

**2019**

**THE LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY**

**OFFICIAL VISITOR AMENDMENT BILL 2019**

**REVISED EXPLANATORY STATEMENT**

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## OFFICIAL VISITOR AMENDMENT BILL 2019

This explanatory statement relates to the Official Visitor Amendment Bill 2019 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 is to be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill.

### Overview

#### Purpose of the Bill

The Bill will amend the *Official Visitor Act 2012* and the five operational Acts of the ACT Official Visitor Scheme (*Children and Young People Act 2008*, *Corrections Management Act 2007*, *Disability Services Act 1997*, *Housing Assistance Act 2007* and *Mental Health Act 2015*). The purpose of these amendments is to give effect to the legislative recommendations from the 2017 Review of the Official Visitor Scheme.

The Bill proposes the following amendments:

- clarifying the legislative functions of official visitors, including identifying, reporting and referring systemic issues of concern and the complaints handling function
- guiding the exercise of official visitor functions, including promoting the human rights of entitled people and taking account an individual's wishes about how the visit is conducted
- removing the redundant position of Principal Mental Health Official Visitor
- requiring official visitors to be appointed under the Official Visitor Act rather than each operational Act
- removing restrictions on official visitors visiting other operational areas when required to allow for greater flexibility and coverage
- requiring visitable places to provide information to entitled people about the right to contact official visitors
- allowing the Homelessness Official Visitor to visit entitled people residing in specialist homelessness properties
- allowing official visitors to access relevant and necessary information about the operation of visitable places, including personal information and personal health information:
  - with the consent of the entitled person or

- without consent in certain circumstances and subject to a range of safeguards for the privacy rights of entitled people
- clarifying the role and functions of the official visitors board to provide ongoing support to the official visitor executive officer and the official visitors
- providing that official visitors are not subject to direction by anyone else except as provided by the Act
- providing a more comprehensive reporting structure
- requiring official visitors to provide reports to the relevant operational Minister, and make appropriate referrals, about systemic issues or serious individual issues that require further action
- requiring a consolidated official visitor annual report to be tabled in the Legislative Assembly and publicly notified
- clarifying that recruitment processes for official visitors are to be conducted independently from operational Directorates but the operational Minister is consulted regarding a proposed appointment
- replacing the requirement to specify visitable places in guidelines with a requirement for the Director-General of an operational Directorate to maintain a register of visitable places.

### **Human rights implications**

The proposed amendments engage with the following human rights under the *Human Rights Act 2004*.

#### **Humane treatment when deprived of liberty and protection from torture**

The Bill amends the Official Visitor Act and related operational Acts to strengthen the ACT Official Visitor Scheme. The proposed amendments support the right to humane treatment when deprived of liberty (s 19, Human Rights Act) and protection from torture (s 10(1), Human Rights Act).

The Official Visitor Scheme is made up of the Official Visitor Act and operational Acts including the Corrections Management Act. Under the Scheme, an official visitor visits an ‘entitled person’ at a ‘visitable place’. The Corrections Management Act provides for official visitors to visit detainees at correctional centres. The Official Visitor Scheme provides a monitoring and complaints-handling process for vulnerable 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’.<sup>1</sup> The official visitors promote transparency and provide a vital oversight and complaints-handling service for detainees at correctional centres.

The proposed amendments provide greater certainty and flexibility for official visitors. The amendments provide more detail on the functions of official visitors and

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<sup>1</sup> Explanatory statement, *Official Visitor Bill 2012 (2)*, May 2012.

prescribe a more comprehensive reporting framework for systemic issues of concern. The amendments also improve the coverage and flexibility of the Scheme by removing the restriction on the places that an official visitor may visit allowing official visitors to visit another visitable place if asked in writing by another official visitor or by the official visitors board. The amendments also require visitable places, including correctional facilities, to provide information to people about the right to contact official visitors.

These changes strengthen the Official Visitor Scheme and will enhance the ability of official visitors to provide independent oversight and protection of the human rights of people who are detained in correctional facilities.

### Right to equality and right to privacy and reputation

The Bill engages the right to recognition and equality before the law (s 8, Human Rights Act) and the right to privacy and reputation (s 12, Human Rights Act). The following amendments have been identified as posing potential limitations to these rights. These potential limitations are ‘reasonable limits set by laws that can be demonstrably justified in a free and democratic society’ as required by section 28 of the Human Rights Act.

Clause 11 of the Bill amends the Official Visitor Act to cover situations where an official visitor is not able to obtain the consent of an entitled person to inspect a record, where the entitled person may lack capacity to consent or to communicate views regarding inspection of records.

The Official Visitor Act currently provides that an operating entity must not give an official visitor access to an entitled person’s records, including health records without the entitled person’s consent. During the review of the Official Visitor Scheme, some official visitors noted that in situations where entitled people in a visitable place are not able to communicate or raise concerns about their treatment that it is particularly important to be able to inspect records held by the visitable place to ensure that there are no systemic concerns and that entitled people are being treated appropriately.

