

Australian Capital Territory

Children and Young People (Official Visitor Complaint) Guidelines 2009 (No 1)*

Notifiable instrument NI2009–109

made under the

Children and Young People Act 2008, section 43(1), Complaints Guidelines

1 Name of instrument

This instrument is the *Children and Young People (Official Visitor Complaint) Guidelines 2009 (No 1)*.

2 Commencement

This instrument commences on the day after notification.

3 Complaint guidelines

These guidelines refer to the handling of complaints by the Official Visitor at each detention place, therapeutic protection place and the place of care an Official Visitor must inspect

Andrew Barr
Minister for Children and Young People
18 / 3 / 09

*Name amended under Legislation Act, s 60

Children and Young People Act 2008

Official Visitor Complaint Guidelines

These guidelines, consistent with the functions of the Official Visitor appointed under the *Children and Young People Act 2008* (the Act), refer to the inspection schedule of the Official Visitors to detention places, therapeutic protection places or places of care as outlined in the Act, the management of complaints by the Official Visitors in accordance with the Act and the provision of reports by the Official Visitor. A Glossary of Terms is an attachment to these Guidelines.

Legislative Context

Detention Place

Pursuant to section 142 of the *Children and Young People Act 2008*, the Minister may declare a place to be a detention place. On 26 August 2008, the Minister declared the Bimberi Youth Justice Centre as a detention place. (NI2008 – 360)

Therapeutic Protection Places

Pursuant to section 625, the Minister may declare a place to be a therapeutic protection place. To date, no place has been declared a therapeutic protection place pursuant to the *Children and Young People Act 2008*.

Place of care

Pursuant to section 525 of the Act, the Minister may approve a place operated by a residential care service as a place of care. In October 2008, the Minister approved Marlow Cottage as a place of care.

Functions of the Official Visitor

The *Children and Young People Act 2008* (s39(1)) requires an Official Visitor to inspect:

- detention places (and places outside detention places where detainees are, or have been, directed to work or participate in an activity); and
- therapeutic protection places; and
- places of care.

The Act stipulates that at such inspections the Official Visitor shall:

- be available to talk with entitled children and young people; and
- receive and consider complaints from entitled children and young people and others on their behalf.

Complaints are not defined in the Act. For the purpose of this document, a complaint is an expression of dissatisfaction with policies, procedures, financial arrangements, staff or quality of service provided.

Prior to receiving a complaint the Official Visitor may receive information from a child or young person and provide this to the operating entity for follow up. These

matters are reportable if they are within the scope of matters to report to the Minister or the Chief Executive.

Performance of Statutory Functions

The *Children and Young People Act 2008* states the Official Visitor may, at any reasonable time, enter a detention place (or any place outside a detention place where detainees are, or have been, directed to work or participate in an activity), a therapeutic protection place or a place of care. The Act outlines a schedule for inspections by the Official Visitors as summarised in the table below.

Visit Schedule

Declared Places	Operating Entity	Regularity of Inspections
Detention Place <ul style="list-style-type: none"> • Bimberi Youth Justice Centre 	Director, Senior Manager or delegated person	Visit the detention place at least once per fortnight
Therapeutic Protection Place <ul style="list-style-type: none"> • No place currently declared 	To be advised once declaration made	At least once each week if a child or young person is being cared for at the place
Place of care <ul style="list-style-type: none"> • Marlow Cottage 	Manager, Marlow Cottage, Richmond Fellowship	At least once each month if a child or young person is being cared for at the place of care

The Minister must appoint at least one Official Visitor (s38 (1)). If there is more than one Official Visitor appointed these guidelines require that one or the other Official Visitor visit a detention place, a therapeutic protection place or a place of care as outlined in the schedule above. Additional visits to those provided in the schedule may be required at the request of an entitled child or young person, while inquiring about a complaint or while attending a function at the Centre.

Visits to the locations are to generally occur during normal business hours and at a reasonable time. Prior arrangements between the Official Visitor and the operating entity may be made to visit children and young people after hours or other times. All endeavours will be made to accommodate a request to visit a location made by the Official Visitor subject to resource constraints and disruption to children and young people resident at the location.

For the purpose of a detention place, the operating entity is the Senior Manager of Bimberi or a person delegated by the Senior Manager. The operating entity for the place of care declared as Marlow Cottage is the Manager, Marlow Cottage, Richmond Fellowship or a person acting in this position. The operating entity for a therapeutic protection place will be determined once a therapeutic protection place is established.

