

Western Australia

# Prisons Amendment Act 1999

(No. 43 of 1999)

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## CONTENTS

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1 .	Short title	1
2 .	Commencement	2
3 .	The Act amended	2
4 .	Section 3 amended	2
5 .	Section 6 amended	4
6 .	Section 7 amended	5
7 .	Part IIIA inserted	5
8 .	Section 9 amended	27
9 .	Section 38 amended	28
10 .	Section 39 replaced	29
11 .	Section 41 amended	30
12 .	Section 42 amended	30
13 .	Section 45 amended	31
14 .	Section 46 amended	31
15 .	Section 49 amended	31
16 .	Section 49B inserted	32
17 .	Section 54 amended	33
18 .	Part XA inserted	33
19 .	Transitional	52
20 .	Miscellaneous amendments	53

**Schedule 1 — Miscellaneous amendments**

1 .	<i>Anti-Corruption Commission Act 1988</i> amended	54
2 .	<i>Constitution Acts Amendment Act 1899</i>	55
3 .	<i>The Criminal Code</i> amended	55
4 .	<i>Freedom of Information Act 1992</i> amended	55
5 .	<i>Parliamentary Commissioner Act 1971</i> amended	56
6 .	<i>Spent Convictions Act 1988</i> amended	58



Western Australia

# Prisons Amendment Act 1999

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No. 43 of 1999

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**An Act to amend the *Prisons Act 1981* to provide for prison services to be provided under contracts and for related matters, to establish the office of the Inspector of Custodial Services, and to amend various other Acts as a consequence.**

*[Assented to 8 December 1999]*

The Parliament of Western Australia enacts as follows:

**1. Short title**

This Act may be cited as the *Prisons Amendment Act 1999*.

**2. Commencement**

- (1) Subject to subsection (2), this Act, other than the Inspector provisions, comes into operation on such day as is fixed by proclamation.
- (2) The day referred to in subsection (1) is not to be earlier than the day when all of Parts 2, 5, 6, 8 and 10 of the *Court Security and Custodial Services (Consequential Provisions) Act 1999* have come into operation.
- (3) The Inspector provisions come into operation on such day as is fixed by proclamation but that day must not be more than 6 months after the day referred to in subsection (1).
- (4) In this section —  
“**the Inspector provisions**” means section 4(5), section 5(3), section 18 and Schedule 1 clause 1(2) to (4), clause 2, clause 4(2) and clause 5(2) and (5) to (7).

**3. The Act amended**

The amendments in this Act are to the *Prisons Act 1981*\* unless otherwise indicated.

[\* *Reprinted as at 21 November 1996.*

*For subsequent amendments see 1997 Index to Legislation of Western Australia, Table 1, p. 188.]*

**4. Section 3 amended**

- (1) Section 3(1) is amended by inserting the following definitions in the appropriate alphabetical order —

“

“**contract**” means a contract entered into under section 15B;

**“contractor”** means a person who has entered into a contract with the chief executive officer;

**“high-level security work”** means —

- (a) work specified in section 15M as high-level security work; and
- (b) work declared as high-level security work under section 15N;

**“permit”** means a permit issued under section 15P to do high-level security work;

**“prison services”** means the management, control and security of a prison and the welfare of the prisoners at the prison;

**“subcontractor”** means a subcontractor of a contractor and includes a person with whom a subcontractor contracts and a person with whom that person contracts;

”.

- (2) Section 3(1) is amended by deleting the definition of “medical officer” and inserting the following definitions instead —

“

**“medical officer”** means a person who is appointed or engaged as a medical officer referred to in section 6(3) or (4);

**“medical practitioner”** means a person —

- (a) who is registered as a medical practitioner under the *Medical Act 1894*; and
- (b) who has current entitlement to practise under that Act;

”.

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- (3) Section 3(1) is amended in the definition of “officer” by deleting “section 6 or section 13” and inserting instead —  
“ , or as referred to in, section 6 or under section 13 ”.
- (4) Section 3(1) is amended by deleting the definition of “prison medical officer”.
- (5) Section 3(1) is amended by inserting the following definitions in the appropriate alphabetical order —  
“  
    **“inspection report”** means an inspection report referred to in section 109I(1);  
    **“Inspector”** means the Inspector of Custodial Services referred to in section 109A;  
”.

**5. Section 6 amended**

- (1) Section 6(3) is amended by inserting after “such officers” —  
“ including medical practitioners as medical officers ”.
- (2) Section 6(4) is repealed and the following subsection is inserted instead —  
“  
    (4) Without limiting the appointment of medical officers referred to in subsection (3), the chief executive officer may —  
        (a) appoint under contracts of service; or  
        (b) engage under contract for services,  
    medical practitioners as medical officers.  
”.

(3) After section 6(5) the following subsection is inserted —

“

(6) In this section —

“**this Act**” does not include Part XA.

”

**6. Section 7 amended**

Section 7(3) is amended by inserting after “superintendent” in both places where it occurs —

“ or other officer ”.

**7. Part IIIA inserted**

After section 15 the following Part is inserted —

“

**Part IIIA — Contracts for prison services**

**Division 1 — Preliminary**

**15A. Definitions**

In this Part —

“**administrator**” means a person appointed or engaged under section 15Y or 15Z;

“**contract worker**” means a natural person who is —

- (a) a contractor or an employee or agent of a contractor; or
- (b) a subcontractor or an employee or agent of a subcontractor;

“**function**” includes power, duty, responsibility and authority;

**“intervene”**, in relation to a contract, means —

- (a) to give directions as to the manner in which a prison service that is a subject of the contract is to be provided; or
- (b) to provide a prison service that is a subject of the contract;

**“other officer”** means an officer, except a medical officer, referred to in section 6(3) or a person engaged under section 6(5);

**“perform”**, in relation to a function, includes the exercise of a power, responsibility or authority.

## **Division 2 — Matters relating to contracts generally**

### **15B. Contracts for prison services**

The chief executive officer may, for and on behalf of the State of Western Australia, enter into a contract with a person to provide prison services for the State.

