

2018

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Disability)

Disability Services Amendment Bill 2018

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Disability Services Amendment Bill 2018

A Bill for

An Act to amend the *Disability Services Act 1991*

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

1 **1 Name of Act**

2 This Act is the *Disability Services Amendment Act 2018*.

3 **2 Commencement**

4 This Act commences on the day after its notification day.

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

7 **3 Legislation amended**

8 This Act amends the *Disability Services Act 1991*.

9 **4 Parts 3 and 4**

10 *substitute*

11 **Part 3 Official visitors**

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

14 The **OV Act** sets out the functions of official visitors which includes
15 visiting visitable places, handling complaints from entitled people and
16 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 **8A Definitions—pt 3**

20 In this part:

21 *associated*—a specialist disability service provider is *associated* with
22 a visitable place if the provider—

- 23 (a) is the operating entity for the place; or
24 (b) owns or rents the place; or
25 (c) provides a specialist disability service at the place.

1 *entitled person* means a person with disability.

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

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

6 **8B Meaning of visitable place—pt 3**

7 (1) In this part:

8 *visitable place*—

9 (a) means accommodation provided to an entitled person for respite
10 or long-term residential purposes; and

11 (b) includes—

12 (i) accommodation that is owned, rented or operated by a
13 specialist disability service provider; and

14 (ii) accommodation at which a specialist disability service
15 provider provides a specialist disability service; and

16 (iii) a residential aged care facility that accommodates the
17 entitled person.

18 (2) However, a *visitable place* does not include the following
19 accommodation provided to an entitled person:

20 (a) a private home if the person receives a specialist disability
21 service at the home only from a person who is not a specialist
22 disability service provider;

23 (b) a private home if the person lives in the home with at least 1
24 adult family member who does not receive a specialist disability
25 service from a specialist disability service provider at the home;

26 (c) accommodation if the only specialist disability service the
27 person receives at the accommodation is a type of service
28 declared by the Minister not to require visitation;

1 (d) a residential aged care facility if the person is 65 years old or
2 older when they first receive a specialist disability service
3 (whether at the facility or elsewhere).

4 (3) A declaration for subsection (2) (c) is a disallowable instrument.

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

7 (4) In this section:

8 ***family member***, of a person, means—

9 (a) a domestic partner of the person; or

10 (b) a relative of the person; or

11 (c) a child of a domestic partner or former domestic partner of the
12 person; or

13 (d) a parent of a child of the person.

14 *Note* A ***domestic partner*** need not be an adult (see [Legislation Act](#), s 169).

15 ***relative***, of a person—

16 (a) means the person's—

17 (i) father, mother, grandfather, grandmother, stepfather,
18 stepmother, father-in-law or mother-in-law; or

19 (ii) son, daughter, grandson, granddaughter, stepson,
20 stepdaughter, son-in-law or daughter-in-law; or

21 (iii) brother, sister, half-brother, half-sister, stepbrother,
22 stepsister, brother-in-law or sister-in-law; or

23 (iv) uncle, aunt, uncle-in-law or aunt-in-law; or

24 (v) nephew, niece or cousin; and

- 1 (b) if the person has or had a domestic partner (other than a spouse
2 or civil union partner)—includes someone who would have been
3 a relative mentioned in paragraph (a) if the person had been
4 married to or in a civil union with the domestic partner; and
- 5 (c) if the person is an Aboriginal or Torres Strait Islander person,
6 includes the following people:
- 7 (i) someone the person has responsibility for, or an interest in,
8 in accordance with the traditions and customs of the
9 person's Aboriginal or Torres Strait Islander community;
- 10 (ii) someone who has responsibility for, or an interest in, the
11 person in accordance with the traditions and customs of
12 the person's Aboriginal or Torres Strait Islander
13 community.

14 ***residential aged care facility*** means a residential facility that provides
15 residential care within the meaning of the *Aged Care Act 1997*
16 (Cwlth), section 41-3 (Meaning of *residential care*) to residents at the
17 facility.

18 **8C Entitled person may request not to be visited**

- 19 (1) An entitled person may at any time ask the official visitor, in writing,
20 not to be visited at a visitable place.
- 21 (2) On receipt of a request under subsection (1), the official visitor must
22 not visit the entitled person other than under section 8D.

23 **8D Complaint about disability service provided at place other
24 than visitable place**

- 25 (1) An entitled person may make a complaint to an official visitor under
26 the *Official Visitor Act 2012*, section 22 about a specialist disability
27 service that is provided—
- 28 (a) at a place other than a visitable place; or

- 1 (b) if the person has asked the official visitor not to visit the person
2 at a visitable place under section 8C—at the visitable place.
- 3 **Example—place other than a visitable place**
4 a private home where a specialist disability service is provided to an entitled person
5 only by a close relative of the person
- 6 (2) The official visitor may—
7 (a) investigate the complaint; and
8 (b) visit the place where the service is provided.
- 9 (3) However, the official visitor may only visit a place mentioned in
10 subsection (1)—
11 (a) if the entitled person consents to the visit; and
12 (b) at a reasonable time, unless the owner of, or entity operating, the
13 place otherwise consents; and
14 (c) either—
15 (i) after giving the owner of, or entity operating, the place
16 reasonable notice; or
17 (ii) without giving notice if the official visitor reasonably
18 believes that an entitled person at the place is at risk of
19 harm.

