

INSPECTOR OF CUSTODIAL SERVICES BILL 2003

EXPLANATORY NOTES

The main purpose of this Bill is to extend the jurisdiction of the Inspector of Custodial Services to juvenile detention centres. In doing so the opportunity has also been taken to draw the current spread of the Inspector's jurisdiction from several pieces of legislation into a discrete statute.

The main provisions in respect of the Inspector's current jurisdiction appear as Part XA in the *Prisons Act 1981*. This refers to the creation of the Office of the Inspector and the specific provisions governing the appointment, terms of conditions and the removal from office of the Inspector; and the general provisions for staff appointed or engaged by the Inspector. This Act also sets out the functions and powers of the Inspector relating to the inspection of prisons and the review of prison services. In addition, the Inspector also has jurisdiction under Part 5 of the *Court Security and Custodial Services Act 1999* to inspect court custody centres and to review any custodial service for which the CEO of the Department of Justice is responsible.

The *Inspector of Custodial Services Bill 2003* has been drafted from the existing provisions in the *Prisons Amendment Act 1981* and the *Court Security and Custodial Services Act 1999*, adding in the new jurisdiction in relation to juvenile detention centres. There is a common framework to the functions and powers of the Inspector that has been applied to the three jurisdictions of juvenile detention, adult prisons and court custody and related services.

Outlined below is an examination of the contents of the Bill on a clause-by-clause basis.

Part 1 - Preliminary

This Part contains the title of the Act, the relevant commencement provisions and definitions of terms used within the Bill.

Clause 1: This clause sets out the short title for the proposed Act.

Clause 2: This clause sets out the commencement provisions. The proposed Act will come into operation on the day on which it receives the Royal Assent.

Clause 3: This clause defines certain words and expressions used in the proposed Act.

Clause 4: This clause clarifies that Notes in the Bill are provided to assist understanding and do not form part of the Act.

Part 2 – Office of the Inspector

Division 1 – Inspector

This Part provides for the continuation of the Office and the arrangements for the appointment, conditions and removal of the Inspector.

Clause 5: This clause provides for the Office of the Inspector of Custodial Services created by section 109A of the *Prisons Act 1981* to be continued.

Clause 6: This clause provides for the appointment of the Inspector and replicates section 109B of the *Prisons Act 1981*.

Subclause (1) provides for the Governor to appoint an appropriately qualified person as the Inspector.

Subclause (2) provides that the *Public Sector Management Act 1994* does not apply to the Inspector. It is one means that provides for the independence of the Inspector. In effect the Inspector is an officer of the Parliament.

Subclause (3) provides for appointment or reappointment for a term of 7 years. The length of term that the Inspector may hold office is another means that provides for the independence of the Inspector. Through these employment arrangements the prospects of the office holder's faith and confidence are strengthened.

Subclause (4) provides that a person who has been a member of Parliament in any Australian jurisdiction cannot be appointed as Inspector. This is a probity provision to minimise the politicisation of the position.

Clause 7: This clause provides for conditions of appointment and replicates section 109C of the *Prisons Act 1981*.

Subclause (1) (a) provides for the Salaries and Allowances Tribunal to determine the yearly rates of salary and allowances.

Subclause 1 (b) provides that leave and other entitlements cannot be reduced during a term of appointment.

Subclause (2) provides for the charging of the salary and allowances payable to the Inspector to the Consolidated Fund and for the direct appropriation for this purpose. This is another feature of the independence of the Inspector.

Clause 8: This clause provides for the Inspector to take an oath or affirmation before performing the functions of office and replicates section 109D of the *Prisons Act 1981*.

Subclause (1) provides the detail of the oath or affirmation.

Subclause (2) provides that the oath or affirmation be administered by the Governor.

Clause 9: This clause provides for the removal of the Inspector from office and replicates section 109E of the *Prisons Act 1981*.

