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INSPECTOR OF CUSTODIAL SERVICES AMENDMENT BILL 2024

STATEMENT OF PUBLIC INTEREST

Need: Why is the policy needed based on factual evidence and stakeholder input?

The Inspector of Custodial Services Amendment Bill 2024 (**the Bill**) forms part of the Government's comprehensive reform package to enhance accountability and transparency and restore public confidence in the NSW Corrective Services system. The Bill amends the *Inspector of Custodial Services Act 2012 (ICSA)* to implement the recommendations of the 2021 statutory review of this Act, which was tabled in Parliament in October 2021, and to address concerns in relation to the Official Visitor program raised in the *Report of the Special Commission of Inquiry into Offending by Former Corrections Officer Wayne Astill at Dillwynia Correctional Centre (Astill Inquiry)*, which was released in March 2024.

The Bill also amends the *Crimes (Administration of Sentences) Act 1999 (CAS Act)* to take an immediate step to address serious issues in relation to the inmate discipline regime identified in the Ombudsman's report on the investigation into inmate discipline in NSW correctional centres (**Ombudsman's report**), which was tabled in August 2024. It does this by amending the CAS Act to introduce an internal review mechanism for decisions made under the correctional centre discipline provisions.

The Bill will implement the recommendations from the statutory review of the ICSA by amending the ICSA to:

- Introduce a provision setting out the objects of the Act.
- Introduce an express power for the Inspector of Custodial Services (the **Inspector**) to conduct private interviews.
- Clarify that the Inspector can require custodial centre staff members to supply information or produce documents concerning a custodial service.
- Enable all reports to Parliament made by the Inspector to be made to a House of Parliament, even if the House is not sitting.
- Provide a formal mechanism for the Inspector to consult with relevant agencies, and for these agencies to make submissions, about any public interest considerations against disclosure of information in a report of the Inspector.
- Introduce a discretionary power for the Inspector to request information from relevant agencies about responses to recommendations.
- Expressly provide that the Inspector is not compellable to produce or disclose documents and information obtained in exercising functions under the Act, subject to certain exceptions.
- Enable the Minister who administers the *Children (Detention Centres) Act 1987* to also exercise certain functions under the ICSA in relation to juvenile justice centres.
- Consolidate all provisions relating to the Official Visitors program into the ICSA.

The Bill will address concerns in relation to Official Visitors raised in the Astill Inquiry by amending the ICSA to provide greater clarity about the role and functions of an Official Visitor, and extending the existing offence protecting complainants against retribution to also capture persons who make a complaint to an Official Visitor.

Objectives: What is the policy's objective couched in terms of the public interest?

The Bill brings together the recommendations and findings of the statutory review of the ICSA, the Astill Inquiry and the Ombudsman's report to improve the oversight, transparency, accountability and integrity of the NSW corrections system by:

- Clarifying and enhancing the role of the independent Inspector of Custodial Services.
- Streamlining the governance framework of the Official Visitor program and promoting clearer complaint pathways through the Official Visitor program.
- Taking an immediate step to address a finding by the Ombudsman that aspects of the administration of inmate discipline in the adult correctional system were contrary to the law and the lack of review and appeal rights for inmates was unjust.

Options: What alternative policies and mechanisms were considered in advance of the bill?

Legislative amendment to the ICSA and CAS Act is required to implement the recommendations of the 2021 statutory review of the ICSA and to respond to the issues raised in the Astill Inquiry and Ombudsman's report. The policy objectives of the reform cannot be achieved through an alternative mechanism.

Analysis: What were the pros/cons and benefits/costs of each option considered?

The proposed amendments to the ICSA to implement the recommendations of the 2021 statutory review of that Act will improve and clarify the role of the Inspector and improve the rigour and efficiency of the Inspector's reporting processes and outcomes. Consolidating the provisions for the Official Visitor program into the ICSA will provide greater clarity for the operation of the program.

The amendments to Official Visitor provisions arising from the Astill Inquiry will clarify the role of Official Visitors and their ability to resolve complaints independently.

The introduction of a review mechanism in the CAS Act for inmate discipline decisions will improve fairness of the inmate discipline system by providing the authority to revisit such decisions. This reform is an immediate response to the Ombudsman's report and as Corrective Services NSW considers further complimentary long term reforms.

Pathway: What are the timetable and steps for the policy's rollout and who will administer it?

The amendments in the Bill will commence by proclamation. Due to the operational nature of the Acts being amended by the Bill, sufficient time is required to ensure necessary updates to systems, procedures and training can be made to implement these reforms. Amendments to various regulations are also required to support the amendments in the Bill before the amendments can commence.

This implementation work is critical for ensuring that the reforms operate as intended and are implemented effectively. The implementation work will be undertaken with urgency and the amendments will commence as soon as they are operationally ready.

Consultation: Were the views of affected stakeholders sought and considered in making the policy?

The Bill was developed in consultation with key NSW Government agencies, including Corrective Services NSW, Youth Justice NSW, the Inspector of Custodial Services and the Ombudsman. Relevant external bodies were also consulted, including the Public Service Association, Legal Aid NSW, NSW Bar Association, Law Society of NSW and Domestic Violence NSW.