty need only apply as a last resort protection against organisational non compliance.

### **Clause 20 — Operating entity must let entitled people know about official visitors**

This clause places a positive obligation on operating entities for visitable places to tell an entitled person at the visitable place, or a person acting on the entitled person's behalf, about the functions of an official visitor and how the official visitor may be contacted.

### **Clause 21 — Requests to meet official visitor**

This clause requires that an operating entity must ensure that an official visitor is told as soon as practicable (and no later than 12 hours after a request) of any request by an entitled person to meet an official visitor. An entitled person need not explain to the operating entity why they want to see an official visitor and the operating entity is expressly prohibited from asking why the person wishes to meet the official visitor.

## **Clause 22 — Complaints to official visitors**

This clause enables an entitled person, or anyone else on the person's behalf to make a complaint to an official visitor. Complaints may be 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.

The entitled person may make the complaint to an official visitor personally or through someone else.

Under sub-clause (3), the entitled person has a right to ask the official visitor to hear the complaint with no-one else present. If the official visitor agrees that the complaint may be made with only the entitled person present, the operating entity is required to provide reasonably private facilities for the official visitor to hear the complaint, for example, a private room to talk to entitled person. The official visitor can however refuse to see an entitled person in private, if for example they are concerned for their own safety.

Also under sub-clause (3), the entitled person has a right to ask to see an official visitor of the same gender. While the Bill does not require the appointment of official visitors of each gender for each operational Act the Minister may appoint more than the minimum required number of official visitors (see clause 10 above) and it is proposed that the Minister ensure there is an official visitor available of each gender for an operational Act. This would mean that in addition to the official visitor appointed to fulfil the primary role an additional official visitor of the opposite gender who is the primary official visitor under another operational Act could also be appointed and fulfil the function only as required when an official visitor of their gender is specifically asked for, spend most of their time functioning as an official visitor for another operational Act. For example, a male official visitor for mental health could also be appointed as an official visitor for people with disabilities, but only take on that secondary role when an entitled male person with disabilities asks specifically to speak with a male official visitor.

Note that clause 12 provides that a Minister may dismiss an official visitor if they continue to fail to inspect a visitable place for 4 weeks. However in this circumstance where an official visitor is appointed effectively as an alternative visitor, clause 12 need not necessarily apply, as a discretion is given to the Minister.

## **Clause 23 — Complaints guidelines**

This clause allows the Attorney General, after consulting with an operational Minister, to make guidelines about an official visitor's handling and referral of complaints.

As more than one official visitor may be appointed for an operational Act, the guidelines must include a schedule that sets out each visitable place official visitors must inspect and how often official visitors must inspect each place. Note they clause 15 and various clause in Schedule 1 also provide for the minimum visitation

requirements and the guidelines may only provide for additional inspections beyond these minimum standards.

The Bill does not set a minimum inspection frequency for community facility inspections as these will vary significantly depending on the particular risk of the place concerned and it is appropriate to delegate responsibility for determining this to the Minister as they are best placed to assess the particular risk of each institution. Nothing in these provisions limit the frequency with which an official visitor may visit a visitable place.

The guidelines are a disallowable instrument.

#### **Clause 24 — Protection of officials from liability**

This clause provides for protection of certain people from civil liability in the exercise of functions under the Act for conduct exercised honestly and without recklessness. Any civil liability is instead effectively transferred from the person to the Territory.

#### **Clause 25 — Offences — use or divulge protected information**

This clause creates offences for the use and divulging of protected information and includes exceptions to the offences in certain circumstances.

#### **Clause 26 — Approved forms**

This clause provides for the Minister to approve forms for the Act. In circumstances where the Minister approves a form for a specific purpose, the form is required to be used. A form is a notifiable instrument.

#### **Clause 27 — Regulation-making power**

This clause provides for the Executive to make regulations for the Act.

#### **Clause 28 — Legislation amended—sch 1**

In addition to the Official Visitors Act the Bill proposes to make a number of consequential amendments to the various operational Act as set out in schedule 1.

#### **Clause 50 — Definitions—pt 10**

This clause defines two important terms for the purposes of the transitional provisions in Part 10 of the Bill.

#### **Clause 51 — Unfinished complaints to official visitors**

This clause provides for complaints made prior to the Act commencing, that have not been closed or finalised, to continue after the Act has commenced as if they had been made under clause 22 of the Bill.