Official visitors may experience difficulties obtaining the consent of an entitled person who has a significant intellectual disability or who is experiencing acute mental illness, even though the official visitor reasonably believes that there are serious concerns about the person’s level of care and treatment.

Although the Bill will allow the inspection of records, including health records, in certain circumstances without consent, this is to serve an important objective to ensure oversight of the services and treatment of entitled people in a visitable place. The Bill includes a range of safeguards for the privacy rights of the entitled person.

The Bill amends the Official Visitor Act to provide that an official visitor may inspect a record if the official visitor has taken reasonable steps to find out if the entitled person consents and the entitled person has not told, or otherwise indicated to, the official visitor that the person does not consent. This means that the official visitor cannot override the entitled person’s expressed wishes, whether or not the entitled person has formal capacity to consent.

The Bill requires official visitors to take reasonable steps to make the entitled person aware that their records have been inspected. This will be particularly important where the entitled person is temporarily incapacitated but can later be given and understand information about their records being inspected and the reasons for this occurring.

The Bill also amends the Official Visitor Act to require the official visitor's quarterly report to disclose the number of times the official visitor used this power to inspect the records which will allow for the ongoing monitoring of use of this power across different operational areas.

A specific power has been provided to make guidelines in relation to inspection of records and compliance with requirements. It is intended that further detailed guidance will be provided to official visitors to ensure that the use of these powers is consistent with the rights of entitled people.

The Bill provides an exception for sensitive information under section 845 of the *Children and Young People Act 2008*. An official visitor cannot inspect this information at the visitable place without consent. This provision will not affect existing powers of official visitors to inspect records with consent or to request access to sensitive information.

The Bill makes related amendments to the consent to visit provisions in the *Disability Services Act 1991* and *Mental Health Act 2015*. The purpose of these amendments is to align the consent provisions for visits and access to records in particular circumstances. These provisions apply to entitled people who are at locations that are not considered a 'visitable place' for the purposes of the legislation. The amendments apply to a situation where an entitled person in this particular location has made an initial complaint about a specialist disability service or the treatment, care or support for a mental disorder, the official visitor then attends the place but the entitled person at that point may be unable to consent to the visit (for example where an entitled person has fluctuating capacity related to a psycho-social disability).

An official visitor cannot use these provisions to expressly override an entitled person's express wishes regarding the visit. While these provisions engage the right to privacy, they include appropriate safeguards to protect the entitled person. A visit will only be made where the entitled person has made a complaint to the official visitor. An official visitor can only proceed with a visit if the official visitor makes reasonable attempts to seek consent and the entitled person has not told, or otherwise indicated to, the official visitor that the person does not consent. These provisions are only applicable where the official visitor reasonably believes that a visit to the place is necessary and appropriate.

The Bill expands the definition of 'visitable place' in the *Housing Assistance Act 2007* to allow the Homelessness Official Visitor to visit entitled people residing in single occupancy accommodation provided by specialist homelessness services funded by the ACT Government. This provision is not intended to apply to public housing or community housing. The Bill allows an official visitor to attend the premises without seeking prior consent from the entitled person or notifying the operating entity, in very limited circumstances. The official visitor may only do this in circumstances where the official visitor reasonably believes that there is a serious risk to the health

or welfare of the entitled person. While this does engage the right to privacy, this engagement is justified on the grounds that this lack of consent only applies in very serious situations, where it may be difficult to seek the entitled person's consent prior to the visit.

Section 23(1) of the Official Visitor Act requires the visit and complaint guidelines to include a schedule that sets out each visitable place that an official visitor must visit and the frequency of the visits. These guidelines are a publicly notified disallowable instrument. The schedule must be remade every time a new visitable place is approved or revoked, which requires the Minister to approve and notify a new disallowable instrument. Visitable places change over time, particularly in areas such as homelessness, disability and residential care and protection. It is procedurally difficult for operational areas to update visitable places regularly. This may also be sensitive information, and there are privacy concerns associated with publishing details of certain places such as residential out of home care facilities.

The Bill supports the right to privacy by replacing the guideline requirement with a requirement for the Director-General of an operational Directorate to maintain a register of visitable places. This register is not publicly available. While the register may contain certain personal information about the names of entitled people and the names, phone numbers and email addresses of employees or volunteers based at the place, this information is subject to important safeguards. The Director-General may only give the information on the register to specified people in particular circumstances, where it is necessary for these specified people to carry out their functions. The Director-General must give information on the register to an official visitor of a visitable place under the operational Act, the public advocate, senior practitioner, the official visitors board or the official visitors executive officer. The Director-General may also give information to other specified people (for example a member of the emergency services, a carer or legal representative of the entitled person) if satisfied that giving the information is reasonable in the circumstances. As a public servant, the Director-General is subject to public authority obligations under section 40B of the *Human Rights Act 2004* (ACT) which requires the Director-General to give proper consideration to the right to privacy in relation to any decision to release information in the register.

## **CLAUSE NOTES**

### **Clause 1 Name of Act**

This clause provides that the name of the Act is the Official Visitor Amendment Act 2019.

