

## INSPECTOR OF CUSTODIAL SERVICES BILL 2012

PROOF

23 May 2012 Page: 24

**Bill introduced on motion by Mr Greg Smith, read a first time and printed.**

### **Second Reading**

**Mr GREG SMITH** (Epping—Attorney General, and Minister for Justice) [12.34 p.m.]: I move:

That this bill be now read a second time.

The Government is pleased to introduce the Inspector of Custodial Services Bill 2012. This bill is designed to establish the Inspector of Custodial Services. It also implements a Government election commitment and follows the recommendations of the Legislative Council General Purpose Standing Committee No. 3 inquiry into the privatisation of prisons and prison-related services in June 2009. By improving the standards within correctional facilities we are improving the prospects of rehabilitation of offenders. If offenders are rehabilitated properly they can become productive, law-abiding members of society on their release. Therefore, by improving standards within correctional facilities we are improving the safety of the community as a whole.

The inspector will perform an independent statutory role that will provide external scrutiny of the standards and operational practices of custodial services in New South Wales. The inspector will also provide an independent mechanism for monitoring broader thematic and systemic issues arising out of inspection of adult and juvenile correctional facilities and services. It is no longer appropriate—if it ever was—that agencies that provide adult and juvenile correctional services oversee themselves. The Inspector-General of Corrective Services role in New South Wales was dissolved in 2003 after the then Government accepted the recommendations of a five-year statutory review of the office. That review found there was significant duplication in the roles of the Inspector-General and Ombudsman because both organisations dealt with inmate complaints.

However, in June 2009 General Purpose Standing Committee No. 3 handed down its report on its inquiry into the privatisation of prisons and prison-related services. The inquiry noted that other jurisdictions, including England, Scotland, Wales and Western Australia, had established independent prison inspectorates. The inquiry noted that the corrections inspectorate was still part of the then Department of Corrective Services and therefore lacked independence from the department. The inquiry received submissions that New South Wales did not have appropriate prison visitors who were outside the control of the Department of Corrective Services, that their role had been watered down and that they could not be autonomous from the department in trying to resolve issues. Therefore, the inquiry recommended that the position of New South Wales Inspector-General of Prisons be reinstated to report on both public and private prisons.

The former Government did not support that recommendation and referred to the findings of the 2003 statutory review. Its response noted that the Department of Correctives Services had established a support line—a free telephone service for inmates to make inquiries and complaints—and appointed monitors to a number of State-operated correctional centres. The

response noted the Commissioner of Corrective Services' direction about the appointment of monitors with regard to contracted services in a number of State-operated correctional centres. However, these initiatives are internal arrangements and do not provide a measure of external security. Inspections under the authority of the inspector will add external scrutiny and weight due to its status as an independent statutory authority.

The inspector will take a proactive rather than a reactive approach to improving custodial services. Rather than simply reacting to individual incidents after they occur, the inspector will regularly inspect and report on all correctional facilities. Therefore, the inspector will be able to nip in the bud potential problems before they become major issues. In contrast, the previous Inspector-General only ever reported on comprehensive inspections of two correctional centres and the Ombudsman has not made a special report to Parliament on Corrective Services NSW since 2000. To avoid the duplication that was identified between the previous Inspector-General's role and that of the Ombudsman, the proposed inspector's role will not extend to dealing with complaints or grievances relating to an individual in a custodial service. The inspector may refer such complaints to other appropriate bodies, such as the Ombudsman's office. Rather, the inspector will take a holistic approach, focusing on systemic issues in correctional facilities to bring about real change.

The administration of the Official Visitors Program will also be transferred from Corrective Services and Juvenile Justice to the inspector. This is essential for ensuring the independence of the Official Visitors Program in the light of findings in the 2009 inquiry. Official visitors will continue to be appointed by the Minister. Official visitors will provide all reports to the inspector as well as continuing to provide reports to the Minister and Corrective Services or Juvenile Justice, as appropriate, who may comment on those reports.

I turn now to the detail of the inspector's role. The inspector will have jurisdiction over all correctional facilities in New South Wales. This will include all adult and juvenile correctional centres, residential facilities, transitional centres, juvenile justice centres, and court and police cells that are managed by Corrective Services or Juvenile Justice. The inspector's role will be to inspect and report to Parliament on each adult correctional facility at least once every five years. The inspector must also inspect and report to Parliament on each Juvenile Justice and juvenile correctional facility at least once every three years. This shorter time frame in relation to juvenile facilities recognises the greater need for protection of juveniles. Of course, the inspector may also inspect and report on such facilities at any time, with or without notice, should the need arise. This allows the inspector to focus on areas of real and immediate concern. The inspector may also examine and review any custodial service at any time. The term "custodial service" is defined broadly and includes the management of custodial centres, the care of inmates and the transport of inmates by Corrective Services or Juvenile Justice. This provides the inspector with the ability to perform thematic reviews of custodial services generally or in relation to a particular correctional facility.

The inspector may 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 interests of any person or in the public interest to do so. This gives the inspector the power to report to Parliament immediately without a full investigation and review, if necessary. The inspector must also 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. The inspector must also prepare an annual report within four months of the end of each financial year detailing the inspector's activities

in the preceding year, an evaluation of the responses of relevant authorities to its recommendations and any recommendations for legislative or administrative action.

