



Australian Capital Territory

Official Visitor Act 2012

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About this republication

The republished law

This is a republication of the *Official Visitor Act 2012* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 9 October 2020. It also includes any commencement, amendment, repeal or expiry affecting this republished law to 9 October 2020.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at www.legislation.act.gov.au):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication does not include amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced, the symbol **U** appears immediately before the provision heading. Any uncommenced amendments that affect this republished law are accessible on the ACT legislation register (www.legislation.act.gov.au). For more information, see the home page for this law on the register.

Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see the *Legislation Act 2001*, section 95.

Penalties

At the republication date, the value of a penalty unit for an offence against this law is \$160 for an individual and \$810 for a corporation (see *Legislation Act 2001*, s 133).



Australian Capital Territory

Official Visitor Act 2012

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Australian Capital Territory

Official Visitor Act 2012

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

Part 1 Preliminary

1 Name of Act

This Act is the *Official Visitor Act 2012*.

3 Dictionary

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

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

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

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

4 Notes

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

Note See the [Legislation Act](#), s 127 (1), (4) and (5) for the legal status of notes.

5 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 *Criminal Code*

The [Criminal Code](#), ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

Note 2 *Penalty units*

The [Legislation Act](#), s 133 deals with the meaning of offence penalties that are expressed in penalty units.

Part 2 Important concepts

6 Who is an *official visitor*?

For this Act:

official visitor, for a visitable place, means a person authorised to visit the place under section 9A.

7 What is an *operational Act*?

Each of the following is an *operational Act*:

- (a) the *Children and Young People Act 2008*;
- (b) the *Corrections Management Act 2007*;
- (c) the *Disability Services Act 1991*;
- (d) the *Housing Assistance Act 2007*;
- (e) the *Mental Health Act 2015*.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see [Legislation Act](#), s 104).

8 Who is an *entitled person*?

For this Act:

entitled person, at a visitable place, means—

- (a) for a visitable place under the *Children and Young People Act 2008*—see that [Act](#), section 37, definition of *entitled person*; and
- (b) for a visitable place under the *Corrections Management Act 2007*—see that [Act](#), section 57, definition of *entitled person*; and
- (c) for a visitable place under the *Disability Services Act 1991*—see that [Act](#), section 8A, definition of *entitled person*; and

- (d) for a visitable place under the *Housing Assistance Act 2007*—see that *Act*, section 25V, definition of *entitled person*; and
- (e) for a visitable place under the *Mental Health Act 2015*—see that *Act*, section 208, definition of *entitled person*.

9 What is a visitable place?

For this Act:

visitable place means a place mentioned in each of the following:

- (a) the *Children and Young People Act 2008*, section 37, definition of *visitable place*;
- (b) the *Corrections Management Act 2007*, section 57, definition of *visitable place*;
- (c) the *Disability Services Act 1991*, section 8B;
- (d) the *Housing Assistance Act 2007*, section 25V, definition of *visitable place*;
- (e) the *Mental Health Act 2015*, section 208, definition of *visitable place*.

9A Authorisation to visit places

- (1) An official visitor appointed under section 10 (1) for a visitable place is authorised to visit the place.
- (2) An official visitor appointed under section 10 (1) for a visitable place is authorised to visit another visitable place if asked, in writing, to visit the place, or deal with an entitled person at the place, by—
 - (a) an official visitor appointed under section 10 (1) for the place; or
 - (b) the official visitors board.

Part 3 Appointment of official visitors

10 Appointment

- (1) The Minister must appoint the following:
 - (a) for a visitable place under the *Children and Young People Act 2008*—at least 2 official visitors, including 1 official visitor who is an Aboriginal or Torres Strait Islander person;
 - (b) for a visitable place under the *Corrections Management Act 2007*—at least 2 official visitors, including 1 official visitor who is an Aboriginal or Torres Strait Islander person;
 - (c) for a visitable place under the *Disability Services Act 1991*—at least 1 official visitor;
 - (d) for a visitable place under the *Housing Assistance Act 2007*—at least 1 official visitor;
 - (e) for a visitable place under the *Mental Health Act 2015*—at least 1 official visitor.
- (2) The Minister may appoint a person as an official visitor for a visitable place only if—
 - (a) the Minister has consulted the operational Minister for the place; and
 - (b) satisfied on reasonable grounds that the person has suitable qualifications or experience to exercise the functions of an official visitor for the place.
- (3) However, the Minister must not appoint a person as an official visitor for a visitable place if the person—
 - (a) is a public employee; or
 - (b) has a relevant interest in relation to the place.

(4) An operational Act may prescribe additional requirements for deciding whether or not to appoint a person as an official visitor for a visitable place.