### **Clause 2 Commencement**

This clause provides that some provisions of the Bill have delayed commencement. These provisions have been delayed to allow implementation work to occur. The following clauses commence on a day fixed by the Minister by written notice: clause 7 (Ending appointment), clause 9 (Handover of records by official visitors), clause 10, so far as it inserts section 15 (2)-(7) relating to inspection of records without consent, clause 16 (Reporting of complaints), clause 19, which substitutes a new s 18(3) consequential to s 15(2); clauses 25 to 30 (Visit and complaint

guidelines, Membership of official visitors board, section 23B(2), Official visitors board functions, Official visitors board procedure, Board annual report), clauses 32 to 35 (Register of visitable places, Voting at meetings, Minister may make guidelines, Protection of officials from liability), clause 37 (Dictionary definition of 'official visitors executive officer' and in the Schedule of amendments to other Acts, amendments 1.8 and 1.23 which would amend provisions relating to consent in the Disability Services Act 1997 and Mental Health Act 2015 which mirror provisions inserted in clause 10.

The remaining provisions of the Bill commence on the day after the Act's notification day.

### **Clause 3      Legislation Amended**

This clause provides that the Bill amends the *Official Visitor Act 2012*. This clause also includes a note stating that Schedule 1 of the Bill amends other legislation.

### **Clause 4      Section 6**

This clause substitutes a new definition of 'official visitor' in section 6 of the Act. The new definition provides that an official visitor means a person authorised to visit a place under section 9A.

### **Clause 5      Sections 8 and 9**

#### Section 8      Who is an *entitled person*?

This clause substitutes a new definition of 'entitled person' in section 8 of the Act and a new definition of 'visitable place' in section 9 of the Act. This clause also inserts a new section 9A into the Act, which sets out the requirements for authorisation to visit places.

The new definition of 'entitled person' collates the definitions of entitled person from the five operational Acts that make up the ACT Official Visitor Scheme. The new definition includes section references for the definitions of an entitled person in the Children and Young People Act, Corrections Management Act, Disability Services Act, Housing Assistance Act and Mental Health Act.

#### Section 9      What is a *visitable place*?

The new definition of 'visitable place' collates the definitions of visitable place from the Children and Young People Act, Corrections management Act, Disability Services Act, Housing Assistance Act and Mental Health Act.

#### Section 9A      Authorisation to visit places

New section 9A provides that an official visitor appointed under section 10(1) of the Act for a visitable place is authorised to visit the place. The official visitor may also visit another visitable place or deal with an entitled person at that place if asked in writing by another official visitor or by the official visitors board. The official visitors



board may delegate this function to the official visitors executive officer (EO) (see clause 29 below).

#### **Clause 6 Section 10**

This clause amends section 10 of the Act to clarify that official visitors with functions under the operational Acts are appointed under the Official Visitor Act. This is done by omitting the terms ‘for an operational Act’ and substituting the terms ‘for a visitable place’. This includes the following:

- at least two official visitors under the Children and Young People Act, including one official visitor who is an Aboriginal or Torres Strait Islander person
- at least two official visitors under the Corrections Management Act, including one official visitor who is an Aboriginal or Torres Strait Islander person
- at least one official visitor under the Disability Services Act
- at least one official visitor under the Housing Assistance Act
- at least one official visitor under the Mental Health Act.

This clause retains the requirement for the Minister to consult the Operational Minister on the appointment and be satisfied on reasonable grounds that the person has suitable qualifications or experience to exercise the functions of an official visitor. The clause also retains the prohibition on appointing a person as an official visitor if the person is a public employee or has a relevant interest in relation to the place.

#### **Clause 7 Ending appointment, Section 12(1)(b)(i)**

This clause substitutes section 12(1)(b)(i) of the Act. Section 12(1)(b)(i) provides that the Minister may end a person’s appointment as an official visitor if the person does not visit a visitable place as required under the visit and complaint guidelines made under section 23. This clause updates the section to refer to the official visitor not complying with any requirement in a guideline made under section 23F. This amendment reflects that the Bill omits the guideline-making power in section 23 and proposes a new guideline-making power under section 23F (see clause 34 below).

#### **Clause 8 Section 12(1)(b)(ii)**

This clause amends section 12(1)(b)(ii) of the Act, which provides that the Minister may end a person’s appointment as an official visitor if the person continues to fail to visit a site as required for four consecutive weeks. This clause omits the word ‘site’ and substitutes the terms ‘visitable place’. This amendment is related to the amendments in clauses 6 to 17 above.

#### **Clause 9 Handover of records by official visitors, Section 13(2)**

This clause substitutes section 13(2) of the Act, which applies to the handover of records by official visitors at the end of their appointments. This clause updates section 13(2) to refer to a ‘visitable place’. This clause also provides that the official visitor may hand the records over to the EO or another official visitor for the place.

#### **Clause 10 Sections 14 and 15**

This clause substitutes sections 14 and 15 of the Act.

#### Section 14 Official visitor functions

New section 14 provides more detail about the functions of official visitors. New section 14 also updates the functions to reflect that official visitors are appointed under the Official Visitor Act.

