



Australian Capital Territory

# Official Visitor Amendment Act 2013

A2013-22

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Australian Capital Territory

# Official Visitor Amendment Act 2013

A2013-22

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An Act to amend the *Official Visitor Act 2012*, and for other purposes

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

**1 Name of Act**

This Act is the *Official Visitor Amendment Act 2013*.

**2 Commencement**

This Act commences on the commencement of the *Official Visitor Act 2012*, section 3.

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

**3 Legislation amended**

This Act amends the *Official Visitor Act 2012*.

*Note* This Act also amends the following legislation (see sch 1):

- [Children and Young People Act 2008](#)
- [Corrections Management Act 2007](#)
- [Disability Services Act 1991](#)
- [Housing Assistance Act 2007](#)
- [Mental Health \(Treatment and Care\) Act 1994](#).

**4 Section 2**

*substitute*

**2 Commencement**

This Act commences on 1 September 2013.

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

**5**      **Ending appointment**  
**Section 12 (1) (b) (i)**

*omit*

complaints

*substitute*

visit and complaint

**6**      **Section 15 heading**

*substitute*

**15**      **Official visitor may enter visitable place**

**7**      **New section 15 (1A)**

*after the note, insert*

(1A) The official visitor may when at the visitable place inspect—

- (a) any health record or any other record relating to an entitled person at the visitable place if 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; and
- (b) any other record required to be kept under the operational Act.

**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

**8 Official visitor must report non-compliant visitable places  
New section 16 (2) (b) (iii)**

*insert*

- (iii) the official visitors board.

**9 Reporting of complaints  
New section 17 (2) (c)**

*insert*

- (c) the official visitors board.

**10 Assistance to official visitors  
Section 18 (1) and example and note**

*substitute*

- (1) If asked by an official visitor (the *responsible official visitor*) for an operational Act, an official visitor for another operational Act may assist the responsible official visitor in the exercise of the responsible official visitor's functions.

**Example**

A young person with disability is detained in a youth correctional facility. An official visitor for the correctional facility asks an official visitor appointed under the *Disability Services Act 1991* to accompany her on a visit to the facility.

*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).

**11 Section 18 (4)**

*omit*

**12**      **Offences—failure to provide assistance etc**  
**Section 19 (4), definition of *person in charge*,**  
**paragraph (a)**

*omit 1st mention of*  
relevant director-general  
*substitute*  
Territory

**13**      **Part 5 heading**

*substitute*

## **Part 5                                  Visits and complaints**

**14**      **Requests to meet official visitor**  
**Section 21 (2)**

*omit*  
12  
*substitute*  
24

**15**      **Section 23 heading**

*substitute*

**23**      **Visit and complaint guidelines**

**16 Section 23 (1)**

*substitute*

- (1) The Minister may, after consulting the operational Minister for an operational Act, make guidelines about—
  - (a) visits by an official visitor for the operational Act; and
  - (b) the handling of complaints, and referral of complaints to investigative entities, by an official visitor for the operational Act.

**17 New part 5A**

*insert*

**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
  - (b) the public advocate; and
  - (c) at least 1 commissioner under the *Human Rights Commission Act 2005* nominated by the commissioners under that Act; and
  - (d) 2 official visitors elected by the official visitors.
- (2) The chair of the board is the public trustee.
- (3) The Minister may determine procedures for subsection (1) (d).



- (4) A determination is a notifiable instrument.

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

### **23C Official visitors board functions**

The official visitors board has the following functions:

- (a) to arrange training for official visitors;
- (b) to facilitate interaction between official visitors;

*Note* An official visitor may ask an official visitor for another operational Act for assistance (see s 18 (1)).

- (c) to arrange for the provision of administrative assistance to official visitors;
- (d) to exercise any other function given to the board under this Act, an operational Act or another territory law.

### **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 twice each year; and
  - (b) the public trustee may, by reasonable written notice given to the other official visitors board members, call a meeting.
- (3) The official visitors board may conduct its proceedings (including its meetings) as it considers appropriate.

## **18 Protection of officials from liability Section 24 (3), definition of *official*, new paragraph (aa)**

*insert*

- (aa) an official visitors board member; or

**19 Offences—use or divulge protected information  
Section 25 (6), definition of *protected information*, note**

*omit*

**20 Consequential amendments  
Schedule 1, amendments 1.27 and 1.28**

*omit*

**21 Dictionary, note 2**

*insert*

- public trustee

**22 Dictionary, new definitions**

*insert*

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

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

**23 Dictionary, definition of *operating entity***

*omit*

site

*substitute*

place

**24 Further amendments, mentions of *inspect***

*omit*

inspect

*insert*

visit

*in*

- section 12 (1) (b)
- section 14
- section 23 (2)

## Schedule 1      Other amendments

(see s 3)

### Part 1.1      Children and Young People Act 2008

#### [1.1]      Part 2.3 heading, note

*omit*

inspecting

*substitute*

visiting

#### [1.2]      Section 40

*omit*

#### [1.3]      Section 153 (1), note

*omit*

inspect

*substitute*

visit

#### [1.4]      Dictionary, note 2

*omit*

- official visitor

#### [1.5]      Dictionary, new definition of *official visitor*

*insert*

***official visitor*** means an official visitor for this Act appointed under the [Official Visitor Act 2012](#), section 10.

---

## Part 1.2                      Corrections Management    Act 2007

### [1.6]            Section 57, note

*omit*

inspecting

*substitute*

visiting

### [1.7]            Section 57, note

*omit*

This part also prescribes other matters for the OV Act.