(5) In this section:

Aboriginal or Torres Strait Islander person means a person who—

- (a) is a descendant of an Aboriginal person or Torres Strait Islander person; and
- (b) identifies as an Aboriginal person or Torres Strait Islander person; and
- (c) is accepted as an Aboriginal person or Torres Strait Islander person by an Aboriginal community or Torres Strait Islander community.

relevant interest, in relation to a visitable place, means—

- (a) a direct interest in a contract with the place or an entity providing services to the visitable place; or
- (b) a financial interest in the place.

11 Conditions of appointment

- (1) An appointment as an official visitor must not be for longer than 3 years.
- (2) The conditions of appointment of an official visitor are the conditions agreed between the Minister and the person, subject to any determination under the *Remuneration Tribunal Act 1995*.

Note 1 For the making of appointments (including acting appointments), see the [Legislation Act](#), pt 19.3.

Note 2 Certain Ministerial appointments require consultation with an Assembly committee and are disallowable (see [Legislation Act](#), div 19.3.3).

Note 3 A person may be reappointed to a position if the person is eligible to be appointed to the position (see [Legislation Act](#), s 208 and dict, pt 1, def *appoint*).

12 Ending appointment

- (1) The Minister may end a person's appointment as an official visitor—
 - (a) for misbehaviour; or
 - (b) if the person—
 - (i) does not comply with any requirement in a guideline made under section 23F; and
 - (ii) continues to fail to visit the visitable place as required for 4 consecutive weeks; or
 - (c) if an operational Act prescribes requirements that the person must satisfy to be appointed as an official visitor—if the person no longer satisfies the criteria.
- (2) The Minister must end the person's appointment as an official visitor—
 - (a) for physical or mental incapacity, if the incapacity substantially affects the exercise of the person's functions; or
 - (b) if the person fails to take all reasonable steps to avoid being placed in a position where a conflict of interest arises during the exercise of the person's functions.
- (3) A person's appointment as an official visitor ends, by force of this section, if the person becomes a public employee.

Note A person's appointment also ends if the person resigns (see [Legislation Act](#), s 210).

13 Handover of records by official visitors

- (1) This section applies if a person's appointment as an official visitor ends.
- (2) The person must, not later than 7 days after the day the appointment ends, give any official visitor record held by the person in relation to a visitable place to—
 - (a) the official visitors executive officer; or
 - (b) another official visitor for the place.
- (3) In this section:

official visitor record held by a person, means—

 - (a) a record made or received by the person because of the person's functions as an official visitor; or
 - (b) information held by the person because of the person's functions as an official visitor.

Part 4 Functions of official visitors

14 Official visitor functions

- (1) An official visitor for a visitable place has the following functions:
 - (a) to visit the place and meet entitled people at the place;
 - (b) to monitor conditions, services and practices in the place;
 - (c) to investigate and seek to resolve complaints from, or on behalf of, entitled people at the place;
 - (d) to identify and report on systemic issues adversely affecting entitled people at the place;
 - (e) if appropriate, to refer complaints or issues from, or on behalf of, entitled people at the place to relevant investigative entities;
 - (f) to report to the Minister and operational Minister for the place as required under this Act;
 - (g) to exercise any other function given to an official visitor under this Act, an operational Act or another territory law.
- (2) An official visitor must, in exercising the official visitor's functions—
 - (a) respect and promote the human rights of entitled people; and
 - (b) promote the provision of services to, and care and treatment of, entitled people that is high quality and centres on the needs of entitled people; and
 - (c) have regard to 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; and

- (d) encourage the early resolution of complaints from, or on behalf of, entitled people whenever reasonable and practicable to do so; and
- (e) have regard to the objects and principles in operational Acts.

14A Independence of official visitors

Except as provided in this Act or another territory law, an official visitor is not subject to the direction of anyone else in relation to the exercise of a function under this Act.

15 Official visitor may enter visitable place etc

- (1) An official visitor for a visitable place may, at any reasonable time, enter the visitable place following a complaint or at the official visitor's own initiative.

Example—time that would not be reasonable

a time that would hinder a search, or coincide with an escape attempt, at a visitable place

- (2) The official visitor may, when at the visitable place, inspect any health record or any other record relating to an entitled person at the visitable place if—
 - (a) the official visitor has the entitled person's—
 - (i) written consent; or
 - (ii) oral consent, if a written record of the consent is made by a person who heard the consent being given; or
 - (b) the official visitor—
 - (i) has taken reasonable steps to find out if the entitled person consents; and
 - (ii) reasonably believes the entitled person may not be able to make a decision about consent or communicate that decision; and

- (iii) reasonably believes that access to the record is necessary and appropriate to allow the official visitor to exercise the official visitor's functions under this Act; and
- (iv) the entitled person has not told, or otherwise indicated to, the official visitor that the person does not consent.

