

CUSTODIAL INSPECTOR AMENDMENT (PROTECTION FROM REPRISAL) BILL 2025 (No. 9)

Second Reading

[2.35 p.m.]

Ms ROSOL (Bass) - Honourable Speaker, I move

- That the bill be now read a second time.

Every member in this place, particularly the members who were involved in the Corrections portfolio, would be aware of the critical work the Custodial Inspector undertakes. On behalf of the Greens, to the Office of the Custodial Inspector, thank you for all your hard work and dedication.

Since the inception of the office in 2016, the Custodial Inspector has produced 10 inspection reports into youth custodial services, nine adult custodial services inspection reports, four reviews, a survey and a research paper. Each of these reports has been a considerable undertaking and resulted in numerous recommendations being made. The work has undoubtedly led to positive change.

However, the government does not have a great track record when it comes to implementing these recommendations. In the latest annual report, the inspector notes that only 26 per cent of recommendations from the 2017 Care and Wellbeing Inspection Report of adult custodial services were completed or required no further action. For the 2017 health and wellbeing inspection of Ashley Youth Detention Centre, the number was somewhat higher but still only 37.5 per cent.

Tasmania's corrections system is in crisis. Overcrowding, excessive lockdowns, high levels of staff burnout, barriers to rehabilitation programs and tough-on-crime policies are driving up incarceration and recidivism and are all significant problems in our corrections system. The Custodial Inspector's work over many years lays out many things that can be done to improve the crises in our prisons. It is not only incumbent on the government to act on these recommendations, but we members of Parliament whose job it is to hold the government to account, must act as well.

Through their significant body of work, the office of the inspector has done and continues to do the heavy lifting. From there, members have a responsibility to scrutinise the government to ensure that the custodial inspector's work is taken seriously and is acted upon. That responsibility is why, when the Custodial Inspector repeatedly made it clear that amendments to the Act were required, we listened. That, and the terrible stories coming out of our prisons that we hear all too often. That is why this bill is before the House today.

The *Custodial Inspector Act 2016* was enacted in 2016, almost a decade ago. Since the act's inception, it has only been amended twice via the *Public Sector Superannuation Reform (Consequential and Transitional Provisions) Act 2016* and the *Dangerous Criminals and High Risk Offenders Act 2021*. Both acts made only minor consequential amendments. In nine years of operation, the act has not had any substantive amendment.

Section 26(2)(c) of the principal act requires that the Custodial Inspector's Annual

Report contains any recommendations for changes in the laws of the state or for administrative action that the inspector considers should be made as the result of the performance of the inspector's functions. In their 2020-21 Annual Report, the inspector first published recommendations under this section of the act. In the inspector's words:

it has become evident that the legislative provisions for inspection reports result in a cumbersome and drawn out process which potentially risks compromising the Inspector's independence.

The inspector recommended that the act be amended to allow for the Custodial Inspector to table their reports themselves rather than through the minister and that the time frames involved in the tabling be reduced.

Clause 6 of our bill amends Section 15 of the principal act to provide that the Inspector is to table their own report rather than the minister. The clause also reduces the timeframe for tabling from not before 30 days after the report has been provided to the minister, to not before seven days.

At this stage, I flag that our bill missed a reference to a 30-day period in Section 15(6)(a) and we will be seeking to go into committee to move an amendment to remedy this omission.

This proposed power to table their own reports is not unique. The national preventative mechanism (NPM) under Section 19(2) of the *OPCAT Implementation Act 2021* has the power to table their own inspection reports. The Integrity Commission under Section 11(3) of the *Integrity Commission Act 2009* can table a report on any matter arising in connection with the performance of its functions or exercise of its powers.

The Ombudsman under Section 28(6) of the *Ombudsman Act 1978* can table a report arising from an investigation themselves. Similarly, the Audit Office and the Commissioners for Children and Young People both have the authority to table their own reports of this nature. The only example we can find of an independent body that cannot table their own investigation reports is the Health Complaints Commission's special reports.

The current requirement for the Custodial Inspector to go through the minister is very much the exception rather than the norm. This recommendation has been reiterated in subsequent annual reports of the inspector. In 2022-23 this recommendation was joined by a range of others and first among these recommendations was a call for protections from reprisal. In the inspector's words:

Unfortunately, some people who have raised their concerns with my office have also reported that their actions in speaking with my office were sometimes not well received.... There are no protections for people who do come forward to report issues to my office. There should be.

On August 5 last year, the Custodial Inspector issued a media release that again called for protections from reprisal in a media release that reiterated the need:

One of the main ways in which we hear about issues within custodial

centres is when people, (including those in custody and staff) raise them with us.