New section 14(1) provides that an official visitor for a visitable place has the following functions: to visit the place and meet entitled people at the place, to monitor conditions, services in the place, to investigate and seek to resolve complaints from or behalf of entitled people at the place, to identify and report on systemic issues adversely affecting entitled people at the place, to refer complaints or issues from or on behalf of entitled people at the place to relevant investigative entities if appropriate, to report to the Minister and operational Minister as required under the Act and to exercise any other function given to an official visitor under the Official Visitor Act, an operational Act or another Territory law.

New section 14(2) establishes legislative principles to guide the exercise of an official visitor's functions. An official visitor must respect and promote the human rights of entitled people, promote the high quality provision of services to, and care and treatment of, entitled people that is centred on their needs, consider the wishes of entitled people in relation to visits to visitable places and how complaints from or on behalf of entitled people are dealt with, encourage the early resolution of complaints from or on behalf of entitled people whenever reasonable and practicable to do so and have regard to the objects and principles in operational Acts.

#### Section 14A Independence of official visitors

This clause inserts new section 14A into the Official Visitor Act.

New section 14A explicitly prescribes the independence of official visitors by stating that an official visitor is not subject to the direction of anyone else in relation to the exercise of a function under the Official Visitor Act, except as provided by the Act or another Territory law.

#### Section 15 Official visitor may enter visitable place etc

This clause substitutes section 15 of the Official Visitor Act. Section 15(1) provides that an official visitor may enter a visitable place at any time following a complaint or at the official visitor's own initiative. This clause updates section 15(1) to reflect that official visitors are appointed under the Official Visitor Act and not the operational Acts. This is related to the amendments at clause 6 above.

Section 15(2) applies to situations where the official visitor seeks access to a health record or any other record relating to an entitled person. An official visitor may inspect a record if the official visitor has the person's written consent, or the person's oral consent if a written record of the consent is made by a person who heard the consent being given.

The official visitor may inspect a record without consent in very limited circumstances. This provision would apply in the following circumstances:

- the official visitor has taken reasonable steps to find out if the entitled person consents;
- the official visitor reasonably believes the entitled person may not be able to make a decision about consent or communicate that decision;
- the official visitor reasonably believes that access to the record is necessary and appropriate to allow the official visitor to exercise the official visitor's functions under the Act; and
- the person has not indicated that they object to the records being inspected.

Section 15(3) requires the official visitor must make reasonable attempts to make the entitled person aware that their records have been accessed without consent under section 15(2). The visitable place must keep a record of each time the official visitor accesses a record in accordance with this provision.

Section 15(5) provides that when the official visitor is at the visitable place, the official visitor may also inspect any other record that is required to be kept under the operational Act. Section 15(6) provides that the official visitor cannot inspect sensitive information as defined under section 845 of the *Children and Young People Act 2008* without consent under section 15(2)(b). This is to maintain existing protections regarding sensitive care and protection information.

A note is included in this provision cross-referencing section 39 of the *Children and Young People Act 2008* which deals with access to sensitive information by an official visitor.

An operational Act may also prescribe minimum requirements for a visit by the official visitor to the visitable place and minimum requirements for inspecting records under section 15.

### **Clause 11 Official visitor must report non-compliant visitable places, Section 16(1)**

This clause substitutes section 16(1) of the Official Visitor Act. Section 16(1) applies to situations where the official visitor must report non-compliant visitable places. This clause updates the section to refer to an official visitor for a 'visitable place' rather than an operational Act, to reflect that official visitors are appointed under the Official Visitor Act. This is related to the amendments at clause 6 above.

### **Clause 12 New section 16(2)(b)(iv)**

This clause inserts new section 16(2)(b)(iv) into the Official Visitor Act. Section 16(2)(b) provides an optional list of entities for the official visitor to report a belief that a visitable place is non-compliant, including the relevant Director-General, the public advocate and the official visitors board. This clause adds the senior practitioner under the *Senior Practitioner Act 2018* to this list. This allows the official visitor to inform the senior practitioner about non-compliance with restricted practices.

### **Clause 13 Section 16(3)**

This clause substitutes section 16(3) of the Official Visitor Act. New section 16(3) omits a reference to 'the operational Act' and substitutes the terms 'the visitable

place'. This updates the section to reflect that official visitors are appointed under the Official Visitor Act. This is related to the amendments at clause 6 above.

#### **Clause 14 Reporting of complaints, section 17(1)**

This clause amends section 17(1) to omit the terms 'an operational Act' and substitute 'a visitable place'. This amendment updates the section to reflect that official visitors are appointed under the Official Visitor Act. This change is a consequential change to the current provision. This provision is separate to the other amendments to section 17 in clause 17 below, as these more substantive amendments to section 17 will commence at a later date.

#### **Clause 15 Section 17(1)(a)**

This clause amends section 17(1)(a) to refer to a visitable place. This amendment updates the section to reflect that official visitors are appointed under the Official Visitor Act. This change is a consequential change to the current provision. This provision is separate to the other amendments to section 17 in clause 16 below, as these more substantive amendments to section 17 will commence at a later date.