Examples—other record relating to an entitled person

for an entitled person in a mental health facility—dietary plans, behavioural plans, records about seclusion or chemical restraint, day plans, lists of rostered carers

- (3) If subsection (2) (b) applies and an official visitor inspects a record, the official visitor must, as soon as practicable, take reasonable steps to make the entitled person aware that the records were inspected.
- (4) The operating entity for a visitable place must keep a record of each time an official visitor accesses a record in accordance with subsection (2) (b).
- (5) The official visitor may also, when at the visitable place, inspect any other record required to be kept under the operational Act.
- (6) Subsection (2) (b) does not apply to any sensitive information (as defined under the *Children and Young People Act 2008*, section 845) included in a record.

Note The *Children and Young People Act 2008*, s 39 also deals with access to sensitive information by an official visitor.

- (7) Without limiting this section, the operational Act may prescribe minimum requirements for—
 - (a) a visit by the official visitor to the visitable place; and
 - (b) inspecting records under this section.

16 Official visitor must report non-compliant visitable places

- (1) This section applies if an official visitor for a visitable place believes on reasonable grounds that any of the following is not in accordance with the operational Act for the place:
 - (a) the care and other services provided to an entitled person at the place;
 - (b) the living conditions and activities of an entitled person at the place;
 - (c) if an entitled person is detained under the operational Act at the place—the detention of the person at the place (including any aspect of the treatment, living conditions, work or activities of the detainee).
- (2) The official visitor—
 - (a) must report the belief to the operational Minister; and
 - (b) may report the belief to—
 - (i) the relevant director-general; and
 - (ii) the public advocate; and
 - (iii) the official visitors board; and
 - (iv) the senior practitioner.
- (3) An operational Act may prescribe other reporting requirements for the visitable place.

17 Reporting of complaints

- (1) An official visitor for a visitable place must prepare for each quarter—
 - (a) a written report (a *full report*) stating—
 - (i) the number and kinds of complaints received by the official visitor in relation to the place; and

- (ii) the action taken on the complaints received; and
 - (iii) the number of visits by the official visitor to the place; and
 - (iv) the number and kinds of matters referred by the official visitor to an investigative entity; and
 - (v) any systemic issues identified by the official visitor; and
 - (vi) the number of times the official visitor inspected records in accordance with section 15 (2) (b); and
- (b) a written report (a *summary report*) summarising the matters mentioned in paragraph (a).
- (2) The full report may include—
- (a) comments by the official visitor about anything in relation to a complaint mentioned in the report; and
 - (b) recommendations about any systemic issues identified by the official visitor.
- (3) The official visitor must give a copy of—
- (a) the full report, as soon as practicable after the end of each quarter, to—
 - (i) the operational Minister for the visitable place; and
 - (ii) if the official visitor makes a recommendation in relation to the administrative unit responsible for administering the operational Act for the place—the relevant director-general for the place; and
 - (b) the summary report, as soon as practicable after the end of each quarter, to the following:
 - (i) the Minister;
 - (ii) the official visitors board;
 - (iii) the official visitors executive officer.

- (4) The official visitor may also give a copy of the report to any of the following:
- (a) the relevant director-general for the visitable place;
 - (b) the public advocate;
 - (c) if the report includes matters in relation to an administrative unit or operational Act for which another Minister is responsible—the other Minister.
- (5) Information that identifies an entitled person at the visitable place—
- (a) must not be included in a report to the Minister; and
 - (b) for any other report—may 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.
- (6) In this section:
- 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 ombudsman and the integrity commissioner.

18 Assistance to official visitors

- (1) An operating entity for a visitable place must give an official visitor for the place any reasonable assistance the official visitor asks for to exercise the official visitor's functions at the place.

Examples

- 1 giving access to documents and records relating to a complaint
- 2 answering reasonable questions about the facts of a complaint
- 3 giving reasonable access to facilities

Note The [Legislation Act](#), s 170 deals with the application of the privilege against self-incrimination.

- (2) An operating entity may only give an official visitor access to an entitled person's health record if the official visitor has complied with section 15 (2) (a) or (b).

19 Offences—failure to provide assistance etc

- (1) A person in charge of an operating entity for a visitable place must not, without reasonable excuse—
- (a) refuse or neglect to render assistance if asked by an official visitor under section 18; or
 - (b) fail to answer any question if asked by an official visitor in the exercise of the official visitor's functions.

Maximum penalty: 50 penalty units.

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

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

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

Maximum penalty: 5 penalty units.

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

- (4) In this section:

person in charge, of an operating entity, means—

- (a) if the operating entity is the Territory—the relevant director-general; and
- (b) in any other case—the person in charge of the entity.

Part 5 Visits and complaints

20 Operating entity must let entitled people know about official visitors

- (1) An operating entity for a visitable place must tell an entitled person at the visitable place, or a person acting on the entitled person's behalf, about—
 - (a) the functions of an official visitor; and
 - (b) how the official visitor may be contacted.
- (2) Without limiting subsection (1), an operating entity for a visitable place must, not later than when an entitled person first enters the place, give the person information about their right to make complaints under this Act in a way that is accessible to the person.

