

2012

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Ms Amanda Bresnan)

Official Visitor Bill 2012

Contents

	Page
Part 1	Preliminary
1	Name of Act 2
2	Commencement 2
3	Dictionary 2
4	Notes 2
5	Offences against Act—application of Criminal Code etc 3
Part 2	Important concepts
6	What is an <i>official visitor</i> ? 4
7	What is an <i>operational Act</i> ? 4
8	What is an <i>entitled person</i> ? 4
9	What is a <i>visitable place</i> ? 4

	Page
Part 3	Appointment of official visitors
10	Appointment 5
11	Conditions of appointment 6
12	Ending appointment 7
13	Handover of records by official visitors 8
Part 4	Functions of official visitors
14	Functions 9
15	Inspection of visitable places 10
16	Official visitor must report non-compliant visitable places 10
17	Reporting of complaints 11
18	Assistance to official visitors 12
19	Offences—failure to provide assistance etc 13
Part 5	Complaints
20	Operating entity must let entitled people know about official visitors 14
21	Requests to meet official visitor 14
22	Complaints to official visitors 14
23	Complaints guidelines 15
Part 6	Miscellaneous
24	Protection of officials from liability 16
25	Offences—use or divulge protected information 16
26	Approved forms 18
27	Regulation-making power 19
28	Legislation amended—sch 1 19
Part 10	Transitional
50	Definitions—pt 10 20
51	Unfinished complaints to official visitors 20
52	Existing appointments 20
53	Transitional regulations 21
54	Expiry—pt 10 21

	Page
Schedule 1	
Consequential amendments	22
Part 1.1	
Children and Young People Act 2008	22
Part 1.2	
Corrections Management Act 2007	27
Part 1.3	
Disability Services Act 1991	28
Part 1.4	
Housing Assistance Act 2007	35
Part 1.5	
Legislation Act 2001	37
Part 1.6	
Mental Health (Treatment and Care) Act 1994	37
Part 1.7	
Territory Records Regulation 2009	41
Dictionary	42

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Official Visitor Bill 2012

A Bill for

An Act to provide for the appointment of official visitors, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Official Visitor Act 2012*.

4 **2 Commencement**

5 (1) The following provisions commence on 1 March 2014:

- 6 • schedule 1, amendment 1.23
- 7 • schedule 1, amendment 1.25
- 8 • schedule 1, amendment 1.27
- 9 • schedule 1, amendment 1.30
- 10 • schedule 1, amendment 1.32.

11 *Note* The naming and commencement provisions automatically commence on
12 the notification day (see Legislation Act, s 75 (1)).

13 (2) The remaining provisions commence on 1 March 2013.

14 **3 Dictionary**

15 The dictionary at the end of this Act is part of this Act.

16 *Note 1* The dictionary at the end of this Act defines certain terms used in this
17 Act, and includes references (*signpost definitions*) to other terms
18 defined elsewhere in this Act.

19 For example, the signpost definition '*operational Act*—see section 7.'
20 means that the term 'operational Act' is defined in that section.

21 *Note 2* A definition in the dictionary (including a signpost definition) applies to
22 the entire Act unless the definition, or another provision of the Act,
23 provides otherwise or the contrary intention otherwise appears (see
24 Legislation Act, s 155 and s 156 (1)).

25 **4 Notes**

26 A note included in this Act is explanatory and is not part of this Act.

27 *Note* See the Legislation Act, s 127 (1), (4) and (5) for the legal status of
28 notes.

- 1 **5 Offences against Act—application of Criminal Code etc**
- 2 Other legislation applies in relation to offences against this Act.
- 3 *Note 1 Criminal Code*
- 4 The Criminal Code, ch 2 applies to all offences against this Act (see
- 5 Code, pt 2.1).
- 6 The chapter sets out the general principles of criminal responsibility
- 7 (including burdens of proof and general defences), and defines terms
- 8 used for offences to which the Code applies (eg ***conduct***, ***intention***,
- 9 ***recklessness*** and ***strict liability***).
- 10 *Note 2 Penalty units*
- 11 The Legislation Act, s 133 deals with the meaning of offence penalties
- 12 that are expressed in penalty units.

1 **Part 2** **Important concepts**

2 **6** **What is an *official visitor*?**

3 An *official visitor*, for an operational Act, means a person appointed
4 under section 10 for the Act.

5 **7** **What is an *operational Act*?**

6 Each of the following is an *operational Act*:

7 (a) the *Children and Young People Act 2008*;

8 (b) the *Corrections Management Act 2007*;

9 (c) the *Disability Services Act 1991*;

10 (d) the *Housing Assistance Act 2007*;

11 (e) the *Mental Health (Treatment and Care) Act 1994*.

12 *Note* A reference to an Act includes a reference to the statutory instruments
13 made or in force under the Act, including regulations (see Legislation
14 Act, s 104).

