

2013

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Official Visitor Amendment Bill 2013

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Official Visitor Amendment Bill 2013

A Bill for

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

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

1 **1 Name of Act**

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

3 **2 Commencement**

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

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

8 **3 Legislation amended**

9 This Act amends the *Official Visitor Act 2012*.

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

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

16 **4 Section 2**

17 *substitute*

18 **2 Commencement**

19 This Act commences on 1 September 2013.

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

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

3 *omit*

4 complaints

5 *substitute*

6 visit and complaint

7 **6** **Section 15 heading**

8 *substitute*

9 **15** **Official visitor may enter visitable place**

10 **7** **New section 15 (1A)**

11 *after the note, insert*

12 (1A) The official visitor may when at the visitable place inspect—

13 (a) any health record or any other record relating to an entitled
14 person at the visitable place if the official visitor has the
15 entitled person's—

16 (i) written consent; or

17 (ii) oral consent, if a written record of the consent is made by
18 a person who heard the consent being given; and

19 (b) any other record required to be kept under the operational Act.

20 **Examples—other record relating to an entitled person**

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

1 **8 Official visitor must report non-compliant visitable places**
2 **New section 16 (2) (b) (iii)**

3 *insert*

4 (iii) the official visitors board.

5 **9 Reporting of complaints**
6 **New section 17 (2) (c)**

7 *insert*

8 (c) the official visitors board.

9 **10 Assistance to official visitors**
10 **Section 18 (1) and example and note**

11 *substitute*

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

16 **Example**

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

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

23 **11 Section 18 (4)**

24 *omit*

1 **12** **Offences—failure to provide assistance etc**
2 **Section 19 (4), definition of *person in charge*,**
3 **paragraph (a)**

4 *omit 1st mention of*
5 *relevant director-general*
6 *substitute*
7 *Territory*

8 **13** **Part 5 heading**

9 *substitute*

10 **Part 5** **Visits and complaints**

11 **14** **Requests to meet official visitor**
12 **Section 21 (2)**

13 *omit*
14 *12*
15 *substitute*
16 *24*

17 **15** **Section 23 heading**

18 *substitute*

19 **23** **Visit and complaint guidelines**

1 **16 Section 23 (1)**

2 *substitute*

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

9 **17 New part 5A**

10 *insert*

11 **Part 5A Official visitors board**

12 **23A Establishment of official visitors board**

13 The official visitors board is established.

14 **23B Membership of official visitors board**

- 15 (1) The official visitors board is made up of—
16 (a) the public trustee; and
17 (b) the public advocate; and
18 (c) at least 1 commissioner under the *Human Rights Commission*
19 *Act 2005* nominated by the commissioners under that Act; and
20 (d) 2 official visitors elected by the official visitors.
21 (2) The chair of the board is the public trustee.
22 (3) The Minister may determine procedures for subsection (1) (d).

1 (4) A determination is a notifiable instrument.

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

3 **23C Official visitors board functions**

4 The official visitors board has the following functions:

5 (a) to arrange training for official visitors;

6 (b) to facilitate interaction between official visitors;

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

9 (c) to arrange for the provision of administrative assistance to
10 official visitors;

11 (d) to exercise any other function given to the board under this
12 Act, an operational Act or another territory law.

13 **23D Official visitors board procedure**

14 (1) Meetings of the official visitors board are to be held when and
15 where it decides.

16 (2) However—

17 (a) the official visitors board must meet at least twice each year;
18 and

19 (b) the public trustee may, by reasonable written notice given to
20 the other official visitors board members, call a meeting.

21 (3) The official visitors board may conduct its proceedings (including
22 its meetings) as it considers appropriate.

23 **18 Protection of officials from liability**
24 **Section 24 (3), definition of *official*, new paragraph (aa)**

25 *insert*

26 (aa) an official visitors board member; or

1 **19 Offences—use or divulge protected information**
2 **Section 25 (6), definition of *protected information*, note**

3 *omit*

4 **20 Consequential amendments**
5 **Schedule 1, amendments 1.27 and 1.28**

6 *omit*

7 **21 Dictionary, note 2**

8 *insert*

- 9
 - public trustee

10 **22 Dictionary, new definitions**

11 *insert*

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

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

16 **23 Dictionary, definition of *operating entity***

17 *omit*

18 site

19 *substitute*

20 place

1 **24 Further amendments, mentions of *inspect***

2 *omit*

3 inspect

4 *insert*

5 visit

6 *in*

- 7 • section 12 (1) (b)
- 8 • section 14
- 9 • section 23 (2)

1 **Schedule 1 Other amendments**

2 (see s 3)

3 **Part 1.1 Children and Young People**
4 **Act 2008**

5 **[1.1] Part 2.3 heading, note**

6 *omit*

7 inspecting

8 *substitute*

9 visiting

10 **[1.2] Section 40**

11 *omit*

12 **[1.3] Section 153 (1), note**

13 *omit*

14 inspect

15 *substitute*

16 visit

17 **[1.4] Dictionary, note 2**

18 *omit*

- 19
 - official visitor

20 **[1.5] Dictionary, new definition of *official visitor***

21 *insert*

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

1 **Part 1.2** **Corrections Management**
2 **Act 2007**

3 **[1.6] Section 57, note**

4 *omit*
5 inspecting
6 *substitute*
7 visiting

8 **[1.7] Section 57, note**

9 *omit*
10 This part also prescribes other matters for the OV Act.