Examples—giving information

- 1 if an entitled person is likely to go to a common area in a visitable place—a notice in a prominent position on the wall in the area
- 2 if it is not practicable or appropriate to put up a notice in a visitable place—give an entitled person a pamphlet
- 3 if an entitled person is not able to see or understand information in writing—tell the person orally
- 4 if an entitled person is not able to understand the information—give written information to the person's legal guardian

21 Requests to meet official visitor

- (1) This section applies if an entitled person at a visitable place tells the operating entity for the place that the person wants to meet an official visitor.
- (2) The operating entity must ensure that an official visitor for the visitable place is told of the request as soon as practicable, but not later than 24 hours after the request is made.

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

22 Complaints to official visitors

- (1) An entitled person at a visitable place, or anyone else, may complain to an official visitor for the place about any aspect of the person's accommodation including—
- (a) the conditions of accommodation of an entitled person; or
 - (b) the care or services provided to an entitled person at the place; or
 - (c) the activities available to an entitled person at the place; or
 - (d) how the place is conducted.
- (2) The entitled person may make the complaint to the official visitor personally or through someone else.
- (3) The entitled person may ask to make a complaint—
- (a) to the official visitor with no-one else present; and
 - (b) to an official visitor of the same gender.
- (4) If the official visitor agrees that the complaint may be made with only the entitled person present, the operating entity must provide reasonably private facilities for the complaint to be made.
- (5) In this section:
- accommodation*, of an entitled person, includes, if an entitled person is detained or confined under an operational Act at a visitable place, the person's detention or confinement.

Part 5A Official visitors board

23A Establishment of official visitors board

The official visitors board is established.

23B Membership of official visitors board

- (1) The official visitors board is made up of—
 - (a) the public trustee and guardian; and
 - (b) at least 1 commissioner under the *Human Rights Commission Act 2005* nominated by the commissioners under that Act; and
 - (c) 2 official visitors elected by the official visitors; and
 - (d) any other members appointed by the Minister under subsection (2).
- (2) The Minister—
 - (a) must appoint the chair of the board; and
 - (b) may appoint other members of the board as the Minister considers appropriate.

Note 1 For the making of appointments (including acting appointments), see the *Legislation Act*, pt 19.3.

Note 2 In particular, a person may be appointed for a particular provision of a law (see *Legislation Act*, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see *Legislation Act*, s 207).

Note 3 Certain Ministerial appointments require consultation with an Assembly committee and are disallowable (see *Legislation Act*, div 19.3.3).

- (3) The Minister may determine procedures for subsection (1) (c).
- (4) A determination is a notifiable instrument.

Note A notifiable instrument must be notified under the *Legislation Act*.

23C Official visitors board functions

- (1) The official visitors board has the following functions:
 - (a) to oversee the exercise of functions by official visitors under this Act, an operational Act or another territory law;
 - (b) to arrange for the recruitment, induction, training and support of official visitors;
 - (c) to provide support for and manage the exercise of functions by official visitors under this Act, an operational Act or another territory law;
 - (d) to consider and try to resolve any complaints about official visitors;
 - (e) to exercise any other function given to the board under this Act, an operational Act or another territory law.
- (2) The chair of the board may arrange with the head of service to use the services of a public servant (the *official visitors executive officer*) to—
 - (a) provide support to the board in the exercise of the board's functions; and
 - (b) exercise any other function given to the official visitors executive officer under this Act, an operational Act or another territory law.

Note The head of service may delegate powers in relation to the management of public servants to a public servant or another person (see [Public Sector Management Act 1994](#), s 18).

- (3) The chair of official visitors board may delegate the board's functions under this Act, an operational Act or another territory law to the official visitors executive officer or another public servant.

Note For the making of delegations and the exercise of delegated functions, see the [Legislation Act](#), pt 19.4.

23D Official visitors board procedure

- (1) Meetings of the official visitors board are to be held when and where it decides.
- (2) However—
 - (a) the official visitors board must meet at least quarterly; and
 - (b) the chair of the board may, by reasonable written notice given to the other board members, call a meeting.
- (3) The official visitors board may conduct its proceedings (including its meetings) as it considers appropriate.

23DA Board annual report

- (1) The official visitors board must give the Minister, within 3 months after the end of a financial year, a written report for the financial year about—
 - (a) the number of—
 - (i) visits by official visitors to visitable places; and
 - (ii) complaints received by official visitors in relation to visitable places; and
 - (iii) referrals of complaints to investigative entities; and
 - (b) the action taken on the complaints received; and
 - (c) any systemic issues in relation to the operation of the Act identified by the board; and
 - (d) the number and kinds of matters referred by an official visitor to an investigative entity; and
 - (e) the number of times an official visitor inspected records in accordance with section 15 (2) (b).

- (2) 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.
- (3) The Minister must give additional public notice of the report.

