

Australian Capital Territory

Official Visitor (Disability Services) Visit and Complaint Guidelines 2014 (No 1)

Disallowable instrument DI 2014–286

made under the

Official Visitor Act 2012, section 23 Visit and Complaint Guidelines

1 Name of instrument

This instrument is the Official Visitor (Disability Services) Visit and Complaint Guidelines 2014 (No 1).

2 Commencement

This instrument commences on the day after notification.

3 Declaration

I make the following Official Visitor (Disability Services) Visit and Complaint Guidelines 2014.

Katy Gallagher

A/g Attorney-General

21 October 2014

Official Visitor for Disability Services Visit and Complaint Guidelines

Purpose

These Guidelines are made under section 23 of the *Official Visitor Act 2012* and refer to visit processes and the handling of complaints by an Official Visitor appointed under the *Official Visitor Act 2012* for entitled persons under the *Disability Services Act 1991*.

These guidelines are supported by *Operational Guidelines* that include detailed processes.

Statement of intent

The Official Visitor (Disability Services) Visit and Complaints Guidelines set out how an Official Visitor appointed under the *Disability Services Act 1991* will perform their functions.

The Official Visitor plays a vital role in safeguarding and promoting the interests of vulnerable people in our community who find themselves in difficult circumstances. The Official Visitor seeks to identify, monitor and resolve service issues locally using early intervention and resolution practices with a view to improving service quality.

Legislative framework

Official Visitor Act 2012

Disability Services Act 1991

Definitions

The **operational Act** means the *Disability Services Act 1991*

The *Official Visitor Act 2012* provides the following definitions

- an **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, human rights commissioners, the public advocate and the ombudsman.
- an **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.
- the **operational Minister** means the Minister responsible for the operational Act.

The *Disability Services Act 1991* provides the following definitions

- an **entitled person** means a person with disability
- a **visitable place** –
 - (a) means accommodation provided for a person with disability for respite or long-term residential purposes other than a private home; and
 - (b) includes a residential aged care facility that accommodates a person with disability who is less than 65 years old.

Functions of an Official Visitor

Section 14(1) of the *Official Visitor Act 2012* requires an Official Visitor to:

- visit visitable places for the operational Act (see also Section 15)
- report to the operational Minister (see also Section 16 and Section 17)
- receive and consider complaints from entitled persons and others on their behalf
- be available to talk with entitled persons and anyone else who has a concern about an entitled person or a visitable place
- exercise any other function given to an Official Visitor under the *Official Visitor Act 2012*, the operational Act or another Territory law.

Section 14(2) states that in exercising their functions an Official Visitor must deal with an entitled person with sensitivity, including in relation to a person's gender, their religion or faith, as well as their wishes about how an Official Visitor may visit a visitable place.

Section 20 states that an operating entity is obligated to inform entitled persons at a visitable place about the functions of an Official Visitor and how an Official Visitor may be contacted.

Assistance to an Official Visitor

Section 18(1) of the *Official Visitor Act 2012* specifies that an Official Visitor may be assisted by another Official Visitor for another operational Act in the exercise of their functions.

Section 18(2) states that an operating entity for a visitable place must give an Official Visitor reasonable assistance to exercise their functions. This includes access to documents and records relating to a complaint, answering reasonable questions about the facts of a complaint and giving reasonable access to facilities.

Section 19 states that it is an offence for a person in charge of an operating entity to fail to provide assistance to an Official Visitor without reasonable excuse. Failure to assist an Official Visitor in their functions includes:

- refusing or neglecting to render assistance if asked
- failing to answer questions if asked and/or
- obstructing or hindering on official visitor in exercising their functions.

Visits

An Official Visitor may make two types of visits:

- scheduled visits, as outlined in section 23 of the *Official Visitor Act 2012* (see Schedule of Visitable Places and Frequency of Visits attached to these Guidelines); and
- ad hoc visits to a visitable place or a place other than a visitable place following a complaint or at an Official Visitor's own initiative as outlined in section 15(1) of the *Official Visitor Act 2012* and section 8B of the *Disability Services Act 1991*.

Visitable places list

Section 23(2)(a) of the *Official Visitor Act 2012* states the Guidelines must include a schedule that sets out each visitable place that an official visitor must visit.

The schedule consists of the Schedule of Visitable Places and Frequency of Visits attached to these Guidelines.