Complaints

Nature of Complaints

Section 44 of the Act states that at a visit to a detention place, therapeutic protection place or place of care, a child, young person or anyone else may complain to an Official Visitor about any aspect of the child or young person's detention, confinement or accommodation including –

- (a) the conditions of detention, confinement or accommodation of an entitled child or young person; or
- (b) the care provided to an entitled child or young person at the detention place, therapeutic protection place or place of care; or
- (c) how a detention place, a therapeutic protection place or a place of care is conducted.

Issues raised with the Official Visitor as a complaint that constitute a child protection report may be reported to Care and Protection Services, Office for Children, Youth and Family Support (voluntary or mandatory reporting - phone 1300 556 728). Care and Protection Services are the investigative entity and a complaint may be resolved through this course of action.

The Official Visitor must also report the matter to the Chief Executive if the Official Visitor believes, on reasonable grounds, that the care provided to an entitled child or young person at a place of care or the living conditions, education or activities of entitled children at a place of care is not in accordance with the Act or the out of home care standards.

Requests

The entitled child or young person may make the complaint to the Official Visitor personally or through someone else.

In addition, an entitled child or young person may ask the operating entity to see an Official Visitor. The entitled child or young person need not explain to the operating entity why they want to see an Official Visitor. The operating entity must ensure the Official Visitor is advised of this request as soon as possible and no later than 12 hours after the request is made.

At Bimberi Youth Justice Centre, young people have access to the Starnet telephone system, enabling young people to contact the Official Visitor directly.

The entitled child or young person may ask the Official Visitor to hear the complaint with no-one else present and the Official Visitor must comply. In these situations the operating entity must provide reasonably private facilities for the Official Visitor to hear the complaint.

The Official Visitor should seek the informed consent of the child or young person to access their personal information relevant to the complaint being made. This consent is to be obtained on the form attached to these Guidelines. A copy of this consent form should be provided to the operating entity when requesting information.

Receipt of a Complaint

Upon receiving a complaint, the Official Visitor must advise the Chief Executive of the Department of Disability, Housing and Community Services (Chief Executive) in writing, that a complaint has been made and the name of the place to which it relates. This should be done promptly.

Actions following receipt of a complaint

After receiving a complaint pursuant to section 44 of the Act, the Official Visitor will take all reasonable steps to promptly and efficiently resolve the complaint with the operating entity for the detention place, therapeutic protection place or place of care.

The Official Visitor may resolve the complaint by:

- making inquiries about any matter raised in the complaint; and
- exercising any function given to an Official Visitor under the *Children and Young People Act 2008*.

The Official Visitor may, when seeking to resolve a complaint, seek agreement from the operating entity for an agreed action plan to resolve the issues of the complaint. This would include relevant information sharing, timeliness of response and agreed actions to address issues raised in a complaint.

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

The Official Visitor may request from the operating entity any reasonable assistance for the Official Visitor to exercise their statutory function. This includes:

- access to relevant documents and records relating to the complaint;
- answering reasonable questions about the facts of a complaint; or
- giving reasonable access to facilities.

Initial inquiries made by the Official Visitor about a complaint should be undertaken with the operating entity. The operating entity will respond to such requests promptly and no later than by the next occasion the Official Visitor would regularly visit and inspect the detention place, therapeutic protection place or place of care.

Any complaint made to the Official Visitor that is critical of an individual person or operating entity must be responded to in accordance with the principles of procedural fairness and natural justice. This requires the Official Visitor to ensure that a person or operating entity has been made aware of the following through management or directly:

- made aware of the allegation made in a complaint; and
- made aware of their right to request and bring a person with them when responding to an allegation; and
- be provided with an opportunity to be heard regarding an allegation; and
- advised that they may exercise the right to choose not to respond to an allegation.

If the Official Visitor is not satisfied with the response to a complaint (including timeliness, actions taken etc) by the operating entity, the Official Visitor may contact the relevant Director or the Executive Director, Office for Children, Youth and Family Support and advise the operating entity of this action.

The Official Visitor will provide information to the complainant in compliance with the information secrecy and sharing provisions of the *Children and Young People Act 2008*.