Note **Public notice** means notice on an ACT government website or in a daily newspaper circulating in the ACT (see [Legislation Act](#), dict, pt 1). The requirement in s (3) is in addition to the requirement for the Minister to present the report to the Legislative Assembly under s (2).

- (4) In this section:

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 ombudsman and the integrity commissioner.

Part 6 Miscellaneous

23DB Register of visitable places

- (1) The relevant director-general for a visitable place must keep a register of each visitable place mentioned under the relevant operational Act.
- (2) The register—
 - (a) must include—
 - (i) the address of each visitable place; and
 - (ii) if relevant for a visitable place—the contact details of a person who can provide access to the place; and
 - (iii) any information prescribed by an operational Act; and
 - (b) may include—
 - (i) the name of each entitled person at each visitable place; and
 - (ii) the name and contact details of each operating entity for each visitable place; and
 - (iii) if an operating entity for a visitable place is not an individual—the name, phone number and email address of the following:
 - (A) an employee or volunteer based at the place;
 - (B) 2 employees of the entity.
- (3) The relevant director-general for a visitable place must, on request, give information on the register to any of the following:
 - (a) an official visitor for the place;
 - (b) the official visitors board;
 - (c) the official visitors executive officer;

- (d) the public advocate;
 - (e) a commissioner under the *Human Rights Commission Act 2005*;
 - (f) the senior practitioner.
- (4) The relevant director-general for a visitable place may, on request, give the information mentioned in subsection (2) (a) to any of the following people, if satisfied giving the information is reasonable in the circumstances:
- (a) a person exercising a function under this Act or the operational Act;
 - (b) a member of the emergency services under the *Emergencies Act 2004*;
 - (c) an entitled person at the place;
 - (d) a carer or legal representative of an entitled person at the place;
 - (e) anyone else approved by the relevant director-general.
- (5) In this section:
- carer*—see the *Guardianship and Management of Property Act 1991*, section 6.

legal representative, of an entitled person who does not have legal capacity, means the person's parent or guardian.

23E Voting at meetings

- (1) At an official visitors board meeting, each board member has a vote on each question to be decided.
- (2) A question is to be decided by a majority of the votes of the official visitors board members present and voting but, if the votes are equal, the chair of the board has a deciding vote.

23F Minister may make guidelines

- (1) The Minister may—
 - (a) after consulting the operational Minister for a visitable place, make guidelines about—
 - (i) visits by an official visitor for the place; and
 - (ii) the inspection by an official visitor for the place of records relating to entitled people at the place, including requirements and guidance for compliance with section 15 (2) (a) and (b) and (3); and
 - (iii) the handling of complaints, and referral of complaints to investigative entities, by an official visitor for the place; and
 - (iv) any other matter relating to the place or official visitor for the place; and
 - (b) make guidelines about any other matter.
- (2) A guideline is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

24 Protection of officials from liability

- (1) An official is not civilly liable for anything done or omitted to be done honestly and without recklessness—
 - (a) in the exercise of a function under this Act; or
 - (b) in the reasonable belief that the act or omission was in the exercise of a function under this Act.
- (2) Any civil liability that would, apart from subsection (1), attach to an official attaches instead to the Territory.

(3) In this section:

official means—

- (a) an official visitor; or
- (b) an official visitors board member; or
- (c) the official visitors executive officer; or
- (d) a person authorised under this Act to do or not to do a thing.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see [Legislation Act](#), s 104).

25 Offences—use or divulge protected information

- (1) A person to whom this section applies commits an offence if—
- (a) the person uses information; and
 - (b) the information is protected information about someone else; and
 - (c) the person is reckless about whether the information is protected information about someone else.

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

- (2) A person to whom this section applies commits an offence if—
- (a) the person does something that divulges information; and
 - (b) the information is protected information about someone else; and
 - (c) the person is reckless about whether—
 - (i) the information is protected information about someone else; and

- (ii) doing the thing would result in the information being divulged to someone else.

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

- (3) Subsections (1) and (2) do not apply if the information is used or divulged—
 - (a) under this Act or another territory law; or
 - (b) in relation to the exercise of a function, as a person to whom this section applies, under this Act or another territory law; or
 - (c) in a court proceeding.
- (4) Subsections (1) and (2) do not apply to the using or divulging of protected information about a person with the person's consent.

Note The defendant has an evidential burden in relation to the matters mentioned in ss (3) and (4) (see [Criminal Code](#), s 58).

- (5) A person to whom this section applies need not divulge protected information to a court, or produce a document containing protected information to a court, unless it is necessary to do so for this Act or another law applying in the territory.
- (6) In this section:

court includes a tribunal, authority or person having power to require the production of documents or the answering of questions.

divulge includes—

- (a) communicate; or
- (b) publish.

person to whom this section applies means—

- (a) a person who is or has been an official visitor; or
- (b) anyone else who has exercised a function under this Act.

produce includes allow access to.

protected information means information about a person that is disclosed to, or obtained by, a person to whom this section applies because of the exercise of a function under this Act by the person or someone else.

use information includes make a record of the information.