Conditions of entering a visitable place

For an Official Visitor to conduct a visit at a visitable place or a place other than a visitable place where disability services are provided they must:

- give the operating entity of the place at least 24 hours written notice
- generally visit during normal business hours and at a reasonable time or
- prior arrangements may be made to visit after hours or at other times between an:
 - Official Visitor
 - entitled person and
 - operating entity.

Section 8C of the *Disability Services Act 1991* states an Official Visitor may only make a visit without giving notice where the Official Visitor has a reasonable belief that an entitled person at a visitable place is at risk of harm and the Official Visitor has consent from the entitled person.

Obligations of an operating entity

Section 19(3) of the *Official Visitor Act 2012* states that a person in charge of an operating entity must keep a record of each visit made by an official visitor to a visitable place.

Section 21 states that if an operating entity is advised that an entitled person wants to meet an Official Visitor, the operating entity must ensure that an Official Visitor is told as soon as practicable and within 24 hours of the request being made.

A notice of a request may be emailed to an official visitor.

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.

Section 22(4) specifies that should an entitled person request that a complaint be made with no-one else present and an Official Visitor agrees the operating entity must provide reasonably private facilities for the complaint to be made.

Record inspection during a visit

Section 15 of the *Official Visitor Act 2012* states that an Official Visitor may see records relating to an entitled person at a visitable place, provided they have the entitled person's written or oral consent.

Records may include health records, behavioural plans, individual plans, restrictive practice arrangements, roster of disability support officers, carers, and other allied health professionals. An operating entity must not give access to a person's health record without consent.

Minimum requirements

All reasonable endeavours must be made by an operating entity to accommodate a request by an Official Visitor to visit a visitable place. Consideration should be given to any disruption a visit might create for an entitled person, other residents at the place, and any resource constraints for an Official Visitor.

Complaints

Section 22 of the *Official Visitor Act 2012* states that an entitled person or anyone else may make a complaint to an Official Visitor personally (or through someone else) about any aspect of their accommodation, including:

- the conditions of accommodation of an entitled person
- the care or services provided to an entitled person at a visitable place
- the activities available to an entitled person at a visitable place
- how a visitable place is conducted.

Requests and complaints

An entitled person or someone acting on their behalf may make a request to meet or make a complaint through another person, including an operating entity, or directly to an official visitor.

Referral of another entity

If an Official Visitor has received a complaint and considers that the complaint would be better dealt with by an investigative entity (e.g. Chief Police Officer, Public Advocate, or the Ombudsman) with power to investigate the complaint, an Official Visitor may refer the complaint to the investigative entity.

If a referral to an investigative entity has been made by an Official Visitor, an Official Visitor:

- must give the investigative entity all information concerning the complaint and
- advise the complainant of the referral
- may close the complaint.

Note: Information provided to a complainant must comply with the requirements of other legislation regarding privacy including, the Commonwealth's *Privacy Act 1988* and the ACT's *Information Privacy Act 2014* and *Health Records (Privacy and Access) Act 1997*.

Frivolous, vexatious or dishonest complaints

If an Official Visitor receives a complaint and, after due consideration, is satisfied that the complaint is frivolous, vexatious or not made honestly, an Official Visitor must close the complaint. Where reasonable, an Official Visitor should advise the complainant.

Non-compliance of a visitable place

Section 16 states that a visitable place may be found to be non-compliant if an Official Visitor believes on reasonable grounds that any of the following is not in accordance with the operational Act:

- the care and other services provided to an entitled person at the visitable place for the operational Act and
- the living conditions and activities of an entitled person at the visitable place.

If after a visit an Official Visitor believes the place is non-compliant, the official visitor must report the belief to the operational Minister and may report the belief to:

- the relevant Director-General
- the Public Advocate and
- the Official Visitors' Board.

An operational Act may prescribe other reporting requirements for the operational entity.

Resolving complaints

When seeking to resolve a complaint, an Official Visitor may seek agreement from the operating entity for an agreed action plan to resolve the issues of the complaint. This would include relevant information sharing, timeliness of response and agreed actions to address issues raised in a complaint.

If an Official Visitor is not satisfied with the response to a complaint by the operating entity (including timeliness, actions taken), the Official Visitor may contact the head of service of the operating entity to consider how best to resolve the issue prior to escalation through to the operational Minister.

Closing complaints

If an Official Visitor is satisfied the complaint is resolved with the operating entity the Official Visitor must close the complaint. An Official Visitor must advise the complainant that the complaint has been closed and the reasons for the closure.

Withdrawal of a complaint

A complainant may withdraw a complaint at any time by giving an Official Visitor written notice. An Official Visitor or a member of staff of the visitable place may assist a complainant, with their consent, to make a written request to withdraw their complaint.