### **15C. Minimum matters to be included in contracts**

A contract must provide for —

- (a) compliance by the contractor with this Act, any other written law and the rules;
- (b) objectives and performance standards in relation to the provision of prison services under the contract;
- (c) fees, costs and charges to be paid to and by the contractor;



- (d) compliance by the contractor with the minimum standards established under section 15D in relation to the provision of prison services under the contract;
- (e) the submission of reports in relation to the contractor's obligations under the contract;
- (f) notification by the contractor of any change in the control, management or ownership of —
  - (i) the contractor; or
  - (ii) a subcontractor, or a member of a class of subcontractors, specified for the purposes of this paragraph by the chief executive officer in the contract;
- (g) the financial and other consequences of intervening in a contract under section 15W, terminating or suspending a contract under section 15X and of requisitioning property under section 15ZC;
- (h) codes of ethics and conduct, as approved by the chief executive officer, to apply to the contractor, any subcontractor and their employees and agents;
- (i) reporting procedures to notify the chief executive officer of escapes, deaths of prisoners and other emergencies or serious irregularities;
- (j) investigation procedures and dispute resolution mechanisms for complaints about the provision of prison services under the contract;
- (k) an indemnity by the contractor in favour of the State of Western Australia;

- (l) the office the holder of which is to be the principal officer of the contractor and the subcontractors under the relevant contract for the purposes of the *Anti-Corruption Commission Act 1988*, the *Freedom of Information Act 1992* and the *Parliamentary Commissioner Act 1971*, respectively; and
- (m) any other matter prescribed by regulation.

**15D. Minimum standards**

- (1) The chief executive officer must establish minimum standards applicable to the provision of prison services under a contract and the chief executive officer may, from time to time, amend the minimum standards.
- (2) The Minister is to ensure that the minimum standards, as amended from time to time, are laid before each House of Parliament within 10 sitting days of such House next following the establishment or amendment of the minimum standards.

**15E. Minister, chief executive officer etc. may have access to certain prisons, persons, vehicles and documents**

- (1) The Minister, the chief executive officer and any person authorized by the chief executive officer may, at any time, (with any assistants, prison dogs and equipment that the Minister, the chief executive officer or authorized person thinks are necessary) have free and unfettered access to a prison, person, vehicle or document referred to in subsection (2) for the purpose of —
  - (a) ensuring compliance with this Act, the rules or a contract; or

- (b) ensuring that a prison service that is a subject of a contract is being properly provided.
- (2) A person referred to in subsection (1) may have access to —
- (a) a prison at which prison services are provided under a contract or any part of such a prison;
  - (b) a prisoner in such a prison;
  - (c) a contract worker whose work is concerned with such a prison;
  - (d) a vehicle used by a contractor to provide prison services under a contract;
  - (e) a prisoner in such a vehicle;
  - (f) a contract worker whose work is concerned with such a vehicle; and
  - (g) all documents in the possession of the contractor or a subcontractor in relation to any prison service that is a subject of a contract.
- (3) The chief executive officer may authorize a person for the purposes of subsection (1).
- (4) An authorization must be in writing and may be made subject to such conditions and limitations specified in the authorization as the chief executive officer thinks fit.
- (5) A person must not hinder or resist a person referred to in subsection (1) when the person is exercising or attempting to exercise a power under that subsection.

Penalty: \$20 000.

- (6) Nothing in this section limits any entitlement that a person, under a law, has to have access to a place, vehicle, person or document referred to in subsection (2).

**15F. Administrators and reporting officers may have access to certain prisons, persons, vehicles and documents**

- (1) An administrator and a reporting officer appointed under section 9 may, at any time, (with any assistants, prison dogs and equipment that the administrator or reporting officer thinks are necessary) have free and unfettered access to a prison, vehicle, person or document referred to in section 15E(2) for the purpose of enabling the administrator or reporting officer to perform his or her functions.
- (2) A person must not hinder or resist an administrator or reporting officer when the administrator or reporting officer is exercising or attempting to exercise a power under subsection (1).  
Penalty: \$20 000.
- (3) Nothing in this section limits any entitlement that a person, under a law, has to have access to a place, vehicle, person or document referred to in section 15E(2).

**15G. Annual reports and tabling of contracts**

- (1) The chief executive officer is to prepare and deliver to the Minister by 30 September each year a report on each contractor who provided prison services under a contract in the preceding 12 months.

- (2) The report is to contain such information as is required to be included in the report by the Minister to enable an informed assessment to be made of —
  - (a) the operations of each contractor; and
  - (b) the extent to which there has been compliance with the relevant contract.
- (3) The Minister is to ensure that the report is laid before each House of Parliament within 10 sitting days of such House next following the Minister's receipt of the report.
- (4) The Minister is to ensure that a contract, as amended from time to time, is laid before each House of Parliament within 30 days of such House next sitting following the execution of the contract or the amendment.
- (5) If neither House of Parliament is sitting on the day when the 30 day period referred to in subsection (4) expires —
  - (a) immediately on the expiration of that period the Minister is to send a copy of the contract or the contract as amended, as is relevant to the case, to the Clerk of the Legislative Assembly and the Clerk of the Legislative Council; and
  - (b) the Clerks are to jointly ensure that the contract or the contract as amended is published as soon as practicable in a prescribed manner.

**15H. No contracting out**

The provisions of this Part apply despite anything to the contrary in the contract.

**Division 3 — Authorization of contract workers to perform functions**

**15I. Contract workers' functions**

- (1) The chief executive officer may authorize a contract worker who holds a permit, to perform any of the functions that —
  - (a) a superintendent;
  - (b) a prison officer; or
  - (c) an other officer,

has under this Act except a function referred to in section 15J.

- (2) An authorization must be in writing and may be made subject to such conditions and limitations specified in the authorization as the chief executive officer thinks fit.
- (3) A contract worker is not to decide whether a prisoner may be detained in custody under section 32(1)(a).

**15J. Limitation on functions of contract workers**

- (1) A contract worker cannot be authorized to perform a function that cannot be delegated to a person under section 8(1).
- (2) A contract worker cannot be authorized to perform a superintendent's function of a kind referred to in a provision of this Act that is set out in the Table to this subsection.

Table

s. 31(2)	s. 74(3)
s. 32(1)(b)	s. 75(1) and (2)
s. 47(1) and (2)	s. 76(1) and (2)
s. 71(1) and(2)	s. 77(1) and (2)
s. 73(a) (second reference to superintendent only)	s. 80(1) and (2)

- (3) A contract worker cannot be authorized to perform a superintendent's function of a kind referred to in Part X.
- (4) A contract worker cannot be authorized to perform a prison officer's function referred to in section 47(1) or (2).

**15K. Effect of authorization**

- (1) Subject to subsections (2), (3), (4), (5) and (6), a contract worker who is authorized under section 15I to perform a function of —
- (a) a superintendent;
  - (b) a prison officer; or
  - (c) an other officer,

must, for the purposes of this Act and any other written law, be deemed to be a superintendent, prison officer or other officer, as the case requires, in relation to that function.

- (2) A reference to a superintendent in Part X does not include a reference to a contract worker.

- (3) A reference to a prison officer or any other officer in a provision of this Act that is set out in the Table to this subsection does not include a reference to a contract worker.