Subclause (1) provides that the Governor may remove the Inspector from office for (a) (i) misbehaviour or incompetence; or (ii) physical or mental incapacity, other than temporary illness, impairing the performance of the Inspector's functions; or (b) bankruptcy or similar financial circumstances. The provisions for removal are limited to provide another means to strengthen the independence of the Inspector.

Subclause (2) provides that misbehaviour is defined to include conduct that does not relate to any function of the office.

Clause 10: This clause provides for portability of superannuation and other entitlements and replicates section 109G of the *Prisons Act 1981*.

Subclause (1) provides for continuity of entitlements of a public service officer appointed as Inspector.

Subclause (2) provides for continuity of entitlements of an Inspector appointed as a public service officer.

Subclause (3) provides that where an Inspector was immediately before appointment an officer under Part 3 of the *Public Sector Management Act 1994*, and the term of office as Inspector expires by effluxion of time, then that person is entitled to be appointed to an office that is no lower in status.

Division 2 – Acting appointments

Clause 11: This clause provides for acting appointments made by the Governor and replicates section 109F(1) of the *Prisons Act 1981*.

The Governor may appoint a person to act when the position is vacant, or the Inspector is absent from duty or is not able to perform the functions of the officer for any other reason. This is another means that provides for the independence of the Inspector's position.

Clause 12: This clause provides for acting appointments by the Inspector and replicates sections 109F(2) and (3) of the *Prisons Act 1981*.

Subclause (1) provides that if the Governor has not appointed a person to act, the Inspector may do so for not more than 4 weeks at a time and for not more than 6 weeks in a 12 month period.

Subclause (2) provides that the Governor may overturn the acting arrangements of the Inspector.

Clause 13: This clause provides for matters relevant to all acting appointments.

Subclause (1) provides that a person who has been a member of Parliament in any Australian jurisdiction cannot be appointed to act as Inspector. This is a probity provision to minimise the politicisation of the position.

Subclause (2) provides that acting appointments can be made at any time but must be expressed to have effect only in circumstances in the instrument of appointment.

Clause 14: This clause provides for the acting Inspector to be subject to all relevant provisions of the law. This is probity provision to control the functioning of the office. It replicates section 109F(5) of the *Prisons Act 1981*.

Clause 15: This clause provides for savings and replicates section 109F(6) of the *Prisons Act 1981*.

The validity of anything done by the Inspector or an acting Inspector is not affected by the administrative arrangements of appointments.

Division 3 – Staff

Clause 16: This clause provides for appointment or engagement of the staff necessary for the performance of the Inspector's function. It replicates section 109I of the *Prisons Act 1981*.

In general terms staff may be a public servant, a term appointment or a person specifically retained to provide expert advice. The Inspector may also, by arrangement and on such terms as agreed, make use of any officer or employee or any facilities of any department of the Public Service or a State agency or instrumentality.

Part 3 – Relationship with Minister

Clause 17: This clause provides for the directions of the Minister. Taking account of the expanded nature of the Inspector's jurisdiction, it substantially replicates section 109L of the *Prisons Act 1981* and section 87 of the *Court Security and Custodial Services Act 1999*.

Subclause (1) provides that except in the circumstances described in this section the Inspector is not subject to direction by the Minister or any other person in the performance of functions. This is another means that provides for the independence of the Inspector's position.

Subclause (2) provides that the Minister may direct the Inspector to (a) inspect a prison, detention centre, court custody centre or lock-up; and (b) to review a custodial service in relation to a prison, detention centre, or a custodial service, or any aspect of these services; and report on a specified matter of significance. This ensures that the Minister may exercise oversight over the Inspector's performance of functions and enables matters known to the Minister to be referred to the Inspector for consideration.

Subclause (3) provides that the Minister may, after consultation with the Inspector, issue a written direction as to the performance of any of the Inspector's functions but a direction cannot be issued in respect to a particular case. This enables the independence of the Inspector to be preserved whilst enabling the Minister to test the appropriateness of specific referrals. The Inspector does not have the mandate to act in specific cases, see subclause (2) of clause 26 below.