15 **8** **What is an *entitled person*?**

16 An *entitled person*, for an operational Act, means an entitled person
17 under the operational Act.

18 **9** **What is a *visitable place*?**

19 A *visitable place*, for an operational Act, means a visitable place
20 under the operational Act.

Part 3 Appointment of official visitors

10 Appointment

- (1) The Minister must appoint the following:
- (a) for the *Children and Young People Act 2008*—at least 2 official visitors, including one official visitor who is an Aboriginal or Torres Strait Islander person;
 - (b) for the *Corrections Management Act 2007*—at least 2 official visitors, including one official visitor who is an Aboriginal or Torres Strait Islander person;
 - (c) for the *Disability Services Act 1991*—at least 1 official visitor;
 - (d) for the *Housing Assistance Act 2007*—at least 1 official visitor;
 - (e) for the *Mental Health (Treatment and Care) Act 1994*—at least 1 official visitor.
- (2) The Minister may appoint a person as an official visitor for an operational Act only if—
- (a) the Minister has consulted the operational Minister; and
 - (b) satisfied on reasonable grounds that the person has suitable qualifications or experience to exercise the functions of an official visitor for the operational Act.
- (3) However, the Minister must not appoint a person as an official visitor if the person—
- (a) is a public employee; or
 - (b) has a relevant interest.
- (4) An operational Act may prescribe additional requirements for deciding whether or not to appoint a person as an official visitor for the operational Act.

- 1 (5) In this section:
- 2 ***Aboriginal or Torres Strait Islander person*** means a person who—
- 3 (a) is a descendant of an Aboriginal person or Torres Strait
- 4 Islander person; and
- 5 (b) identifies as an Aboriginal person or Torres Strait Islander
- 6 person; and
- 7 (c) is accepted as an Aboriginal person or Torres Strait Islander
- 8 person by an Aboriginal community or Torres Strait Islander
- 9 community.
- 10 ***relevant interest*** means—
- 11 (a) a direct interest in a contract with a visitable place or an entity
- 12 providing services to the visitable place; or
- 13 (b) a financial interest in a visitable place.
- 14 **11 Conditions of appointment**
- 15 (1) An appointment as an official visitor must not be for longer than
- 16 3 years.
- 17 (2) The conditions of appointment of an official visitor are the
- 18 conditions agreed between the Minister and the person, subject to
- 19 any determination under the *Remuneration Tribunal Act 1995*.
- 20 *Note 1* For the making of appointments (including acting appointments), see
- 21 the Legislation Act, pt 19.3.
- 22 *Note 2* Certain Ministerial appointments require consultation with an Assembly
- 23 committee and are disallowable (see Legislation Act, div 19.3.3).
- 24 *Note 3* A person may be reappointed to a position if the person is eligible to be
- 25 appointed to the position (see Legislation Act, s 208 and dict, pt 1,
- 26 def ***appoint***).

1 **12 Ending appointment**

2 (1) The Minister may end a person's appointment as an official
3 visitor—

4 (a) for misbehaviour; or

5 (b) if the person—

6 (i) does not inspect a visitable place as required under the
7 complaints guidelines made under section 23; and

8 (ii) continues to fail to inspect the site as required for
9 4 consecutive weeks; or

10 (c) if an operational Act prescribes requirements that the person
11 must satisfy to be appointed as an official visitor—if the person
12 no longer satisfies the criteria.

13 (2) The Minister must end the person's appointment as an official
14 visitor—

15 (a) for physical or mental incapacity, if the incapacity substantially
16 affects the exercise of the person's functions; or

17 (b) if the person fails to take all reasonable steps to avoid being
18 placed in a position where a conflict of interest arises during
19 the exercise of the person's functions.

20 (3) A person's appointment as an official visitor ends, by force of this
21 section, if the person becomes a public employee.

22 *Note* A person's appointment also ends if the person resigns (see Legislation
23 Act, s 210).

- 1 **13 Handover of records by official visitors**
- 2 (1) This section applies if a person's appointment as an official visitor
- 3 ends.
- 4 (2) The person must, not later than 7 days after the day the appointment
- 5 ends, give any official visitor record held by the person to another
- 6 official visitor.
- 7 (3) In this section:
- 8 *official visitor record* held by a person, means—
- 9 (a) a record made or received by the person because of the
- 10 person's functions as an official visitor; or
- 11 (b) information held by the person because of the person's
- 12 functions as an official visitor.

1 **Part 4** **Functions of official visitors**

2 **14** **Functions**

3 (1) An official visitor for an operational Act has the following
4 functions:

5 (a) to inspect visitable places for the operational Act;

6 (b) to report to the operational Minister under section 16 and
7 section 17;

8 (c) to receive and consider complaints from entitled people, and
9 others on their behalf;

10 (d) to be available to talk with entitled people and anyone else who
11 has a concern about an entitled person or a visitable place;

12 (e) to exercise any other function given to an official visitor under
13 this Act, an operational Act or another territory law.

14 (2) An official visitor must, in exercising the official visitor's functions,
15 deal with an entitled person with sensitivity, including in relation to
16 the person's—

17 (a) gender; and

18 (b) religion or faith; and

19 (c) wishes about how the official visitor may inspect a visitable
20 place.

21 **Examples—par (c)**

22 1 an entitled person may not wish to meet with or talk to an official
23 visitor

24 2 an entitled person may ask that the official visitor inspect the visitable
25 place only at certain times

1 3 an entitled person may ask that an official visitor not go into areas in a
2 visitable place that the person considers to be private

3 *Note* An example is part of the Act, is not exhaustive and may extend,
4 but does not limit, the meaning of the provision in which it
5 appears (see Legislation Act, s 126 and s 132).