Table

s. 13(1), (2) and (3)	s. 110(1)(b), (d), (e), (v), and (w)
Part X	s. 114(1), (3), (6), (8), (9), (11) and (12)

- (4) If prison services in relation to a prison are being provided under a contract, a reference to the prison's superintendent in a provision that is set out in the Table to section 15J(2) in relation to that prison is to be regarded as a reference to a superintendent of a prison that is not managed under a contract.
- (5) If prison services in relation to a prison are being provided under a contract, a reference to a prison officer in section 47(1) or (2) in relation to that prison is to be regarded as a reference to a prison officer engaged under section 13.
- (6) A contract worker referred to in subsection (1) —
- (a) does not hold the position of superintendent, prison officer or other officer, as the case requires; and
  - (b) is not subject to the *Public Sector Management Act 1994*.



**Division 4 — Vetting and control of contract workers in relation to high-level security work**

**15L. Interpretation in this Division of “offence for which the contract worker is convicted”**

In this Division a reference to an offence for which the contract worker is convicted includes —

- (a) an offence for which the person is convicted in any part of the world; and
- (b) the payment of the whole or a part of a penalty under a traffic infringement notice that is served on the contract worker under section 102(1) of the *Road Traffic Act 1974* or a corresponding law in any other part of the world.

**15M. High-level security work**

A prison service is high-level security work if —

- (a) it is of a kind that requires the person providing it to exercise a power of a superintendent, a prison officer or any other officer; and
- (b) it is provided by a contract worker.

**15N. Chief executive officer may declare other kinds of work to be high-level security work**

- (1) The chief executive officer may, in writing, declare as high-level security work —
  - (a) a prison service of a kind that requires a contract worker to deal directly with prisoners except a prison service referred to in section 15M;
  - (b) work that requires a contract worker to have access to information about prisoners; or

- (c) any other work to be done by a contract worker that in the opinion of the chief executive officer should be declared to be high-level security work.
- (2) The chief executive officer may amend a declaration.
- (3) The chief executive officer is to ensure that notice of a declaration or an amendment of a declaration is published in the *Gazette* within 14 days after the day the declaration or amendment occurs.
- (4) The validity of a declaration or an amendment of a declaration is not affected by failure to publish the notice.

**150. Contract workers require permits to do high-level security work**

A contract worker must not do, or purport to do, any high-level security work unless he or she has a current permit to do the work and does the work in accordance with the permit.

Penalty: Imprisonment for 3 years.

**15P. Issue of permits to do high-level security work**

- (1) On application by a contract worker in a manner approved by the chief executive officer, the chief executive officer may issue the contract worker with a permit to do high-level security work.

- (2) To determine the suitability of a contract worker to do high-level security work the chief executive officer may —
  - (a) have regard to the information referred to in section 15Q(1) and (3) about the contract worker;
  - (b) make appropriate enquiries about the contract worker; and
  - (c) enquire into the honesty and integrity of the contract worker's known associates.
- (3) A permit may be issued subject to such conditions and limitations specified in the permit as the chief executive officer thinks fit.
- (4) A permit is not transferable.

**15Q. Information about applicants for permits**

- (1) The chief executive officer may, in writing, require a contract worker who applies for a permit or the relevant contractor to provide —
  - (a) information about any offence for which the contract worker is convicted;
  - (b) information about any disciplinary proceedings conducted against the contract worker in the course of his or her employment;
  - (c) information about any other matter that is relevant to the suitability of the contract worker to do high-level security work; and
  - (d) a photograph of the contract worker.

- (2) A person must not give information or a photograph that is false or misleading in a material particular in response to a requirement under subsection (1).  
Penalty: Imprisonment for 3 years.
- (3) If a contract worker applies for a permit the contract worker is to authorize the Commissioner of Police to provide to the chief executive officer and the relevant contractor —
- (a) information about any offence for which the contract worker is convicted; and
  - (b) such other information as is required by the chief executive officer to determine the suitability of the contract worker to do high-level security work.
- (4) A person must not give information that is false or misleading in a material particular in an authority under subsection (3).  
Penalty: Imprisonment for 3 years.

**15R. Taking of fingerprints and palmprints**

- (1) The chief executive officer may, in writing, require a contract worker who applies for, or holds, a permit to attend at a place and there have his or her fingerprints or palmprints taken by a member of the Police Force or an employee of the Police Service.
- (2) The Commissioner of Police is to cause fingerprints and palmprints taken under this section and any copy of them to be destroyed —
- (a) if the permit is not granted; or
  - (b) when the permit no longer has effect.

**15S. Refusal to issue permit**

- (1) The chief executive officer may refuse to issue a contract worker with a permit to do high-level security work if, in the opinion of the chief executive officer —
  - (a) the contract worker has not complied with a requirement under section 15Q(1);
  - (b) the contract worker has not given an authority under section 15Q(3);
  - (c) the contract worker has not complied with a requirement under section 15R(1);
  - (d) the contract worker has not completed training approved by the chief executive officer;
  - (e) the contract worker has failed to satisfy the chief executive officer that the contract worker is a fit and proper person to do high-level security work;
  - (f) the contract worker should not do high-level security work because of his or her criminal record or character or because of any other relevant reason;
  - (g) the contract worker does not meet all the conditions specified in the relevant contract in relation to persons who are to do high-level security work; or
  - (h) it is not in the public interest to do so.
- (2) The rules known as the rules of natural justice (including any duty of procedural fairness) do not apply to or in relation to the issue of, or refusal to issue, a permit.

**15T. Determining suitability of contract workers to keep holding permits**

- (1) To determine the suitability of a contract worker to continue to do high-level security work the chief executive officer may —
  - (a) have regard to the information referred to in subsection (2) and (4) about the contract worker;
  - (b) make appropriate enquiries about the contract worker; and
  - (c) enquire into the honesty and integrity of the contract worker's known associates.
- (2) If a contract worker holds a permit the chief executive officer may, at any time, in writing require the contract worker or the relevant contractor to provide information about —
  - (a) any offence for which the contract worker is convicted;
  - (b) any disciplinary proceedings conducted against the contract worker in the course of his or her employment; and
  - (c) any other matter that is relevant to the suitability of the contract worker to continue to do high-level security work.
- (3) A person must not give information that is false or misleading in a material particular in response to a requirement under subsection (2).

Penalty: Imprisonment for 3 years.

- (4) If a contract worker holds a permit the chief executive officer may, at any time, in writing require the contract worker to authorize the Commissioner of Police to provide to the chief executive officer and the relevant contractor —
  - (a) information about any offence for which the contract worker is convicted; and
  - (b) such other information as is required by the chief executive officer to determine the suitability of the contract worker to continue to do high-level security work.
- (5) A person must not give information that is false or misleading in a material particular in an authority under subsection (4).

Penalty: Imprisonment for 3 years.