11 **[1.8] Section 58**

12 *omit*

13 **[1.9] Dictionary, note 2**

14 *omit*
15 • official visitor

16 **[1.10] Dictionary, new definition of *official visitor***

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

1 **Part 1.3 Disability Services Act 1991**

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

3 *substitute*

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

7 **[1.12] Part 3 heading, note**

8 *omit*

9 inspecting

10 *substitute*

11 visiting

12 **[1.13] Section 8A**

13 *substitute*

14 **8A Meaning of *official visitor* etc**

15 In this Act:

16 *entitled person* means a person with disability.

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

19 *visitable place*—

20 (a) means disability accommodation for respite or long-term
21 residential purposes, wholly or partly funded by the Territory;
22 and

23 (b) includes a residential aged care facility that accommodates a
24 person with disability who is less than 65 years old.

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

2 *omit*

3 under this Act

4 *substitute*

5 wholly or partly by the Territory

6 **[1.15] Section 8B (1), new example**

7 *insert*

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

9 a private home

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

13 **[1.16] Section 8B (2) and (3)**

14 *omit*

15 inspect

16 *substitute*

17 visit

18 **[1.17] Section 8C**

19 *substitute*

20 **8C Official visitors must give notice of visit**

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

- 1 (2) However, the official visitor may visit a visitable place without
2 giving notice if—
- 3 (a) the official visitor reasonably believes, or has been given a
4 complaint, that an entitled person at the visitable place is at risk
5 of harm; and
- 6 (b) the entitled person consents to the visit.

7 **[1.18] Section 8E, note 2**

8 *omit*

9 s 11

10 *substitute*

11 s 11A

12 **[1.19] New section 11A**

13 *insert*

14 **11A Approved forms**

- 15 (1) The Minister may approve forms for this Act.
- 16 (2) If the Minister approves a form for a particular purpose, the
17 approved form must be used for that purpose.
- 18 *Note* For other provisions about forms, see the [Legislation Act](#), s 255.
- 19 (3) An approved form is a notifiable instrument.

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

21 **[1.20] Dictionary, note 2**

22 *omit*

- 23 • official visitor

1 **[1.21] Dictionary, new definition of *official visitor***

2 *insert*

3 *official visitor*—see section 8A.

4 **Part 1.4 Housing Assistance Act 2007**

5 **[1.22] Part 4B heading, note**

6 *omit*

7 inspecting

8 *substitute*

9 visiting

10 **[1.23] Section 25V heading**

11 *substitute*

12 **25V Meaning of *official visitor* etc**

13 **[1.24] Section 25V, definition of *visitable place***

14 *substitute*

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

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

1 **[1.25] Section 25W**

2 *omit*
3 inspection
4 *substitute*
5 visit

6 **[1.26] Section 25W**

7 *omit*
8 inspect
9 *substitute*
10 visit

11 **[1.27] Section 25W (2) (b)**

12 *omit*
13 agrees
14 *substitute*
15 consents

16 **[1.28] Section 25W (3)**

17 *substitute*

18 (3) In this section:

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

20 (a) if the Territory operates the place—the director-general; or

21 (b) in any other case—the entity that operates the place.

1 **[1.29] Dictionary, note 2**

2 *omit*

- 3 • official visitor

4 **[1.30] Dictionary, new definition of *official visitor***

5 *insert*

6 *official visitor*—see section 25V.

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

9 **[1.31] Part 11 heading, note**

10 *omit*

11 inspecting

12 *substitute*

13 visiting

14 **[1.32] Section 121 heading**

15 *substitute*

16 **121 Meaning of *official visitor* etc**

17 **[1.33] Section 121, definition of *visitable place***

18 *substitute*

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

21 *visitable place* means—

- 22 (a) a mental health facility; or

1 (b) a long-term residential accommodation facility or respite
2 facility at which a person receiving treatment or care for
3 mental dysfunction or a mental illness may stay; or

4 (c) a place in a correctional centre where a detainee is receiving
5 treatment or care for mental dysfunction or a mental illness for
6 the period in which the treatment or care is given to the
7 detainee.

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

11 **[1.34] Section 122B**

12 *substitute*

13 **122B Notice to official visitor of detainee receiving mental**
14 **health treatment or care in correctional centre**

15 (1) This section applies if a detainee in a correctional centre is receiving
16 treatment or care for mental dysfunction or a mental illness in a
17 visitable place in a correctional centre.

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

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

26 (3) In this section:

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

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

2 *before*

3 funded

4 *insert*

5 wholly or partly

6 **[1.36] Section 122C (2) and (3)**

7 *omit*

8 inspect

9 *substitute*

10 visit

11 **[1.37] Dictionary, note 2**

12 *omit*

- 13
 - official visitor

14 **[1.38] Dictionary, new definition of *official visitor***

15 *insert*

16 *official visitor*—see section 121.

Endnotes

1 Presentation speech

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

2 Notification

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

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

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