

PRISONS AMENDMENT BILL 1998

Supplementary Clause Notes

(Committee Amendments in the Legislative Assembly)

These amendments deal specifically with the creation of the Office of the Inspector of Custodial Services (ICS) as established under Part XA of the *Prisons Act Amendment Bill 1998*.

1. Short Title

The short title.

2. Commencement

This Bill is reliant upon the passage of the Court Security & Custodial Services (Consequential Provisions) legislation. Commencement for the Inspector of Custodial Services shall be no later than 6 months from the first day fixed by proclamation.

3. The Act Amended

The amendments are to the *Prisons Act 1981*.

4. Section 3 Amended

These definitions clarify the new terms introduced into the *Prisons Act 1981*.

5. Section 6 Amended

7 Section 7 Amended

This is an accountability provision which requires the Minister to table in the Parliament any contract for service entered into with the private sector within 30 days of the contract being executed.

18 Part XA inserted

Part XA relates to the Inspector of Custodial Services and is not affected by other sections of the *Prisons Act 1981*. That is the powers of the CEO etc have no bearing on the Inspector.

These amendments provide for the establishment of the office of The Inspector of Custodial Services.

There are 3 Divisions within this new part: Division 1 refers to the Office of the Inspector of Custodial Services. Division 2 relates to the functions and powers of the Inspector. Division 3 refers to other matters relating to the Inspector.

Section 109A Creation and Purpose of Inspector of Custodial Services (the Inspector)

This section provides for the creation of a new office of Inspector of Custodial Services to be established as a separate Department pursuant to section 35 of the Public Sector Management Act 1994. The Inspector of Custodial Services will be responsible for all matters relating to the office, including expenditure control.

Section 109B Appointment of the Inspector

This section provides for the Governor to appoint using a selection process similar to that used for Auditor General and the Ombudsman. The Public Sector Management Act 1994 does not apply to the Inspector. Appointment and selection by the Governor following an appropriately constituted selection panel process overcomes any perception that the Inspector may be a politically motivated appointment.

Section 109C Conditions of Appointment

This section ensures the appointee is not required to be dependent upon a Minister for appropriations relating to salary and allowances.

Leave and other entitlements may not be reduced during a term of appointment.

Section 109D Oath

This section requires that the appointee make an oath or affirmation to the Governor to be faithful and impartial in the performance of his duties. This further removes any perception of political influence.

Section 109E Removal of the Inspector from Office

This section provides that the Inspector can only be removed from office by the Governor and then only if his performance of the functions is impaired by those things specified in the provision.

Section 109F Acting Appointments

This section provides for the Governor to appoint an acting Inspector. However, the Inspector may appoint an acting Inspector for short periods where the Governor does not make such an appointment.

Section 109G Portability of superannuation and other entitlements

This section provides for the Inspector to retain and carry over entitlements if previously a public servant and to have service in the office carried over if subsequently appointed to a position in the Public Service.

Section 109H Staff

This section provides for the permanent appointment of (public service) staff to the office under the *Public Service Management Act 1994* and arrangements for staff from another State agency or instrumentality. It will be necessary from time to time for the Inspector to make arrangements for specialists in the medical, education and auditing sectors and this section enables this to be done. It also enables the Inspector to use any facilities of a department of the public Service or a State agency or instrumentality.

Section 109I Functions of the Inspector

This section requires the Inspector to inspect each prison (and service) at least once every 3 years. The Inspector is free to make his own arrangements as to announced and unannounced, thematic, full or partial inspections.

The Inspector may at any time give advice, make recommendations, provide a draft report or an inspection (statutory report).

The Inspector must not cause delay, interference or duplication in a Section 9 inquiry or an investigation by the ACC or Ombudsman.

The Inspector will report upon any aspect of a prison service with a focus upon the conditions and treatment of persons in custody.

Section 109J Powers

The Inspector has power to do 'all things necessary' for the performance of functions and without notice. This is to protect the Inspector from external interference and to ensure the integrity of the function is maintained.

Section 109K Access

The Inspector has access to all prisons, prisoners, vehicles used to transport prisoners, persons whose work is concerned with a prison and relevant documents.

The Inspector may authorise (in writing) a person to have free and unfettered access.

Hindrance of the Inspector may be subject to a substantial penalty.

Section 109L Directions

The Inspector is not subject to direction by any person in the performance of his functions.

However, the Minister may direct in writing that a particular review or inspection be undertaken. However, the Inspector may refuse such a direction and must then cause the reasons to be tabled in Parliament.

Section 109M Minister to have access to information

The Minister may request information in the possession of the Inspector. However, the Inspector may refuse such a request and must then cause the reasons to be tabled in Parliament.

Section 109N Reporting

The Inspector must publish a list of planned inspections as well as a list of actual inspections.

Each inspection report is to be delivered simultaneously to Parliament and the Minister. The Presiding Officers of Parliament must keep the reports in safe custody to allow 30 days for the Minister to consider a response before the reports are tabled in Parliament. Reports will be published within 14 days of the expiration of the 30 days they are held by the Presiding Officers.

The Inspector must submit an annual report and may submit other (not statutory) reports progressively throughout the year.

Section 109O Consultation

The Inspector may provide information to and consult with the Office of the Director of Public Prosecutions, the Anti-Corruption Commission, or the Ombudsman's office on the performance of a function. This is to minimise the duplication, interference or delay of any matter active within these agencies.

Section 109P Disclosure of certain information

The inspector may disclose information to the Director of Public Prosecutions, the Anti-Corruption Commission, or the Ombudsman. This formal exchange of information is to ensure the proper functioning of all these agencies.

Section 109Q Confidentiality

There are strict provisions to ensure confidentiality. The Inspector may disclose information, refuse to disclose information or direct others not to disclose information. If the Inspector intends to make a statement critical of a department, contractor or person he must first take submissions in relation to the matter. A substantial penalty may apply for information disclosure breaches.

Section 109R Documents sent to or by the Inspector not admissible

Documents are privileged, except for an offence under the Royal Commission Act or proceedings under this Act.

Section 109S Protection for proceedings in Cabinet

The Director General, Department of the Premier and Cabinet may certify any information required in relation to proceedings in Cabinet.

Section 109T Hindering and other offences

Anyone hindering, resisting or threatening the Inspector may be subject to substantial penalties.