Subclause (4) provides that each direction is included in the Inspector's annual report. This is another means that provides for the independence of the Inspector's position.

Subclause (5) provides that the Inspector must comply with a direction, unless there are exceptional circumstances.

Subclause (6) provides that if the Inspector refuses to comply with a direction from the Minister written details must be included in the Inspector's annual report.

Clause 18: This clause provides for the Minister to have access to information and replicates section 109M of the *Prisons Act 1981*.

There are 5 subclauses in this section to set out the arrangements. The Inspector must comply with an information request unless, in the Inspector's opinion, it would not be in the public interest to do so. In this case the Inspector must include the reasons in the Inspector's annual report. This is another means that provides for the independence of the Inspector's position.

Part 4 – Functions and powers of the Inspector

Division 1 - Functions

Clause 19: This clause provides for the mandatory inspection of each prison, detention centre, court custody centre and lock-up once every 3 years. It parallels, in relation to prisons, section 109L(1) of the *Prisons Act 1981* and, in relation to court custody centres, section 85(1) of the *Court Security and Custodial Services Act 1999*.

Clause 20: This clause provides for the Inspector to prepare an inspection report on the findings in relation to each inspection and for the inspection report to contain such advice and recommendations as the Inspector considers appropriate in relation to the findings. This parallels the same provisions as those mentioned in relation to clause 19.

Clause 21: This clause provides for the occasional inspection of places listed in clause 19 at any other time and on any number of occasions. This is another means that provides for the independence of the Inspector's position. The clause parallels section 109I(3)(a) of the *Prisons Act 1981* and section 85(3)(a) of the *Court Security and Custodial Services Act 1999*.

Clause 22: This clause provides for the occasional review of custodial services relating to a prison, a detention centre or a custodial service under the *Court Security and Custodial Services Act 1999*. In general terms this relates to systemic issues rather than the performance of services at locations. It parallels section 109I(3)(b) of the *Prisons Act 1981* and section 85(3)(b) of the *Court Security and Custodial Services Act 1999*.

Clause 23: This clause provides for the reporting on occasional inspections and reviews. The Inspector may at any time report to the Minister on any matters relating to an occasional inspection or review. This clause substantially replicates section 109I(4)(a) of the *Prisons Act 1981* and section 85 (4)(a) of the *Court Security and Custodial Services Act 1999*.

Clause 24: This clause provides for the Inspector to deliver either a draft report or a prepared report to the Minister or any other person having an interest in the subject matter of an occasional inspection or review. This clause substantially replicates section 109I(4)(b) of the *Prisons Act 1981* and section 85(4)(b) of the *Court Security and Custodial Services Act 1999*.

Clause 25: This clause provides for notifications by the Inspector to perform any of the functions. The Inspector does not need to give notice, except to the chief judicial officer of a court, when reasonable notice is to be given in relation to the inspection of a court custody centre that is part of the court premises or the review of any court custodial services or any aspect of court custodial services affecting the court. The Inspector is also to consult the chief judicial officer in relation to a relevant inspection or review. This ensures that the separation of judicial officer powers and the independence of the Inspector are preserved.

This clause substantially replicates section 109J(2) of the *Prisons Act 1981* and section 88 of the *Court Security and Custodial Services Act 1999*.

Clause 26: This clause provides for the relationship of the Inspector's functions to other laws. It substantially replicates sections 109I(5) and (6) of the *Prisons Act 1981* and section 85(5) of the *Court Security and Custodial Services Act 1999*.

Subclause (1) provides that the Inspector ensures that the performance of any function is not likely to delay, interfere with or duplicate (a) an inquiry under the *Prisons Act 1981* section 9; (b) an inquiry under the *Court Security and Custodial Services Act 1999* section 44; (c) an investigation, or the taking of further actions, as defined in the *Anti-Corruption Commission Act 1988* section 17; or (d) an investigation by the Parliamentary Commissioner for Administrative Investigations under the *Parliamentary Commissioner Act 1971*.

