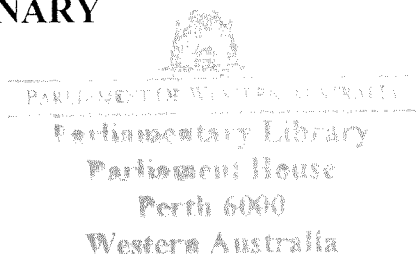


CLAUSE NOTES

PART 1 PRELIMINARY

Clause 1 Short title

Short title of the Act.



Clause 2 Commencement

The *Custody Management and Court Security Bill 1998* will come into operation from a date to be determined. This will be subject to the Minister being satisfied that satisfactory contract arrangements can be put into place with a suitable service provider and that appropriate inter-agency arrangements are finalised with the Minister for Police for those services not being contracted out.

Clause 2 Definitions

Provides a definition of terms used in the construction of the Bill.

Clause 4 Interpretation of "person held apprehended under the Mental Health Act".

These include persons apprehended by police under an order issued by a psychiatrist pursuant to s34, 41, 71 or 84 of the *Mental Health Act 1996*, ordering removal to a hospital. Also included are persons apprehended at the discretion of a police officer for an examination by a medical practitioner pursuant to s195 of the *Mental Health Act 1996* where the police officer forms a reasonable suspicion that the person is mentally ill within the criteria set out in s195.

Clause 5 Interpretation of "security, good order or management"

Defines the application of this term in respect of services provided, and people effected by this Bill.

Clause 6 Crown bound

This Act binds the Crown

PART 2 ADMINISTRATION OF COURT SECURITY AND CUSTODIAL SERVICES

Division 1 CEO's responsibilities

This division outlines the CEO's responsibilities for functions covered by the Bill.

CLAUSE NOTES

Clause 7 Court security services

Sets out the scope of the CEO's responsibility to provide services in relation to court security. Specifically these are responsibilities to any people with business in a court, people who work in a court, and the physical assets to support those services.

Clause 8 Management etc. of court custody centres

The CEO is responsible for the holding cells within or adjacent to a court where persons are held pending an appearance before the court or pending their removal immediately after a court disposition.

Clause 9 Responsibilities as to persons in custody at court premises

Sets out the CEO's responsibility to provide for the management of people in custody at court premises, either in the court custody centre or any part of the court premises.

Clause 10 Property management at court custody centres

The CEO is responsible for property held on behalf of persons in custody at court premises and for that held for visitors to custody centres.

Clause 11 Management etc. of lock-ups

The CEO is responsible for all the proper management of all lock-ups in Western Australia where persons may be held pending an appearance before the court or immediately after a court disposition. Intoxicated persons (see clause 79) and involuntary patients (see clause 75) may also be held in a lock-up.

Clause 12 Responsibilities as to persons in lock-ups

Sets out the scope of the CEO's responsibility to provide for the management of people in lock-ups who have been lawfully handed over to an authorised person or a police officer charged with the responsibility for a lock-up. Intoxicated persons (see clause 79) and involuntary patients (see clause 75) may also be held in a lock-up.

Clause 13 Property management at lock-ups

The CEO is responsible for property held on behalf of persons in custody at lock-ups and for that held for visitors to lock-ups.

Clause 14 Responsibilities as to persons in custody at certain other custodial places

The CEO has responsibility for those persons transferred into his custody only in accordance with the transfer provisions in Part 4 of this Bill in response to a direction of a court or in accordance with a request issued under other existing legislation. Services provided by the CEO

CLAUSE NOTES

include guarding of any person in custody at a hospital for medical treatment, transport and guarding prisoners attending a funeral as approved under the terms of the *Prisons Act 1981*, or similar authorised absence of a juvenile detainee from a detention centre under s188(4) of the *Young Offenders Act 1994*.

Clause 15 Moving persons in custody and intoxicated detainees between custodial places

Persons in custody and intoxicated detainees may be moved for any appropriate and lawful purpose. This includes movement between courts, prisons, and detention centres, hospitals, lock-ups and any other place prescribed by law where persons in custody and intoxicated detainees might be moved.

Clause 16 Property management for certain persons in custody

The CEO is responsible for making provisions for the management of property belonging to persons in custody.

Division 2 Framework for administering court security and custodial services

This division relates only to arrangements covering services, which are the subject of a contract.

Clause 17 Contracts with private sector

Enables the Chief Executive Officer to enter into private contracts for the provision of the services covered in the legislation.

Note: Similar provisions are contained in the *Victorian Corrections Act 1986* s8B, the *NSW Prisons Act 1952* s31B, the *Queensland Corrective Services (Administration) Act 1988*, s19(2)(f).