#### **Clause 16 Section 17**

This clause substitutes section 17 of the Official Visitor Act to provide a new framework for reporting complaints. This builds on the existing requirement for an official visitor to provide quarterly reports to the operational Minister on complaints received and matters referred by the official visitor to an investigative entity.

The official visitor must prepare a written report for each quarter (the full report) summarising the number and kinds of complaints received by the official visitor in relation to the place, the action taken on the complaints received, the number and kinds of matters referred by the official visitor to an investigative entity and any systemic issues identified by the official visitor. The report must also include the number of times the official visitor used the power under section 15(2)(b) to inspect records without the consent of the entitled person. The official visitor must give a copy of the full report, as soon as practicable after the end of each quarter, to the operational Minister. If the official visitor makes a recommendation in relation to the administrative unit which is responsible for administering the operational Act for a visitable place, the official visitor must also give a copy of the report to the relevant Director-General.

The official visitor must also prepare a report summarising the matters in the full report (a summary report). As soon as practicable after the end of each quarter, the official visitor must give the summary report to the Minister, the official visitors board and the EO.

The official visitor may give a copy of the report to the relevant Director-General for the visitable place or to the public advocate. If the report includes matters in relation to an administrative unit or operational Act where another Minister is responsible, the official visitor may provide a copy of the report to the other Minister.

Information that identifies an entitled person at the visitable place must not be included in a report to the Minister. For any other report, the identifying information must only be included in the report if the official visitor considers it necessary to deal with a complaint mentioned or issue raised in the report.

#### **Clause 17 Assistance to official visitors, Section 18(1)**

This clause omits section 18(1) of the Official Visitor Act. Section 18(1) provided that an official visitor for an operational Act could ask an official visitor for another operational Act for assistance. This section has been omitted because new section 9A provides a more formal process for an official visitor or the official visitors board to authorise an official visitor to visit another visitable place (see clause 5 above).

#### **Clause 18 Section 18(2), except examples and note**

This clause substitutes section 18(2) of the Official Visitor Act but retains the current examples and note. This clause updates section 18(2) to remove the reference to an 'operational Act' to reflect that official visitors are appointed under the Official Visitor Act. This is related to the amendments at clause 6 above.

#### **Clause 19 New section 18(3)**

This clause inserts new section 18(3) into the Official Visitor Act. Section 18 of the Act provides for assistance to official visitors. New section 18(3) amends section 18 to incorporate the amendments in clause 11 above.

#### **Clause 20 Operating entity must let entitled people know about official visitors, New section 20(2)**

This clause inserts new section 20(2) into the Official Visitor Act. Section 20 of the Act requires an operating entity for a visitable place to tell an entitled person, 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. New section 20(2) builds on this requirement to require an operating entity for a visitable place to give an entitled person information about the person's right to make complaints under the OV Act in a way that is accessible to the person. The operating entity must provide this information no later than when an entitled person first enters a visitable place.

#### **Clause 21 Requests to meet official visitor, Section 21(1)**

This clause substitutes section 21(1) of the Official Visitor Act. Section 21 of the Act applies if an entitled person makes a request to meet an official visitor. This clause updates this section to omit the reference to an operational Act and substitute the terms 'the visitable place' to reflect that official visitors are appointed under the Official Visitor Act. This is related to the amendments at clause 6 above.

#### **Clause 22 Section 21(2)**

This clause amends section 21(2) of the Official Visitor Act. This clause updates this section to omit the reference to an operational Act and substitute the terms 'the visitable place' to reflect that official visitors are appointed under the Official Visitor Act. This is related to the amendments at clause 6 above.

### **Clause 23 Complaints to official visitors, Section 22(1)**

This clause amends section 22(1) of the Official Visitor Act. Section 22 of the Act applies to complaints to official visitors. This clause updates this section to omit the reference to an operational Act and substitute the terms ‘the visitable place’ to reflect that official visitors are appointed under the Official Visitor Act. This is related to the amendments at clause 6 above.

### **Clause 24 Section 22(1)(b), (c) and (d)**

This clause amends sections 22(1)(b)(c) and (d) of the Official Visitor Act. This clause updates these sections to omit the reference to an operational Act and substitute the terms ‘the visitable place’ to reflect that official visitors are appointed under the Official Visitor Act. This is related to the amendments at clause 6 above.

### **Clause 25 Visit and complaint guidelines, Section 23**

This clause omits section 23 of the Official Visitor Act, which provides that the Minister may make visit and complaint guidelines. This section has been omitted because the Bill proposes a more general guideline-making power at clause 35 below and replaces the requirement to specify visitable places in guidelines with a requirement for the Director-General of an operational Directorate to maintain a register of visitable places in clause 32 below.

### **Clause 26 Membership of official visitors board, New section 23B(1)(d)**

This clause amends section 23B(1) of the Official Visitor Act to provide that the official visitors board may also include any other members appointed by the Minister.