An Official Visitor must close the withdrawn complaint if satisfied that the complaint is about:

- a minor issue
- has been resolved appropriately or
- has lapsed (the person has left the place and the complaint is no longer relevant).

If an Official Visitor considers it is in the public interest that a withdrawn complaint be considered, the Official Visitor must:

- refer the complaint to the Human Rights Commission and provide all information about the complaint to the Commission for consideration
- close the complaint and
- tell the complainant about the referral and the closing of the complaint.

In such instances, an Official Visitor may ask the entity investigating the complaint about the investigation of the complaint. The entity must advise an Official Visitor about the investigation of the complaint and an Official Visitor may advise the complainant about the progress of the investigation.

If an Official Visitor has received a complaint from an entitled person concerning a visitable place and that entitled person no longer resides at the visitable place, the complaint can only be closed if:

- the Official Visitor is satisfied that the substance of the complaint has been addressed or
- after reasonable inquiry has been made to the complainant, an Official Visitor is not able to gain enough information regarding the complaint to undertake a proper review.

Reasonable inquiry may include attempts to contact the complainant by telephone or at their residential premises. An Official Visitor may request details from the operating entity to enable such inquiry to be made.

Reopening complaints

Where an Official Visitor is satisfied an operating entity has not complied with an action or undertaking agreed to in the closing of an original complaint, the official visitor may re-open the complaint. In doing so, an Official Visitor must

try to resolve the complaint by taking all reasonable steps to promptly and efficiently resolve the complaint with the operating entity. In addition, an Official Visitor should promptly advise the person in charge of the operating entity in writing of this decision.

An Official Visitor may resolve the complaint by:

- making inquiries about any matter raised in the complaint and
- exercising any function given to an official visitor under the relevant legislation.

Before asking for assistance that may involve sensitive information, an Official Visitor must consider whether the complaint should be referred to an investigating entity.

Quarterly reporting

Section 17 of the *Official Visitor Act 2012* outlines the reporting requirements for an Official Visitor. In particular, an Official Visitor must give the operational Minister a written report as soon as practicable after the end of each quarter.

Note: A quarter ends on 31 December, 31 March, 30 June or 30 September in any year. (*Legislation Act 2001* part 1)

The written report must summarise:

- the number and kinds of complaints received by an Official Visitors
- the action taken on the complaints received, including complaints resolved and closed and
- the number and kinds of matters referred by an Official Visitor to an investigative entity.

An Official Visitor may give a copy of the report to the relevant Director-General, the Public Advocate, and the Official Visitors' Board.

The report may include comments by an Official Visitor about anything in relation to a complaint mentioned in the report.

The report must not include material that may be adverse to, or critical of, a person if an Official Visitor has not given the person or operating entity an opportunity to be heard/respond. This applies whether the adverse or critical material is express or implicit or by way of opinion or otherwise.

End of year reporting

Section 17 of the *Official Visitor Act 2012* states for each financial year, the operational Minister must present a report of the information presented to the operational Minister by an Official Visitor to the Legislative Assembly. The report must be presented within 6 sitting days of 30 September every year.

Note: The financial year ends on 30 June of each year.

Schedule of Visitable Places and Frequency of Visits

Schedule to the Official Visitor (Disability Services) Visit and Complaint Guidelines

Purpose

This schedule sets out visitable places that an Official Visitor must visit and how often the official visitor must visit the place.

Statement of intent

The intent of having a schedule of visitable places and frequency of visits provides the terms of agreement for an Official Visitor to perform their functions and to be held to account by the operational Minister.

Under section 10 of the *Official Visitor Act 2012*, the operational Minister has responsibility for the appointment of Official Visitors and ending of appointments (see also section 12), which includes provisions for performing visits as required under the Visit and Complaint Guidelines made under section 23.

Legislative framework

Official Visitor Act 2012

Disability Act 1991

Frequency of scheduled visits

Category of visitable place	Number of places (range)	Frequency of scheduled visits (per annum)
Disability ACT- Operated Supported Accommodation	54	1 visit (minimum)
Non-Government- Operated Supported Accommodation	66	1 visit (minimum)
Residential Age Care Provider (for people with disability under 65 years)	16	1 visit (minimum)

Note: The official visitor may visit a place more than the minimum scheduled number of visits in order to respond to ad hoc matters arising.

The number of places is as of 1 September 2014. These may vary over time as people's circumstances change and Disability ACT's role as a provider of supported accommodation services reduces.