Clause 18 Arrangements with Commissioner of Police and public sector

In some locations where a private contract may not be viable or warranted the CEO may arrange for police or other public sector officers to continue to provide services.

Clause 19 Delegation

The CEO may delegate certain of the CEO's functions to facilitate proper administration of the Bill.

Clause 20 CEO has Schedule powers

Gives the CEO all of the powers set out in Schedules 1, 2 and 3 of the Bill. This provision is based on the principle that a CEO should not authorise or delegate a power that they themselves do not possess.

CLAUSE NOTES

Clause 21 Powers of contract workers

The powers set out in Schedules 1, 2 and 3 may be exercised by contract workers who are in possession of a Permit issued by the CEO under clause 50 of the Bill. This provision limits the application of a power by a contract worker in the circumstances of the type of work they are required to perform, either court security or custodial services. The CEO can also apply a discretionary limit.

Clause 22 Powers of police officers

The powers set out in Schedules 1, 2 and 3 may be exercised by police officers (in addition to their existing powers) if they are engaged to provide either court security or custodial services under an arrangement made between the CEO and the Commissioner of Police pursuant to clause 18 of the Bill. This provision limits the application of a power by a police officer in the circumstances of the type of work they are required to perform, either court security or custodial services.

Clause 23 Powers of certain court officers

Certain “statutory” court officers (in addition to their existing powers) may exercise the powers set out in Schedules 1, 2 and 3 if they are required by the CEO to provide either court security or custodial services. This provision limits the application of a power by a court officer in the circumstances of the type of work they are required to perform, either court security or custodial services.

Clause 24 CEO may authorise certain other persons to exercise powers

The powers set out in Schedules 1, 2 and 3 may be exercised by certain other persons referred to in the Bill as “justice officers” (in addition to their existing powers), if they are required by the CEO to provide either court security or custodial services. This provision limits the application of a power by a justice officer in the circumstances of the type of work they are required to perform, either court security or custodial services.

Clause 25 Authorised persons may use reasonable force

Allows for the use of appropriate physical force in managing potentially violent persons in defence of personal attack, to forcibly move a person, or to control obstructive behaviours. What is “reasonable force” is a well-established concept commonly understood in the law. Police and prison officers currently operate within this understood concept. Use of reasonable force is limited to circumstances where a person is authorised to exercise a statutory power as provided for in Schedules 1, 2 and 3.

CLAUSE NOTES

Clause 26 Responsibility of certain authorised persons for escapes etc.

Places a statutory responsibility for the escape of a person in custody placed in the charge of any person authorised to exercise a power in certain circumstances relevant to the provision of custodial services.

Division 3 Other matters relating to administration of court security and custodial services

Clause 27 Minister may give directions

In issuing a direction to the CEO the Minister is required, where practicable, to consult with the chief judicial officer in each jurisdiction to ensure there is no conflict between that direction and the operation of the court.

Clause 28 Minister to be informed of certain events

For the purposes of ministerial accountability, this imposes a statutory requirement to ensure that the Minister is informed of escapes and deaths of persons in custody and other serious irregularities. The provision is modelled on s7 of the *Prisons Act 1981*.

Clause 29 Separation of certain kinds of persons in custody and intoxicated detainees

Gives effect to important “duty of care” principles of practice to separate different categories of persons in custody where practicable. Similar provisions exist in the *Prisons Act 1981*, and the *Young Offenders Act 1994*.

Clause 30 Young persons to be dealt with in accordance with the *Young Offenders Act 1994*

Young offenders managed under the provisions of this Bill are subject to the application of the *Young Offenders Act 1994*. This reinforces the principles, application, intent and requirements of those statutory provisions.

Clause 31 CEO may make rules

Rules made under this provision give operational effect to the principal legislation. Rules may impact upon any person involved in the delivery of services under this Bill, any person in custody subject to those services and any person having business in places where the services are performed. A similar rule making power exists under section 35 *Prisons Act 1981*, and section 181 *Young Offenders Act 1994*.

CLAUSE NOTES

Clause 32 CEO may ban certain persons from visiting lock-ups or court custody centres

This section allows the CEO to impose bans preventing identified persons from visiting lock-ups and court custody centres if they have previously been shown to pose a threat to the security or good order of the facility and persons in custody.

Clause 33 Right of entry of certain judicial officers to lock-ups and court custody centres

This provision allows the unfettered right of entry by Judges and Magistrates to inspect custodial facilities operated under the Bill as a means of ensuring external independent scrutiny.

Clause 34 Court's powers not affected by this Act

Re states the independence of the court.

