



New South Wales

Inspector of Custodial Services Amendment Bill 2024

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are—

- (a) to amend the *Inspector of Custodial Services Act 2012* (the *ICS Act*) to address the recommendations of a statutory review, including—
 - (i) to set out the objects of the ICS Act, and
 - (ii) to further provide for the functions of the Inspector of Custodial Services (the *Inspector*), and
 - (iii) to provide for the appointment and functions of Official Visitors to correctional centres and juvenile justice centres, and
- (b) to amend the *Crimes (Administration of Sentences) Act 1999* to enable the Commissioner of Corrective Services to review decisions by the governor of a correctional centre in relation to correctional centre offences committed by inmates.

The Bill also makes a consequential amendment to the *Children (Detention Centres) Act 1987*.

Outline of provisions

Clause 1 sets out the name, also called the short title, of the proposed Act.

Clause 2 provides for the commencement of the proposed Act.

Schedule 1 Amendment of Inspector of Custodial Services Act 2012 No 55

Objects of Act

Schedule 1[1] sets out the objects of the ICS Act as follows—

- (a) to improve the prospects of rehabilitating offenders by improving—
 - (i) standards in custodial centres, and
 - (ii) the provision of custodial services,
- (b) to promote the improved treatment of, and improved outcomes for, persons in custody on remand.

Inspector of Custodial Services

Schedule 1[9] enables the Inspector to require custodial centre staff members to give the Inspector information or documents relating to custodial services as well as custodial centre operations.

Schedule 1[10] requires the Inspector to have regard to the legislation regulating custodial centres and custodial services in exercising the Inspector's functions.

Schedule 1[11] enables the Inspector to carry out private interviews with custodial centre staff members and persons in custody, detained or residing at a custodial centre in certain circumstances.

Schedule 1[13] updates provisions relating to arrangements between the Inspector and certain government officials and bodies. The amendment enables the Inspector to enter into arrangements with the Health Care Complaints Commission, the Law Enforcement Conduct Commission and the Children's Guardian in relation to the exercise of the Inspector's functions and certain functions of those officials and bodies. Currently, the Inspector may enter into these arrangements with Corrective Services NSW, Juvenile Justice, the Justice Health and Forensic Mental Health Network, the Ombudsman and the Independent Commission Against Corruption. The amendment also requires the Inspector to report officer misconduct or serious maladministration to the Law Enforcement Conduct Commission. **Schedule 1[14]–[16]** make consequential amendments.

Schedule 1[20] requires the Inspector to consult with government sector agencies in relation to whether there are public interest considerations against the disclosure of information in a report by the Inspector to Parliament.

Schedule 1[21] and [22] enable all reports to Parliament by the Inspector, not only annual reports, to be given to a House of Parliament even if the House is not sitting.

Schedule 1[23] specifies that the Inspector may require a government sector agency or the management company of a managed correctional centre to give the Inspector an update about a recommendation relating to the agency or company contained in a report by the Inspector to Parliament. **Schedule 1[17]** makes a consequential amendment.

Schedule 1[24] extends an existing protection against retribution for a person who gives information to the Inspector or the Inspector's staff so the protection applies to a person who gives information to an Official Visitor.

Schedule 1[25] provides that the Inspector is not compellable in certain court and tribunal proceedings to give evidence or produce documents in certain circumstances.

Official Visitors

Schedule 1[12] and [28] consolidate, with some changes, existing provisions relating to Official Visitors from the *Crimes (Administration of Sentences) Act 1999*, the *Crimes (Administration of Sentences) Regulation 2014* and the *Children (Detention Centres) Act 1987*. The provisions relate to the following—

- (a) the appointment of Official Visitors, including eligibility requirements,
- (b) the assignment of Official Visitors to custodial centres,

- (c) the functions of Official Visitors, including—
 - (i) visiting custodial centres, and
 - (ii) dealing with complaints and inquiries from persons in custody, detained or residing at custodial centres.

Schedule 1[26] inserts a regulation-making power about Official Visitors.

Schedule 1[27] provides for existing Official Visitors to continue as Official Visitors under the proposed amendments.

Schedule 1[2]–[5] make consequential amendments to definitions used in the ICS Act.

Schedule 1[6]–[8], [18] and [19] make other consequential amendments.

Schedule 2 Amendment of Crimes (Administration of Sentences) Act 1999 No 93

Schedule 2[3] enables the Commissioner of Corrective Services to review the following decisions by the governor of a correctional centre in relation to correctional centre discipline—

- (a) a decision that the governor is satisfied beyond reasonable doubt that the inmate is guilty of a correctional centre offence,
- (b) a decision to impose a penalty on the inmate in relation to the correctional centre offence.

Schedule 2[5] inserts a savings and transitional provision.

Schedule 2[2] and [4] make consequential amendments in relation to Official Visitors.

Schedule 2[1] removes a redundant definition of *Corrective Services NSW*, consequent on Corrective Services NSW becoming a Public Service executive agency under the *Government Sector Employment Act 2013*.

Schedule 3 Amendment of Children (Detention Centres) Act 1987 No 57

Schedule 3 makes a consequential amendment to the *Children (Detention Centres) Act 1987* in relation to Official Visitors.