Resolving complaints involving other agencies

A complaint may be received by the Official Visitor that concerns an agency providing service at a detention place, therapeutic protection place or place of care. The Official Visitor must advise the Chief Executive of this complaint. The operating entity will seek to obtain information from the other agency to assist the Official Visitor with the inquiry.

Closing Complaints

If the Official Visitor is satisfied that the complaint is resolved with the operating entity for the place and to the satisfaction of the complainant, the Official Visitor must close the complaint. The Official Visitor must advise the complainant that the complaint has been closed and the reasons for this.

If the Official Visitor has received a complaint and is satisfied the complainant has left the detention place, therapeutic protection place or place of care and cannot after reasonable inquiries be found, the Official Visitor must close the complaint. Reasonable inquiries may include attempts to contact the complainant by telephone or at their residential premises. The Official Visitor may request details from the operating entity to enable such inquiries to be made.

Withdrawal of a Complaint

A complainant may withdraw a complaint at any time by giving the Official Visitor written notice. The Official Visitor or a member of staff of the detention place, therapeutic protection place or place of care may assist a complainant, with their consent, to make provide a written request to withdraw their complaint. A withdrawal form is attached to these Guidelines for this purpose. Other written forms of communication may also be used. The form must be signed by the complainant.

The Official Visitor must close the withdrawn complaint if satisfied that the complaint is about:

- a minor issue; or
- has been resolved appropriately; or
- has lapsed (the person has left the detention place, therapeutic protection place or place of care).

If the Official Visitor considers it is in the public interest that a withdrawn complaint be considered, the Official Visitor must:

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

In such instances, the Official Visitor may ask the entity investigating the complaint about the investigation of the complaint. The entity must advise the Official Visitor about the investigation of the complaint and the Official Visitor may advise the complainant about the progress of the investigation.

Referral to another entity

If the Official Visitor has received a complaint and considers the complaint would be better dealt with by an investigative entity with power to investigate the complaint, the Official Visitor may refer the complaint to the investigative entity.

On occasion, the operating entity or delegate may have previously referred the substance of the complaint to an investigative entity (e.g police, Public Advocate, Ombudsman). In such instances, the Official Visitor may make inquiries directly with the investigative entity regarding the investigation.

If a referral to an investigative entity has been made by the Official Visitor, the Official Visitor must:

- give the investigative entity all information concerning the complaint;
- advise the complainant of the referral; and
- may close the complaint.

In such instances, the Official Visitor may ask the entity investigating the complaint about the investigation of the complaint. The entity must advise the Official Visitor about the investigation of the complaint and the Official Visitor may advise the complainant about the progress of the investigation. Information provided to a complainant must consider the information sharing provisions regarding ‘sensitive’ and/or ‘protected’ information of the *Children and Young People Act 2008* and must comply with the requirements of other legislations.

Frivolous, Vexatious or Dishonest Complaints

If the Official Visitor receives a complaint and is satisfied after due consideration that the complaint is frivolous, vexatious or not made honestly, the Official Visitor must close the complaint. Where reasonable, the Official Visitor should advise the complainant.

Reopening Complaints

If a complaint is resolved with an operating entity and part of resolving the complaint is that the operating entity will do, or not do, something and the Official Visitor is satisfied the operating entity has not done what was agreed, the Official Visitor may re-open the complaint. In doing so, the Official Visitor must try to resolve the

complaint by taking all reasonable steps to promptly and efficiently resolve the complaint with the operating entity for the detention place. In addition, the Official Visitor should promptly advise the Chief Executive in writing of this decision.

The Official Visitor may resolve the complaint by:

- making inquiries about any matter raised in the complaint; and
- exercise any function given to an Official Visitor under the Act.

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

Official Visitor Initiated Complaints

If the Official Visitor becomes aware of a matter that may be the subject of a complaint, no complaint has been made and is satisfied that the matter should be dealt with by an investigative entity with power to investigate the matter, the Official Visitor may advise the Chief Executive about the matter and/or refer the matter to the investigative entity. When making such a referral, the Official Visitor must give the investigating entity all information that the Official Visitor has in relation to the matter.

Official Visitor Reports

The Official Visitor must report to the Minister in writing on matters where the Official Visitor believes, on reasonable grounds, that the care provided to entitled children or young people or the living conditions, education or activities of entitled children or young people at a detention place, therapeutic protection place and place of care is not in accordance with the Act.