Subclause (2) provides that the Inspector may refer a complaint or grievance concerning a particular individual to the Parliamentary Commissioner for Administrative Investigations or any other government agency having a function to deal with the matter. See subclause 3 of clause 17 above. The Inspector does not have the mandate to act in specific cases.

Division 2 - Powers

These are key clauses that provide the Inspector with the independence and authority to perform the statutory functions. The wording from these clauses is reflected in the warrants issued by the Inspector to authorised persons.

Clause 27: This clause provides for the powers of the Inspector. It is a broad power that enables the Inspector to do all things necessary or convenient to be done for or in connection with the performance of the Inspector's function. It replicates section 109J(1) of the *Prisons Act 1999*.

Clause 28: This clause provides for the Inspector or any person authorised by the Inspector, at any time and with the assistance and equipment that the Inspector or authorised person thinks are necessary, to have free and unfettered access to:

- (a) a prison or any part of a prison;
- (b) a prisoner in a prison;
- (c) a person whose work is concerned with a prison;
- (d) a vehicle used to transport prisoners;
- (e) a prisoner in such a vehicle;
- (f) a person whose work is concerned with such a vehicle;
- (g) all documents in the possession of a contractor or a subcontractor in relation to a prison that is the subject to a contract or a custodial service in relation to a prison that is a subject of a contract.

It replicates sections 109K(1) and (2) of the *Prisons Act 1981*.

Clause 29: This clause provides for access to detention centres and associated vehicles, people in a detention centre or whose work is concerned with such a place and all relevant documents. It parallels the prison arrangements provided for in clause 28.

Clause 30: This clause provides for access to court custody centres and lock-ups and associated vehicles, people in a court custody centre or whose work is concerned with such a place and all relevant documents. It replicates sections 86(1) and (2) of the *Court Security and Custodial Services Act 1999*.

Clause 31: This clause provides for matters relevant to access powers. Sub-clauses 1 and 2 replicate sections 109K(3) and (4) of the *Prisons Act 1981* and sections 86(3) and (4) of the *Court Security and Custodial Services Act 1999*.

Subclause (1) provides that the Inspector may authorise a person for the purpose of 28(1), 29(1) or 30(1).

Subclause (2) provides that the authorisation must be in writing and may be made subject to such conditions and limitations specified in the authorisation as the Inspector thinks fit. This ensures that the Inspector is able to exercise adequate control over authorised persons.

Subclause (3) provides for the Inspector to revoke an authorisation if the Inspector considers it appropriate to do so.

Subclause (4) provides that the Minister may revoke an authorisation if the person has adversely affected, or is likely to adversely affect: (a) the good order or the security of a prison, detention centre, court custody centre or lock-up, or vehicle referred to in clause 28(1)(d), 29(1)(d) or 30(1)(d); or (b) the safety of any person at such a place or in such a vehicle or whose work is connected with such a place or vehicle.

Subclause (5) provides that nothing in 28, 29 or 30 limits any entitlement that a person has, under a written law, to have access to a place, vehicle, person or document referred to in those clauses.

Subclause (6) provides that a written law to ban a person from visiting a prison, detention centre, court custody centre or lock-up cannot be exercised in respect of the Inspector or any person who is authorised by the Inspector. Appropriate controls have been provided in subclause (3) and (4) of clause 31 above. The subclauses under clause 31 provide for Inspector and Ministerial override in certain circumstances, but also ensure that the enduring powers of the *Prisons Act 1981* do not inadvertently apply to persons appointed or authorised under this provision.

Clause 32: This clause provides for offences against persons exercising access powers. In particular, it is proposed that there should be offences with strong penalties for hindering or resisting the Inspector or a person authorised by the Inspector. The clause substantially replicates section 109K(5) of the *Prisons Act 1981* and section 86(5) of the *Court Security and Custodial Services Act 1999*.