Division 4 — Court security and court custodial services

This division deals specifically with the arrangements for consultation and coordination of matters concerning the provision of services to the courts.

Clause 35 CEO to consult relevant chief judicial officer on certain matters

The independence of the courts is reflected in requirements for the Chief Executive Officer to consult with the chief judicial officer in each court jurisdiction concerning matters that touch on court security and court custodial services in that jurisdiction. This ensures that the needs of the courts are met in the negotiation of arrangements and contracts and that those arrangements do not conflict with the independent view or wishes of the court.

Clause 36 Sheriff's role

The office of the Sheriff is a statutory office created under s156 of the *Supreme Court Act 1936* and takes its direction from the Supreme Court. For the purposes of creating a mechanism for liaison between the chief judicial officer and the Chief Executive Officer specifically for services under this Bill, the Sheriff has been given an overarching role in all courts as the representative of the chief judicial officer of each jurisdiction. In this way there is a consistent application of standards and conditions in the management of the functions relevant to the administration of a contract for service.

PART 3 CONTRACTS FOR COURT SECURITY AND CUSTODIAL SERVICES

Division 1 Matters relating to contracts generally

This Division establishes arrangements for the setting up, administration and scrutiny of contracts for service provision.

Clause 37 Minimum matters to be included in contracts

Contracts for service should include, but not be limited to, these items.

Clause 38 Minimum standards

This section is to establish standards of service delivery and to amend standards and for those standards to be subject to scrutiny by Parliament.

Clause 39 Contract workers in court premises are subject to judicial direction

By virtue of their public officer status police officers, court officers and other staff providing custodial or administrative services in a court are deemed to be officers of the court. This section provides for contract workers to be regarded as officers of the court thus making them liable to act on the direction of the court and to be answerable for failing to comply with a direction.

Clause 40 *Public Sector Management Act 1994* not applicable

This provision is to avoid confusion with the rights of Public Sector officers under the *Public Sector Management Act 1994*, and the private employment status of contract workers.

Clause 41 Minister, CEO etc. may have access to certain places, persons, vehicles and documents

It is intended that the unequivocal rights of the Minister and the CEO to have full access to all aspects of a contractors operation be protected at law. This right may be exercised routinely for performance management and audit purpose, or on an as required basis for purposes such as investigation, emergency or contract failure. The contractor is protected against vexatious access through the requirement for the CEO to appoint a person to have access and for the CEO to make the appointment in writing setting out the conditions and limitations of the authorisation. Provision is made for a penalty of \$20,000 applicable in the event of hindrance or resistance to the CEO, Minister or an appointed person.

CLAUSE NOTES

Clause 42 Administrators and investigators may have access to certain places, persons, vehicles and documents

It is a requirement that a contractor give free and unfettered access to its operations by an administrator or an investigator. A penalty of \$20,000 applies to anyone hindering or resisting an administrator or investigator.

Clause 43 CEO may set up inquiry

The CEO may appoint an investigator to conduct an inquiry into any aspect of a contractor's operation, including "any matter, incident or occurrence" concerning services delivered under a contract. Any person required to give information to an investigator may not refuse to answer on the grounds of self-incrimination. However, information provided under this provision cannot be used in evidence against the person in any proceedings. This provision is modelled on s9 of the *Prisons Act 1981*.

Clause 44 Annual reports

The production of an annual report is to provide an assessment of the operation of a contract and the contractor's performance under the agreed key performance indicators for the contract. It ensures that the Minister and parliament are informed of the level of service delivery.

Clause 45 No contracting out

Division 2 — Vetting and control of contract workers in relation to high-level security work

This Division makes provision for safeguards applicable to a contractor for the pre-employment selection screening, recruitment and authorisation of contract workers.

Clause 46 Meaning of "offence" in this Division

Defines the scope of offences to be considered in the pre-employment screening process and includes traffic infringements not normally characterised as convictions but are relevant as an indicator of an applicant's driving record that relates to services provided under a contract.

Clause 47 High-level security work

High-level security work is specifically defined in this section as work which relates to operational tasks performed by "front line" staff engaged in the direct provision of court security and custodial services, as opposed to ancillary tasks performed by others in support roles, such as people who may provide cleaning, secretarial or vehicle maintenance services. The distinction enables the CEO to allocate Schedule powers to contract workers as appropriate. It also enables the CEO to apply screening safeguards to ensure integrity and accountability in the selection, recruitment and ongoing monitoring of the contractor or sub-contractor's workforce

CLAUSE NOTES

engaged in these services. In order to perform high-level security work a contract worker must possess a permit issued under clause 50 of the Bill.