6 **15 Inspection of visitable places**

7 (1) An official visitor for an operational Act may, at any reasonable
8 time, enter a visitable place for the operational Act following a
9 complaint or at the official visitor's own initiative.

10 **Example—time that would not be reasonable**
11 a time that would hinder a search, or coincide with an escape attempt, at a
12 visitable place

13 *Note* An example is part of the Act, is not exhaustive and may extend, but
14 does not limit, the meaning of the provision in which it appears (see
15 Legislation Act, s 126 and s 132).

16 (2) Without limiting subsection (1), the operational Act may prescribe
17 minimum requirements for a visit by the official visitor to the
18 visitable place.

19 **16 Official visitor must report non-compliant visitable places**

20 (1) This section applies if an official visitor for an operational Act
21 believes on reasonable grounds that any of the following is not in
22 accordance with the operational Act:

23 (a) the care and other services provided to an entitled person at a
24 visitable place for the operational Act;

25 (b) the living conditions and activities of an entitled person at the
26 visitable place;

27 (c) if an entitled person for the operational Act is detained under
28 that Act at the visitable place—the detention of the person at
29 the place (including any aspect of the treatment, living
30 conditions, work or activities of the detainee).

- 1 (2) The official visitor—
2 (a) must report the belief to the operational Minister; and
3 (b) may report the belief to—
4 (i) the relevant director-general; and
5 (ii) the public advocate.
6 (3) An operational Act may prescribe other reporting requirements for
7 the operational Act.

8 **17 Reporting of complaints**

- 9 (1) An official visitor for an operational Act must give the operational
10 Minister, as soon as practicable after the end of each quarter, a
11 written report for the quarter summarising—
12 (a) the number and kinds of complaints received by the official
13 visitor; and
14 (b) the action taken on the complaints received; and
15 (c) the number and kinds of matters referred by the official visitor
16 to an investigative entity.
17 *Note Quarter*—see the Legislation Act, dictionary, pt 1.
18 (2) The official visitor may give a copy of the report to—
19 (a) the relevant director-general; and
20 (b) the public advocate.
21 (3) The report may include comments by the official visitor about
22 anything in relation to a complaint mentioned in the report.
23 (4) For each financial year, the operational Minister must present a
24 report of the information given to the Minister under subsection (1)
25 to the Legislative Assembly within 6 sitting days after the end of the
26 3-month period after the end of the financial year.

- 1 **18 Assistance to official visitors**
- 2 (1) The public advocate may give an official visitor for an operational
- 3 Act any reasonable assistance the official visitor asks for to exercise
- 4 the official visitor's functions.
- 5 **Example**
- 6 assistance to prepare reports
- 7 *Note* An example is part of the Act, is not exhaustive and may extend, but
- 8 does not limit, the meaning of the provision in which it appears (see
- 9 Legislation Act, s 126 and s 132).
- 10 (2) An operating entity for a visitable place for an operational Act must
- 11 give an official visitor for the Act any reasonable assistance the
- 12 official visitor asks for to exercise the official visitor's functions at
- 13 the place.
- 14 **Examples**
- 15 1 giving access to documents and records relating to a complaint
- 16 2 answering reasonable questions about the facts of a complaint
- 17 3 giving reasonable access to facilities
- 18 *Note* The Legislation Act, s 170 deals with the application of the privilege
- 19 against self-incrimination.
- 20 (3) An operating entity must not give an official visitor access to an
- 21 entitled person's health record without the entitled person's consent.
- 22 (4) In this section:
- 23 *health record*—see the *Health Records (Privacy and Access)*
- 24 *Act 1997*, dictionary.

1 **19 Offences—failure to provide assistance etc**

2 (1) A person in charge of an operating entity for a visitable place must
3 not, without reasonable excuse—

4 (a) refuse or neglect to render assistance if asked by an official
5 visitor under section 18; or

6 (b) fail to answer any question if asked by an official visitor in the
7 exercise of the official visitor's functions.

8 Maximum penalty: 50 penalty units.

9 (2) A person in charge of an operating entity for a visitable place must
10 not, without reasonable excuse, obstruct or hinder an official visitor
11 in the exercise of the official visitor's functions.

12 Maximum penalty: 50 penalty units, imprisonment for 6 months or
13 both.

14 (3) A person in charge of an operating entity for a visitable place must
15 keep a record of each visit by an official visitor to the visitable
16 place.

17 Maximum penalty: 5 penalty units.

18 *Note* If a form is approved under s 26 for a record, the form must be used.

19 (4) In this section:

20 ***person in charge***, of an operating entity, means—

21 (a) if the operating entity is the relevant director-general—the
22 relevant director-general; and

23 (b) in any other case—the person in charge of the entity.

1 **Part 5** **Complaints**

2 **20** **Operating entity must let entitled people know about**
3 **official visitors**

4 An operating entity for a visitable place must tell an entitled person
5 at the visitable place, or a person acting on the entitled person's
6 behalf, about—

- 7 (a) the functions of an official visitor; and
8 (b) how the official visitor may be contacted.