The inspector will be given broad powers in order to perform his or her functions. The inspector will be entitled to full access to the records of any custodial centre, including health records, and to take copies or to have copies made of any of them. The inspector may visit and examine any custodial centre at any time the inspector thinks fit. The inspector may require custodial centre staff members to supply information or produce documents concerning a custodial centre's operations. The inspector may require custodial centre staff members to attend before the inspector to answer questions or produce documents relating to the custodial centre's operations. The inspector may refer matters relating to a custodial centre to other appropriate agencies for consideration or action. For example, if the inspector receives a complaint from an inmate, the inspector may refer that complaint to the Ombudsman's office. The inspector is entitled to be given access to persons in custody, detained or residing at any custodial centre for the purpose of communicating with them. The Minister must refer reports produced during a special inquiry under section 230 of the Crimes (Administration of Sentences) Act 1999 to the inspector for comment.

It will be an offence for a person to obstruct, threaten, or fail to comply with a lawful requirement of the inspector or a member of staff of the inspector in the exercise of their functions without reasonable excuse. It will also be an offence for a person to wilfully make any false statement or mislead the inspector or a member of staff of the inspector in the exercise of their functions. Furthermore, it will be an offence for a person to take, or threaten to take, detrimental action against another person because that person provides, or proposes to provide, information, documents or evidence to the inspector. These offences will carry a maximum penalty of 50 penalty units or imprisonment for 12 months, or both.

Information held by the inspector in relation to his investigative and reporting functions will be designated to be excluded information in schedule 2 of the Government Information (Public Access) Act 2009. This means that a person cannot obtain information from the inspector relating to his investigative and reporting functions through an application for access to information under the Government Information (Public Access) Act 2009. This will ensure that confidential information retained by the inspector is protected. Similar exclusions exist in relation to information retained by the Ombudsman and the Independent Commission Against Corruption. The inspector and the Ombudsman may enter into arrangements regarding any areas of potential overlap between their functions. The inspector and the Ombudsman may also share information obtained in discharging their functions. However, information may not be shared if it could not otherwise be disclosed or obtained by the inspector or Ombudsman under their respective legislation. This will ensure that the inspector and the Ombudsman are able to assist each other, and will minimise any potential for duplication of their functions.

The inspector will have a duty to report to the Independent Commission Against Corruption any matter that the inspector suspects on reasonable grounds concerns or may concern corrupt conduct. The inspector must furnish every report made by the inspector under the Act to the Presiding Officer of each House of Parliament. The fact that the inspector provides the reports directly to Parliament ensures the independence of those reports. However, the inspector must provide the Minister with a draft of each report that is to be furnished to Parliament and give the Minister a reasonable opportunity to make submissions in relation to the draft report. Similarly, if a report sets out an opinion that is critical of another division of

the government service or any other person, the inspector must give those people a reasonable opportunity to make submissions. This will ensure that relevant parties are informed and it addresses concerns relating to natural justice. Whilst the inspector must consider any comments made in relation to a draft report, the inspector will not be bound to amend the report in light of those submissions.

The inspector must not disclose information in a report 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. However, the fact that disclosure of information might be misunderstood or cause embarrassment to the Government is irrelevant and must not be taken into account. This test provides an appropriate balance between the public interest in the inspector disclosing such information and particular circumstances in which the disclosure of the information would actually harm the public interest. For example, the disclosure of the whereabouts and security arrangements regarding a person convicted of terrorism offences could potentially threaten national security, or the disclosure of the identity of an informant could endanger their life. However, it would be open to the inspector to amend his report to minimise any adverse public interest, for example, by anonymising people referred to in the report. The bill provides that communication between inmates and the inspector remain confidential by deeming the inspector an exempt body for the purposes of clause 107 of the Crimes (Administration of Sentences) Regulation 2008 and clause 3 of the Children (Detention Centres) Regulation 2010.

The 2009 report of the General Purpose Standing Committee of the New South Wales Legislative Council on its inquiry into privatisation of prisons and prison-related services also recommended that the New South Wales Government establish a Prisons Parliamentary Oversight Committee with powers and authority similar to the committees of the Independent Commission Against Corruption and the Police Integrity Commission. Consistent with this proposal, the joint parliamentary committee that currently monitors the Ombudsman, the Police Integrity Commission, the Information Commissioner and the Privacy Commissioner will also monitor the inspector.

The joint committee will monitor and review the inspector's exercise of his functions, examine reports of the inspector, report to Parliament on matters relating to the inspector and inquire into matters referred to it by Parliament.

The joint committee will also have the power to veto the appointment or reappointment of the inspector. The inspector will be appointed for a term of five years and may be reappointed only once. The inspector will be able to be removed from office only in very limited circumstances, including for incapacity, incompetence, misbehaviour or unsatisfactory performance. These features ensure that the inspector retains the highest degree of independence. There will be a statutory review of the inspector after five years. The rate of remuneration of the inspector will be determined in accordance with the Statutory and Other Officers Remuneration Act 1975, as occurs in the case of the Ombudsman and the Commissioner of the Police Integrity Commission.

I note that the Australian Government signed the optional protocol with the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment [OPCAT] on 19 May 2009 but has not yet ratified the agreement. Under that convention, State parties agree to international inspections of places of detention by the United Nations Subcommittee

on the Prevention of Torture. Once the convention is ratified, Australia will need to establish an independent national preventative mechanism to conduct inspections of all places of detention. For example, in the United Kingdom her Majesty's Inspector of Prisons has operated as the coordinating function for the United Kingdom's national preventative mechanism. Similarly, the role of the New South Wales inspector could be deemed to be part of the national preventative mechanism to assist the State in meeting its obligations under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. I commend the bill to the House.

**Debate adjourned on motion by Mr Paul Lynch and set down as an order of the day for a future day.**