Part 5 – Reporting

Clause 33: This clause provides for annual reporting. It substantially replicates sections 109L(5) and (6) and 109N(1) and (2) of the *Prisons Act 1981* and section 89 of the *Court Security and Custodial Services Act 1999*, and clarifies the relationship of the Inspector's reporting requirements to the normal obligations arising under the *Financial Administration and Audit Act 1985*.

Subclause (1) provides that the Inspector, as soon as practicable each year but no later than 30 September, is to deliver a copy of reports specified in subclause 2, to (a) the Speaker of the Legislative Assembly and the President of the Legislative Council who are to keep the copies of the report in safe keeping and (b) to the Minister, who may prepare a response to the report.

This provides a direct link between the Inspector and the Parliament and ensures that the final version of reports prepared by the Inspector is protected. The protection occurs in two ways: firstly, the reports are placed in safe keeping whilst public responses are being considered by the Minister and others; and secondly, the reports receive Parliamentary protection from liability as the reports are tabled before being published.

Subclause (2) provides for the various reports that the Inspector is to table by 30 September each year, including an annual report on the performance of the Inspector's function; the text of any Ministerial direction; the text of any refusal of a Ministerial direction; the text of any Ministerial request for information; the text of any refusal of a Ministerial request for information; a list of places inspected in a preceding 12 month period and a list of places intended to be inspected in the next 12 months. The provisions ensure independence for the Inspector, for example, the list of places to be inspected and those that have been inspected allows the Inspector to report if there were obstacles to completing necessary work.

Subclause (3) provides for the Inspector to report to Parliament if there is some reason why reports that are required annually were not prepared by 30 September of each year. This is a further protection of the independence of the Inspector and also ensures that Parliament supervises the performance of the Inspector.

Clause 34: This clause provides for the tabling of mandatory inspection reports and reports of occasional inspections and reviews as soon as is practicable after completion. This is to ensure that reports are to be progressively received by Parliament and published and is another form of support for the independence of the Inspector. In some other custodial jurisdictions several reports are released at once to minimise any controversy reported by accountability agencies.

The clause in conjunction with clause 35 substantially replicates and clarifies section 109N of the *Prisons Act 1981* and section 89 of the *Court Security and Custodial Services Act 1999*.

Clause 35: This clause provides for the Speaker and President to lay before Parliament each of the documents mentioned in clause 33 and 34. These are the procedural arrangements to support the Inspector to perform the statutory functions.

Subclause (1) provides that these documents not be tabled prior to 30 days, but this should be done as soon as practicable after that period.

Subclause (2) provides for the Inspector to deal directly with a Clerk of a House of Parliament in the event that a House is not sitting.

Subclause (3) provides that a copy of a document transmitted to a Clerk of a House is to be regarded as having been laid before that House.

Subclause (4) provides that that laying of a copy of a document that is regarded to have occurred under subclause (3) is to be recorded on the first sitting day of the House after the Clerk receives the copy.

The clause substantially replicates and clarifies the procedures previously covered by section 109N(4) and (5) of the *Prisons Act 1981*.

Clause 36: This clause provides for chief judicial officers to receive a copy of inspection reports, reports on occasional inspections and reviews affecting the court. A chief judicial officer may respond to the report. This provision differs from the arrangements for other persons set out in clause 37 below about whom the Inspector may intend to express an opinion in a report and who may make oral or written submissions back to the Inspector. The arrangement for chief judicial officers acknowledges the separation of judicial powers.

The clause substantially replicates section 89(2) of the *Court Security and Custodial Services Act 1999*.

Clause 37: This clause provides for submissions in certain cases before the completion of reports. The clause requires the Inspector to afford an opportunity to the Department of Justice, a contractor to the Department or any other person, to make an oral or written submission before the Inspector discloses information or makes a statement setting out an opinion that is either expressly or implied as critical. Subclause (3) defines the parties mentioned in the clause.