9 **21** **Requests to meet official visitor**

10 (1) This section applies if an entitled person for an operational Act tells
11 the operating entity for a visitable place that the person wants to
12 meet an official visitor for that Act.

13 (2) The operating entity must ensure that an official visitor for an
14 operational Act is told of the request as soon as practicable, but not
15 later than 12 hours after the request is made.

16 (3) An operating entity must not ask an entitled person, and the person
17 need not explain to the operating entity, why the person wants to
18 meet an official visitor.

19 **22** **Complaints to official visitors**

20 (1) An entitled person for an operational Act, or anyone else, may
21 complain to an official visitor for that Act about any aspect of the
22 person's accommodation including—

- 23 (a) the conditions of accommodation of an entitled person; or
24 (b) the care or services provided to an entitled person at a visitable
25 place; or

- 1 (c) the activities available to an entitled person at a visitable place;
2 or
3 (d) how a visitable place is conducted.
- 4 (2) The entitled person may make the complaint to the official visitor
5 personally or through someone else.
- 6 (3) The entitled person may ask to make a complaint—
7 (a) to the official visitor with no-one else present; and
8 (b) to an official visitor of the same gender.
- 9 (4) If the official visitor agrees that the complaint may be made with
10 only the entitled person present, the operating entity must provide
11 reasonably private facilities for the complaint to be made.
- 12 (5) In this section:
13 *accommodation*, of an entitled person, includes, if an entitled
14 person is detained or confined under an operational Act at a visitable
15 place, the person's detention or confinement.

16 **23 Complaints guidelines**

- 17 (1) The Minister may, after consulting the operational Minister for an
18 operational Act, make guidelines, consistent with this part, about the
19 handling, and referral of complaints to investigative entities, by an
20 official visitor for the operational Act.
- 21 (2) The guidelines must include a schedule that sets out—
22 (a) each visitable place that an official visitor must inspect; and
23 (b) how often the official visitor must inspect the place.
- 24 (3) A guideline is a disallowable instrument.

25 *Note* A disallowable instrument must be notified, and presented to the
26 Legislative Assembly, under the Legislation Act.

- 1 **Part 6** **Miscellaneous**
- 2 **24** **Protection of officials from liability**
- 3 (1) An official is not civilly liable for anything done or omitted to be
- 4 done honestly and without recklessness—
- 5 (a) in the exercise of a function under this Act; or
- 6 (b) in the reasonable belief that the act or omission was in the
- 7 exercise of a function under this Act.
- 8 (2) Any civil liability that would, apart from subsection (1), attach to an
- 9 official attaches instead to the Territory.
- 10 (3) In this section:
- 11 *official* means—
- 12 (a) an official visitor; or
- 13 (b) a person authorised under this Act to do or not to do a thing.
- 14 *Note* A reference to an Act includes a reference to the statutory instruments
- 15 made or in force under the Act, including any regulation (see
- 16 Legislation Act, s 104).
- 17 **25** **Offences—use or divulge protected information**
- 18 (1) A person to whom this section applies commits an offence if—
- 19 (a) the person uses information; and
- 20 (b) the information is protected information about someone else;
- 21 and
- 22 (c) the person is reckless about whether the information is
- 23 protected information about someone else.
- 24 Maximum penalty: 50 penalty units, imprisonment for 6 months or
- 25 both.

- 1 (2) A person to whom this section applies commits an offence if—
2 (a) the person does something that divulges information; and
3 (b) the information is protected information about someone else;
4 and
5 (c) the person is reckless about whether—
6 (i) the information is protected information about someone
7 else; and
8 (ii) doing the thing would result in the information being
9 divulged to someone else.
- 10 Maximum penalty: 50 penalty units, imprisonment for 6 months or
11 both.
- 12 (3) Subsections (1) and (2) do not apply if the information is used or
13 divulged—
14 (a) under this Act or another territory law; or
15 (b) in relation to the exercise of a function, as a person to whom
16 this section applies, under this Act or another territory law; or
17 (c) in a court proceeding.
- 18 (4) Subsections (1) and (2) do not apply to the using or divulging of
19 protected information about a person with the person's consent.
- 20 *Note* The defendant has an evidential burden in relation to the matters
21 mentioned in ss (3) and (4) (see Criminal Code, s 58).
- 22 (5) A person to whom this section applies need not divulge protected
23 information to a court, or produce a document containing protected
24 information to a court, unless it is necessary to do so for this Act or
25 another law applying in the territory.

- 1 (6) In this section:
- 2 *court* includes a tribunal, authority or person having power to
- 3 require the production of documents or the answering of questions.
- 4 *divulge* includes—
- 5 (a) communicate; or
- 6 (b) publish.
- 7 *person to whom this section applies* means—
- 8 (a) a person who is or has been an official visitor; or
- 9 (b) anyone else who has exercised a function under this Act.
- 10 *produce* includes allow access to.
- 11 *protected information* means information about a person that is
- 12 disclosed to, or obtained by, a person to whom this section applies
- 13 because of the exercise of a function under this Act by the person or
- 14 someone else.
- 15 *Note* An example is part of the Act, is not exhaustive and may extend, but
- 16 does not limit, the meaning of the provision in which it appears (see
- 17 Legislation Act, s 126 and s 132).
- 18 *use information* includes make a record of the information.
- 19 **26 Approved forms**
- 20 (1) The Minister may, in writing, approve forms for this Act.
- 21 (2) If the Minister approves a form for a particular purpose, the
- 22 approved form must be used for that purpose.
- 23 *Note* For other provisions about forms, see the Legislation Act, s 255.
- 24 (3) An approved form is a notifiable instrument.
- 25 *Note* A notifiable instrument must be notified under the Legislation Act.