**15U. Suspension or revocation of permits**

- (1) The chief executive officer may, at any time, suspend or revoke a permit issued to a contract worker if, in the opinion of the chief executive officer —
  - (a) the permit ought not to have been issued to the contract worker, or ought not to continue in force in respect of the contract worker, having regard to the grounds referred to in section 15S(1)(d) to (h); or
  - (b) the contract worker has failed to comply with —
    - (i) this Act, the rules or standing orders;
    - (ii) a direction given to the contract worker under this Act, the rules, a standing order or the relevant contract;

- (iii) an order, direction, warrant or other instrument under any law directed to the contract worker in relation to a prisoner;
  - (iv) a code of ethics or conduct provided for under the relevant contract; or
  - (v) a requirement under section 15T(2) or (4).
- (2) The chief executive officer may suspend or revoke any permit issued to any contract worker if —
  - (a) the chief executive officer intervenes in the relevant contract under section 15W or terminates or suspends the relevant contract under section 15X; or
  - (b) the relevant contract is terminated or suspended under the terms of the contract.
- (3) The rules known as the rules of natural justice (including any duty of procedural fairness) do not apply to or in relation to the suspension or revocation of a permit under subsection (2).

**15V. Gazettal of permit details**

- (1) The chief executive officer is to ensure that notice of the issue, suspension, reinstatement or revocation of a permit is published in the *Gazette* within 14 days after the day the event occurs.
- (2) The validity of the issue, suspension, reinstatement or revocation of a permit is not affected by failure to publish the notice.



**Division 5 — Intervention in, and termination of,  
contracts**

**15W. Intervention in contracts**

- (1) The chief executive officer may intervene in a contract if —
  - (a) there are grounds for doing so under subsection (2); and
  - (b) the intervention is in the public interest or is necessary to ensure the proper provision of a prison service that is a subject of a contract.
- (2) The grounds for intervening in a contract are that —
  - (a) there is an emergency in a prison service that is a subject of the contract; or
  - (b) the contractor has failed to effectively provide a prison service that is a subject of the contract.

**15X. Termination or suspension of contracts**

- (1) The chief executive officer, with the Minister's approval, may on behalf of the State terminate or suspend (wholly or partially) a contract if, in the opinion of the chief executive officer —
  - (a) there are grounds for doing so under subsection (2); and
  - (b) the termination or suspension of the contract is in the public interest.
- (2) The grounds for terminating or suspending a contract are that —
  - (a) the contractor becomes insolvent within the meaning of the contract;

- (b) the identity of the persons who control, manage or own the contractor or a subcontractor changes during the term of the contract without the consent of the chief executive officer;
- (c) the contractor has committed a material breach of the contract that is not capable of being remedied;
- (d) the contractor has failed to rectify a breach of the contract within the time specified in the contract after the issue of a default notice; or
- (e) the chief executive officer gives the contractor written notice to the effect that the contract will be terminated or suspended 3 days after the day on which the contractor receives the notice or at such later time as is specified in the notice.

**15Y. Administrator where intervention in contract**

- (1) If the chief executive officer intervenes in a contract under section 15W the chief executive officer may appoint or engage an administrator —
  - (a) to give directions as to the manner in which a prison service that is subject of the contract is to be provided; or
  - (b) to provide a prison service that is a subject of the contract.
- (2) The directions given by an administrator and the provision by an administrator of a prison service that is a subject of a contract must be in accordance with the terms of the administrator's appointment or engagement.

- (3) An administrator cannot be appointed or engaged for a period exceeding one year but can be reappointed or re-engaged if, after review of the reason for intervention in a contract, the chief executive officer determines that the reason for the intervention still exists.

**15Z. Administrator where termination or suspension of contract**

- (1) If the chief executive officer terminates or suspends a contract under section 15X the chief executive officer may appoint or engage an administrator —
  - (a) to provide any prison service that was a subject of the terminated contract; or
  - (b) to provide any prison service that is a subject of the suspended contract.
- (2) The provision by an administrator of a prison service that was or is a subject of a contract must be in accordance with the terms of the administrator's appointment or engagement.
- (3) An administrator cannot be appointed or engaged for a period exceeding one year but can be reappointed or re-engaged if the chief executive officer determines —
  - (a) in the case of the termination of a contract, that matters arising from the terminated contract have not been properly resolved; or
  - (b) in the case of the suspension of a contract, that the reason for the suspension still exists.

**15ZA. Administrator's functions**

An administrator may, for the purposes of performing his or her functions —

- (a) perform —
  - (i) any function that the contractor or an employee or agent of that contractor has under a contract or had under a terminated contract; and
  - (ii) any function that a subcontractor or an employee or agent of that subcontractor has under a contract or had under a terminated contract;
- and
- (b) exercise any power of a superintendent, a prison officer or any other officer.

**15ZB. Compliance with administrator's directions**

- (1) If an administrator is appointed under section 15Y then for the period of the appointment or engagement —
  - (a) the contractor;
  - (b) each subcontractor; and
  - (c) any person appointed or employed by the contractor or a subcontractor to manage a service that is a subject of a contract,

must comply with the administrator's directions in respect of the management or provision of the service, or the ceasing of the provision of the service.

Penalty: \$50 000.

- (2) If an administrator is appointed or engaged under section 15Y then for the period of the appointment or engagement any contract worker who has a function in respect of a prison service that is a subject of the relevant contract must comply with the administrator's directions as to the performance of the function.
- Penalty: \$5 000.

**15ZC. Requisitioning property on intervention in, or termination of, contract**

If the chief executive officer intervenes in a contract under section 15W or terminates or suspends a contract under section 15X, the chief executive officer or an administrator (with the chief executive officer's approval) may —

- (a) no later than 2 months after the intervention, termination or suspension, requisition any property used in relation to the provision of a prison service that is a subject of the contract or was a subject of the terminated contract; and
- (b) use the property for the ongoing provision of that prison service for no longer than 12 months after the requisition of the property.

”

**8. Section 9 amended**

Section 9 is amended by inserting a new subclause (4) and (5) as follows —

“

- (4) Before a reporting officer requests a person to give information or asks a person a question for the

purposes of an inquiry the reporting officer must advise the person —

- (a) that the person does not have to give the information or answer the question unless the reporting officer requires the person to do so;
  - (b) that if the person gives the information or answers the question on the request of the reporting officer but without having been required by the reporting officer to do so, the information or answer may be admissible in evidence against the person in any proceedings;
  - (c) of the effect of giving the information or answering the question in response to a requirement of the reporting officer to do so; and
  - (d) of the offences and the penalty as mentioned.
- (5) A requirement of a reporting officer to give information or answer a question for the purposes of an inquiry must be clearly distinguishable from a request to give the information or answer the question.

”

**9. Section 38 amended**

- (1) Section 38(1) is repealed and the following subsection is inserted instead —

“

- (1) The chief executive officer is to ensure that medical care and treatment is provided to the prisoners in each prison.