Clause 48 CEO may declare other kinds of work to be high-level security work

The CEO retains the right to determine what may constitute high-level security work other than that requiring the exercise of a Schedule power but may involve access to persons in custody and confidential documents. The CEO is required to make a declaration of what constitutes high-level security work and must publish this declaration in the Government Gazette. In order to perform high-level security work a contract worker must possess a permit issued under clause 50 of the Bill

Clause 49 Contract workers require permits to do high-level security work

Creates an offence to perform high-level security work without a permit issued under clause 50 of the Bill.

Clause 50 Issue of permits to do high-level security work

This is a fundamental accountability provision giving the CEO the ultimate measure of control over who may work in the provision of contracted services. Whilst all other employment matters and pre-conditions are the responsibility of a contractor, contract workers employed to carry out high-level security work must be issued with a permit approved by the CEO. In issuing a permit the CEO must be satisfied that the applicant meets specified criteria and complies with the steps set out in s51.

Clause 51 Information about applicants for permits

This provision requires pre-employment checks to be carried out on the contractor's and sub-contractors staff performing high-level security work and for the CEO to have access to this information as a safeguard to accountability. Pre-employment checks include criminal histories, driving record, disciplinary record during previous employment, fingerprinting, photographing and checks on associates if there is some doubt about a person's honesty and integrity. This provision creates an offence for misleading information provided in an application for a permit which is punishable by 3 years imprisonment.

Clause 52 Taking of fingerprints and palmprints

This provision is modelled on s48 of the *Security and Related Activities (Control) Act 1996*, which enables the taking of fingerprints and palmprints for the purposes of confirming the identity of people employed in work covered by that Act. This section applies a similar provision to contract workers engaged in the provision of court security and custodial services work to ensure that both prospective and existing contract workers seeking to conceal prior criminal convictions are not employed. The requirement for the Commissioner of Police to destroy the fingerprint and palmprints records of any person who is not granted a permit to do

CLAUSE NOTES

high-level security work, or who's permit is cancelled, is a safeguard to protect the interests of the individual concerned.

Clause 53 Refusal to issue permits

This provision preserves the CEO's discretion to issue a permit. The "public interest" is an important safeguard and also has relevance to s50(2)(c) where a person's dubious "known associates" might be a determining factor in refusing a permit. Experience in the recruitment of prison officers indicates that, although not frequently utilised, such screening mechanisms are essential. The CEO's authority under this section is absolute.

Clause 54 Determining suitability of contract workers to keep holding permits

Authorises the CEO to make inquiries as to the suitability of a permit holder. This is an important safeguard and accountability control measure.

Clause 55 Suspension or revocation of permits

The CEO's power to suspend or revoke a permit issued to a contract worker following an inquiry is a necessary requirement in such circumstances where there is no formal employer/employee relationship existing between the contract worker and the CEO. This is an essential safeguard for the CEO and constitutes the ultimate sanction against a contract worker if the contractor fails to exercise proper disciplinary control over an employee and is a useful accountability measure. The CEO's authority under this section is absolute.

Clause 56 Gazettal of permit details

The requirement to publish the issue, suspension, reinstatement or revocation of a permit is a useful administrative safeguard and provides a further measure of Government accountability to the community.

Clause 57 Directions to contract workers about high-level security work

Empowers the CEO to give directions to a contract worker engaged in high-level security work.

Division 3 Intervention in, and termination of, contracts

Provisions in this Division ensure the State's right of "step in" to enable continuity of services in the event of an emergency in a contract or failure to perform on the part of a contractor.

Clause 58 Intervention in contracts

This is designed to preserve the Principal's interests where the contractor exhibits sub-optimal performance which does not justify breach of contract leading to termination, but requires immediate resolution. The requirements, circumstances and scope of intervention are detailed matters for the contract. The "public interest" is an important criterion.

CLAUSE NOTES

Clause 59 Termination or suspension of contracts

This is designed to preserve the Principal's interests where the contractor has failed to satisfy contractual requirements. The requirements, circumstances and scope of termination or suspension are detailed matters for the contract. Again, the "public interest" is an important criterion. Termination or suspension provisions are standard provisions in contracts for service.

Clause 60 Administrator where intervention in contract

Disruptions to the judicial process are of paramount concern and contingencies to ensure continuity of services are essential. Where there is a requirement to intervene in a contract an administrator can be appointed for the efficient functioning of the services. The role of the administrator is to ensure continuity of services at an acceptable standard and to safeguard the State's interests.