1 **27** **Regulation-making power**

2 The Executive may make regulations for this Act.

3 *Note* A regulation must be notified, and presented to the Legislative
4 Assembly, under the Legislation Act.

5 **28** **Legislation amended—sch 1**

6 This Act amends the legislation mentioned in schedule 1.

Part 10 Transitional

50 Definitions—pt 10

In this part:

commencement day means the day this Act commences.

operational Act means the following:

- (a) the *Children and Young People Act 2008*;
- (b) the *Corrections Management Act 2007*;
- (c) the *Mental Health (Treatment and Care) Act 1994*.

51 Unfinished complaints to official visitors

(1) This section applies if—

- (a) before the commencement day, an entitled person makes a complaint to the official visitor under an operational Act; and
- (b) immediately before the commencement day, the investigation of the complaint had not been finalised or otherwise fully dealt with.

(2) The complaint is taken to be a complaint made by the entitled person under this Act, section 22 (Complaints to official visitors).

52 Existing appointments

(1) This section applies to a person—

- (a) appointed as an official visitor under an operational Act; and
- (b) who was an official visitor immediately before the commencement day.

(2) The person is taken to have been appointed as an official visitor for the operational Act under this Act, section 10.

1 **53 Transitional regulations**

2 A regulation may prescribe transitional matters necessary or
3 convenient to be prescribed because of the enactment of this Act.

4 **54 Expiry—pt 10**

5 This part expires 2 years after the day it commences.

6 *Note* Transitional provisions are kept in the Act for a limited time.
7 A transitional provision is repealed on its expiry but continues to have
8 effect after its repeal (see Legislation Act, s 88).

Schedule 1 Consequential amendments

(see s 28)

Part 1.1 Children and Young People Act 2008

[1.1] Part 2.3

substitute

Part 2.3 Official visitors

Note At least 2 official visitors (including a visitor who is an Aboriginal or Torres Strait Islander person) must be appointed for this Act under the *Official Visitor Act 2012* (the **OV Act**).

The OV Act sets out the functions of official visitors which includes inspecting visitable places, handling complaints from entitled people and reporting on those matters.

This part defines what is an *entitled person* and a *visitable place* for the OV Act. This part also prescribes other matters for the OV Act.

37 Meaning of *entitled person* and *visitable place*

In this Act:

entitled person—

(a) means a child or young person who is—

(i) detained in a detention place; or

(ii) confined at a therapeutic protection place; or

(iii) accommodated in a place of care; and

(b) includes—

(i) a young detainee who is 18 years old or older; and

(ii) a person prescribed by regulation.

1 ***visitable place*** means—

- 2 (a) a detention place; or
- 3 (b) a place outside a detention place if a detainee is, or has been,
4 directed to work or participate in an activity at the place; or
- 5 (c) a therapeutic protection place; or
- 6 (d) a place of care.

7 **38 Appointment of official visitors—additional suitability**
8 **requirement**

9 A person must not be appointed as an official visitor unless the
10 person is a suitable entity.

11 *Note* Suitable entities are dealt with in pt 2.4.

12 **39 Request for sensitive information by official visitors**

13 (1) This section applies if—

- 14 (a) a complaint is made to an official visitor in relation to a
15 visitable place under the *Official Visitor Act 2012*, section 22;
16 and
- 17 (b) the visitor intends to ask the operating entity for the visitable
18 place for assistance in exercising the visitor's functions at the
19 place; and
- 20 (c) the request involves giving sensitive information.

21 *Note* An operating entity for a visitable place must give an official visitor any
22 reasonable assistance the official visitor asks for to exercise the official
23 visitor's functions at the place (see *Official Visitor Act 2012*, s 18).

24 (2) Before asking the operating entity for assistance, the official visitor
25 must consider whether the complaint would be better dealt with by,
26 and should be referred to, an investigative entity.

- 1 (3) In this section:
2 *operating entity*, for a visitable place—see the *Official Visitor*
3 *Act 2012*, dictionary.

4 **40 Frequency of visits by official visitors**

5 For the *Official Visitor Act 2012*, section 15 (Inspection of visitable
6 places), an official visitor must, if practicable, visit—

- 7 (a) each detention place at least once each fortnight; and
8 (b) a therapeutic protection place at least once each week if an
9 entitled person is confined at the therapeutic protection place;
10 and
11 (c) a place of care at least once each month if an entitled person is
12 being cared for at the place of care.

13 **[1.2] Section 153 (1), note**

14 *substitute*

15 *Note* Official visitors must inspect detention places (see pt 2.3 and *Official*
16 *Visitor Act 2012*).

