

## DRAFT SECOND READING SPEECH

HON. MICHAEL FERGUSON MP

### *Custodial Inspector Bill 2016*

*\*check Hansard for delivery\**

I move that the Bill now be read for a second time.

The Government is pleased to bring this Bill to the Parliament in line with its policy commitment to establish an independent prison inspectorate.

By improving standards within correctional facilities we are improving the prospects of rehabilitation of offenders. If offenders are rehabilitated properly they can become productive and law abiding members of the society upon their release. Therefore, by improving standards within correctional facilities we are improving the safety of the community as a whole.

The Bill makes provision for the independent systemic oversight of Tasmania Prison Service facilities (including remand facilities) and the Ashley Youth Detention Centre through the establishment of an Office of the Custodial Inspector.

It should be noted that a custodial centre is defined as a prison within the meaning of the *Corrections Act 1997*, and a detention centre, but it excludes police stations and court cell complexes.

Police stations and court cell complexes have been excluded because the Bill focuses on places where prisoners and detainees are likely to be held for longer periods.

A detention centre is defined as a detention centre within the meaning of the *Youth Justice Act 1997*.

In effect this means that Tasmania Prison Service facilities, including the remand centre and holding cells at the Hobart Reception Prison and the Launceston Reception Prison, and the Ashley Youth Detention Centre will be subject to the oversight of the Custodial Inspector.

This role will be performed by the Office of the Ombudsman.

Specifically, the Bill provides for the following:

- The appointment of the Inspector and conditions of the appointment;
- The functions and powers of the Custodial Inspector;
- That the Custodial Inspector must perform his or her duties independently, impartially and in the public interest;
- The appointment of staff to assist the Custodial Inspector; and
- A power of delegation.

The Bill provides that the Custodial Inspector has a number of functions which include:

- mandatory and occasional inspections and reviews of each custodial centre;
- preparing and publishing guidelines in relation to the conduct of inspection and reviews;

- reporting to the Minister and Parliament on inspections and any issues or general matters relating to his or her functions;
- providing an annual report to Parliament;
- providing advice or recommendations relating to the safety, custody, care, wellbeing and rehabilitation of prisoners and detainees;
- providing information relating to education and programs to assist in the rehabilitation of prisoners and detainees.

Broadly, the powers of the Custodial Inspector include:

- the right to visit and examine custodial centres including areas that are related to the custodial centre;
- obtaining information, access to documents and information relating to custodial centres or persons in custody, including obtaining information from persons in any manner.

These powers are set out in clause 8 and have been included to ensure that the Custodial Inspector has access to sites, information and material required to undertake his or her functions.

A key feature of the Bill is Part 3. Part 3 relates to mandatory and occasional inspections and reviews.

### **Mandatory Inspections**

The Bill provides for mandatory inspections of each custodial centre at least once every three years.

Mandatory inspections are aimed at objectively assessing custodial centres' compliance with relevant standards and guidelines.

When a mandatory inspection is conducted, the Custodial Inspector will be required to prepare an inspection report which contains his or her findings. This report may contain any advice or recommendations as the Custodial Inspector considers necessary or appropriate in the circumstances.

As soon as practicable after the completion of an inspection report on a mandatory inspection, the Custodial Inspector is required to deliver a copy of the report to the responsible Minister, and the responsible Minister is then required to table a copy of the report in each House of Parliament.

This requirement will ensure that both the Minister and Parliament are kept properly informed of matters arising from mandatory inspections.

The Bill also provides that the responsible Minister may prepare a response to the Inspector in respect to the report.

### **Occasional Inspections and Reviews**

The Bill also provides for the Custodial Inspector to undertake occasional inspections and reviews of custodial centres. Essentially these inspections and reviews may be conducted at any time and outside the routine three year cycle at the Custodial Inspector's discretion.

The responsible Minister may also request the Custodial Inspector to undertake these types of inspections and reviews.

The potentially random and unannounced nature of these types of inspections is intended to ensure that appropriate standards and protections are maintained at all times within custodial centres.

The Bill also provides that when an occasional inspection and review is conducted, the Inspector may, at any time, provide a report on any matter relating to the occasional inspection and review to the responsible Minister.

In the case of occasional inspections and reviews, the Custodial Inspector may also table the report in each House of Parliament where he or she considers it necessary or appropriate to do so. This provision is discretionary because it may not always be necessary for these reports to be tabled Parliament. For example, the matters dealt with in the report may be minor in nature and may have been resolved by the time the report is prepared.

The Bill also provides that the responsible Minister may prepare a response to the Inspector in respect to the report.

#### **Inspector's access to prisoners and detainees**

The Bill provides that the Custodial Inspector is entitled to access to a prisoner or detainee at any time and may take photographs, films or visual recordings as he or she considers necessary.

#### **Opportunity to be heard**

The provisions relating to inspections also include natural justice requirements. Where a report makes an adverse comment, the person or government department to whom those comments relate must be given a reasonable opportunity to respond. If there is evidence of a breach of duty or misconduct, the Custodial Inspectorate must also report on those matters.

In addition, where recommendations by the Custodial Inspector are made to a Department, the Custodial Inspector may require the Department to advise of the steps to be taken to remediate the problem, or why no steps will be taken. If remedial action is not taken in a reasonable time, a copy of the recommendations and comments from the Department may be sent to the Premier and the responsible Minister.

#### **Disclosure of Information (public interest considerations)**

There are strong provisions governing the release of information in a report to Parliament. These are set out in clause 21. Specifically, this clause sets out public interest considerations against the release of the information in a report to Parliament.

These include matters such as:

- national security;
- endangerment of life;
- identification of a person; and
- prejudicing the future supply of information.

Part 4 of the Bill sets out Offence provisions relating to the disclosure of information and offences against the Custodial Inspector or an officer of the Office of Custodial Inspector.

## Miscellaneous

Part 5 of the Bill deals with a range of miscellaneous matters, including:

- Annual reporting requirements;
- Personal information protection act exemptions;
- Provision for the Minister to require the Custodial Inspector to inspect a custodial centre;
- Provision for the referral of matters to, and sharing of information with the Ombudsman and other entities;  
A general power to require the production of documents;
- Protections from liability;
- A regulation making power; and
- Consequential amendments.

## Closing remarks

The primary focus of the Custodial Inspector will be to identify and analyse performance issues and standards in custodial facilities and to provide recommendations which are aimed at improving outcomes in custodial centres.

The Government is confident that a Custodial Inspector in Tasmania will deliver the following outcomes:

- A program of inspections and reports which will provide assurance to the community and Parliament that the management of Tasmania's prisons and the Ashley Youth Detention Centre is effectively scrutinised.
- External scrutiny through an independent statutory office and the publication of reports and recommendations focussed on systemic issues relating to the management, control and security of the State's prisons and youth detention centre and the care and welfare of prisoners and detainees.
- The promotion of continuous improvement in the way that prison and detention centre services are delivered and the identification of good practices.
- Increased transparency and accountability, for example through the provision of reports and recommendations.
- Enhanced risk awareness.
- Improved quality assurance, and
- The development of expertise within Tasmania in relation to prisons and prison reform.

I commend the Bill to the House.