The clause substantially replicates section 109N(6) and (7) of the *Prisons Act 1981*.

Clause 38: This clause provides for the Inspector's reporting requirements under the *Financial Administration and Audit Act 1985*. The details are more fully articulated in **Schedule 1**. This provides that the Inspector is only required to submit one annual report to comply with both the general performance reporting proposed by this Bill and the financial and administrative reporting requirements of the *Financial Administration and Audit Act 1985*: see also clause 33.

Part 6 – Independent visitor service

This Part provides for the continuation of this service that is currently contained in the *Prisons Act 1981* and provides for the Inspector to have a more direct role.

Clause 39: This clause provides for appointment of independent prison visitors. The current statutory arrangements are contained in section 54 of the *Prisons Act 1981*. Important changes have been made in the proposed clause. The proposed clause changes the title from prison visitors to independent prison visitors. This was done to remove the potential for confusion with other persons who visited prisons mainly for social reasons and to emphasise more accurately the accountability role performed by persons appointed for this purpose. The proposed clause also changes the appointment authority from the Governor to the Minister. This strengthens the relationship between the Minister who is the end user of the reports and the independent prison visitors. The clause also provides for the Inspector to have a more direct role in the administration of the Independent Visitor Service to prisons and detention centres.

Subclause (1) provides for the Minister to appoint independent prison visitors after having regard to the advice of the Inspector.

Subclause (2) prohibits the appointment of any person who has an interest in a prison service contract. The precise definitions in this regard are specified in subclause (5) which in turn refers to provisions in section 3(1) of the *Prisons Act 1981*.

Subclause (3) provides that an independent prison visitor cannot carry out the duties of a visiting justice. This ensures that the role is not confused with that of any other visitor to prisons and thereby strengthens the independence of the position.

Subclause (4) provides for appointments to be of 2 years duration, but enables an independent prison visitor to resign earlier by written notice to the Minister.

Subclause (5) has been referred to above.

Clause 40: This clause specifies the duties of independent prison visitors. The clause substantially replicates section 55 of the *Prisons Act 1981*.

Subclause (1) provides for independent prison visitors to visit and inspect the prison for which the visitor is appointed as soon as practicable after appointment and thereafter at intervals of not more than 3 months. The visitor is to record any complaint made and to furnish a written report to the Inspector. This ensures continuous independent scrutiny and public accountability for prisons. The closer relationship between the independent prison visitor service and the Inspector improves the information flow and enables the Inspector to apply considerable powers should the circumstances warrant their application.

Subclause (2) provides for an independent prison visitor to immediately communicate, by way of a personal report, to the Inspector or the chief executive officer of the Department.

Subclause (3) provides that an independent prison visitor must not interfere with the management of, or discipline at, the prison or give or purport to give any instructions to a person employed at the prison. This ensures that there is a balanced approach to the role of the independent prison visitor.

Clause 41: This clause provides for appointment of independent detention centre visitors. The details are identical to the provisions for independent prison visitors.

Clause 42: This clause specifies the duties of independent detention centre visitors. The details are identical to the provisions for independent prison visitors. The clause substantially replicates section 167 of the *Young Offenders Act 1994*.

Clause 43: This clause provides for the Inspector to deal with reports of independent prison visitors and independent detention centre visitors. This enables the Inspector to review each report, to seek comments from the Department or a relevant contractor and to report to the Minister. The Inspector is also able to take action to perform a function relating to an inspection or review from matters arising from these arrangements.

Part 7 – Disclosure of information

Clause 44: This clause provides for the disclosure of information for consultation purposes to and from the Anti-Corruption Commission, the Director of Public Prosecutions or the Parliamentary Commissioner for Administrative Investigations relating to the performance of any of the Inspector's functions.

This clause replicates section 109O of the *Prisons Act 1981*.

