



New South Wales

Inspector of Custodial Services Bill 2012

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are:

- (a) to provide for the appointment of an Inspector of Custodial Services and confer on that Inspector functions relating to the inspection and review of custodial centres and custodial services, and
- (b) to make a number of miscellaneous amendments of a minor or consequential nature to other Acts and regulations.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 defines certain words and expressions used in the proposed Act. Amongst others, the provision provides for the following principal definitions for the purposes of the proposed Act:

custodial centre means the following:

- (a) a correctional centre (including a juvenile correctional centre, a managed correctional centre and a periodic detention centre),
- (b) a residential facility,
- (c) a transitional centre,
- (d) a juvenile justice centre,

but does not include any police station or court cell complex that is not managed by Corrective Services NSW or Juvenile Justice.

custodial service means the following:

- (a) the management, direction, control or security of a custodial centre,
- (b) the security, management, control, safety, care or welfare (including health care) of persons in custody, detained or residing at a custodial centre,
- (c) the transport of persons in custody or otherwise detained to or from a custodial centre by or on behalf of Corrective Services NSW or Juvenile Justice,

but does not include any function of, or service provided by, the NSW Police Force, the Serious Offenders Review Council, the Serious Young Offenders Review Panel or the State Parole Authority.

The proposed section also provides that certain terms used in the proposed Act have the same meanings as in the *Crimes (Administration of Sentences) Act 1999*, except in so far as they are defined differently in the proposed Act or the context or subject-matter otherwise indicates or requires.

Part 2 Inspector of Custodial Services

Division 1 Appointment and staff of Inspector of Custodial Services

Clause 4 provides for the appointment of an Inspector of Custodial Services (*the Inspector*) and that the Committee on the Office of the Ombudsman and the Police Integrity Commission constituted under the *Ombudsman Act 1974* may veto the appointment of a person as the Inspector.

Clause 5 provides for the employment and engagement of staff to assist the Inspector.

Division 2 Functions and powers of Inspector of Custodial Services

Clause 6 specifies certain principal functions of the Inspector. In general the Inspector is responsible primarily for inspecting, examining and reviewing, and making recommendations on, custodial services (including the management of the custodial centres). More specifically, the Inspector has the following functions:

- (a) to inspect each custodial centre (other than juvenile justice centres and juvenile correctional centres) at least once every 5 years,
- (b) to inspect each juvenile justice centre and juvenile correctional centre at least once every 3 years,
- (c) to examine and review any custodial service at any time,
- (d) to report to Parliament on each such inspection, examination or review,
- (e) to report to Parliament on any particular issue or general matter relating to the functions of the Inspector if, in the Inspector's opinion, it is in the interest of any person or in the public interest to do so,
- (f) to report to Parliament on any particular issue or general matter relating to the functions of the Inspector if requested to do so by the Minister,
- (g) to include in any report such advice or recommendations as the Inspector thinks appropriate (including advice or recommendations relating to the efficiency, economy and proper administration of custodial centres and custodial services),
- (h) to oversee Official Visitor programs conducted within correctional centres and juvenile justice centres,
- (i) to advise, train and assist Official Visitors in the exercise of their functions,
- (j) such other functions as may be conferred or imposed on the Inspector under the proposed Act or any other Act.

Clause 7 sets out certain powers of the Inspector. The proposed section provides that the Inspector in the exercise of the Inspector's functions:

- (a) is entitled to full access to the records of any custodial centre (including health records) and may make copies of, or take extracts from, those records and may remove and retain those copies or extracts, and
- (b) may visit and examine any custodial centre at any time the Inspector thinks fit, and
- (c) may require custodial centre staff members to supply information or produce documents or other things relating to any matter, or any class or kind of matters, concerning a custodial centre's operations, and
- (d) may require custodial centre staff members to attend before the Inspector to answer questions or produce documents or other things relating to a custodial centre's operations, and

- (e) may refer matters relating to a custodial centre to other appropriate agencies for consideration or action, and
- (f) is entitled to be given access to persons in custody, detained or residing at any custodial centre for the purpose of communicating with them.

Clause 8 provides that the Inspector also has power to do all things necessary to be done for or in connection with, or reasonably incidental to, the exercise of the Inspector's functions.

Division 3 Relationship of Inspector with other agencies

Clause 9 provides that the Inspector may enter into arrangements with the Director-General of the Department of Attorney General and Justice regarding the exercise of the Inspector's functions in relation to Corrective Services NSW and Juvenile Justice. The clause also provides that the Inspector may enter into such arrangements with the Chief Executive of the Justice and Forensic Mental Health Network regarding the exercise of the Inspector's functions in relation to that Network.

Clause 10 provides that the Inspector may enter into arrangements with the Ombudsman as to the investigation of complaints and certain other matters that could be the subject of a complaint under the *Ombudsman Act 1974*.

Clause 11 provides that the Inspector must report to the Independent Commission Against Corruption any matter concerning corrupt conduct. The Inspector may enter into arrangements with the Commission for the handling of matters that involve possible misconduct.

Division 4 Reports by Inspector

Clause 12 requires the Inspector to make annual reports to Parliament of the Inspector's operations within 4 months after 30 June of each year. Those reports must include a description of the Inspector's activities during that year, an evaluation of the response of relevant authorities to the Inspector's recommendations and any recommendations for changes in the laws of the State or for administrative action that the Inspector considers should be made.

