

Acts Amendment (Safety and Human Rights of Persons in Custody) Bill 2009

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Western Australia

LEGISLATIVE ASSEMBLY

(Introduced by Hon. Eric Ripper, MLA)

**Acts Amendment (Safety and Human Rights of
Persons in Custody) Bill 2009**

A Bill for

An Act to amend the following —

- *Inspector of Custodial Services Act 2003;*
- *Prisons Act 1981;*
- *Court Security and Custodial Services Act 1999;*
- *Criminal Law (Mentally Impaired Accused) Act 1996;*
- *Young Offenders Act 1994.*

The Parliament of Western Australia enacts as follows:

1 **Part 1 — Preliminary Matters**

2 **1. Short title**

3 This is the *Acts Amendment (Safety and Human Rights of*
4 *Persons in Custody) Act 2009.*

5 **2. Commencement**

6 This Act comes into operation as follows —

- 7 (a) sections 1 and 2 — on the day on which this Act
8 receives the Royal Assent;
- 9 (b) the rest of the Act — on a day fixed by proclamation.

s. 4

- 1 (2) Within 7 days of the issuing of a notice under
2 subsection (1), the Inspector is to provide a copy of the
3 notice to the Attorney-General.
- 4 (3) The Attorney-General is required to table the notice
5 issued under subsection (1) in the Houses of Parliament
6 within 5 sitting days of receipt.
- 7 (4) It is an offence for the CEO issued with a notice under
8 subsection (1) not to respond by the date and time
9 specified in the notice.
- 10 Penalty: \$20 000.
11

1 **Part 3 — Amendments to *Prisons Act 1981***

2 **5. The Act amended**

3 The amendments in this Part are to the *Prisons Act 1981*.

4 **6. Section 3 amended**

5 In section 3 insert in alphabetical order:

6

7 *Inspector of Custodial Services* means the Inspector of
8 Custodial Services under the *Inspector of Custodial*
9 *Services Act 2003*;

10

11 **7. Section 7A inserted**

12 After section 7 insert:

13

14 **7A. Inspector of Custodial Services to be notified of**
15 **imprisonment**

16 (1) As soon as practicable after a person is first imprisoned
17 under this Act, the chief executive officer must notify
18 the Inspector of Custodial Services as to the place
19 where the person is being imprisoned.

20 (2) The lawfulness of a persons' imprisonment is not
21 affected by a failure to comply with subsection (1).

22

s. 8

1 **8. Section 95F inserted**

2 After section 95E insert:

3

4 **95F. Humane treatment of prisoner**

5 (1) The prisoner —

6 (a) must be treated with humanity and with respect
7 for human dignity; and

8 (b) must not be subjected to cruel, inhuman or
9 degrading treatment,

10 by anyone exercising authority under this Act or
11 implementing or enforcing this Act.

12 (2) The Inspector of Custodial Services may, at any time,
13 review the prisoner's imprisonment under this Act to
14 determine whether the subsection (1) is being complied
15 with in relation to the prisoner.

16 (3) The Inspector of Custodial Services may, at any time,
17 report to the chief executive officer on any matter
18 relating to a review under subsection (2) and give
19 advice or make recommendations as the Inspector of
20 Custodial Services considers appropriate in relation to
21 the matter.

22 (4) For the purposes of this section the Inspector of
23 Custodial Services may exercise any power conferred
24 by the *Inspector of Custodial Services Act 2003*
25 whether or not the place where the prisoner is being
26 imprisoned is a place referred to in section 19 of that
27 Act.
28

1 **Part 4 — Amendments to *Court Security and Custodial***
2 ***Services Act 1999***

3 **9. The Act amended**

4 The amendments in this Part are to the *Court Security and*
5 *Custodial Services Act 1999*.

6 **10. Section 3 amended**

7 In section 3 insert in alphabetical order:

8

9 *Inspector of Custodial Services* means the Inspector of
10 Custodial Services under the *Inspector of Custodial*
11 *Services Act 2003*;

12

13 **11. Section 29A inserted**

14 After section 29 insert:

15 **29A. Inspector of Custodial Services to be notified of**
16 **persons in custody**

17

18 (1) As soon as practicable after a person is first taken into
19 custody under this Act, the CEO must notify the
20 Inspector of Custodial Services as to the place where
21 the person is being held in custody.

22 (2) The lawfulness of a person being held in custody is not
23 affected by a failure to comply with subsection (1).

24

s. 12

1 **12. Section 101 inserted**

2 After section 100 insert:

3

4 **101. Humane treatment of persons in custody**

5 (1) The person in custody —

6 (a) must be treated with humanity and with respect
7 for human dignity; and

8 (b) must not be subjected to cruel, inhuman or
9 degrading treatment,

10 by anyone exercising authority under this Act or
11 implementing or enforcing this Act.