17 **[1.3] Section 514, note 3**

18 *after*

19 pt 2.3

20 *insert*

21 and Official Visitor Act 2012

1 **[1.4] Section 524 (5), note 3**

2 *after*

3 pt 2.3

4 *insert*

5 and *Official Visitor Act 2012*

6 **[1.5] Section 525 (6), note 3**

7 *after*

8 pt 2.3

9 *insert*

10 and *Official Visitor Act 2012*

11 **[1.6] Section 815 (4), note**

12 *after*

13 pt 2.3

14 *insert*

15 and *Official Visitor Act 2012*

16 **[1.7] Section 874 (2) (b)**

17 *omit*

18 section 44

19 *substitute*

20 the *Official Visitor Act 2012*, section 22

Part 1.2 Corrections Management Act 2007

[1.16] Sections 57 to 61

substitute

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

In this Act:

entitled person means—

- (a) a detainee at a correctional centre; or
- (b) a person prescribed by regulation.

visitable place means—

- (a) a correctional centre; or
- (b) a place outside a correctional centre if a detainee is, or has been, directed to work or participate in an activity at the place.

Note At least 2 official visitors (including a visitor who is an Aboriginal or Torres Strait Islander person) must be appointed for this Act under the *Official Visitor Act 2012* (the **OV Act**).

The OV Act sets out the functions of official visitors which includes inspecting visitable places, handling complaints from entitled people and reporting on those matters.

This part defines what is an *entitled person* and a *visitable place* for the OV Act. This part also prescribes other matters for the OV Act.

58 Frequency of visits by official visitors

For the *Official Visitor Act 2012*, section 15 (Inspection of visitable places), an official visitor must, if practicable, visit each correctional centre at least once each fortnight.

- 1 **[1.17] Dictionary, note 2**
- 2 *insert*
- 3 • official visitor
- 4 **[1.18] Dictionary, new definition of *entitled person***
- 5 *insert*
- 6 *entitled person*—see section 57.
- 7 **[1.19] Dictionary, definition of *official visitor***
- 8 *omit*
- 9 **[1.20] Dictionary, new definition of *visitable place***
- 10 *insert*
- 11 *visitable place*—see section 57.

12 **Part 1.3 Disability Services Act 1991**

- 13 **[1.21] New part 1 heading**
- 14 *before section 1, insert*

15 **Part 1 Preliminary**

- 16 **[1.22] New part 2 heading**
- 17 *before section 6, insert*

18 **Part 2 Financial Assistance**

1 **[1.23] New section 6 (2) (c)**

2 *insert*

3 (c) if a provider of disability accommodation is to be funded by
4 the grant—

5 (i) the provider complies with, and is likely to continue to
6 comply with, the disability services standards; and

7 (ii) the accommodation complies with, and is likely to
8 continue to comply with, the disability services standards.

9 *Note* The Minister may make disability services standards under s 9A.

10 **[1.24] New part 3**

11 *after section 8, insert*

12 **Part 3 Official visitors**

13 *Note* At least 1 official visitor must be appointed for this Act under the
14 *Official Visitor Act 2012* (the **OV Act**).

15 The OV Act sets out the functions of official visitors which includes
16 inspecting visitable places, handling complaints from entitled people
17 and reporting on those matters.

18 This part defines what is an *entitled person* and a *visitable place* for the
19 OV Act. This part also prescribes other matters for the OV Act.

20 **8A Official visitors—meaning of *entitled person* and *visitable***
21 ***place***

22 In this Act:

23 *entitled person* means a person—

24 (a) with disability who is staying in a visitable place; or

25 (b) with disability that receives a service funded under this Act; or

26 (c) prescribed by regulation.

- 1 *visitable place*—
- 2 (a) means disability accommodation for respite or long-term
- 3 residential purposes; and
- 4 (b) includes a residential aged care facility that accommodates a
- 5 person with disability who is less than 65 years old.
- 6 **8B Complaint about disability service provided at place other**
- 7 **than visitable place**
- 8 (1) An entitled person may make a complaint to an official visitor under
- 9 the *Official Visitor Act 2012*, section 22 about a service funded
- 10 under this Act that is provided at a place other than a visitable place.
- 11 (2) The official visitor may—
- 12 (a) investigate the complaint; and
- 13 (b) inspect the place where the service is provided.
- 14 (3) However, the official visitor may only inspect a place that is not a
- 15 visitable place—
- 16 (a) with the entitled person’s consent; and
- 17 (b) after giving the owner of, or entity operating, the place at least
- 18 24 hours written notice; and
- 19 (c) at a reasonable time, unless the owner of, or entity operating,
- 20 the place otherwise consents.
- 21 **8C Official visitors must give notice of inspection**
- 22 (1) An official visitor must give an operating entity for a visitable place
- 23 written notice that the official visitor intends to inspect the place at
- 24 least 24 hours before the official visitor’s inspection.

(2) However, the official visitor may inspect a visitable place without giving notice to the operating entity if—

(a) the official visitor reasonably believes, or has been given a complaint, that an entitled person at the visitable place is at risk of harm; and

(b) the entitled person agrees to the inspection.

(3) In this section:

operating entity, for a visitable place—see the *Official Visitor Act 2012*, dictionary.

[1.25] New part 4

insert

Part 4 Disability accommodation

8D Definitions—pt 4

In this part:

applicant, in relation to a reviewable decision—see section 8E.

reviewable decision means a decision by the director-general to refuse approval of a place as disability accommodation under section 8E.

