

FACT SHEET

Custodial Inspector Bill 2016

The Custodial Inspector Bill 2016 provides for the establishment of a Custodial Inspector in Tasmania.

The proposed provisions in this Bill provide for the independent systemic oversight of Tasmania Prison Service facilities and the Ashley Youth Detention Centre (AYDC) through the establishment of an office of the Custodial Inspector attached to the Office of the Ombudsman.

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 Bill:

- will establish a Custodial Inspector to have systemic oversight of custodial centres;
- defines:
 - 'custodial centre' as a prison within the meaning of the *Corrections Act 1997*, and a 'detention centre' as a detention centre within the meaning of the *Youth Justice Act 1997*, but it excludes police stations and court cell complexes;
 - a prisoner to be 'a person who is subject to an order of a court by which he or she is sentenced to a term of imprisonment, and includes a person declared as a dangerous criminal under section 19 of the Sentencing Act 1997';
 - a detainee as 'a person, other than a prisoner, who is lawfully held in a custodial centre' and captures youth detainees who are held in detention;
- specifies the functions of the Custodial Inspector;
- provides for each custodial centre to be inspected at least once every three years, with the Inspector having authority to decide which facilities to inspect and in what order;
- provides for the Custodial Inspector to undertake occasional inspections and reviews of custodial centres;
- adopts the Code of Inspection Standards for Adult Custodial Services used by the Office of the Inspector of Custodial Services in Western Australia to suit the custodial inspectorate and provides that these guidelines and standards can be amended in the future if required;

- sets out reporting requirements for the Custodial Inspector;
- clarifies that in the performance of his or her functions under the Act, Custodial Inspector must act independently, impartially and in the public interest;
- provides that the Custodial Inspector has a range of powers available to him or her for the purpose of exercising his or her functions under the Act;
- clarifies that the Custodial Inspector is entitled to:
 - access a prisoner or detainee at all reasonable times;
 - conduct an interview with a prisoner or detainee out of the hearing of any other person; and
 - take such photographs, films or audio or visual recordings that are considered necessary in the circumstances;
- protects the privacy of prisoners and detainees by clarifying that members of the staff of the custodial centre or staff who provide services within the custodial centre must not, without the approval of the prisoner or detainee, copy, remove or read any correspondence from the prisoner or detainee to the Inspector or from the Inspector to the prisoner or detainee;
- provides that State Service officers and employees may be appointed or employed to enable the Inspector perform and exercise his or her functions and powers under the Bill;
- provides that the Inspector may also delegate any of his or her functions or powers to a person or class of persons prescribed by the regulations;
- specifies that the Custodial Inspector is required to conduct mandatory inspections of each custodial centre at least once every three years;
- specifies that after the completion of an inspection report on a mandatory inspection, the Inspector is required to deliver a copy of the report to the responsible Minister and the Minister is to table it in Parliament;
- sets out that at any time, and on any number of occasions, the Custodial Inspector may conduct an occasional inspection and review of any custodial centre or any aspect of a custodial centre;
- 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 and may also provide it to Parliament;

- requires the Secretary to issue the Inspector and his or her staff and delegates, with an identity card;
- provides that the Inspector must not make a report on a mandatory inspection or an occasional inspection and review that contains adverse or derogatory comments in respect of a person or responsible department, unless the Inspector has given the person or responsible department a reasonable opportunity to appear before him or her or to make representations, either orally or in writing;
- provides that if there is evidence of a breach of duty or misconduct by an officer or employee of a department, and the evidence is of sufficient force to justify his or her doing so, the Inspector is to bring the evidence to the notice of the responsible Secretary, or in the case of the responsible Secretary to the notice of the responsible Minister;
- provides that if the Inspector makes a recommendation to the Secretary who is responsible for the Custodial Centre or the services provided within a Custodial Centre, the Inspector may request the Secretary to notify him or her of the steps that have been or are proposed to be taken to give effect to the recommendations. Or, if no steps have been or are proposed to be taken, the reasons why;
- lists the public interest considerations against disclosure of certain information acquired by the Inspector under the Act;
- provides that the Inspector may publish a schedule of dates on which the Inspector intends to carry out mandatory inspections or occasional inspections and reviews;
- provides strict rules around the disclosure of information acquired under the Act;
- creates a number of offence provisions including:
 - making it an offence for the Inspector or an officer of the Inspector to directly or indirectly make a record of, or disclose, any information that has been acquired in his or her official capacity and which is disclosed or obtained under the Act; and
 - for a person to use or disclose any information for his or her benefit, or for the benefit of another person.
- provides a number of offence provisions to ensure that the Custodial Inspector can undertake his or her functions in accordance with the Act; these include an offences relating to:
 - obstructing, hindering, resisting or threatening the Inspector or an officer;

- refusing or wilfully failing to comply with any lawful requirement of the Inspector or an officer; and
 - wilfully making any false statement to mislead or attempt to mislead the Inspector or an officer.
- provides that the Inspector is required to table an annual report in each House of Parliament after 30 June in each year;
- contains a separate mechanism which provides that the responsible Minister may bring a matter to the attention of the Inspector, and request the Inspector to carry out an inspection of a custodial centre on that particular matter;
- provides that the Inspector may refer matters for investigation to the Ombudsman, or another person or body that has functions under Tasmanian law or under the laws of another jurisdiction;
- clarifies that the Crown, is not entitled to prevent or obstruct records from being produced or evidence from being given for the purpose of inspections and reviews, even if the Crown would be entitled to do so if the matter was a legal proceeding before a court;
- contains a standard clause which protects the Inspector or an officer of the Inspector from liability for anything done or omitted to be done in good faith for the purposes of the Act;
- Schedule 1 details the terms and conditions of appointment which apply to the office of Custodial Inspector; and
- makes provision for a range of consequential amendments to other Acts and Regulations to ensure that the Custodial Inspector can fulfil his or her functions under the Bill.