12 (2) The Inspector of Custodial Services may, at any time,
13 review the prisoner's imprisonment under this Act to
14 determine whether the subsection (1) is being complied
15 with in relation to the prisoner.

16 (3) The Inspector of Custodial Services may, at any time,
17 report to the chief executive officer on any matter
18 relating to a review under subsection (2) and give
19 advice or make recommendations as the Inspector of
20 Custodial Services considers appropriate in relation to
21 the matter.

22 (4) For the purposes of this section the Inspector of
23 Custodial Services may exercise any power conferred
24 by the *Inspector of Custodial Services Act 2003*
25 whether or not the place where the prisoner is being
26 imprisoned is a place referred to in section 19 of that
27 Act.
28

1 **Part 5 — Amendments to *Criminal Law (Mentally***
2 ***Impaired Accused) Act 1996***

3 **13. The Act amended**

4 The amendments in this Part are to the *Criminal Law (Mentally*
5 *Impaired Accused) Act 1996*.

6 **14. Section 23 amended**

7 In section 23 insert in alphabetical order:

8
9 *Inspector of Custodial Services* means the Inspector of
10 Custodial Services under the *Inspector of Custodial*
11 *Services Act 2003*;

12
13 **15. Section 24A inserted**

14 After section 24 insert:

15
16 **24A. Inspector of Custodial Services to be notified of**
17 **detention**

- 18 (1) As soon as practicable after a person is first detained
19 under this Act, the Board must notify the Inspector of
20 Custodial Services as to the place where the person is
21 being held in custody or detained.
- 22 (2) The lawfulness of a person's detention is not affected
23 by a failure to comply with subsection (1).

s. 16

1 **16. Section 26A inserted**

2 After section 26 insert:

3

4 **26A. Humane treatment of detainee**

5 (1) The detainee —

6 (a) must be treated with humanity and with respect
7 for human dignity; and

8 (b) must not be subjected to cruel, inhuman or
9 degrading treatment,

10 by anyone exercising authority under this Act or
11 implementing or enforcing this Act.

12 (2) The Inspector of Custodial Services may, at any time,
13 review the detainee's detention under this Act to
14 determine whether the subsection (1) is being complied
15 with in relation to the prisoner.

16 (3) The Inspector of Custodial Services may, at any time,
17 report to the Board on any matter relating to a review
18 under subsection (2) and give advice or make
19 recommendations as the Inspector of Custodial
20 Services considers appropriate in relation to the matter.

21 (4) For the purposes of this section the Inspector of
22 Custodial Services may exercise any power conferred
23 by the *Inspector of Custodial Services Act 2003*
24 whether or not the place where the prisoner is being
25 imprisoned is a place referred to in section 19 of that
26 Act.
27

1 **Part 6 — Amendments to *Young Offenders Act 1994***

2 **17. The Act amended**

3 The amendments in this Part are to the *Young Offenders*
4 *Act 1994*.

5 **18. Section 3 amended**

6 In section 3 insert in alphabetical order:

7
8 *Inspector of Custodial Services* means the Inspector of
9 Custodial Services under the *Inspector of Custodial*
10 *Services Act 2003*;

11
12 **19. Section 9A inserted**

13 After section 9 insert:

14
15 **9A. Inspector of Custodial Services to be notified of**
16 **detention**

17 (1) As soon as practicable after a person is first taken into
18 custody or detained (which ever is the earlier) under
19 this Act, the chief executive officer must notify the
20 Inspector of Custodial Services as to the place where
21 the person is being detained.

22 (2) The lawfulness of a person being held in custody or
23 detention is not affected by a failure to comply with
24 subsection (1).
25

s. 20

1 **20. Section 11G inserted**

2 After section 11F insert:

3

4 **11G. Humane treatment of detainee**

5 (1) The person in custody or the detainee —

6 (a) must be treated with humanity and with respect
7 for human dignity; and

8 (b) must not be subjected to cruel, inhuman or
9 degrading treatment,

10 by anyone exercising authority under this Act or
11 implementing or enforcing this Act.

12 (2) The Inspector of Custodial Services may, at any time,
13 review the detainee’s detention to determine whether
14 subsection (1) is being complied with in relation to the
15 detainee.

16 (3) The Inspector of Custodial Services may, at any time,
17 report to the chief executive officer on any matter
18 relating to a review under subsection (2) and give
19 advice or make recommendations as the Inspector of
20 Custodial Services considers appropriate in relation to
21 the matter.

22 (4) For the purposes of this section the Inspector of
23 Custodial Services may exercise any power conferred
24 by the *Inspector of Custodial Services Act 2003*
25 whether or not the place where the detainee is being
26 detained is a place referred to in section 19 of that Act.
27

28