Clause 45: This clause provides for information disclosed by the Inspector, or a person authorised by the Inspector, to be used by the Anti-Corruption Commission, the Director of Public Prosecutions or the Parliamentary Commissioner for Administrative Investigations.

This clause replicates section 109P of the *Prisons Act 1981*.

Clause 46: This clause provides for the Inspector to disclose information to other parties if it is in certain interests to do so.

Subclause (1) provides that the Inspector may disclose information, or make a statement with respect to the performance of a function of the Inspector, if in the Inspector's opinion, it is in the interest of any person or otherwise in the public interest. This is an important provision for the independence of the Inspector and for public accountability. In practical terms it allows the Inspector to issue press releases following the publication of an Inspection Report.

Subclause (2) provides for the Inspector to notify the Department or a person before disclosing information or making a statement that is either expressly or implied to be critical if it is practicable to do so.

Subclause (3) provides that the arrangements in this clause do not apply where the Inspector has previously provided notification and opportunity for comment prior to the completion of reports.

Clause 47: This clause provides for confidentiality. A person must not disclose information obtained from the Inspector except for the specified purposes. The penalty for breach of this provision is \$6, 000 and imprisonment for 2 years. The strong penalty is proportional to the damage that could result from such a breach.

Subclause (2) provides that subclause (1) does not apply to the disclosure of statistical or other information that could not reasonably be expected to lead to the identification of any person to whom it relates.

The clause substantially replicates sections 109Q(1) and (7) of the *Prisons Act 1981*.

Clause 48: This clause provides for directions to not disclose certain information. It substantially replicates sections 109Q(2) and (7) of the *Prisons Act 1981*.

Subclause (1) provides for the Inspector to direct a person to whom a document is sent not to disclose to any other person any information contained in the document except for the purpose of a function of the Inspector to which the document relates.

Subclause (2) sets the penalty for a breach of this provision at the same level as a breach of confidentiality

Part 8 – Other offences

Clause 49: This clause provides for hindering and other offences. It substantially replicates and clarifies section 109T of the *Prisons Act 1981*.

Subclause (1) provides that a person must not, without reasonable excuse, hinder or resist the Inspector, or a person authorised by the Inspector, for the purpose of performing or attempting to perform a defined function.

Subclause (2) provides that a person must not make a false or misleading statement to the Inspector, or a person authorised by the Inspector, for the purpose of performing or attempting to perform a defined function.

Subclause (3) provides that a person must not deliberately mislead or attempt to mislead the Inspector, or a person authorised by the Inspector, for the purpose of performing or attempting to perform a defined function.

The penalty applicable to each subclause is \$6, 000 and imprisonment for 12 months. The strong penalty is proportional to the damage that could result from such an offence. Any proven offence is against an Officer of the Parliament, and in the case of misleading the Inspector for example, the impact could be that Parliament may be misled.

Clause 50: This clause provides for victimisation. It replicates section 109U of the *Prisons Act 1981*.

Subclause (1) provides that a person must not (a) prejudice, or threaten to prejudice, the safety or career of; (b) intimidate or harass, or threaten to intimidate or harass; or (c) do any act that is, or is likely to be, to the detriment of, another person. Another person is defined as a person who has provided, is providing or will or may in the future provide information to the Inspector in the performance of a function of the Inspector. The penalty is \$8 000 or imprisonment for 2 years.

Subclause (2) provides that a person who attempts to commit an offence under subclause (1) also commits an offence, for which the penalty is the same.

Subclause (3) provides that a person who intends to commit an offence or incites another person to commit an offence under subclause (1) also commits an offence, for which the penalty is the same.

Part 9 – Miscellaneous

Clause 51: This clause provides for the Inspector to have regard to security and safety when performing a defined function. In particular (a) the good order and security of a prison, detention centre, court custody centre or lock-up, or a defined vehicle; and (b) the safety of any person at such a place or in or near such a vehicle or whose work is connected with such a place or vehicle.

