

Western Australia

Inspector of Custodial Services Amendment Bill 2011

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Western Australia

LEGISLATIVE ASSEMBLY

**Inspector of Custodial Services Amendment
Bill 2011**

A Bill for

An Act to amend the *Inspector of Custodial Services Act 2003*.

The Parliament of Western Australia enacts as follows:

s. 1

1 **1. Short title**

2 This is the *Inspector of Custodial Services Amendment*
3 *Act 2011*.

4 **2. Commencement**

5 This Act comes into operation as follows —

- 6 (a) sections 1 and 2 — on the day on which this Act
7 receives the Royal Assent;
- 8 (b) the rest of the Act — on a day fixed by proclamation,
9 and different days may be fixed for different provisions.

10 **3. Act amended**

11 This Act amends the *Inspector of Custodial Services Act 2003*.

12 **4. Section 22 amended**

13 (1) In section 22 delete “The” and insert:

14

15 (1) The

16

17 (2) At the end of section 22 insert:

18

19 (2) Without limiting subsection (1), a review may be
20 carried out under that subsection of the following or
21 any aspect of the following —

22 (a) a custodial service in relation to one or more
23 particular prisoners;

24 (b) a custodial service in relation to one or more
25 particular detainees;

26 (c) a custodial service (CSCS Act) in relation to
27 one or more particular persons in custody.
28

1 **5. Section 28 amended**

2 In section 28(1):

3 (a) delete “section 22(a),” and insert:

4

5 section 22(1)(a) or (2)(a),

6

7 (b) in paragraph (g) delete “prison; and” and insert:

8

9 prison or to a person who is, or has been, a prisoner; and

10

11 (c) in paragraph (h)(ii) delete “contract.” and insert:

12

13 contract; or

14

15 (d) after paragraph (h)(ii) insert:

16

17 (iii) a person who is, or has been, a prisoner
18 in a prison that is a subject of a contract.

19

20 (e) after each of paragraphs (a) to (f) insert:

21

22 and

23

24 **6. Section 29 amended**

25 In section 29(1):

26 (a) delete “section 22(b),” and insert:

27

28 section 22(1)(b) or (2)(b),

29

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1 (b) in paragraph (g) delete “centre.” and insert:
2
3 centre or to a person who is, or has been, a detainee.
4

5 (c) after each of paragraphs (a) to (e) insert:

6
7 and
8

9 **7. Section 30 amended**

10 In section 30(1):

11 (a) delete “section 22(c),” and insert:

12
13 section 22(1)(c) or (2)(c),
14

15 (b) delete paragraph (g) and insert:

16
17 (g) all documents in the possession of the
18 Department in relation to a court custody centre
19 or lock-up or a custodial service (CSCS Act) or
20 to a person who is, or has been, a person in
21 custody —

22 (i) in a court custody centre or lock-up; or

23 (ii) in a vehicle described in paragraph (d);
24 or

25 (iii) in relation to whom a custodial service
26 (CSCS Act) is, or has been, provided;

27 and
28

29 (c) in paragraph (h)(ii) delete “contract.” and insert:

30
31 contract; or
32

- 1 (d) after paragraph (h)(ii) insert:
2
3 (iii) a person who is, or has been, a person in
4 custody —
5 (I) in a court custody centre or
6 lock-up that is a subject of a
7 contract; or
8 (II) in a vehicle described in
9 paragraph (d); or
10 (III) in relation to whom a custodial
11 service (CSCS Act) that is a
12 subject of a contract is, or has
13 been, provided.
14
15 (e) after each of paragraphs (a) to (f) insert:
16
17 and
18

19 **8. Section 33A inserted**

20 At the end of Part 4 Division 2 insert:
21

22 **33A. Inspector may give chief executive officer or CEO**
23 **show cause notice**

- 24 (1) In this section —
25 *responsible officer* means —
26 (a) in relation to a prisoner — the chief executive
27 officer as defined in the *Prisons Act 1981*
28 section 3(1); or
29 (b) in relation to a detainee — the chief executive
30 officer as defined in the *Young Offenders*
31 *Act 1994* section 3; or

- 1 (c) in relation to a person in custody — the CEO.
- 2 (2) Subsection (3) applies if the Inspector suspects on
3 reasonable grounds —
- 4 (a) that there is, or has been, a serious risk to the
5 security, control, safety, care or welfare of a
6 prisoner, detainee or person in custody; or
- 7 (b) that a prisoner, detainee or person in custody is
8 being, or has been, subjected to cruel, inhuman
9 or degrading treatment.
- 10 (3) The Inspector may give the responsible officer a
11 written notice (a *show cause notice*) —
- 12 (a) specifying the matters in relation to which
13 subsection (2)(a) or (b) applies; and
- 14 (b) requiring the responsible officer to show cause
15 why the Inspector should not refer those
16 matters to the Minister.
- 17 (4) The show cause notice must specify a period of at least
18 3 days within which the notice must be complied with.
- 19 (5) The responsible officer may, within the period
20 specified in the show cause notice, make submissions,
21 either orally or in writing, or provide evidence to the
22 Inspector with respect to the matters specified in the
23 notice.
- 24 (6) Having considered any submissions made or evidence
25 provided under subsection (5), the Inspector —
- 26 (a) may refer any matter specified in the show
27 cause notice to the Minister; or
- 28 (b) may decide to take no further action with
29 respect to the matter.
- 30 (7) If the Inspector refers a matter to the Minister under
31 subsection (6)(a), the Inspector must give advice or

1 make recommendations to the Minister as the Inspector
2 considers appropriate in relation to the matter.

3 (8) The Inspector may, by written notice given to the
4 responsible officer, withdraw a show cause notice.
5

6 **9. Section 33 amended**

7 (1) In section 33(2):

8 (a) in paragraph (e) delete “June.” and insert:

9

10 June; and

11

12 (b) after paragraph (e) insert:

13

14 (f) if the Inspector considers it appropriate to
15 include those details in the report — details of
16 any show cause notice given under
17 section 33A(3) in the period of 12 months
18 ending on the preceding 30 June.

19

20 (c) after each of paragraphs (a) to (c) insert:

21

22 and

23

24 (2) After section 33(2) insert:

25

26 (3A) If, under subsection (2)(f), the Inspector includes in the
27 report details of a show cause notice, the Inspector
28 must also include details of any submissions made or
29 evidence provided to the Inspector under
30 section 33A(5) with respect to the matters specified in
31 the notice.

s. 10

1 (3B) If the Inspector considers it appropriate to do so
2 because of the extent of the submissions made or
3 evidence provided to the Inspector under
4 section 33A(5), the Inspector may comply with
5 subsection (3A) by including in the report a summary
6 of those submissions or that evidence.
7

8 **10. Section 36 amended**

9 In section 36(1)(b) delete “section 22(c),” and insert:

10

11 section 22(1)(c) or (2)(c),
12

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