26 **Approved forms**

- (1) The Minister may approve forms for this Act.
- (2) If the Minister approves a form for a particular purpose, the approved form must be used for that purpose.

Note For other provisions about forms, see the [Legislation Act](#), s 255.

- (3) An approved form is a notifiable instrument.

Note A notifiable instrument must be notified under the [Legislation Act](#).

27 **Regulation-making power**

The Executive may make regulations for this Act.

Note A regulation must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

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
- integrity commissioner
- Minister (see s 162)
- public advocate
- public trustee and guardian.

entitled person, at a visitable place—see section 8.

health record—see the [Health Records \(Privacy and Access\) Act 1997](#), dictionary.

official visitor, for a visitable place—see section 6.

official visitors board means the official visitors board established under section 23A.

official visitors executive officer—see section 23C (2).

operating entity, for a visitable place, means—

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

operational Act—see section 7.

operational Minister, for a visitable place, means the Minister responsible for the operational Act under which the visitable place is mentioned.

relevant director-general, for a visitable place, means the director-general of the administrative unit responsible for the operational Act under which the place is mentioned.

senior practitioner means the Senior Practitioner under the [Senior Practitioner Act 2018](#).

visitable place—see section 9.

Endnotes

1 About the endnotes

Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws are not included in the republished law. The details of these laws are underlined in the legislation history. Uncommenced expiries are underlined in the legislation history and amendment history.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

2 Abbreviation key

A = Act	NI = Notifiable instrument
AF = Approved form	o = order
am = amended	om = omitted/repealed
amdt = amendment	ord = ordinance
AR = Assembly resolution	orig = original
ch = chapter	par = paragraph/subparagraph
CN = Commencement notice	pres = present
def = definition	prev = previous
DI = Disallowable instrument	(prev...) = previously
dict = dictionary	pt = part
disallowed = disallowed by the Legislative Assembly	r = rule/subrule
div = division	reloc = relocated
exp = expires/expired	renum = renumbered
Gaz = gazette	R[X] = Republication No
hdg = heading	RI = reissue
IA = Interpretation Act 1967	s = section/subsection
ins = inserted/added	sch = schedule
LA = Legislation Act 2001	sdiv = subdivision
LR = legislation register	SL = Subordinate law
LRA = Legislation (Republication) Act 1996	sub = substituted
mod = modified/modification	<u>underlining</u> = whole or part not commenced or to be expired

3 Legislation history

Official Visitor Act 2012 A2012-33

notified LR 15 June 2012
s 1, s 2 commenced 15 June 2012 (LA s 75 (1))
remainder commenced 1 September 2013 (s 2 (as am by [A2013-22](#)
s 4))

as amended by

[Official Visitor Amendment Act 2013 A2013-22](#)

notified LR 17 June 2013
s 1, s 2 commenced 17 June 2013 (LA s 75 (1))
remainder commenced 1 September 2013 (s 2 and see A2012-33 s 2
as am by this Act)

[Mental Health Act 2015 A2015-38 sch 2 pt 2.4 div 2.4.12](#)

notified LR 7 October 2015
s 1, s 2 commenced 7 October 2015 (LA s 75 (1))
sch 2 pt 2.4 div 2.4.12 commenced 1 March 2016 (s 2 (1) and see
[Mental Health \(Treatment and Care\) Amendment Act 2014 A2014-51](#),
s 2 (as am by [A2015-38](#) amdt 2.54))

[Protection of Rights \(Services\) Legislation Amendment Act 2016 \(No 2\) A2016-13 sch 1 pt 1.29](#)

notified LR 16 March 2016
s 1, s 2 commenced 16 March 2016 (LA s 75 (1))
sch 1 pt 1.29 commenced 1 April 2016 (s 2 and see [Protection of Rights \(Services\) Legislation Amendment Act 2016 A2016-1 s 2](#))

[Statute Law Amendment Act 2017 \(No 2\) A2017-28 sch 3 pt 3.10](#)

notified LR 27 September 2017
s 1, s 2 commenced 27 September 2017 (LA s 75 (1))
sch 3 pt 3.10 commenced 11 October 2017 (s 2)

[Integrity Commission Act 2018 A2018-52 sch 1 pt 1.18 \(as am by A2019-18 s 4\)](#)

notified LR 11 December 2018
s 1, s 2 commenced 11 December 2018 (LA s 75 (1))
sch 1 pt 1.18 commenced 1 December 2019 (s 2 (2) (a) as am by
[A2019-18](#) s 4)

Endnotes

3 Legislation history

Integrity Commission Amendment Act 2019 A2019-18

notified LR 14 June 2019

s 1, s 2 commenced 14 June 2019 (LA s 75 (1))

s 3, s 4 commenced 15 June 2019 (s 2 (1))

Note This Act only amends the [Integrity Commission Act 2018 A2018-52](#).