8E Approval of disability accommodation

On application by a provider of services (an *applicant*), the director-general may approve a place as disability accommodation.

Note 1 A refusal to approve a place as disability accommodation is a reviewable decision (see s 8G and s 8H).

Note 2 If a form is approved under s 11 for this provision, the form must be used.

8F Register of approved disability accommodation

- (1) The director-general must keep a register of places approved as disability accommodation.
- (2) The director-general—
- (a) must provide information on the register to—
 - (i) an official visitor; and
 - (ii) the public advocate; and
 - (b) may provide information on the register to—
 - (i) a person with disability; and
 - (ii) a carer or legal representative of a person with disability; and
 - (iii) a person exercising a function under this Act; and
 - (iv) anyone else approved by the director-general.
- (3) In this section:
- carer*—see the *Guardianship and Management of Property Act 1991*, section 6.
- legal representative*, of a person with disability, means—
- (a) the person's legal representative; or
 - (b) if the person does not have legal capacity—the person's parent or guardian.

8G Reviewable decision notice

If the Minister makes a reviewable decision, the Minister must give a reviewable decision notice to an applicant in relation to the decision.

Note 1 The Minister must also take reasonable steps to give a reviewable decision notice to any other person whose interests are affected by the decision (see *ACT Civil and Administrative Tribunal Act 2008*, s 67A).

Note 2 The requirements for reviewable decision notices are prescribed under the *ACT Civil and Administrative Tribunal Act 2008*.

8H Applications for review

The following may apply to the ACAT for review of a reviewable decision:

- (a) an applicant in relation to the decision;
- (b) any other person whose interests are affected by the decision.

Note If a form is approved under the *ACT Civil and Administrative Tribunal Act 2008* for the application, the form must be used.

[1.26] New part 5 heading

before section 9, insert

Part 5 Miscellaneous

[1.27] New section 9A

insert

9A Disability services standards

- (1) The Minister may make standards about services provided to people with disabilities.

- 1 (2) A standard is a disallowable instrument.
2 *Note* A disallowable instrument must be notified, and presented to the
3 Legislative Assembly, under the Legislation Act.

4 **[1.28] New section 11**

5 *insert*

6 **11 Approved forms**

- 7 (1) The Minister may approve forms for this Act.
8 (2) If the Minister approves a form for a particular purpose, the
9 approved form must be used for that purpose.
10 *Note* For other provisions about forms, see the Legislation Act, s 255.
11 (3) An approved form is a notifiable instrument.
12 *Note* A notifiable instrument must be notified under the Legislation Act.

13 **[1.29] Dictionary, note 2**

14 *insert*

- 15
 - official visitor

16 **[1.30] Dictionary, new definition of *applicant***

17 *insert*

18 *applicant*, in relation to a reviewable decision, for part 4 (Disability
19 accommodation)—see section 8E.

20 **[1.31] Dictionary, new definitions**

21 *insert*

22 *disability accommodation* means accommodation for a person with
23 disability provided by the Territory or a grantee.

24 *entitled person*—see section 8A.

1 **[1.32] Dictionary, new definition of *reviewable decision***

2 *insert*

3 *reviewable decision*, for part 4 (Disability accommodation)—see
4 section 8D.

5 **[1.33] Dictionary, new definition of *visitable place***

6 *insert*

7 *visitable place*—see section 8A.

8 **Part 1.4 Housing Assistance Act 2007**

9 **[1.34] New part 4B**

10 *insert*

11 **Part 4B Official visitors**

12 *Note* At least 1 official visitor must be appointed for this Act under the
13 *Official Visitor Act 2012* (the **OV Act**).

14 The OV Act sets out the functions of official visitors which includes
15 inspecting visitable places, handling complaints from entitled people
16 and reporting on those matters.

17 This part defines what is an *entitled person* and a *visitable place* for the
18 OV Act. This part also prescribes other matters for the OV Act.

19 **25V Official visitors—meaning of *entitled person* and *visitable***
20 ***place***

21 In this Act:

22 *entitled person* means a person—

23 (a) who is homeless or at risk of homelessness who is staying in a
24 visitable place; or

25 (b) prescribed by regulation.

1 *visitable place* means temporary or short-term supported
2 accommodation for people who are homeless or at risk of
3 homelessness, provided by an entity funded under this Act.

4 **25W Official visitors must give notice of inspection**

5 (1) An official visitor must give an operating entity for a visitable place
6 written notice that the official visitor intends to inspect the place at
7 least 24 hours before the official visitor's inspection.

8 (2) However, the official visitor may inspect a visitable place without
9 giving notice to the operating entity if—

10 (a) the official visitor reasonably believes, or has been given a
11 complaint, that an entitled person at the visitable place is at risk
12 of abuse or harm; and

13 (b) the entitled person agrees to the inspection.

14 (3) In this section:

15 *operating entity*, for a visitable place—see the *Official Visitor*
16 *Act 2012*, dictionary.

17 **[1.35] Dictionary, note 2**

18 *insert*

- 19 • official visitor

20 **[1.36] Dictionary, new definitions**

21 *insert*

22 *entitled person*—see section 25V.

23 *visitable place*—see section 25V.