### [1.8]            Section 58

*omit*

### [1.9]            Dictionary, note 2

*omit*

- official visitor

### [1.10]          Dictionary, new definition of *official visitor*

*insert*

***official visitor*** means an official visitor for this Act appointed under the *Official Visitor Act 2012*, section 10.

## Part 1.3      Disability Services Act 1991

### [1.11]      Section 6 (2) (c) and note

*substitute*

- (c) if a provider of disability accommodation is to be funded by the grant, the provider and accommodation would comply with any relevant standards approved under section 11.

### [1.12]      Part 3 heading, note

*omit*

inspecting

*substitute*

visiting

### [1.13]      Section 8A

*substitute*

#### 8A      Meaning of *official visitor* etc

In this Act:

*entitled person* means a person with disability.

*official visitor* means an official visitor for this Act appointed under the [Official Visitor Act 2012](#), section 10.

*visitable place*—

- (a) means disability accommodation for respite or long-term residential purposes, wholly or partly funded by the Territory; and
- (b) includes a residential aged care facility that accommodates a person with disability who is less than 65 years old.

**[1.14] Section 8B (1)**

*omit*

under this Act

*substitute*

wholly or partly by the Territory

**[1.15] Section 8B (1), new example**

*insert*

**Example—place other than a visitable place**

a private home

*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).

**[1.16] Section 8B (2) and (3)**

*omit*

inspect

*substitute*

visit

**[1.17] Section 8C**

*substitute*

**8C Official visitors must give notice of visit**

- (1) An official visitor must give the director-general written notice that the official visitor intends to visit a visitable place at least 24 hours before the official visitor's visit.

- (2) However, the official visitor may visit a visitable place without giving notice 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 consents to the visit.

**[1.18] Section 8E, note 2**

*omit*

s 11

*substitute*

s 11A

**[1.19] New section 11A**

*insert*

**11A 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](#).

**[1.20] Dictionary, note 2**

*omit*

- official visitor



**[1.21] Dictionary, new definition of *official visitor***

*insert*

*official visitor*—see section 8A.

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

**[1.22] Part 4B heading, note**

*omit*

inspecting

*substitute*

visiting

**[1.23] Section 25V heading**

*substitute*

**25V Meaning of *official visitor* etc**

**[1.24] Section 25V, definition of *visitable place***

*substitute*

*official visitor* means an official visitor for this Act appointed under the [Official Visitor Act 2012](#), section 10.

*visitable place* means multiple occupancy supported accommodation for people who are homeless or at risk of homelessness, provided by an entity funded by the Territory.

**[1.25]    Section 25W**

*omit*

inspection

*substitute*

visit

**[1.26]    Section 25W**

*omit*

inspect

*substitute*

visit

**[1.27]    Section 25W (2) (b)**

*omit*

agrees

*substitute*

consents

**[1.28]    Section 25W (3)**

*substitute*

(3) In this section:

***operating entity***, for a visitable place, means—

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

**[1.29] Dictionary, note 2**

*omit*

- official visitor

**[1.30] Dictionary, new definition of *official visitor***

*insert*

*official visitor*—see section 25V.

## **Part 1.5                      Mental Health (Treatment and Care) Act 1994**

**[1.31] Part 11 heading, note**

*omit*

inspecting

*substitute*

visiting

**[1.32] Section 121 heading**

*substitute*

**121                      Meaning of *official visitor* etc**

**[1.33] Section 121, definition of *visitable place***

*substitute*

*official visitor* means an official visitor for this Act appointed under the [Official Visitor Act 2012](#), section 10.

*visitable place* means—

- (a) a mental health facility; or

- (b) a long-term residential accommodation facility or respite facility at which a person receiving treatment or care for mental dysfunction or a mental illness may stay; or
- (c) a place in a correctional centre where a detainee is receiving treatment or care for mental dysfunction or a mental illness for the period in which the treatment or care is given to the detainee.

*Note*     A visitable place mentioned in par (c) is also a visitable place for an official visitor under the *Corrections Management Act 2007* (see that *Act*, s 57).

**[1.34]     Section 122B**

*substitute*

**122B     Notice to official visitor of detainee receiving mental health treatment or care in correctional centre**

- (1) This section applies if a detainee in a correctional centre is receiving treatment or care for mental dysfunction or a mental illness in a visitable place in a correctional centre.
- (2) The doctor for the correctional centre must give an official visitor for this Act written notice that a detainee is receiving treatment or care for mental dysfunction or a mental illness in the visitable place as soon as practicable, but not later than 24 hours after the detainee starts receiving treatment or care in the place.

*Note*     A visitable place in a correctional centre is also a visitable place for an official visitor under the *Corrections Management Act 2007* (see that *Act*, s 57).

- (3) In this section:

***doctor***, for a correctional centre, means the doctor appointed under the *Corrections Management Act 2007*, section 21 (1) for the centre.

**[1.35] Section 122C (1) (a)**

*before*

funded

*insert*

wholly or partly

**[1.36] Section 122C (2) and (3)**

*omit*

inspect

*substitute*

visit

**[1.37] Dictionary, note 2**

*omit*

- official visitor

**[1.38] Dictionary, new definition of *official visitor***

*insert*

*official visitor*—see section 121.

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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 16 May 2013.

**2 Notification**

Notified under the [Legislation Act](#) on 17 June 2013.

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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I certify that the above is a true copy of the Official Visitor Amendment Bill 2013, which was passed by the Legislative Assembly on 6 June 2013.

Clerk of the Legislative Assembly

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