### **Clause 27 Membership of official visitors board, Section 23B(2)**

This clause amends section 23B(2) of the Official Visitor Act, which applies to the membership of the official visitors board. The Act currently provides that the chair of the board is the public trustee and guardian. Revised section 23B(2) provides that the Minister must appoint the chair of the board. The Minister may also appoint other members of the board as the Minister considers this appropriate.

### **Clause 28 Official visitors board functions, Section 23C**

This clause substitutes section 23C of Official Visitor Act. New section 23C sets out the functions of the official visitors board. This includes providing support for and managing the exercise of functions under the Official Visitor Act, an operational Act or another Territory law, arranging for the recruitment, training and support of official visitors, considering and trying to resolve any complaints about official visitors and exercising any other function given to the board under the Official Visitor Act, an operational Act or another Territory law.

The chair of the official visitors board may arrange with the head of service to use the services of a public servant as the EO. The EO provides support to the official visitors board in the exercise of the board’s functions, and exercises any other function given to the EO under the Official Visitor Act, an operational Act or another

Territory law. The chair may delegate the board's functions under the Official Visitor Act, an operational Act or another Territory law to the EO or another public servant.

### **Clause 29 Official visitors board procedure, Section 23D(2)**

This clause substitutes section 23D(2) of the Official Visitor Act. Section 23D sets out the procedure for the official visitors board. This clause provides that the official visitors board must meet at least quarterly. The chair of the board may, by reasonable written notice to the other board members, call a meeting.

### **Clause 30 New section 23DA**

This clause inserts new section 23DA into the Official Visitor Act. New section 23DA requires the official visitors board to give the Minister, within three months after the end of a financial year, a written report for the financial year.

The report must include the following information:

- the number of visits by official visitors
- the number of complaints received by official visitors
- the number of referrals of complaints to investigative entities
- the action taken on the complaints received
- any systemic issues in relation to the operation of the Act identified by the board
- the number and kinds of matters referred by the official visitor to an investigative entity
- the number of times the official visitor inspected records without the consent of the entitled person in accordance with section 15(2)(b).

The Minister must present the report to the Legislative Assembly within 6 sitting days after being given a copy of the report by the board. The Minister must also give additional public notice of the report.

### **Clause 31 New section 23DB**

This clause inserts new section 23DB into the Official Visitor Act. New section 23DB requires the relevant Director-General for an operational Act to keep a register of visitable places under the operational Act.

The register must include:

- the address of each visitable place;
- the contact details of a person who can provide access to the visitable place; and
- any information prescribed by an operational Act.

The register *may* include:

- the name of each entitled person at each visitable place;
- the name and contact details of each operating entity for each visitable place; and

- if an operating entity for a visitable place is not an individual – the name, phone number and email address of the following:
  - an employee or volunteer based at the visitable place
  - two employees of the entity

The relevant Director-General must give the address of a visitable place, contact details of a person providing access and any information required under an operational Act to the following people, to the following people on request:

- an official visitor under the operational Act;
- the official visitors board;
- EO;
- the public advocate;
- a commissioner under the *Human Rights Commission Act 2005*; and
- the senior practitioner.

The Director-General may give the address of a visitable place, contact details of a person providing access and any information required under an operational Act to the following people, if satisfied that giving the information is reasonable in the circumstances:

- a person exercising a function under the Official Visitor Act or the operational Act;
- a member of the emergency services;
- an entitled person at the place;
- a carer or legal representative of an entitled person;
- anyone else approved by the Director-General.

### **Clause 32 Register of visitable places, New section 23DB(3)(ba)**

This clause amends new section 23DB(3) of the Official Visitor Act to provide that the Director-General must also the address of a visitable place, contact details of a person providing access and any information required under an operational Act to the EO. This clause is separate to the amendments above because the provisions relating to the EO will have delayed commencement.

### **Clause 33 Voting at meetings, Section 23E(2)**

This clause amends section 23E(2) of the Official Visitor Act. Section 22E applies to voting at meetings. This clause omits the reference to the public trustee and guardian and substitutes the terms ‘chair of the board’ to state that if votes are equal, the chair of the board has a deciding vote.

### **Clause 34 New section 23F**

This clause inserts new section 23F into the Official Visitor Act. New section 23F is a new general power for the Minister to make guidelines under the Act. After consulting the operational Minister, the Minister may make guidelines about visits by an official visitor for the place, the handling of complaints, and referral of complaints



by an official visitor for the place and any other matter relating to the place or official visitor for the place. A specific provision is included for guidelines to be made in relation to the inspection of records at a visitable place and guidance and requirements for complying with s 15(2) (a) and (b) and (3) which relate to the inspection of records without consent of the entitled person in certain circumstances. The Minister may also make guidelines about any other matter. A guideline is a disallowable instrument.

**Clause 35 Protection of officials from liability, Section 24(3), definition of *official*, new paragraph (ba)**

This clause inserts new paragraph (ba) into section 24(3) of the Official Visitor Act. Section 24 provides that an official is not civilly liable for anything done or omitted to be done honestly and without recklessness in the exercise of a function under the Act, or in the reasonable belief that the act or omission was in the exercise of a function under the Act.