Clause 13 provides that all other reports of the Inspector under the proposed Act to Parliament are to be provided to the Presiding Officer of each House of Parliament.

Clause 14 requires the Inspector to provide the Minister with a draft of each of the Inspector's reports to Parliament, and to provide Government Divisions and other persons criticised in a draft report with a draft, before it is furnished to the Presiding Officers. The Minister, the Division Head and person concerned are to be given a reasonable opportunity to make submissions on the draft report, but the Inspector is not bound to make any changes to the draft report because of any such submission.

Clause 15 provides that the Inspector must not disclose information in a report to Parliament if there is an overriding public interest against disclosure of the information. A similar balancing test to that set out in the *Government Information*

(*Public Access*) Act 2009 is provided for. The proposed section provides that there are public interest considerations against disclosure of information if disclosure of the information could reasonably be expected to have one or more of the following effects (whether in a particular case or generally):

- (a) prejudice the supervision of, or facilitate the escape of, any person in lawful custody or detention,
- (b) prejudice the security, discipline or good order of any custodial centre,
- (c) prejudice national security (within the meaning of the *National Security Information (Criminal and Civil Proceedings) Act 2004* of the Commonwealth),
- (d) reveal or tend to reveal the identity of an informant or prejudice the future supply of information from an informant,
- (e) identify or allow the identification of a person who is or was detained at a juvenile justice centre or in custody in a juvenile correctional centre,
- (f) endanger, or prejudice any system or procedure for protecting, the life, health or safety of any person who is in custody, detained or residing at a custodial centre (including but not limited to systems or procedures to protect witnesses and other persons who may be separated from other persons at the centre for their safety),
- (g) identify or allow the identification of a custodial centre staff member or endanger, or prejudice any system or procedure for protecting, the life, health or safety of such a staff member.

The fact that disclosure of information might cause embarrassment to, or a loss of confidence in, the Government or that disclosure of information might be misinterpreted or misunderstood by any person is irrelevant and must not be taken into account.

Clause 16 provides for a copy of a report furnished to the Presiding Officers to be laid before each House of Parliament. If the report includes a recommendation that the report be made public immediately, the Presiding Officer may make it public whether or not the House is in session and whether or not the report has been laid before the House. Such publicised reports attract the same privileges and immunities as if they had been laid before the House.

Part 3 Parliamentary Joint Committee

Clause 17 confers functions on the Committee on the Office of the Ombudsman and the Police Integrity Commission constituted under the *Ombudsman Act 1974* including the function of monitoring and reviewing the exercise by the Inspector of the Inspector's functions.

Clause 18 provides that the Minister is to refer a proposal to appoint a person as Inspector to that Parliamentary Joint Committee and that Committee is empowered to veto the proposed appointment. The Parliamentary Joint Committee has 14 days

after the proposed appointment is referred to it to veto the proposal and has a further 30 days (after the initial 14 days) to veto the proposal if it notifies the Minister within that 14 days that it requires more time to consider the matter.

Part 4 Miscellaneous

Clause 19 creates offences relating to the obstruction of the Inspector, including:

- (a) without reasonable excuse, wilfully obstructing, hindering, resisting or threatening the Inspector or a member of staff of the Inspector, or
- (b) without reasonable excuse, refusing or wilfully failing to comply with any lawful requirement of the Inspector or a member of staff of the Inspector, or
- (c) wilfully making any false statement to or misleading, or attempting to mislead, the Inspector or a member of staff of the Inspector.

The offences are to carry a maximum penalty of 50 penalty units or imprisonment for 12 months, or both.

Clause 20 makes it an offence for a person to take or threaten to take detrimental action against another person for providing, or proposing to provide, information, documents or evidence to the Inspector or a member of staff of the Inspector. The offence carries a maximum penalty of 50 penalty units or imprisonment for 12 months, or both.

Clause 21 provides that the Inspector or member of staff of the Inspector may, in another State or Territory, exercise functions under the law of the other State or Territory. Such an exercise of functions is to be in accordance with arrangements between the Minister and the relevant Minister of the other State or Territory.

Clause 22 provides that the Inspector, a member of staff of the Inspector or a person acting under the Inspector's direction is not personally liable for actions done in good faith for the purposes of executing the proposed Act or any other Act.

Clause 23 provides for the delegation of the Inspector's functions.

Clause 24 provides that proceedings for an offence under the proposed Act or the regulations may be dealt with summarily before the Local Court.

Clause 25 restricts the disclosure of information obtained in connection with the administration or execution of the proposed Act (or any other Act conferring or imposing functions on the Inspector).

Clause 26 enables the Inspector and the Ombudsman to share information obtained in discharging their functions. However, information may not be disclosed under the proposed section if it could not otherwise be disclosed or obtained by the Inspector or Ombudsman under their respective legislation.

Clause 27 enables the Governor to make regulations for the purposes of the proposed Act.

Clause 28 provides for the review of the proposed Act 5 years after its commencement.

Schedule 1 Provisions relating to Inspector

Schedule 1 contains provisions relating to the appointment, term of office, vacation of office and remuneration of the Inspector. Provisions are included to enable the appointment of the Inspector on a full-time or part-time basis.

Schedule 2 Savings, transitional and other provisions

Schedule 2 enables regulations of a savings or transitional nature to be made consequent on the enactment of the proposed Act or any Act that amends the proposed Act.

Schedule 3 Amendment of Acts and regulations

Schedule 3 makes consequential amendments to the Acts and regulations specified in the Schedule.