”

- (2) Section 38(2) is amended by deleting “the prison medical officer or” in each place where it occurs and inserting instead —  
“ a ”.
- (3) Section 38(3) is amended by deleting “prison medical officer or medical officer who is responsible under this section” and inserting instead —  
“ medical officer who is responsible ”.

**10. Section 39 replaced**

Section 39 is repealed and the following section is inserted instead —

“

**39. Duties of medical officers**

A medical officer shall —

- (a) attend at a prison at such times and on such occasions as are specified in the terms of the medical officer’s appointment or engagement;
- (b) on the request of the chief executive officer, examine a prisoner as soon as practicable after the prisoner’s admission to prison and ascertain and record the prisoner’s state of health and any other circumstance connected with the prisoner’s health, as the medical officer considers necessary;
- (c) maintain a record of the medical condition and the course of treatment prescribed in respect of each prisoner under the medical officer’s care;
- (d) make such returns and reports to the chief executive officer as the chief executive officer may from time to time direct;

**s. 11**

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- (e) make records referred to in paragraphs (b) and (c) relating to a prisoner available, upon request, to the chief executive officer;
- (f) on the request of the chief executive officer, give close medical supervision to a prisoner in separate confinement;
- (g) on the request of the chief executive officer, examine and treat a prisoner who requires medical care and treatment; and
- (h) on the request of the chief executive officer or a superintendent, examine a prisoner.

”

**11. Section 41 amended**

Section 41(3) is amended by inserting after “may” —

“

, subject to section 49B of this Act and to section 6(2) of the *Weapons Act 1998*,

”

**12. Section 42 amended**

- (1) Section 42(1)(b) is amended by deleting “the prison medical officer or the” and inserting instead —

“ a ”.

- (2) Section 42(2) is amended by deleting “the prison medical officer, or the” and inserting instead —

“ a ”.



**13. Section 45 amended**

Section 45 is amended as follows:

- (a) in paragraph (c) by deleting “the prison medical officer or the medical officer, as the case may be,” and inserting instead —  
“ a medical officer ”;
- (b) in paragraph (d) by deleting “the prison medical officer or the medical officer, as the case may be,” and inserting instead —  
“ a medical officer ”;
- (c) by deleting “the prison medical officer or”.

**14. Section 46 amended**

Section 46 is amended by deleting “the prison medical officer, the medical officer,” and inserting instead —

“ a medical officer ”.

**15. Section 49 amended**

Section 49(5) is amended by inserting after “and,” —

“

subject to section 49B of this Act and to section 6(2) of the *Weapons Act 1998*,

”.

**16. Section 49B inserted**

After section 49A the following section is inserted —

“

**49B. Possession of firearms, prohibited drugs etc. by prison officers**

- (1) A prison officer who comes into possession of property under section 41, 49 or 49A does not commit —
- (a) an offence under the *Firearms Act 1973* in relation to possession of a firearm, ammunition or a silencer or contrivance of a similar nature; or
  - (b) an offence under the *Misuse of Drugs Act 1981* in relation to the possession of a prohibited drug, prohibited plant or utensil,

if the prison officer possesses the property for a reason set out in subsection (2).

- (2) A prison officer may possess the property —
- (a) so as to deliver it into the custody of a member of the Police Force or an employee of the Police Service; or
  - (b) in the case of a firearm, if the prison officer is authorized under this Act to be in possession of the firearm for the purposes of section 47.

”

**17. Section 54 amended**

After section 54(1) the following subsection is inserted —

“

- (1a) A person is not to be appointed as a prison visitor for a prison where prison services are being provided under a contract if —
- (a) the person has any financial interest in the contract; or
  - (b) the person is, or to any extent controls, manages or owns, the contractor or a subcontractor under the contract.

”

**18. Part XA inserted**

After section 109 the following Part is inserted —

“

**Part XA—Inspector of Custodial Services**

**Division 1 — Office of Inspector of Custodial Services**

**109A. Creation and purpose of office of Inspector**

An office of Inspector of Custodial Services is hereby created for the purpose of performing the functions of the Inspector under this Act or any other law.

**109B. Appointment of Inspector**

- (1) The Governor shall appoint an appropriately qualified Inspector.

- (2) The *Public Sector Management Act 1994* does not apply to or in relation to the appointment of the Inspector and the Inspector is not subject to that Act.
- (3) Subject to this Act, the Inspector holds office for such term of not more than 7 years as is specified in the appointment and is eligible for re-appointment for one or more terms each of not more than 7 years.
- (4) No person who is or has been within the preceding 3 years a member of the Parliament of the Commonwealth or any State shall be appointed as Inspector or acting Inspector.

**109C. Conditions of appointment**

- (1) The Inspector —
  - (a) shall be paid salary and allowances at such rates per annum as are determined by the Salaries and Allowances Tribunal established by the *Salaries and Allowances Act 1975*; and
  - (b) has such leave and other entitlements as are determined by the Governor and which cannot be reduced during a term of appointment.
- (2) The salary and allowances payable to the Inspector are to be charged to the Consolidated Fund and this subsection appropriates the Consolidated Fund accordingly.

**109D. Oath**

- (1) Before performing the functions of his or her office the Inspector shall take an oath or affirmation that he or she will faithfully and impartially perform the duties of the office, and that he or she will not, except in

accordance with this Act, divulge any information received by him or her under this Act or any other law.

- (2) The oath or affirmation shall be administered by the Governor.

**109E. Removal of Inspector from office**

- (1) The Governor may remove the Inspector from office —
  - (a) for —
    - (i) misbehaviour or incompetence; or
    - (ii) physical or mental incapacity, other than temporary illness, impairing the performance of the Inspector's functions;
  - or
  - (b) if the Inspector becomes a bankrupt or applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of salary for their benefit.
- (2) In subsection (1)(a)(i) “**misbehaviour**” includes conduct that renders the Inspector unfit to hold office as Inspector even though the conduct does not relate to any function of the office.

**109F. Acting appointments**

- (1) The Governor may appoint a person to act in the office of the Inspector —
  - (a) during a vacancy in the office; or

- (b) during any period or during all periods when the person holding or appointed to act in that office is absent from duty or is for any other reason unable to perform the functions of the office.
- (2) If the Governor has not appointed a person under subsection (1) the Inspector may appoint a person to act in the office of the Inspector in the circumstances referred to in subsection (1)(b) —
  - (a) for not more than 4 weeks at a time; and
  - (b) for not more than 6 weeks in a 12 month period.
- (3) If the Inspector appoints a person under subsection (2) and the Governor later appoints a person under subsection (1) whose term of the appointment is to begin before the term of the Inspector's appointee has ended, the appointment of the Inspector has no effect on and from the day when the term of the Governor's appointee begins.
- (4) An appointment under subsection (1) or (2) may be made at any time and may be expressed to have effect only in the circumstances specified in the instrument of appointment.
- (5) A person who is acting in the office of Inspector shall perform all the functions of the office of Inspector under this or any other Act and is subject to all relevant provisions of this Act and any other law applying to the Inspector.
- (6) The validity of anything done by or in relation to a person purporting to act in the office of Inspector under an appointment made under subsection (1) or (2) shall

not be called in question on the ground that the occasion for the appointment had not arisen, that there is a defect or irregularity in the appointment, that the appointment had ceased to have effect or that the occasion for the person to act had not arisen or had ceased.