## **Clause 52 — Existing appointments**

This clause provides for official visitors appointed prior to the Act commencing, and acting in that role immediately prior to the Act commencing, to continue in their current roles after the Act has commenced as if they had been appointed under clause 10.

## **Clause 53 — Transitional regulations**

This clause provides for regulations to be made to deal with transitional matters.

## **Clause 54 — Expiry—pt 10**

This clause provides for part 10 of the Act to expire 2 years after the Act's commencement.

## **Schedule 1 — Consequential amendments**

### **Part 1.1 Children and Young People Act 2008**

#### **Clause 1.1 — Part 2.3**

This clause provides for the amendment of part 2.3 of the *Children and Young People Act 2008*.

#### New Section 37 — Meaning of *entitled person* and *visitable place*

This new section re casts the what is currently provided in sections 37 and 39 of the *Children and Young People Act 2008* into the new defined terms, entitled person and visitable place created by the Bill. The substantive operation of the definitions remains unchanged from the existing Act.

#### New Section 38 — Appointment of official visitors—additional suitability requirement

This new section removes a number of the current requirements set out in the Act for the appointment of official visitors as these requirements will now be provided for under the new Official Visitors Act 2012 (see clause 10 above for the requirements for the appointment of official visitors). However the new section 37 will retain the additional requirement that the person to be appointed an official visitor must be a suitable entity as set out under part 2.4 of the Act.

#### New Section 39 —Request for sensitive information by official visitors

This new section removes the current functions listed under the current section 39 as the functions of official visitors will now be provided for under the new Official Visitors Act 2012 (see clause 14 above for the functions of official visitors). The new section retains the requirement for an official visitor to consider whether a complaint is more appropriately referred to another investigative entity if sensitive information needs to be accessed from the operating entity.

### New Section 40 — Frequency of visits by official visitors

This clause sets out the minimum frequency with which at least one official visitor for children and young people must visit a visitable place, being:

- each detention place at least once each fortnight;
- a therapeutic protection place at least once each week if an entitled person is confined at the therapeutic protection place; and
- a place of care at least once each month if an entitled person is being cared for at the place of care.

These requirements are currently set out in section 39(2) of the Act.

### **Clauses 1.2 to 1.15**

These clauses amend various notes and signpost definitions consequential to previous clauses of the Bill.

### **Part 1.2 Corrections Management Act 2007**

#### **Clause 1.16 — Sections 57 to 61**

This clause provides for amendments to be made to the *Corrections Management Act 2007*.

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

This new section re casts the current section 39 which provides for the functions of the official visitors so that it is consistent with the new defined terms set out in the new Official Visitor Act 2012. The substantive effect of the new sections remains unchanged from the current Act.

Note that correctional centres in the ACT are prescribed by Corrections Management (Correctional Centres) Declarations and currently include the Alexander Maconochie Centre, the Symonston Periodic Detention Centre and holding cells at the Courts.

### New Section 58 — Frequency of visits by official visitors

This clause sets out the minimum frequency with which at least one official visitor for corrections must visit a visitable place, being at least once each fortnight for a correctional centre.

### **Clauses 1.17 to 1.20**

These clauses insert a new note and signpost definitions.

### **Part 1.3 — Disability Services Act 1991**

Part 1.3 provides for amendments to be made to the *Disability Services Act 1991* to create:

- an official visitor for people with disabilities
- disability service standards; and
- a register of approve disability accommodation.

## **Clauses 1.21 and 1.22**

These clauses insert new heading in the *Disability Services Act 1991*.

### **Clause 1.23 — New section 6 (2) (c)**

This amendment limits the provision of grant funding to providers of disability accommodation to those providers who comply and are likely to continue to comply with the disability services standards as set by the Minister under new section 9A of the *Disability Services Act 1991*.

### **Clause 1.24 — New part 3**

This clause creates a new part in the *Disability Services Act 1991* to provide for the creation of an official visitor for people with disabilities.

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

This clause creates definitions of visitable place and entitled person, consistent with the framework set out by the new Official Visitor Act 2012 for the *Disability Services Act 1991* in relation to the official visitor for people with disabilities.