Official Visitor Amendment Act 2019 A2019-29

notified LR 2 October 2019

s 1, s 2 commenced 2 October 2019

s 7, s 9, s 10 (so far as it inserts s 15 (2)-(7)), s 16, s 19, ss 25-30, ss 32-35, s 37 commenced 2 April 2020 (s 2 (1) and LA s 79)

remainder commenced 3 October 2019 (s 2 (2))

COVID-19 Emergency Response Act 2020 A2020-11 sch 1 pt 1.15

notified LR 7 April 2020

s 1, s 2 commenced 7 April 2020 (LA s 75 (1))

sch 1 pt 1.15 commenced 8 April 2020 (s 2 (1))

4 Amendment history

Commencement

s 2 sub [A2013-22](#) s 4
om LA s 89 (4)

Who is an *official visitor*?

s 6 sub [A2019-29](#) s 4

What is an *operational Act*?

s 7 am [A2015-38](#) amdt 2.81

Who is an *entitled person*?

s 8 sub [A2019-29](#) s 5

What is a *visitable place*?

s 9 sub [A2019-29](#) s 5

Authorisation to visit places

s 9A ins [A2019-29](#) s 5

Appointment

s 10 am [A2015-38](#) amdt 2.81
sub [A2019-29](#) s 6

Ending appointment

s 12 am [A2013-22](#) s 5, s 24; [A2019-29](#) s 7, s 8

Handover of records by official visitors

s 13 am [A2019-29](#) s 9

Official visitor functions

s 14 am [A2013-22](#) s 24
sub [A2019-29](#) s 10

Independence of official visitors

s 14A ins [A2019-29](#) s 10

Official visitor may enter visitable place etc

s 15 hdg sub [A2013-22](#) s 6; [A2019-29](#) s 10
s 15 am [A2013-22](#) s 7; ss renum R1 LA
sub [A2019-29](#) s 10

Official visitor must report non-compliant visitable places

s 16 am [A2013-22](#) s 8; [A2019-29](#) ss 11-13

Reporting of complaints

s 17 am [A2013-22](#) s 9; [A2017-28](#) amdt 3.30; [A2019-29](#) s 14, s 15;
[A2018-52](#) amdt 1.96
sub [A2019-29](#) s 16

Endnotes

4 Amendment history

Assistance to official visitors

s 18 am [A2013-22](#) s 10, s 11; [A2019-29](#) s 17, s 18; [A2019-29](#) s 19;
ss renum R9 LA

Offences—failure to provide assistance etc

s 19 am [A2013-22](#) s 12

Visits and complaints

pt 5 hdg sub [A2013-22](#) s 13

Operating entity must let entitled people know about official visitors

s 20 am [A2019-29](#) s 20

Requests to meet official visitor

s 21 am [A2013-22](#) s 14; [A2019-29](#) s 21, s 22

Complaints to official visitors

s 22 am [A2019-29](#) s 23, s 24

Visit and complaint guidelines

s 23 hdg sub [A2013-22](#) s 15
s 23 am [A2013-22](#) s 16, s 24
om [A2019-29](#) s 25

Official visitors board

pt 5A hdg ins [A2013-22](#) s 17

Establishment of official visitors board

s 23A ins [A2013-22](#) s 17

Membership of official visitors board

s 23B ins [A2013-22](#) s 17
am [A2016-13](#) amdts 1.98-1.100; pars renum R4 LA; [A2017-28](#)
amdt 3.31; [A2019-29](#) s 26, s 27

Official visitors board functions

s 23C ins [A2013-22](#) s 17
sub [A2019-29](#) s 28

Official visitors board procedure

s 23D ins [A2013-22](#) s 17
am [A2016-13](#) amdt 1.101; [A2019-29](#) s 29

Board annual report

s 23DA ins [A2019-29](#) s 30
am [A2020-11](#) amdt 1.61
(3A), (3B) exp 8 October 2020 (s 23DA (3B))

Register of visitable places

s 23DB ins [A2019-29](#) s 31; [A2019-29](#) s 32; pars renum R9 LA

Voting at meetings

s 23E ins [A2016-13](#) amdt 1.102; [A2019-29](#) s 33

Minister may make guidelines

s 23F ins [A2019-29](#) s 34

Protection of officials from liability

s 24 am [A2013-22](#) s 18; pars renum R1 LA; [A2019-29](#) s 35;
pars renum R9 LA

Offences—use or divulge protected information

s 25 am [A2013-22](#) s 19

Approved forms

s 26 am [A2017-28](#) amdt 3.32

Legislation amended—sch 1

s 28 om LA s 89 (3)

Transitional

pt 10 hdg exp 1 September 2015 (s 54)