**109G. Portability of superannuation and other entitlements**

- (1) If a public service officer is appointed to the office of Inspector he or she is entitled to retain all existing and accruing rights, including those as to superannuation, as if his or her service in that office were a continuation of his or her service as a public service officer.
- (2) If a person ceases to hold the office of Inspector and becomes a public service officer his or her service in that office shall be regarded as service in the Public Service for the purposes of determining his or her rights, including those as to superannuation, as a public service officer.
- (3) If—
  - (a) immediately before his or her appointment the Inspector occupied an office under Part 3 of the *Public Sector Management Act 1994*; and
  - (b) his or her term of office as Inspector expires by effluxion of time and he or she is not reappointed,

that person is entitled to be appointed to an office under Part 3 of the *Public Sector Management Act 1994* that is not lower in status than the office which he or she occupied immediately before the appointment to the office of Inspector.

- (4) In this section —  
“**public service officer**” has the definition it has in the  
*Public Sector Management Act 1994*.

**109H. Staff**

- (1) The staff necessary for the performance of the Inspector’s functions shall be appointed under Part 3 of the *Public Sector Management Act 1994*.
- (2) A person may be appointed or engaged for the purpose of giving expert advice or other assistance in relation to the performance of the Inspector’s functions.
- (3) The Inspector may by arrangement with the relevant employer make use, either fulltime or parttime, of the services of any officer or employee —
- (a) in the Public Service;
  - (b) in a State agency or instrumentality; or
  - (c) otherwise in the service of the Crown in right of the State.
- (4) The Inspector may by arrangement with —
- (a) a department of the Public Service; or
  - (b) a State agency or instrumentality,
- make use of any facilities of the department, agency or instrumentality.
- (5) An arrangement under subsection (3) or (4) is to be made on such terms as are agreed to by the parties.



**Division 2 — Functions and powers of Inspector**

**109I. Functions of Inspector**

- (1) The Inspector shall inspect each prison at least once every 3 years and prepare an inspection report on his or her findings.
- (2) An inspection report may contain such advice or recommendations as the Inspector considers appropriate in relation to the findings.
- (3) The Inspector may —
  - (a) inspect a prison at any time and on any number of occasions between the inspections of the prison referred to in subsection (1); or
  - (b) review a prison service at any time, including any aspect of a prison service.
- (4) The Inspector may, at any time —
  - (a) report to the Minister on any matter relating to an inspection of a prison or a review of a prison service and give advice or make recommendations in relation to the matter; or
  - (b) deliver to the Minister or any other person having an interest in the subject matter of the document —
    - (i) a draft inspection report; or
    - (ii) a report prepared by the Inspector concerning an inspection or review under subsection (3).

- (5) The Inspector shall ensure that the performance of a function of the Inspector under this Act or any other law is not likely to delay, interfere with or duplicate —
  - (a) a pending inquiry under section 9;
  - (b) a pending investigation, or the taking of further action (as defined in section 17 of the *Anti-Corruption Commission Act 1988*), by the Anti-Corruption Commission under that Act; or
  - (c) a pending investigation by the Parliamentary Commissioner for Administrative Investigations under the *Parliamentary Commissioner Act 1971*.
- (6) The Inspector shall not deal with a complaint or grievance concerning an individual other than to advise the complainant that the Inspector's functions do not relate to the matter or, if appropriate, to refer the matter to the Parliamentary Commissioner for Administrative Investigations.

**109J. Powers of the Inspector**

- (1) The Inspector has power to do all things necessary or convenient to be done for or in connection with the performance of the functions of the Inspector under this Act or any other law.
- (2) It is not necessary for any person to be given notice of the Inspector's intention to perform a function of the Inspector under this Act or any other law.

**109K. Inspector may have access to prisons and certain persons, vehicles and documents**

- (1) The Inspector and any person authorized by the Inspector may, at any time, (with any assistants and equipment that the Inspector or authorized person thinks are necessary) have free and unfettered access to a prison, person, vehicle or document referred to in subsection (2) for the purpose of performing the Inspector's functions under this Act.
- (2) A person referred to in subsection (1) may have access to —
  - (a) a prison or any part of a prison;
  - (b) a prisoner in a prison;
  - (c) a person whose work is concerned with a prison;
  - (d) a vehicle used to transport prisoners;
  - (e) a prisoner in such a vehicle;
  - (f) a person whose work is concerned with such a vehicle; and
  - (g) all documents in the possession of —
    - (i) the Department in relation to a prison or a prison service; and
    - (ii) a contractor or a subcontractor in relation to a prison or a prison service that is a subject of a contract.
- (3) The Inspector may authorize a person for the purposes of subsection (1).

- (4) An authorization must be in writing and may be made subject to such conditions and limitations specified in the authorization as the Inspector thinks fit.
- (5) A person must not hinder or resist a person referred to in subsection (1) when the person is exercising or attempting to exercise a power under that subsection.  
Penalty: \$20 000.
- (6) Nothing in this section limits any entitlement that a person, under a law, has to have access to a place, vehicle, person or document referred to in subsection (2).

**109L. Directions**

- (1) Except as provided in this section, the Inspector is not subject to direction by the Minister or any other person in the performance of the Inspector's functions.
- (2) The Minister may direct the Inspector to inspect a prison or to review a prison service or an aspect of a prison service and report on a specified matter of significance.
- (3) The Minister may, after consultation with the Inspector, issue to the Inspector directions as to the performance of any of the Inspector's functions but a direction cannot be issued in respect of a particular case.
- (4) The Inspector must comply with a direction under subsection (2) or (3) unless, in the Inspector's opinion, there are exceptional circumstances for not complying.

- (5) If the Inspector refuses to comply with a direction under subsection (2) or (3) he or she must prepare written reasons for the failure to comply and cause the reasons to be laid before each House of Parliament within 14 sitting days of that House after the refusal.
- (6) Every direction shall be in writing and the text of the direction shall be included in the annual report of the Inspector under section 109N(2)(d).