20 **8E Register of visitable places**

- 21 (1) The director-general must keep a register of visitable places.
22 (2) The register must include—
23 (a) the address of each visitable place; and
24 (b) the name of each entitled person living at each visitable place;
25 and
26 (c) each specialist disability service provider associated with each
27 visitable place; and

- 1 (d) if a specialist disability service provider associated with a
2 visitable place is not an individual—the name, phone number
3 and email address of the following:
- 4 (i) an employee or volunteer based at the visitable place;
5 (ii) 2 employees of the specialist disability service provider.
- 6 (3) The director-general must give information on the register to—
7 (a) an official visitor; and
8 (b) the public advocate.
- 9 (4) The director-general may, on request, give the address of a visitable
10 place on the register to any of the following people, if satisfied giving
11 the information is reasonable in the circumstances:
- 12 (a) a person exercising a function under this Act;
13 (b) a member of the emergency services under the *Emergencies*
14 *Act 2004*;
15 (c) an entitled person;
16 (d) a carer or legal representative of an entitled person;
17 (e) anyone else approved by the director-general.
- 18 (5) In this section:
19 *carer*—see the *Guardianship and Management of Property Act 1991*,
20 section 6.
21 *legal representative*, of an entitled person, means—
22 (a) the person’s legal representative; or
23 (b) if the person does not have legal capacity—the person’s parent
24 or guardian.

- 1 **8F** **Provider to give information about visitable place**
- 2 (1) A specialist disability service provider associated with a visitable
- 3 place must give the director-general, in writing, the information
- 4 mentioned in section 8E (2) within 5 days after becoming associated
- 5 with the visitable place.
- 6 Maximum penalty: 10 penalty units.
- 7 (2) If any information given to the director-general under subsection (1)
- 8 changes, the specialist disability service provider must give the
- 9 director-general, in writing, the new information within 5 days after
- 10 the information changes.
- 11 Maximum penalty: 10 penalty units.

12 **5** **New part 10**

13 *insert*

14 **Part 10** **Transitional—Disability Services**

15 **Amendment Act 2018**

16 **50** **Definitions—pt 10**

17 *associated*, with a visitable place—see section 8A.

18 *commencement day* means the day the *Disability Services*

19 *Amendment Act 2018*, section 3 commences.

20 *old register* means the register of places approved as disability

21 accommodation under section 8F immediately before the

22 commencement day.

23 *new register* means the register of visitable places under section 8E.

- 1 **51 Register of approved disability accommodation**
- 2 (1) A place listed on the old register immediately before the
- 3 commencement day is taken, on the commencement day, to be a
- 4 visitable place on the new register.
- 5 (2) Any specialist disability service provider associated with a visitable
- 6 place mentioned in subsection (1) must give the director-general, in
- 7 writing, any of the following information that was not held on the old
- 8 register:
- 9 (a) the address of each visitable place;
- 10 (b) the name of each entitled person living at each visitable place;
- 11 (c) each specialist disability service provider associated with the
- 12 visitable place;
- 13 (d) if a specialist disability service provider associated with the
- 14 visitable place is not an individual—the name, phone number
- 15 and email address of the following:
- 16 (i) an employee or volunteer based at the visitable place;
- 17 (ii) 2 employees of the specialist disability service provider.
- 18 (3) A specialist disability service provider commits an offence if the
- 19 specialist disability service provider fails to give the director-general,
- 20 in writing, the information mentioned in subsection (2) within
- 21 3 months after the commencement day.
- 22 Maximum penalty: 10 penalty units.

23 **52 Expiry—pt 10**

24 This part expires 6 months after the commencement day.

25 *Note* Transitional provisions are kept in the Act for a limited time.

26 A transitional provision is repealed on its expiry but continues to have

27 effect after its repeal (see [Legislation Act](#), s 88).

1 **6 Dictionary, note 2**

2 *insert*

- 3 • domestic partner

4 **7 Dictionary, definition of *applicant***

5 *omit*

6 **8 Dictionary, new definition of *associated***

7 *insert*

8 *associated*, with a visitable place, for part 3 (Official visitors)—see
9 section 8A.

10 **9 Dictionary, definition of *disability accommodation***

11 *omit*

12 **10 Dictionary, definitions of *entitled person* etc**

13 *substitute*

14 *entitled person*, for part 3 (Official visitors)—see section 8A.

15 *official visitor*, for part 3 (Official visitors)—see section 8A.

16 *operating entity*, for a visitable place, for part 3 (Official visitors)—
17 see section 8A.

18 **11 Dictionary, definition of *reviewable decision***

19 *omit*

20 **12 Dictionary, definition of *visitable place***

21 *substitute*

22 *visitable place*, for part 3 (Official visitors)—see section 8B.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 30 October 2018.

2 Notification

Notified under the [Legislation Act](#) on 2018.

3 Republications of amended laws

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