Clause 61 Administrator where termination or suspension of contract

The CEO may terminate or suspend a contract and appoint an administrator for the efficient functioning of the services. The role of the administrator is to ensure continuity of services at an acceptable standard and to safeguard the State's interests.

Clause 62 Administrator's functions

An administrator is the agent of the CEO. It is necessary for an administrator appointed in the case of intervention, termination or suspension, to have the legislative authority to perform all of the functions and to have all of the powers necessary to do so.

Clause 63 Compliance with administrator's directions

The appointment of an administrator must be supported with the appropriate force of the law to have his/her directions complied with. A distinction is made here between compliance by a person in a managerial capacity (\$50,000 fine) as opposed to a compliance by a contract worker (\$5,000 fine).

Clause 64 Requisitioning property on intervention in, or termination of, contract

This provision ensures access to and usage of property to enable the continuity of services in the event of the intervention into of a contract by the CEO. This may include vehicles, premises, computers and communications equipment owned or leased by a contractor to perform services. The time frame ensures that the CEO makes alternative arrangements within a reasonable time thus safeguarding the interests of creditors of any failed contractor.

CLAUSE NOTES

PART 4 HOW AUTHORIZED PERSONS TAKE CHARGE OF, AND MOVE, PERSONS IN THE CUSTODY OF LAW ENFORCEMENT OFFICERS

Division 1 General

Clause 65 Definition of “request”

Self explanatory.

Clause 66 Authorised persons to comply with requests, subject to contract

This compels an authorised person to comply with a request except when a refusal is within the terms of the relevant contract.

Clause 67 Presumption that persons are in legal custody

In order for an authorised person to comply with clause 66 they must assume that the custody status of a person is legitimate.

Clause 68 Custodial status not affected by requests

This provision protects against any claim that transfer of persons at the points of hand over may breach or otherwise effect the continuity of a sentence of imprisonment or their custody status.

Division 2 Law enforcement officers may ask authorized persons to take charge of, and move, persons in custody

This Division deals specifically with requests issued by law enforcement officers to authorised persons. A law enforcement officer is any person who is authorised under a law of the State or the Commonwealth to arrest or apprehend a person and includes members of the Western Australia Police Service, federal police officers, fisheries inspectors, the Sheriff, Bailiffs, and others.

Clause 69 Meaning of “authorized person” and “person in custody” in this Division

Clarifies the scope of authority, also a person apprehended under the *Mental Health Act 1996* is managed under the provisions of Division 3.

Clause 70 Law enforcement officers may ask authorized persons to take charge of persons in custody at certain custodial places

This provision enables persons in custody and intoxicated detainees to be handed over into the charge of an authorised person at the locations designated in the provision by the law enforcement officer who has custody of that person in custody or intoxicated detainee.

CLAUSE NOTES

Clause 71 Law enforcement officers may ask authorized persons to move persons in custody between custodial places

This provision enables a person in custody and intoxicated detainees to be handed over by a law enforcement officer into the charge of an authorised person for the purpose of being moved to another location

Clause 72 Law enforcement officers' powers not affected

This allows for situations where a prisoner, once having being lodged at a lock-up, is required to be taken out of the lock-up by a different law enforcement officer for purposes relating to investigation and questioning concerning the commission of an offence or some other lawful matter.

Clause 73 Form of requests

This provision requires for the issue of an approved form by the law enforcement officer for the purposes of lodging persons in custody and intoxicated detainees into the charge of an authorised person. Once a person who has been charged with an offence appears in court their continuing custody will be determined by the court and documented in the form of a warrant or court order. This section also provides for a proper audit trail of the movement of persons in custody.

Division 3 Police officers may ask authorized persons to take charge of persons apprehended under the Mental Health Act

This Division deals with the transfer of persons subject to an order issued under the *Mental Health Act 1996* which requires that police carry out apprehension and transport of these persons. Because the MHA is specific about the use of police it is necessary to provide legislation for the period an involuntary patient might be held in a lock-up which will be under the control of the CEO of the Ministry of Justice.

Clause 74 Meaning of "authorized person" in this Division

Generally this would be a police officer or contract worker employed in a lock-up.

Clause 75 Police officers may ask authorized persons to take charge of persons apprehended under the Mental Health Act, at lock-ups

It is necessary from time-to-time to accommodate the temporary charge of involuntary patients in a lock-up pending arrangements for their transfer to a mental health facility pursuant to an order made under the *Mental Health Act 1996*. This requirement commonly occurs in country areas pending the arrangement of a Royal Flying Doctor Service flight to Perth and may extend to include overnight accommodation.