**109M. Minister to have access to information**

- (1) Subject to this section the Minister is entitled —
  - (a) to have information in the possession of the Inspector; and
  - (b) where the information is in or on a document, to have, and make and retain copies of, that document.
- (2) For the purposes of subsection (1) the Minister may —
  - (a) request the Inspector to furnish information to the Minister;
  - (b) request the Inspector to give the Minister access to information;
  - (c) for the purposes of paragraph (b) make use of the Inspector's staff to obtain the information and furnish it to the Minister.
- (3) The Inspector must comply with a request under subsection (2) and make his or her staff and facilities available to the Minister for the purposes of subsection (2)(c) unless, in the Inspector's opinion, it would not be in the public interest to provide the information.

- (4) If the Inspector refuses to comply with a request under subsection (2) he or she must prepare written reasons for the failure to comply and cause the reasons to be laid before each House of Parliament within 14 sitting days of that House after the refusal.
- (5) In this section —
  - “**document**” includes any tape, disc or other device or medium on which information is recorded or stored;
  - “**information**” means information specified, or of a description specified, by the Minister that related to the functions of the Inspector.

**109N. Reporting**

- (1) The Inspector shall, as soon as is practicable in each year but not later than 30 September, deliver copies of the documents referred to in subsection (2) —
  - (a) to the Speaker of the Legislative Assembly and the President of the Legislative Council who shall keep the documents in safe custody; and
  - (b) to the Minister, who may prepare a response to the documents.
- (2) The documents are —
  - (a) each inspection report prepared by the Inspector as a result of inspecting a prison in the period of 12 months ending on the preceding 30 June;
  - (b) a list of —
    - (i) the prisons that have been inspected since the preceding 30 June and the day on which the list was prepared; and

- (ii) the prisons that are proposed to be inspected in the period up to the next 30 June;
  - (c) any report prepared by the Inspector concerning an inspection or review under section 109I(3) that the Inspector considers appropriate to be laid before the Houses of Parliament; and
  - (d) a report on the administration of the Inspector's functions for the period of 12 months ending on the preceding 30 June.
- (3) Nothing in this section prevents a document from being delivered under subsection (1) at a different time from another document.
- (4) The Speaker and the President shall lay each document delivered under subsection (1)(a) before their respective Houses of Parliament not before 30 days after the document is delivered under subsection (1)(a) but as soon as practicable after the expiration of the 30 day period.
- (5) If neither House of Parliament is sitting on the day when the 30 day period referred to in subsection (4) expires, the Clerk of the Legislative Assembly and the Clerk of the Legislative Council shall jointly ensure that the document is published as soon as practicable in a prescribed manner.
- (6) The Inspector shall not, in a document referred to in subsection (2) disclose information or make a statement setting out opinions that are, either expressly or impliedly, critical of the Department or a contractor or any person unless the Inspector has complied with subsection (7) in relation to the matter.

- (7) Where the Inspector proposes to disclose information or make a statement setting out opinions referred to in subsection (6) he or she shall, before doing so, afford —
- (a) if the opinions relate to the Department, the chief executive officer;
  - (b) if the opinions relate to a contractor or other person, the contractor or person,

the opportunity to make submissions, either orally or in writing, in relation to the matter.

### **Division 3 — Other matters relating to the Inspector**

#### **109O. Consultation**

- (1) The Inspector may consult the Anti-Corruption Commission, the Director of Public Prosecutions or the Parliamentary Commissioner for Administrative Investigations concerning the performance of a function of the Inspector under this Act or any other law.
- (2) Information obtained by the Inspector or the Inspector's staff in the course of, or for the purpose of, the performance of a function of the Inspector under this Act or any other law may be disclosed for the purposes of a consultation under subsection (1).

#### **109P. Disclosure of certain information**

A person who is the Inspector or a member of the Inspector's staff authorized for the purposes of this section by the Inspector may disclose information obtained by the Inspector or the Inspector's staff in the course of, or for the purpose of, the performance of a



function of the Inspector under this Act or any other law if the information —

- (a) is disclosed to a person who is —
  - (i) a member of the Anti-Corruption Commission; or
  - (ii) an officer or a seconded officer of the Anti-Corruption Commission authorized for the purposes of this subparagraph by the Anti-Corruption Commission,  
and concerns a matter that is relevant to the functions of the Anti-Corruption Commission;
- (b) is disclosed to a person who is —
  - (i) the Director of Public Prosecutions;
  - (ii) the Deputy Director of Public Prosecutions; or
  - (iii) a member of the staff of the Director of Public Prosecutions authorized for the purposes of this subparagraph by the Director of Public Prosecutions or the Deputy Director of Public Prosecutions,  
and concerns a matter that is relevant to the functions of either the Anti-Corruption Commission or the Director of Public Prosecutions; or
- (c) is disclosed to a person who is —
  - (i) the Parliamentary Commissioner for Administrative Investigations;
  - (ii) the Deputy Parliamentary Commissioner for Administrative Investigations; or

- (iii) an officer of the Parliamentary Commissioner authorized for the purposes of this subparagraph by the Parliamentary Commissioner or the Deputy Parliamentary Commissioner, and concerns a matter that is relevant to the functions of the Parliamentary Commissioner.

**109Q. Confidentiality**

- (1) Information obtained by the Inspector or the Inspector's staff in the course of, or for the purpose of, performing a function under this Act or any other law, shall not be disclosed, except —
  - (a) for the purposes of the performance of a function of the Inspector under this Act or any other law;
  - (b) for the purposes of any proceedings for perjury or for an offence under this Act; or
  - (c) as authorized by section 109O or 109P.
- (2) The Inspector may in writing direct the person to whom a document is sent by the Inspector not to disclose to any other person any information contained in the document except for the purposes of the performance of a function of the Inspector to which the document relates, and a person to whom such a direction is given shall comply with the direction.
- (3) Subsection (1) does not prevent the Inspector from disclosing information, or making a statement, to any person or to the public or a section of the public with respect to the performance of a function of the Inspector if, in the Inspector's opinion, it is in the interests of the Department or a contractor or of any

person, or is otherwise in the public interest, to disclose the information or to make the statement.

- (4) The Inspector shall not disclose information or make a statement under subsection (3) with respect to a particular matter where the disclosure of that information, or the making of that statement, is likely to interfere with the performance of a function of the Inspector in relation to that or any other matter.
- (5) The Inspector shall not, in disclosing information or making a statement under subsection (3) with respect to a particular matter set out opinions that are, either expressly or impliedly, critical of the Department or a contractor or any person unless the Inspector has complied with subsection (6) in relation to the matter.
- (6) Where the Inspector proposes to disclose information or make a statement setting out opinions referred to in subsection (5) he or she shall, before doing so, afford —
  - (a) if the opinions relate to the Department, the chief executive officer;
  - (b) if the opinions relate to a contractor or other person, the contractor or person,

the opportunity to make submissions, either orally or in writing, in relation to the matter.