An entitled person who can make a complaint to an official visitor for people with disabilities is a person:

- who is staying in a visitable place;
- receives a service funded under the *Disability Services Act 1991*; or
- a person prescribed by regulation.

A visitable place is defined as:

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

#### New Section 8B — Complaint about disability service provided at place other than visitable place

This new section allows a person with disabilities who receives a service funded under the *Disability Services Act 1991* at a place that is not a visitable place to make a complaint about that service to the official visitor for people with disabilities.

#### New Section 8C — Official visitors must give notice of inspection

This clause requires an official visitor for people with disabilities to give an operating entity for a visitable place written notice that the official visitor intends to inspect the place at least 24 hours before the official visitor's inspection.

However an official visitor can inspect a visitable place without prior warning if they are concerned that a person with disabilities staying at that place is at risk of harm.

The operating entity cannot deny entry to the official visitor, however a person with disabilities retains the right not to allow the official visitor to undertake the inspection.

#### **Clause 1.25 — New part 4**

This clause creates a new part in the *Disability Services Act 1991* so as to provide for the definition and registration of disability accommodation.

##### New Section 8D — Definitions—pt 4

This clause provides new definitions for Part 4 of the *Disability Services Act 1991*.

##### New Section 8E — Approval of disability accommodation

This clause provides for the director-general to approve a place as disability accommodation. A refusal is a reviewable decision.

##### New Section 8E — Register of approved disability accommodation

This clause requires the director-general to keep a register of places approved as disability accommodation.

The director-general must make information on the register available to the official visitor for people with disabilities and the public advocate.

The director-general may provide information on the register to:

- a person with disabilities or their carer or legal representative;
- a person exercising a function under the *Disability Services Act 1991*; and
- anyone else approved by the director-general.

Note that in determining whether or not it is appropriate to provide information on the register to anyone else the director-general must have regard to the protected human rights of the people living in those places of accommodation (see section 40B of the *Human Rights Act 2004*)

The creation of a register of approved disability accommodation is not intended to affect those people who receive individual support packages and can personally choose where to spend those funds.

##### New Section 8G — Reviewable decision notice

This new section requires that the Minister give an applicant a reviewable decision notice if a decision on an application for approval as a place of disability accommodation is refused.

##### New Section 8H — Applications for review

This clause provides for an applicant in relation to a decision about the approval of a disability accommodation place or any other person whose interests are affected by the decision to apply to the ACAT for review the decision.

#### **Clause 1.26 — New part 5 heading**

This clause creates a new part 5 heading.



### **Clause 1.27 — New section 9A**

New section 9A provides for the Minister to make standards about services provided to people with disabilities.

Given there are existing standards which are already applied to parts of the disability sector nationally, it is envisaged the standards set by the Minister under this new section will incorporate much of the existing standards and adapt them to the ACT disability sector.

The standard is a disallowable instrument.

### **Clause 1.28 — New section 11**

New section 11 provides for the Minister to approve forms for the *Disability Services Act 1991*. In circumstances where the Minister approves a form for a specific purpose, the form is required to be used. A form is a notifiable instrument

### **Amendment 1.29 to 1.30**

These clauses insert a new note and signpost definition.

### **Amendment 1.31 to 1.33 — Dictionary**

These clauses insert a number of signpost definitions and a new definition of ‘disability accommodation’ as accommodation for a person with disabilities that is provided by the Territory or a grantee. It is not intended to capture accommodation which is purchased by a person with disabilities using an individual support package.

### **Part 1.4 — Housing Assistance Act 2007**

#### **Clause 1.34 — New part 4B**

This amendment creates a new part in the *Housing Assistance Act 2007* to provide for an official visitor for people experiencing homelessness.

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

This clause creates definitions for the *Housing Assistance Act 2007* in relation to the official visitor scheme.

An entitled person who can make a complaint to an official visitor for people experiencing homelessness is a person who is:

- homeless or at risk of homelessness who is staying in a visitable place, or
- a person prescribed by regulation.

A visitable place is defined as temporary or short-term supported accommodation for people who are homeless or at risk of homelessness, provided by an entity funded under the *Housing Assistance Act 2007*.

### New Section 8C — Official visitors must give notice of inspection

This clause requires an official visitor for people experiencing homelessness to give an operating entity for a visitable place written notice that the official visitor intends to inspect the place at least 24 hours before the official visitor's inspection.