Clause 52: This clause provides for protection from liability for a person who does anything in good faith in the performance, or purported performance, of a function. It includes any act of omission. The clause parallels and clarifies section 111 of the *Prisons Act 1981*.

Clause 53: This clause provides for documents sent to or by the Inspector or an authorised person in the performance of a defined function being privileged and not admissible in evidence in any proceedings other than proceedings for perjury or for an offence provided for in this Bill. The clause replicates section 109R of the *Prisons Act 1981*.

Clause 54: This clause replicates section 109S of the *Prisons Act 1981*. It provides for protection from proceedings in Cabinet. Specifically, subclause (2) provides for the Director General of the Department of the Premier and Cabinet, with the approval of the Premier of the State, to certify any information or question, or any document or part of a document that relates to any such proceedings. The Inspector plays no part in these proceedings.

Clause 55: This clause provides for the Governor to make regulations prescribing all matters that are required or permitted, or are necessary or convenient to be prescribed. This is a standard clause that allows regulations to be issued. The general provisions of section 110 of the *Prisons Act 1981* previously permitted the making of Regulations in relation to the Inspector of Custodial Services

Clause 56: This clause provides for consequential amendments to other Acts and regulations. **Schedule 2** contains the specific details of all proposed amendments, as set out below. It also repeals Part XA of the *Prisons Act 1981*, which was the original statutory basis for the establishment of the Office of the Inspector of Custodial Services.

Clause 57: This clause provides for savings and transitional arrangements. It provides for continuity of services. **Schedule 3** contains the specific details, as set out below.

Schedule 1 is linked to clause 38. Under the previous legislation, the Inspector's Annual report had to conform to two contradictory requirements – to be tabled by 30th September as soon as reasonably practicable after a lapse of 30 days from having been lodged by the Inspector with the Speaker and the President (section 109N of the *Prisons Act 1981*) and through the Minister no more than 15 days after the Auditor-General has completed an audit of the accounts of the Office (*Financial Administration and Audit Act 1985*) Consequently, the annual report has had in the past to be tabled twice to comply with these dual statutory requirements. The provisions of Schedule 1 and clause 38 enable one tabling to be treated as meeting both statutory requirements.

Schedule 2 amends a number of other Acts by ensuring that their relevant cross-reference provisions are to the *Inspector of Custodial Services Act 2003*, rather than as previously to the *Prisons Act 1981* (**clauses 1, 2, 5, 9, 10 and 11**). It also repeals Part 5 of the *CSCS Act 1999*, which had previously been the source of the Inspector's jurisdiction in relation to custodial services under that Act (**clause 3**).

In addition, the *Freedom of Information Act 1992* is amended so as to exempt the Office of the Inspector from FOI requirements. The original legislation had only provided a partial exemption, and this provision brings the Inspector into line with all the other accountability agencies in the State – such as the Auditor-General, the Ombudsman, the Equal Opportunity Commissioner and the Freedom of Information Commissioner herself (**clause 4**).

Various amendments have had to be made to the *Prisons Act 1981* and the *Prisons Regulations 1982* as a consequence of the changes made to the Independent Visitor Scheme. In that Act, the appointment provisions, powers, responsibilities and duties of visiting justices had been aggregated with those of prison visitors. Consequently, the relevant provisions of the *Prisons Act 1981* have had to be amended and re-enacted insofar as they cover visiting justices, whilst the new provisions relating to Independent Prison Visitors have had to be separately enacted to the extent that they require to be covered by the *Prisons Act 1981* (**clauses 6 and 8**). A parallel drafting exercise in relation to Independent Detention Centre Visitors has been carried out in relation to the relevant provisions of the *Young Offenders Act 1994* (**clause 7**).

Schedule 3 contains transitional provisions, continuing existing appointments of the Inspector, his staff and independent prison visitors and clarifying other practical transitional matters.