Section 24(3) defines an ‘official’ for the section as meaning an official visitor, an official visitors board member or a person authorised under the Act to do or not do a thing. This clause adds the EO to this list of officials.

**Clause 36 Dictionary, definition of *entitled person* and *official visitor***

This clause updates the definitions of ‘entitled person’ and ‘official visitor’ in the Dictionary of the Official Visitor Act. This clause refers to the new definitions of ‘entitled person’ in section 8 of the Act (see clause 4 above) and ‘official visitor’ in section 6 of the Act (see clause 5 above).

**Clause 37 Dictionary, new definition of *official visitors executive officer***

This clause amends the Dictionary of the Official Visitor Act to refer to the definition of the EO ‘in section 23C(2) of the Act.

**Clause 38 Dictionary, definition of *operational Minister* and *relevant director-General***

This clause amends the definition of ‘operational Minister’ in the Dictionary of the Official Visitor Act. This amendment updates the definition to reflect that official visitors are appointed under the Official Visitor Act. This is related to the amendments at clause 6 above.

This clause substitutes the definition of ‘responsible director-general’. The new definition provides that for an operational Act, the responsible Director-General is the Director-General of the administrative unit responsible for the operational Act. For a visitable place, the responsible Director-General is the Director-General of the administrative unit responsible for the operational Act under which the visitable place is mentioned.

**Clause 39 Dictionary, new definition of *senior practitioner***

This clause amends the Dictionary to refer to the definition of ‘senior practitioner’ under the *Senior Practitioner Act 2018*.

#### **Clause 40 Dictionary, definition of *visitable place***

This clause updates the definition of ‘visitable place’ in the Dictionary of the Official Visitor Act. This amendment refers to the definition of ‘visitable place’ in section 9 of the Act (see clause 5 above).

### **Schedule 1 Other amendments**

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

##### **Clause [1.1] Section 38**

This clause amends section 38 of the Children and Young People Act. Section 38 of the Children and Young People Act establishes suitability requirements for official visitors. This clause updates section 38 to include the terms ‘for a visitable place’. This amendment updates the section to reflect that official visitors are appointed under the Official Visitor Act. This is related to the amendments at clauses 6 to 19 above.

##### **Clause [1.2] Section 39(1)(a)**

This clause amends section 39(1)(a) of the Children and Young People Act. Section 39 of the Children and Young People Act applies to requests for sensitive information by official visitors. This clause updates section 39(1)(a) to refer to ‘an official visitor for a visitable place’. This amendment updates the section to reflect that official visitors are appointed under the Official Visitor Act. This is related to the amendments at clauses 6 to 19 above.

##### **Clause [1.3] Dictionary, definition of *official visitor***

This clause amends the definition of ‘official visitor’ in the Dictionary of the Children and Young People Act. This clause updates the definition to reflect that official visitors are appointed under the Official Visitor Act. This is related to the amendment at clause 6 above.

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

##### **Clause [1.4] Dictionary, definition of *official visitor***

This clause amends the definition of ‘official visitor’ in the Dictionary of the Corrections Management Act. This clause updates the definition to reflect that official visitors are appointed under section 6 the Official Visitor Act. This is related to the amendments at clause 6 above.

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

##### **Clause [1.5] Section 8A, definition of *official visitor***

This clause amends the definition of ‘official visitor’ in section 8A of the Disability Services Act. This clause updates the definition to reflect that official visitors are

appointed under section 6 the Official Visitor Act. This is related to the amendments at clause 6 above.

#### **Clause [1.6] Section 8C(1)**

This clause amends section 8C of the Disability Services Act. Section 8C provides that an entitled person may request to not be visited by the official visitor. This clause updates the section to reflect that official visitors are appointed under section 6 the Official Visitor Act. This is related to the amendments at clause 6 above.

#### **Clause [1.7] Section 8D(1), except example**

This clause amends substitutes section 8D(1) of the Disability Services Act but retains the example in the current provision. The revised provision updates the section to reflect that official visitors are appointed under section 6 the Official Visitor Act. This is related to the amendments at clause 6 above.

#### **Clause [1.8] New sections 8D(4) and (5)**

This clause inserts new sections 8D(4) and (5) into the Disability Services Act which apply to consent to visits by an official visitor to be consistent with the amendments to the consent provisions in section 15 of the Official Visitor Act (see clause 11 above).

#### **Clause [1.9] Section 8E**

This clause substitutes section 8E of the Disability Services Act. Section 8E requires the Director-General to keep a register of visitable places. This clause updates the section to refer to the amendments to the Official Visitor Act at clause 32 above.

#### **Clause [1.10] Section 8F(1)**

This clause amends section 8F (1) of the Disability Services Act to omit the reference to section 8E(2) and substitute 'section 8E'. This amendment is related to the amendment at clause [1.9] above.