Definitions—pt 10

s 50 exp 1 September 2015 (s 54)
def **commencement day** exp 1 September 2015 (s 54)
def **operational Act** exp 1 September 2015 (s 54)

Unfinished complaints to official visitors

s 51 exp 1 September 2015 (s 54)

Existing appointments

s 52 exp 1 September 2015 (s 54)

Transitional regulations

s 53 exp 1 September 2015 (s 54)

Expiry—pt 10

s 54 exp 1 September 2015 (s 54)

Transitional—Mental Health Act 2015

pt 11 hdg ins [A2015-38](#) amdt 2.82
exp 1 September 2016 (s 62)

Definitions—pt 11

s 60 ins [A2015-38](#) amdt 2.82
exp 1 September 2016 (s 62)
def **commencement day** ins [A2015-38](#) amdt 2.82
exp 1 September 2016 (s 62)
def **repealed Act** ins [A2015-38](#) amdt 2.82
exp 1 September 2016 (s 62)

Continued appointment

s 61 ins [A2015-38](#) amdt 2.82
exp 1 September 2016 (s 62)

Endnotes

4 Amendment history

Expiry—pt 11

s 62 ins [A2015-38](#) amdt 2.82
exp 1 September 2016 (s 62)

Consequential amendments

sch 1 hdg om LA s 89 (3)

Children and Young People Act 2008

sch 1 pt 1.1 om LA s 89 (3)

Corrections Management Act 2007

sch 1 pt 1.2 om LA s 89 (3)

Disability Services Act 1991

sch 1 pt 1.3 om LA s 89 (3)

New section 9A

sch 1 amdt 1.27 om [A2013-22](#) s 20

New section 11

sch 1 amdt 1.28 om [A2013-22](#) s 20

Housing Assistance Act 2007

sch 1 pt 1.4 om LA s 89 (3)

Legislation Act 2001

sch 1 pt 1.5 om LA s 89 (3)

Mental Health (Treatment and Care) Act 1994

sch 1 pt 1.6 om LA s 89 (3)

Territory Records Regulation 2009

sch 1 pt 1.7 om LA s 89 (3)

Dictionary

dict am [A2013-22](#) s 21; [A2016-13](#) amdt 1.103; [A2018-52](#)
amdt 1.97
def **entitled person** sub [A2019-29](#) s 36
def **health record** ins [A2013-22](#) s 22
def **investigative entity** am [A2016-13](#) amdt 1.104
om [A2017-28](#) amdt 3.33
def **official visitor** sub [A2019-29](#) s 36
def **official visitors board** ins [A2013-22](#) s 22
def **official visitors executive officer** ins [A2019-29](#) s 37
def **operating entity** am [A2013-22](#) s 23
def **operational Minister** sub [A2019-29](#) s 38
def **relevant director-general** sub [A2019-29](#) s 38
def **senior practitioner** ins [A2019-29](#) s 39
def **visitable place** sub [A2019-29](#) s 40

5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (*) in column 1. Electronic and printed versions of an authorised republication are identical.

Republication No and date	Effective	Last amendment made by	Republication for
R1 1 Sept 2013	1 Sept 2013– 1 Sept 2015	A2013-22	new Act and amendments by A2013-22
R2 2 Sept 2016	2 Sept 2015– 29 Feb 2016	A2013-22	expiry of transitional provisions (pt 10)
R3 1 Mar 2016	1 Mar 2016– 31 Mar 2016	A2015-38	amendments by A2015-38
R4 1 Apr 2016	1 Apr 2016– 1 Sep 2016	A2016-13	amendments by A2016-13
R5 2 Sept 2016	2 Sept 2016– 10 Oct 2017	A2016-13	expiry of transitional provisions (pt 11)
R6 11 Oct 2017	11 Oct 2017– 2 Oct 2019	A2017-28	amendments by A2017-28
R7 3 Oct 2019	3 Oct 2019– 30 Nov 2019	A2019-29	amendments by A2019-29
R8 1 Dec 2019	1 Dec 2019– 1 Apr 2020	A2019-29	amendments by A2018-52 as amended by A2019-18
R9 2 Apr 2020	2 Apr 2020– 7 Apr 2020	A2019-29	amendments by A2019-29
R10 8 Apr 2020	8 Apr 2020– 8 Oct 2020	A2020-11	amendments by A2020-11

Endnotes

6 Expired transitional or validating provisions

6 Expired transitional or validating provisions

This Act may be affected by transitional or validating provisions that have expired. The expiry does not affect any continuing operation of the provisions (see [Legislation Act 2001](#), s 88 (1)).

Expired provisions are removed from the republished law when the expiry takes effect and are listed in the amendment history using the abbreviation ‘exp’ followed by the date of the expiry.

To find the expired provisions see the version of this Act before the expiry took effect. The ACT legislation register has point-in-time versions of this Act.

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