CLAUSE NOTES

Clause 76 Police officers' powers not affected

It is likely that the police officer issuing the form of request giving effect to the hand over of an involuntary patient may not be the same police officer who removes the involuntary patient from the lock-up for onward transfer.

Clause 77 Form of requests

This provision requires for the issue of an approved form by the police officer for the purposes of lodging an involuntary patient into the charge of an authorised person. This section also provides for a proper audit trail recording the temporary custody of involuntary patients.

Division 4 Police officers may ask authorized persons to take charge of, and move, intoxicated detainees

This Division deals with arrangements for the transfer of intoxicated detainees held under the provisions of Part VA of the *Police Act 1892*, for the purposes of their temporary custody. Because lock-ups fall within the control and management of the CEO and the *Police Act* is the responsibility of the Commissioner for Police, there must be a statutory provision for the security, control, custody, care and welfare of intoxicated detainees to be transferred as a consequence of their apprehension and detention under the *Police Act*.

Clause 78 Meaning of "authorized person" in this Division

Generally this would be a police officer or contract worker employed in a lock-up.

Clause 79 Police officers may ask authorized persons to take charge of intoxicated detainees at lock-ups

This provision enables intoxicated detainees to be handed over into the charge of an authorised person at a lock-up pursuant to Part VA of the *Police Act 1892*.

Clause 80 Police officers may ask authorized persons to move intoxicated detainees between certain custodial places

This provision enables intoxicated detainees to be handed over by a police officer to an authorised person at a lock-up for the purpose of being moved to another location to accommodate any requirement of Part VA of the *Police Act 1892*.

Clause 81 Police officers' powers not affected

It is likely that the police officer issuing the form of request giving effect to the hand over of an intoxicated detainee may not be the same police officer who removes the intoxicated detainee from the lock-up for purposes as required under Part VA of the *Police Act 1892*.

CLAUSE NOTES

Clause 82 Form of requests

This provision requires for the issue of an approved form by the police officer for the purposes of lodging an intoxicated detainee into the charge of an authorised person. This section also provides for a proper audit trail of the movement of intoxicated detainees.

PART 5 OFFENCES

Clause 83 Possession of firearms and other weapons at custodial places

It constitutes an offence to bring a firearm or other weapon into a custodial place without lawful reason.

Clause 84 Hindering or resisting

Hindrance or resisting an authorised person may include obstruction to escort vehicles and the movement of persons in custody being taken on foot.

Clause 85 Certain articles not to be brought into lock-ups and court custody centres

Articles likely to affect the security, good order or management of a lock up or custody centre are not defined. Depending on circumstances these will include articles that are not unlawful to have in possession such as power tools, radio equipment, hand held telephones and alcoholic beverages.

PART 6 MISCELLANEOUS

Clause 86 Courts may order or direct authorized persons to take charge of, and move, persons in custody

Warrants and other orders issued by a court direct a particular person to carry out certain instructions. Usually the instruction is to remove the person to a prison, police lock-up or some other place. This provision overcomes any inconsistency at law by allowing other authorised persons to give effect to the warrant or order.

Clause 87 Protection from liability

An indemnity extends to contract workers and public sector workers performing services under this Bill for anything done in good faith. However, the contractor or sub-contractor is not protected and is vicariously liable for any action of an employee. It is not appropriate for the Crown to extend an indemnity to a contractor or sub-contractor engaged under a service contract to provide functions for which the Government is required to pay. Similarly, the Crown remains liable for any action of a Crown employee including an action for false imprisonment.

CLAUSE NOTES

Clause 88 Possession of firearms, prohibited drugs etc. by authorized persons

It is desirable that sufficient legislative provision exists to give appropriate protection for authorised persons who come into possession of prohibited drugs and other illegal substances, or firearms and other related items, during searches of **persons in custody during the course of their duties**. The *Weapons Bill 1998* contains a similar provision.

Clause 89 Exchange of information

This section makes provision for the formal application and exchange of information between Government instrumentalities or agencies for bone-fide purposes related to the services provided under a contract. Information requested would normally relate to the management, security and well being of persons in custody and intoxicated detainees. Specific information might include reference to any prior history of self-harm, depressive illness, violence, compulsive or predatory behaviour, or anything else which may assist in providing a risk assessment relevant to the persons management.

Clause 90 Confidentiality

This confidentiality provision is modelled on the s17 of the *Young Offenders Act 1994* and is designed to safeguard against the inappropriate use of information. Operating together with s89, this makes an effective information management process with all of the appropriate safeguards.

Clause 91 Assistance by police officers

Provides a statutory arrangement for the Commissioner of Police to enter into arrangements with the CEO and others for the provision of assistance in the exercise of a function under this Bill. This will include the development of agreements and protocols for routine assistance as determined and emergency assistance as is required according to circumstances.