The Official Visitor must report to the Chief Executive in writing on matters where the Official Visitor believes, on reasonable grounds, that the care provided to entitled children or young people at a place of care or the living conditions, education or activities of entitled children or young people at a place of care is not in accordance with the Act or the out of home care standards.

The Official Visitor must provide in writing to the Minister and Chief Executive, as soon as practicable after the end of each month, a report summarising:

- the number and kinds of complaints received by the Official Visitor for each place;
- the action taken on the complaints received, including complaints resolved and closed; and
- the number and kinds of matters referred by the Official Visitor to an investigative entity as Official Visitor initiated complaints.

The Official Visitor must not include in a monthly report material that may be adverse to, or critical of, a person if the Official Visitor has not given the person or operating entity an opportunity to be heard/respond. This applies whether the adverse or critical material is express or implicit or by way of opinion or otherwise.

Records of Official Visitors

Official Visitors are to keep secure records of their statutory activities in compliance with the *Records Management Act 2002*. If an Official Visitors appointment ends, the Official Visitor must provide, no later than 7 days after the day the appointment ends, all records to another Official Visitor appointed under this Act or to the Public Advocate. Storage of records of finalised statutory activities (e.g. young person has become an adult) may also be arranged in this manner.

Transitional Provisions

The *Children and Young People (Consequential Amendments) Act 2008*, s901, provides that complaints not finalised before 27 October 2008 are taken to be complaints made pursuant to section 44 of the *Children and Young People Act 2008* and must be dealt with in accordance with these guidelines.

Glossary of Terms

Children and Young People Act 2008

Complaint – See definition at page two.

Detention Place – A place declared by the Minister under section 142 of the Act to be a detention place.

Therapeutic Protection Place – A place declared by the Minister under section 625 of the Act to be a therapeutic protection place.

Place of care – A place declared by the Minister under section 525 of the Act to be operated by a residential care service as a place of care.

Entitled children and young people – section 37 – a child or young person detained in a detention place, confined in a therapeutic protection place or accommodated in a place of care. The definition includes a detainee who is 18 years or older.

Reasonable time at a place – section 39 – a period of time that would not hinder the running of the place, that would be a time children and young people are present, that would not hinder a search or coincide with an escape attempt.

Operating entity – for a detention place the Senior Manager responsible for the detention place - for a therapeutic protection place or place of care- if the Territory operates the place the Chief Executive, in any other case the Manager of the entity that runs the place.

Complaint – section 44 - An entitled child or young person, or anyone else, may complain to an official visitor about any aspect of the child's or young person's detention, confinement or accommodation including—

- (a) the conditions of detention, confinement or accommodation of an entitled child or young person; or
- (b) the care provided to an entitled child or young person at a detention place, therapeutic protection place or place of care; or
- (c) how a detention place, therapeutic protection place or place of care is conducted.

Complainant – a persons making a complaint to the Official Visitor consistent with section 44 of the Act.

Chief Executive – Chief Executive of the Department of Disability, Housing and Community Services

Minister – Minister for Children and Young People

Child protection/child concern reports – a mandatory or voluntary report pursuant to sections 356, 362 and 354 of the *Children and Young People Act 2008*.

Investigating entity – an entity with power to require the production of documents or the answering of questions including the Chief Police Officer, the Human Rights Commission, the Public Advocate and the Ombudsman.

Protected information under the Act – information that meets the criteria of Chapter 25 of the ACT.

Sensitive information – information that is part of a child protection/child concern/prenatal report, information in a care and protection appraisal, interstate care and protection information, family group conference information, contravention report information and information prescribed by regulation.

Operating entity – see table on page 3.

OFFICIAL VISITOR CONSENT FORM

CHILDREN AND YOUNG PEOPLE ACT 2008

I [name of person] have made a complaint to the
Official Visitor [nature of the complaint]

.....
.....
.....
.....

[nature of complaint].

For the purpose of inquiring into this complaint, I authorise the Official Visitor to
request and review records of my personal information relevant to my complaint held
by:

.....
.....
.....
.....
.....

.....

Signature of complainant

/ /

WITHDRAWAL OF COMPLAINT MADE

TO THE OFFICIAL VISITOR

CHILDREN AND YOUNG PEOPLE ACT 2008

I [name of person]..... made a complaint to the
Official Visitor appointed under the *Children and Young People Act 2008* about

.....
.....

[nature of the complaint].

I am withdrawing this complaint.

.....

Signature of Complainant

/ /

Date