Part 1.5 Legislation Act 2001

[1.37] Dictionary, part 1, new definition of *official visitor*

insert

official visitor means an official visitor appointed under the *Official Visitors Act 2012*, section 10.

Part 1.6 Mental Health (Treatment and Care) Act 1994

[1.38] Part 11

substitute

Part 11 Official visitors

Note At least 1 official visitor must be appointed for this Act under the *Official Visitor Act 2012* (the **OV Act**).

The OV Act sets out the functions of official visitors which includes inspecting visitable places, handling complaints from entitled people and reporting on those matters.

This part defines what is an *entitled person* and a *visitable place* for the OV Act. This part also prescribes other matters for the OV Act.

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

In this Act:

entitled person means a person—

(a) receiving treatment or care for mental dysfunction or a mental illness—

(i) at a visitable place; or

1 (ii) at a place other than a visitable place under an order
2 under this Act; or

3 (b) prescribed by regulation.

4 ***visitable place*** means—

5 (a) a long-term residential accommodation facility or respite
6 facility at which a person receiving treatment or care for
7 mental dysfunction or a mental illness may stay; or

8 (b) a mental health facility; or

9 (c) a place in a correctional centre where a detainee may receive
10 treatment or care for mental dysfunction or a mental illness.

11 **122 Appointment of official visitors—additional suitability**
12 **requirement**

13 A person must not be appointed as an official visitor unless the
14 person—

15 (a) is a legal practitioner who has not less than 5 years practising
16 experience; or

17 (b) is a medical practitioner; or

18 (c) has been nominated by a body representing consumers of
19 mental health services; or

20 (d) has experience and skill in the care of persons with a mental
21 dysfunction or mental illness.

22 **122A Official visitor's functions**

23 Without limiting the *Official Visitor Act 2012*, section 14
24 (Functions), an official visitor must enquire into—

25 (a) the adequacy of services provided at a visitable place for the
26 assessment and treatment of people with mental dysfunction or
27 a mental illness; and

- 1 (b) the appropriateness and standard of facilities at a visitable
2 place for the recreation, occupation, education, training and
3 rehabilitation of people receiving treatment or care for mental
4 dysfunction or a mental illness; and
- 5 (c) the extent to which people receiving treatment or care for
6 mental dysfunction or a mental illness at a visitable place are
7 being provided the best possible treatment or care appropriate
8 to their needs in the least possible restrictive environment and
9 least possible intrusive manner consistent with the effective
10 giving of that treatment or care.

11 **122B Frequency of visits by official visitors**

12 For the *Official Visitor Act 2012*, section 15 (Inspection of visitable
13 places), an official visitor must, if practicable, visit each visitable
14 place conducted by the Territory at least once each month.

15 **122C Complaint about treatment or care provided at place**
16 **other than visitable place**

- 17 (1) An entitled person may make a complaint to an official visitor under
18 the *Official Visitor Act 2012*, section 22 about treatment or care for
19 mental dysfunction or a mental illness that is—
- 20 (a) funded by the Territory; and
21 (b) provided at a place other than a visitable place.
- 22 (2) The official visitor may—
- 23 (a) investigate the complaint; and
24 (b) inspect the place where the service is provided.
- 25 (3) However, the official visitor may only inspect a place that is not a
26 visitable place—
- 27 (a) with the entitled person's consent; and

1 (b) after giving the owner of, or entity operating, the place at least
2 24 hours written notice; and

3 (c) at a reasonable time unless the director-general otherwise
4 consents.

5 **[1.39] Section 140A (3), definition of *official*, paragraph (d)**

6 *omit*

7 **[1.40] Section 140A (3), definition of *official*, new note**

8 *insert*

9 *Note 1* An official visitor exercising a function under this Act is protected from
10 civil liability by the *Official Visitor Act 2012*, s 24.

11 **[1.41] Dictionary, note 2**

12 *insert*

- 13
 - official visitor

14 **[1.42] Dictionary, new definition of *entitled person***

15 *insert*

16 *entitled person*—see section 121.

17 **[1.43] Dictionary, definition of *official visitor***

18 *omit*

19 **[1.44] Dictionary, new definition of *visitable place***

20 *insert*

21 *visitable place*—see section 121.

1 **Part 1.7** **Territory Records**
2 **Regulation 2009**

3 **[1.45] Dictionary, note 2**

4 *insert*

- 5 • official visitor

6 **[1.46] Dictionary, definition of *official visitor***

7 *omit*

Dictionary

(see s 3)

Note 1 The Legislation Act contains definitions and other provisions relevant to this Act.

Note 2 For example, the Legislation Act, dict, pt 1 defines the following terms:

- appoint
- director-general (see s 163)
- exercise
- function
- Minister (see s 162)
- public advocate.

entitled person, for an operational Act—see section 8.

investigative entity means an entity with power to require the production of documents or the answering of questions including, for example, the chief police officer, the human rights commission, the public advocate and the ombudsman.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

official visitor, for an operational Act—see section 6.

operating entity, for a visitable place, means—

- (a) if the Territory operates the site—the relevant director-general;
or
- (b) in any other case—the entity that operates the site.

operational Act—see section 7.

operational Minister, for an operational Act, means the Minister responsible for the operational Act.