Clause 92 Evidentiary provision

A certificate issued by the CEO under this Bill may be taken as prima-facie proof of its content.

Clause 93 Regulations

Regulations may be made by the Governor pursuant to this Bill.

SCHEDULE 1 POWERS IN RELATION TO COURT SECURITY SERVICES

The powers set out in Schedules 1 may be exercised by a person authorised by the CEO pursuant to clauses 21, 22, 23 and 24 of the Bill. This provision limits the application of a power by an authorised person in the circumstances of the type of work they are required to perform.

CLAUSE NOTES

1. Meaning of “court premises” in this Schedule

The powers in this Schedule are not applicable to a court custody centre.

2. Power to identify persons at court premises

The power to request identification from visitors entering courts is a fundamental security measure but will be limited in its application to circumstances requiring an authorised person to exercise a discretion. There are no existing powers to apply such a provision. Certain categories of persons or individuals may be exempted from this such as Judges, Magistrates etc.

3. Power to deal with disorderly or suspicious persons at court premises

There are no existing powers for court staff to deal with disorderly conduct except where police are called. Police do not have powers unless requested by the property owner.

4. Power to search persons and their personal effects at court premises

There are no existing powers of search of people attending courts. Searches of people and personal effects may be conducted by the use of electronic apparatus or by hand. Searches will be no more intrusive than those carried out at airport passenger barriers and safeguards will exist with regard to privacy, decency and self-respect. Detailed search provisions will be provided in regulations.

5. Power to require property to be deposited at court premises

Authorised persons will be required to exercise discretion concerning the types of items that may constitute a threat in a court. No such powers currently exist. Regulations will set out procedures for the safekeeping of property.

6. Further powers to refuse entry to, or remove persons from, court premises

No specific powers currently exist enabling refusal to enter courts or removal from courts. Any person with good reason for being in a court will not be removed.

7. Power to seize property from persons visiting court premises

No such powers currently exist to seize property that may be relevant to the commission of an offence. Regulations will set out procedures for the disposal of seized property.

SCHEDULE 2 POWERS IN RELATION TO CUSTODIAL SERVICES

The powers set out in Schedules 2 may be exercised by a person authorised by the CEO pursuant to clauses 21, 22, 23 and 24 of the Bill. This provision limits the application of a power by an authorised person in the circumstances of the type of work they are required to perform.

CLAUSE NOTES

Division 2 Powers in relation to keeping persons in custody

1. Power to take charge of, and move, persons in the custody of law enforcement officers

An authorised person cannot exercise this power unless they receive a request pursuant to s70, 71 or 75.

2. Power to take charge of, and move, prisoners and detainees

This provision enables an authorised person at the locations designated to take charge of and move prisoners and detainees transferred into their charge in accordance with an order or request issued pursuant to a court disposition, the *Prisons Act 1981* or the *Young Offenders Act 1994*.

3. Power to take charge of, and move, persons in court custody

This provision enables an authorised person at the court or other locations designated to take charge of and move persons in court custody transferred into their charge in accordance with an order following a disposition of a court or a request.

4. Power to move young persons remanded for observation

This category of young person may be moved by an authorised person.

5. Power to move mentally ill or mentally impaired defendants

Extends the power to authorised persons rather than being limited to police officers or prison officers.

Division 2 Powers in relation to keeping persons in custody

6. Powers in this Division apply in relation to exercise of Division 1 powers

An authorised person can only exercise a Division 2 power under circumstances where they take charge of a person in custody as outlined in Division 1. This limitation applies a further level of accountability.

7. Power to take particulars of identity of persons in custody

The taking of fingerprints etc is work that is currently limited to police officers who, after the commencement of this Bill, will no longer provide a service in all lock-ups. Fingerprints etc are taken from every person arrested and charged by police.

8. Power to search persons in custody

Searches of persons in custody are conducted out of regard for security, safety, welfare and good order. Police and prison officers routinely search all prisoners as a duty of care measure.

9. Power to seize property from persons in custody

Seizure of property from persons in custody is a measure to ensure security, safety, welfare and good order. Property may be seized under different circumstances having due regard for the location and status of the person in custody. Property seized will be accounted for, managed or disposed of according to the CEO's Rules.

10. Power to take persons in custody from certain custodial places for medical treatment

This power as it is currently carried out by police officers is not codified and is applied in an ad-hoc manner. The status of the person in custody is often unclear which sometimes leads to conflicting intentions on the part of police and prison officials. The continuity of custody and the status of a person in custody is not affected by their transfer for medical treatment.