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

#### **Clause [1.11] Section 24V, definition of *official visitor* and *visitable place***

This clause amends the definitions of 'official visitor' and 'visitable place' in section 24V of the Housing Assistance Act. This amendment updates the definition of 'official visitor' to reflect that official visitors are appointed under section 6 the Official Visitor Act. This is related to the amendments at clause 6 above.

This clause substitutes the definition of 'visitable place' in section 25V of the Housing Assistance Act to update the kinds of accommodation that an official visitor may visit. New section 25V provides an expanded definition of a 'visitable place' which now includes single occupancy independent accommodation for people who are homeless or at risk of homelessness, as well as multiple occupancy supported accommodation for people who are homeless or at risk of homelessness. In each case the accommodation must be provided by an entity funded by the Territory. This

expanded definition will only allow official visitors to visit an entitled person in accommodation provided by specialist homelessness services. It does not apply to general housing assistance provided through public and community housing.

**Clause [1.12]      Section 25W(2)**

This clause substitutes section 25W(2) of the Housing Assistance Act. Substituted section 25W(2) provides that the official visitor may visit a visitable place without giving notice to the operating entity in the following circumstances. If the visitable place is multiple occupancy accommodation, the official visitor may visit without notice if the official visitor reasonably believes, or has been given a complaint, that an entitled person at the visitable place is at risk of abuse and harm and the entitled person consents to the visit. If the visitable place is single occupancy independent accommodation, the official visitor may visit without notice if the official visitor reasonably believes, or has been given a complaint, that there is serious risk to the health or welfare of an entitled person at the visitable place.

It is intended that official visitors will generally only visit an entitled person in independent single occupancy accommodation on request from the entitled person. However, this provision will allow the official visitor to attend premises without seeking prior consent from the entitled person, or notifying the operating entity, where the official visitor reasonably believes that there is a serious risk to the health or welfare of the entitled person. In these circumstances it may be difficult to seek the entitled person's consent prior to the visit. An official visitor will not enter single occupancy independent premises without the consent of the entitled person.

**Part 1.5      Mental Health Act 2015**

**Clause [1.13]      Section 208, definition of *official visitor***

This clause amends the definition of 'official visitor' in section 208 of the Mental Health Act. This amendment updates the definition to reflect that official visitors are appointed under section 6 the Official Visitor Act. This is related to the amendments at clause 6 above.

**Clause [1.14]      Section 209**

This clause amends section 209 of the Mental Health Act. Section 209 prescribes suitability requirements for the appointment of official visitors. This clause amends the section to include the terms 'for a visitable place'. This updates the section to reflect that official visitors are appointed under section 6 the Official Visitor Act. This is related to the amendments at clause 6 above.

**Clause [1.15]      Section 210**

This clause omits section 210 of the Mental Health Act. Section 210 provides that the Minister may appoint one official visitor as the principal official visitor. This section has been omitted as this position is now redundant.

**Clause [1.16]      Section 211**

This clause amends section 211 of the Mental Health Act to include the terms ‘for a visitable place’. This updates the section to reflect that official visitors are appointed under section 6 the Official Visitor Act. This is related to the amendments at clause 6 above.

**Clause [1.17]      Section 211(a), (b) and (c)**

This clause amends section 211(a), (b) and (c) of the Mental Health Act to omit the terms ‘a visitable place’ and substitute the terms ‘the visitable place’. This is related to the amendment at clause 1.15 above.

**Clause [1.18]      Section 211(d)**

This clause amends section 211(d) of the Mental Health Act to omit the word ‘an’ and substitute the word ‘the’. This is related to the amendment at clause 1.13 above.

**Clause [1.19]      Section 212**

This clause omits section 212 of the Mental Health Act. Section 212 prescribes the functions of the principal official visitor. This section has been omitted because this position is now redundant and has been abolished. This is related to the amendment at clause 1.12 above.

**Clause [1.20]      Section 213(2)**

This clause amends section 213(2) of the Mental Health Act. This clause substitutes the reference to the Mental Health Act with a reference to ‘the visitable place’. This updates the section to reflect that official visitors are appointed under section 6 the Official Visitor Act. This is related to the amendments at clause 6 above.

**Clause [1.21]      Section 214(1)**

This clause amends section 214(1) of the Mental Health Act to include the terms ‘for a visitable place’. This updates the section to reflect that official visitors are appointed under section 6 the Official Visitor Act. This is related to the amendments at clause 6 above.

**Clause [1.22]      Section 214(1)(b)**

This clause amends section 214(1)(b) of the Mental Health Act to omit the terms ‘a visitable place’ and substitute ‘the visitable place’. This updates the section to reflect that official visitors are appointed under section 6 the Official Visitor Act. This is related to the amendments at clause 6 above.

**Clause [1.23]      New sections 214(4) and (5)**

This clause inserts new sections 214(4) and (5) into the Mental Health Act which apply to consent to a visit by an official visitor to be consistent with the amendments to the consent provisions in section 15 of the Official Visitor Act (see clause 11 above).

**Clause [1.24]      Dictionary, definition of *principal official visitor***

This clause omits the definition of ‘principal official visitor’ from the Mental Health Act.