As well as repeating people's reports that it was not well received when they raised their concerns with the inspector, the Custodial Inspector went on to say:

Some people have also indicated that they are reluctant to disclose information knowing there is no protection against reprisal.

The inspector emphasised that there should be protections. We asked about this recommendation a number of times, including during Budget estimates, and the response from the government was:

We do not think that additional protections are necessary for staff and indeed the dry cells report which the custodial inspector issued not too long ago, stemmed from a staff member approaching the Custodial Inspector and making that reference, so I do not think that there is any need for it.

Staff are welcome to contact the custodial inspector and we welcome that as well. We try to act in a transparent manner and our staff are absolutely free to contact the custodial inspector.

This is a wholly inadequate response. The TPS is a large organisation with new staff coming and going over the years. Reprisal could come from myriad positions, present or future. No organisation can guarantee that reprisals will not ever occur. The Custodial Inspector's comments have made it clear that some staff have felt that their actions were poorly received. Even if one were inclined to accept that reprisals are unlikely to occur, there is value in having protection spelled out solely to provide people with the confidence to come forward. It is also important to recognise that custodial settings are higher-risk settings for reprisal in general. Correctional institutions are environments that are inherently disciplinary in nature, with strong hierarchies and involve having significant power over others and the regular deployment of punitive measures.

The Custodial Inspector recommended provisions similar to those in section 36 of the *OPCAT Implementation Act 2021*. Clause 9 of our bill introduces protection from reprisal provisions consistent with this recommendation. The clause would introduce a new section 25A that prohibits a person from prejudicing or threatening to prejudice a person's safety or career, intimidating, harassing or threatening to intimidate or harass a person, take a detrimental action, or permitting another person to do any of the above to a person in response to that person providing information to the inspector. The penalty for a reprisal is up to 240 penalty units, or \$48,480 or imprisonment for a term not exceeding two years, or both.

In addition to section 36 of the *OPCAT Implementation Act 2021*, similar provisions can be found in section 19 of the *Public Interest Disclosures Act 2002*. Section 54(2) of the *Integrity Commission Act 2009* also provides a broad protection against violence, punishment, damage, loss or disadvantage to another person for or on account of that other person having given evidence. In addition to provisions that provide protection from

reprisal, the Custodial Inspector notes that section 35 of the *OPCAT Implementation Act 2021* provides considerable discretion in being able to share information that would assist in the work to improve conditions of people in places of detention.

Clause 10 of this bill amends section 34 of the principal act to extend protections for the provision of information on similar terms to section 35 of the *OPCAT Implementation Act 2021*. This clause extends the coverage to provision of information made for the purposes of the act, rather than just under the act, and extends to civil liability, as well as adding a qualifier that the protections only apply insofar as the information was provided in good faith. I note there is a spelling error in clause 10 and we have a small amendment to correct this error.

The 2022-23 annual report also noted that the information sharing powers of the Custodial Inspector are quite limited. Section 24(4) of the *Custodial Inspector Act 2016* allows for information sharing with the Integrity Commission, Coroner, or Auditor-General and Section 30 allows information to be shared with the Ombudsman.

The Custodial Inspector notes there are no similar provisions allowing information to be shared with the Health Complaints Commissioner, Anti-Discrimination Commissioner and Commissioner for Children and Young People, for example. In contrast, section 22 of the *OPCAT Implementation Act 2021* allows information to be shared with and among other entities, public authorities and the responsible minister. Clause 8 of this bill introduces a new subsection (4A) to section 24 of the principal act, to allow information to be shared with public authorities and the responsible minister.

The custodial inspector also noted that current provisions of the act prevent the inspector from delegating powers to consultants. The practical concern is that it is necessary to acquire a gate pass in order for consultants to be granted access, which means that conducting an unannounced inspection without TPS being made aware of the inspection is not possible. The inspector recommended that changes be made that allow for them to delegate to consultants. Clauses 4 and 5 amend sections 4 and 10 of the principal act respectively to ensure that persons appointed for the purposes of carrying out an inspection can have powers delegated to them.

The final recommendation of the inspector that this bill addresses is a request for an amendment to section 17 to clarify that officers of the inspector also have the power to engage confidentially with prisoners or detainees.

The recommendations of the custodial inspector should not be controversial. Many of these amendments are small, practical changes that have become apparent over the nine years of the act's operation that would enable the act and the inspector to operate as they were always intended to. Other amendments, like protections from reprisal and the ability to directly table investigation reports, are the common standard with similar bodies and legislation, and will serve to improve the independence and effectiveness of the inspector as well as the safety of those who disclose information to the inspector. I commend the bill to the House.