

**ACTS AMENDMENTS (SAFETY AND HUMAN RIGHTS OF PERSONS IN CUSTODY)
BILL 2009 (E 072)**

EXPLANATORY MEMORANDUM

(Introduced by Hon. Eric Ripper, MLA)

The purpose of the *Acts Amendments (Safety and Human Rights of Persons in Custody) Bill 2009* is to implement recommendations 1 and 2 contained in Coroner Alastair Hope's report (ref no: 9/09) following the inquest into the death of Mr Ward whilst in custody on 27 January 2008.

The Coroner recommended:

1. That a statutory system be put in place which would enable the Inspector of Custodial Services to issue the Department of Corrective Services with a "show cause" notice in cases where the Inspector is aware of issues relating to the human rights and safety of persons in custody.
2. That the terms of section 34 and 39 of the *Terrorism (Preventative Detention) Act 2006* be inserted in relevant legislation dealing with the Inspector's powers so that those protections be extended to all persons in custody and to all areas of the Inspector's jurisdiction.

The *Acts Amendments (Safety and Human Rights of Persons in Custody) Bill 2009* increases the power of the Inspector of Custodial Services to ensure the safety and human rights of persons who are being held in custody, detention or prison by introducing new sections into the following Acts:

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

Part I - Preliminary

Clause 1 Short Title

Provides for the Act to be cited as the *Acts Amendments (Safety and Human Rights of Persons in Custody) Act 2009*.

Clause 2 Commencement

Provides for this Act to come into operation as follows on the day fixed by proclamation.

Part 2 – Amendments to Inspector of Custodial Services Act 2003

Clause 3 The Act amended

Provides that the amendments in Part 2 are to the Act.

Clause 4 Section 31A inserted

Section 31A enables the Inspector of Custodial Services to issue a notice compelling the CEO to respond in writing to any concerns regarding:

- a) the security, control, safety, care or welfare of a person for whom the CEO is responsible under the *Court Security and Custodial Services Act 1999*; or
- b) compliance with the proposed amendments contained in Clause 8, Clause 12, Clause 16 and Clause 20 of the Bill. These amendments relate to the requirement that a prisoner, person in custody or detainee be treated with humanity and not subjected to cruel, inhuman or degrading treatment.

The penalty for non-compliance with a notice is \$20,000, the same penalty that is imposed under section 32 of the Act.

Part 3 – Amendments to Prison Act 1981

Clause 5 The Act amended

Provides that the amendments in Part 3 are to the Act.

Clause 6 Section 3 amended

Amends section 3 of the Act to include a definition of “Inspector of Custodial Services”. This is necessary to provide meaning to the proposed amendments contained in Clause 7 and Clause 8 of the Bill. The proposed definition of “Inspector of Custodial Services” is identical to that provided in the *Inspector of Custodial Services Act 2003*.

Clause 7 Section 7A inserted

Section 7A requires the chief executive officer to notify the Inspector of Custodial Services as soon as practicable after a person is first imprisoned under the Act as to the place where the person is being imprisoned. This proposed section is modelled closely on section 34 of the *Terrorism (Preventative Detention) Act 2006*.

Clause 8 Section 95F inserted

Section 95F seeks to:

- a) ensure all persons imprisoned under the Act are treated with humanity and not subjected to cruel, inhuman or degrading treatment;
- b) increase the powers of the Inspector of Custodial Services to ensure compliance with the above by reporting to, giving advice or making recommendations to the chief executive officer.

This proposed section is modelled closely on section 39 of the *Terrorism (Preventative Detention) Act 2006*.

Part 4 – Amendments to Court Security and Custodial Services Act 1999

Clause 9 The Act amended

Provides that the amendments in Part 4 are to the Act.

Clause 10 Section 3 amended

Amends section 3 of the Act to include a definition of “Inspector of Custodial Services”. This is necessary to provide meaning to the proposed amendments contained in Clause 11 and Clause 12 of the Bill. The proposed definition of “Inspector of Custodial Services” is identical to that provided in the *Inspector of Custodial Services Act 2003*.

Clause 11 Section 29A inserted

Section 29A requires the CEO to notify the Inspector of Custodial Services as soon as practicable after a person is first taken into custody under the Act as to the place where the person is being held in custody. This proposed section is modelled closely on section 34 of the *Terrorism (Preventative Detention) Act 2006*.

Clause 12 Section 101 inserted

Section 101 seeks to:

- a) ensure all persons held in custody under the Act are treated with humanity and not subjected to cruel, inhuman or degrading treatment;
- b) increase the powers of the Inspector of Custodial Services to ensure compliance with the above by reporting to, giving advice or making recommendations to the chief executive officer.

This proposed section is modelled closely on section 39 of the *Terrorism (Preventative Detention) Act 2006*.

Part 5 – Amendments to Criminal Law (Mentally Impaired Accused) Act 1996

Clause 13 The Act amended

Provides that the amendments in Part 5 are to the Act.

Clause 14 Section 23 amended

Amends section 23 of the Act to include a definition of “Inspector of Custodial Services”. This is necessary to provide meaning to the proposed amendments contained in Clause 15 and Clause 16 of the Bill. The proposed definition of “Inspector of Custodial Services” is identical to that provided in the *Inspector of Custodial Services Act 2003*.

Clause 15 Section 24A inserted

Section 24A requires the Board to notify the Inspector of Custodial Services as soon as practicable after a person is detained under the Act as to the place where the person is being held in detention. This proposed section is modelled closely on section 34 of the *Terrorism (Preventative Detention) Act 2006*.

Clause 16 Section 26A inserted

Section 26A seeks to:

- a) ensure all persons who are held in detention under the Act are treated with humanity and not subjected to cruel, inhuman or degrading treatment;
- b) increase the powers of the Inspector of Custodial Services to ensure compliance with the above by reporting to, giving advice or making recommendations to the chief executive officer.

This proposed section is modelled closely on section 39 of the *Terrorism (Preventative Detention) Act 2006*.

Part 6 – Amendments to Young Offenders Act 1994

Clause 17 The Act amended

Provides that the amendments in Part 6 are to the Act.

Clause 18 Section 3 amended

Amends section 3 of the Act to include a definition of “Inspector of Custodial Services”. This is necessary to provide meaning to the proposed amendments contained in Clause 19 and Clause 20 of the Bill. The proposed definition of “Inspector of Custodial Services” is identical to that provided in the *Inspector of Custodial Services Act 2003*.

Clause 19 Section 9A inserted

Section 9A requires the chief executive officer to notify the Inspector of Custodial Services as soon as practicable after a young offender is taken into custody or detained under the Act as to the place where the young offender is being held in custody or detention. This proposed section is modelled closely on section 34 of the *Terrorism (Preventative Detention) Act 2006*.

Clause 20 Section 11G inserted

Section 11G seeks to:

- a) ensure all persons who are held in custody or detention under the Act are treated with humanity and not subjected to cruel, inhuman or degrading treatment;
- b) increase the powers of the Inspector of Custodial Services to ensure compliance with the above by reporting to, giving advice or making recommendations to the chief executive officer.

This proposed section is modelled closely on section 39 of the *Terrorism (Preventative Detention) Act 2006*.