11. Power to issue orders to persons in custody

The function of authorised persons and the operation of custodial places is ineffectual without this power. Disciplinary provision applicable to prisoners and detainees are drawn from the *Prisons Act 1981* and the *Young Offenders Act 1994* respectively and offenders will be dealt with at the relevant prison or detention centre. Other persons in custody will be dealt with under the provisions set out in this provision which attracts a \$300 fine for non-compliance with an order.

12. Power to restrain persons in custody

Restraint is necessary to prevent escape, prevent self-harm or injury to others. The most common form of restraint is the use of handcuffs. Appropriate safeguards exist to ensure the protection of personal dignity and rights, and further measures to ensure accountability will be provided for in regulations. These powers are modelled on similar provisions contained in the *Prisons Act 1981* that have worked effectively in preserving good order and security in prison management. Medication as a form of restraint to induce the sedation of a chronically distressed person can be used only in appropriate circumstances as authorised and prescribed by a Doctor. More stringent safeguards apply to circumstances where it becomes necessary to apply restraints to juveniles.

13. Power to prevent communication etc. with persons in custody

This provision is inserted out of regard for security, safety and good order of custodial places and is modelled on a similar provision in reg 16 of the *Prison Regulations 1982*.

14. Power to make charges of prison offences

This provision applies only to prisoners as defined. The function of authorised persons and the operation of custodial places is ineffectual without this power. Disciplinary provision applicable to prisoners are drawn from the *Prisons Act 1981* and complaints of offences will be dealt with at the relevant prison.

15. Power to make charges of detention offences

This provision applies only to detainees as defined. The function of authorised persons and the operation of custodial places is ineffectual without this power. Disciplinary provision applicable to detainees are drawn from the *Young Offenders Act 1994* and complaints of offences will be dealt with at the relevant juvenile detention centre.

Division 3 Powers in relation to intoxicated detainees

16. Powers as to intoxicated detainees

This provision enables an authorised person at the locations designated to take charge of and move intoxicated detainees transferred into their charge in accordance with a request issued pursuant to Part VA of the *Police Act 1892*.

Division 4 Powers in relation to visitors to lock-ups and court custody centres

17. Interpretation

Confines the exercise of a power by a contract worker to a lock-up or court custody centre operated under a contract.

18. Power to identify visitors to lock-ups and court custody centres

This provision is inserted out of regard for security, safety, and good order of custodial places and the welfare of persons in custody. It is similar to requirements contained in s60 of the *Prisons Act 1981*. Procedures concerning the identification of visitors to lock-ups and court custody centres will be included in regulations.

19. Power to deal with disorderly or suspicious visitors to lock-ups and court custody centres

This provision is inserted out of regard for security, safety, and good order of custodial places and the welfare of persons in custody. Procedures concerning disorderly or suspicious visitors to lock-ups and court custody centres will be included in regulations.

CLAUSE NOTES

20. Power to search visitors and their personal effects at lock-ups and court custody centres

This provision is inserted out of regard for security, safety, and good order of custodial places and the welfare of persons in custody. Searches will be conducted with due regard for privacy, decency and self respect. Strict procedures controlling searches of visitors to lock-ups and court custody centres will be included in regulations.

21. Power to require visitors to lock-ups and court custody centres to deposit property

This provision is inserted out of regard for security, safety, and good order of custodial places and the welfare of persons in custody. Procedures for the safekeeping and management of property deposited by visitors to lock-ups and court custody centres will be included in regulations

22. Further powers to refuse entry to, or remove visitors from, lock-ups and court custody centres

This provision is inserted out of regard for security, safety, and good order of custodial places and the welfare of persons in custody.

Schedule 3 Powers in relation to apprehension

The powers set out in Schedules 2 may be exercised by a person authorised by the CEO pursuant to clauses 21, 22, 23 and 24 of the Bill. This provision limits the application of a power by an authorised person in the circumstances of the type of work they are required to perform.

1. Power to apprehend and detain certain persons

This provision gives power to authorised persons to function effectively in the circumstances of their work. Persons generally engaged in security work do not have the power of arrest other than a common-law power of citizen's arrest. Authorised persons who are not police officers are required to immediately hand an apprehended person over to police.

The power of apprehension by a contract worker in the event of the escape of a person in custody enables the contract worker to engage in "hot pursuit" of an escaped person in custody only in as far as the contract worker can in his/her opinion affect a recapture within the immediate vicinity of the escape. This prevents against a contract worker or contractor carrying out a pursuit of a nature that may endanger or encroach upon the rights of the general community.