However an official visitor can inspect a visitable place without prior warning if they are concerned that a person experiencing homelessness staying at that place is at risk of harm.

The operating entity cannot deny entry to the official visitor, but the person experiencing homelessness retains the right to refuse entry to the official visitor.

### **Clauses 1.35 to 1.36**

These insert a new note and signpost definitions.

### **Part 1.5 — Legislation Act 2001**

#### **Clauses 1.37**

This clause provides for the signpost definition of official visitor in the *Legislation Act 2001*.

### **Part 1.6 — Mental Health (Treatment and Care) Act 1994**

#### **Clause 1.38 — Part 11**

This clause provides for new official visitor scheme to be incorporated in the *Mental Health (Treatment and Care) Act 1994*. Consistent with other clauses of the Bill and the new official visitor scheme this clause amends the current official visitor provisions and whilst the changes largely leave the substantive effect of the current provisions unchanged there are some important additions to the current scheme. These are set out under the specific new sections.

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

This new section creates new definitions for the *Mental Health (Treatment and Care) Act 1994* in relation to the official visitor scheme.

An entitled person who can make a complaint to an official visitor for mental health is:

- a person receiving treatment or care for mental dysfunction or a mental illness at a:
  - o visitable place; or
  - o a place other than a visitable place where the person is under an order under the *Mental Health (Treatment and Care) Act 1994*; or
- a person prescribed by regulation.

The inclusion of a person under an order at a place that is not a visitable place is new to the official visitor scheme for mental health. It is intended to incorporate those

people who are not required to stay in an inpatient acute mental health ward, but are required to follow an order of the Mental Health Tribunal.

A visitable place is defined as a:

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

The inclusion of a long-term residential accommodation facility or respite facility, and a correctional centre is new to the official visitor scheme for mental health. The move is intended to capture those places other than an inpatient acute mental health ward where people receive and depend on significant levels of mental health services and support.

Mental health facilities in the ACT are prescribed by Mental Health (Treatment and Care) (Mental Health Facility) Approvals and currently include the:

- Canberra Hospital;
- Brian Hennessy Rehabilitation Centre; and
- Calvary Health Care Older Persons Mental Health Inpatient Unit, Intensive Care and Coronary Care Units, Theatre Complex, Ward 5E, and the Aged Care Rehabilitation Unit.

#### New Section 122 — Appointment of official visitors—additional suitability requirement

This new section set out some additional requirements for appointment as a mental health official visitor in addition to the requirements for appointment under clause 10 of the Bill. The new section requires that a person appointed as an official visitor for mental health must:

- have been a legal practitioner who has not less than years practising experience; or
- be a medical practitioner; or
- have been nominated by a body representing consumers of mental health services; or
- have experience and skill in the care of persons with a mental dysfunction or mental illness.

#### New Section 122A — Official visitor's functions

In addition to and without limiting those functions for all official visitors set out in the new Official Visitor Act 2012, this new section requires an official visitor for mental health to enquire into the:

- adequacy of services provided at a visitable place for the assessment and treatment of people with mental dysfunction or a mental illness;
- appropriateness and standard of facilities at a visitable place for the recreation, occupation, education, training and rehabilitation of people receiving treatment or care for mental dysfunction or a mental illness;

- extent to which people receiving treatment or care for mental dysfunction or a mental illness at a visitable place are being provided the best possible treatment or care appropriate to their needs in the least possible restrictive environment and least possible intrusive manner consistent with the effective giving of that treatment or care.

These provisions are unchanged from the existing official visitor for mental health scheme at the request of mental health service consumers.

#### New Section 122B — Frequency of visits by official visitors

This clause requires an official visitor for mental health to inspect each visitable place at least once a month, if practicable.

#### New Section 122B — Complaint about treatment or care provided at place other than visitable place

This clause allows a person receiving a mental health service funded by the Territory at a place that is not a visitable place to make a complaint about that service to the official visitor for mental health.

#### **Clauses 1.39 to 1.46**

These clauses amend various notes and definitions and are consequential on previous clauses.

#### **Dictionary**

As provided for in clause 3 the dictionary is part of the Act. The dictionary defines the application of certain terms for the purposes of the new Official Visitor Act 2012.