

## **EXPLANATORY MEMORANDUM AND CLAUSE NOTES**

### **INSPECTOR OF CUSTODIAL SERVICES AMENDMENT BILL 2011**

#### **EXPLANATORY MEMORANDUM**

The amendments contained in the Inspector of Custodial Services Amendment Bill 2011 (the Bill) will significantly enhance the powers of the Office of the Inspector of Custodial Services by enabling audits to be undertaken on individual prisoners moving through the custodial system, to ensure they are treated safely and humanely at all stages. In addition, where the Office of Custodial Services has reasonable cause to suspect the existence of either a serious risk to life, personal safety, welfare, security or control or of treatment which is cruel, inhumane or degrading it will have power to issue a Show Cause Notice on the Chief Executive Officer of Department of Corrective Services.

These additional powers are directly related to the Government's promise to honour the recommendations of the Coroner in relation to the death of Mr Ward.

It is considered these legislative amendments will aid in achieving continual improvement in custodial service delivery and will act as a preventative mechanism against tragic and avoidable circumstances such as those which led to the death of Mr Ward. These amendments recognise that process failures of different agencies and organisations are not always readily apparent from static inspections of facilities or equipment and it is for these reasons that the additional auditing powers to be given to OICS are being implemented.

The main changes proposed in the Bill therefore relate to additional powers for the Office of the Inspector of Custodial Services to:

1. Undertake audits of individual prisoners; and
2. Issue "Show Cause" notices to the Department of Corrective Services ("DCS") where the Office of the Inspector of Custodial Services has reasonable cause to suspect the existence of either a serious risk to life, personal safety, welfare, security or control, or of the treatment which is cruel, inhumane or degrading.

The amendments contained in the Bill will enable a minimum of forty individual prisoner audits to be conducted annually. They also provide for the issuing of Show Cause notices to the Chief Executive Officer or CEO of the Department of Corrective Services and prescribe the process to be followed in so doing.

## CLAUSE NOTES

### **Clause 1. Short title**

Clause 1 provides that the short title of the Act will be the *Inspector of Custodial Services Amendment Act 2011*.

### **Clause 2. Commencement**

Clause 2 provides that proposed sections 1 and 2 of the Act will come into operation on the day on which this Act receives the Royal Assent. The remainder of the Bill will come into operation on a day fixed by proclamation, and different days may be fixed for different provisions.

### **Clause 3. The Act amended**

Clause 3 provides that the amendments are to the *Inspector of Custodial Services Act 2003*.

### **Clause 4. Section 22 amended**

Clause 4 amends Section 22 by adding Sub Section (2) which provides for reviews to be conducted in relation to particular prisoners, detainees or one or more particular persons in custody, as compared to the provisions contained in the Sub Section (1) which provide for reviews of custodial services in prisons, detention centres or a custodial service under the *Court Security and Custodial Services Act 1999* (CSCS Act).

### **Clause 5. Section 28 amended**

This clause amends Section 28 to reflect that the Inspector of Custodial Services, or any person authorised by the Inspector, is to not only have free and unfettered access to a prison, or any part of a prison, or a prisoner in a prison and those other items currently stipulated in Section 28 (1), but also to “a custodial service in relation to one or more particular prisoners” as stipulated in the new Section 22(2)(a), and also persons who are or have been prisoners .

### **Clause 6. Section 29 amended**

This clause amends Section 29 to reflect that the Inspector of Custodial Services, or any person authorised by the Inspector, is to not only have free and unfettered access to a detention centre, or any part of a detention centre, or a detainee in a detention centre and those other items currently stipulated in Section 29 (1) but also to “a custodial service in relation to one or more particular detainees” as stipulated in the new Section 22(2)(b), and also persons who are or have been detainees .

### **Clause 7. Section 30 amended**

Clause 7 provides that section 30(1) be amended so that the Inspector of Custodial Services, or any person authorised by the Inspector, is to not only have free and unfettered access to court custody centre and lockup, or any part of a those places, or a person in a court custody centre or lockup or and those other items currently stipulated in Section 30 (1) but also to “a custodial service in relation to one or more particular persons in custody ” as stipulated in the new Section 22(2)(c).

This clause also provides for the Inspector or any person authorised by the Inspector to have access to documents in the possession of a court custody centre or lock-up in relation to persons who are or have been in a court custody centre, lock-up or a vehicle used for moving persons for whom the CEO is responsible under the CSCS Act.

### **Clause 8. Section 33A inserted**

Clause 8 inserts Section 33A at the end of Part 4 Division 2.

Section 33A provides for the Inspector to give the chief executive officer or CEO notice to show cause where the Inspector suspects, on reasonable grounds, that there has or has been a serious risk to the security, control, safety care or welfare of a prisoner, detainee or person in custody or that a prisoner, detainee or person in custody is being, or has been, subject to cruel, inhuman or degrading treatment.

The clause prescribes the process to be followed including the Inspector specifying in writing the matters requiring the responsible person to show cause, the time frame in which that is to be done (three days), and the manner in which it is to be done (submissions either orally, in writing or evidence provided to the Inspector).

After consideration of the submission made or the evidence provided, the Inspector may refer the show cause notice to the Minister or decide to take no further action. If referred to the Minister the Inspector must give advice or make recommendations to the Minister as appropriate.

### **Clause 9. Section 33 amended**

Clause 9 provides the Inspector with the ability to report annually on the details of any show cause notice given, which the Inspector considers appropriate.

### **Clause 10. Section 36 amended**

Clause 10 amends Section 36 to provide for Chief judicial officers receiving copies of inspection reports, reports in occasional inspections and reviews affecting the court, in accordance with the amendment to Section 22, to now also receive reviews conducted in relation to particular prisoners, detainees or one or more particular persons in custody.