- (7) A person shall not disclose information contrary to the provisions of this section.

Penalty: \$6 000 and imprisonment for 2 years.

**109R. Documents sent to or by the Inspector not admissible**

Any document that is sent to the Inspector or the Inspector's staff or by the Inspector or the Inspector's staff —

- (a) in the course of, or for the purposes of, the performance of a function of the Inspector under this Act or any other law; and
- (b) that was prepared specifically for the purposes of the performance of the function,

is privileged and is not admissible in evidence in any proceedings other than proceedings for perjury or for an offence under this Act alleged to have been committed in relation to the performance of a function of the Inspector.

**109S. Protection for proceedings in Cabinet**

- (1) A person shall not be required or authorized by virtue of this Act —
  - (a) to furnish any information or answer any question relating to proceedings of Cabinet or of any committee of Cabinet; or
  - (b) to produce or inspect so much of any document as relates to any such proceedings.
- (2) For the purposes of this section a certificate issued by the Director General, Department of the Premier and Cabinet, with the approval of the Premier of the State, certifying that any information or question, or any document or part of a document, relates to any such proceedings as are referred to in subsection (1) is conclusive of the fact so certified.

**109T. Hindering and other offences in relation to Inspector**

A person shall not —

- (a) without reasonable excuse hinder, resist or threaten the Inspector or any person assisting the Inspector in the performance of the Inspector's functions under this Act or any other law;
- (b) make a statement that the person knows to be false or misleading to the Inspector or a person assisting the Inspector in the performance of the Inspector's functions under this Act or any other law; or
- (c) deliberately mislead or attempt to mislead the Inspector or a person assisting the Inspector in the performance of the Inspector's functions under this Act or any other law.

Penalty: \$6 000 or imprisonment for 12 months or both.

**109U. Victimization**

- (1) A person shall not —
  - (a) prejudice, or threaten to prejudice, the safety or career of; or
  - (b) intimidate or harass, or threaten to intimidate or harass; or
  - (c) do any act that is, or is likely to be, to the detriment of,

another person because the other person —

- (d) has provided, is providing or will or may in the future provide information to the Inspector or any person assisting the Inspector in the performance of the Inspector's functions under this Act or any other law; or
- (e) has performed a function of the Inspector or any person assisting the Inspector under this Act or any other law in relation to the other person or is performing, or will or may in the future perform, any such function.

Penalty: \$8 000 or imprisonment for 2 years.

- (2) A person who attempts to commit an offence under subsection (1) commits an offence and is liable to the penalty set out in subsection (1).
- (3) A person who —
  - (a) intends that an offence under subsection (1) be committed; and
  - (b) incites another person to commit the offence,commits an offence and is liable to the penalty set out in subsection (1).

”.

**19. Transitional**

- (1) A person who, immediately before the commencement of this Act, was a prison medical officer as defined in the *Prisons Act 1981* is, on and after the commencement of this Act, to be taken to be —
  - (a) a medical officer referred to in section 6(3) of the *Prisons Act 1981* as amended by this Act; and

- (b) appointed on the same terms and conditions, including as to remuneration, as those which applied to the person immediately before the commencement of this Act.
- (2) A person who, immediately before the commencement of this Act, was a medical officer as defined in the *Prisons Act 1981* is, on and after the commencement of this Act, to be taken to be —
  - (a) a medical officer referred to in section 6(4) of the *Prisons Act 1981* as amended by this Act; and
  - (b) appointed or engaged (as is relevant to the case) on the same terms and conditions, including as to remuneration, as those which applied to the person immediately before the commencement of this Act.

**20. Miscellaneous amendments**

Amendments are made as set out in Schedule 1.

**Schedule 1 — Miscellaneous amendments**

[s. 20 ]

**1. *Anti-Corruption Commission Act 1988* amended**

- (1) Section 3(1) is amended in the definitions of “contractor” and “subcontractor” in each case by inserting after “1998” —

“ or the *Prisons Act 1981*, as is relevant to the case ”.

- (2) Section 3(1) is amended in the definition of “independent agency” by inserting after “Auditor General” —

“ , the Inspector of Custodial Services ”.

- (3) Section 3(1) is amended by inserting after the definition of “independent agency” the following definition —

“

“**Inspector of Custodial Services**” means the Inspector of Custodial Services under the *Prisons Act 1981*;

”.

- (4) Section 14(1) is amended by inserting after paragraph (a) the following paragraph —

“

(aa) the Inspector of Custodial Services;

”.

- (5) Section 14(7)(b) is amended by inserting after “1998” —

“

or the chief executive officer as defined in the *Prisons Act 1981*, as is relevant to the case

”.



**2. Constitution Acts Amendment Act 1899**

Schedule V Part 1 Division 2 is amended by inserting after the item relating to the Information Commissioner the following item —

“ Inspector of Custodial Services under the *Prisons Act 1981*; ”.

**3. The Criminal Code amended**

Section 1(1) is amended in the definition of “public officer” after paragraph (ca) by inserting the following paragraph —

“

(cb) a person who holds a permit to do high-level security work as defined in the *Prisons Act 1981*;

”.

**4. Freedom of Information Act 1992 amended**

(1) Section 63(3)(aa) is amended as follows:

(a) by inserting after “1998” —

“ or the *Prisons Act 1981* ”;

(b) by inserting after “committed” —

“ , as is relevant to the case ”.

(2) Schedule 1 clause 14(1) is amended —

(a) by deleting “or” after paragraph (b);

(b) by deleting the full stop after paragraph (c) and inserting instead —

“ ; or ”; and

(c) by inserting after paragraph (c) the following —

“

(d) section 109Q(1) of the *Prisons Act 1981*.

”.

- (3) Schedule 2 is amended in the Glossary in the definitions of “contractor” and “subcontractor” in each case by inserting after “1998” —

“ or the *Prisons Act 1981*, as is relevant to the case ”.

**5. *Parliamentary Commissioner Act 1971* amended**

- (1) Section 4 is amended in the definitions of “contractor” and “subcontractor” in each case by inserting after “1998” —

“ or the *Prisons Act 1981*, as is relevant to the case ”.

- (2) Section 4 is amended by inserting after the definition of “Director of Public Prosecutions” the following definition —

“

“**Inspector of Custodial Services**” means the Inspector of Custodial Services under the *Prisons Act 1981*;

”.

- (3) Section 4 is amended in paragraph (b) of the definition of “responsible Minister” as follows:

- (a) by inserting after “1998” —

“ or the *Prisons Act 1981* ”;

- (b) by inserting after “committed” —

“ , as is relevant to the case ”.

- (4) Section 19(7)(b) is amended as follows:

- (a) by inserting after “1998” —

“ or the *Prisons Act 1981* ”;

- (b) by inserting after “committed” —

“ , as is relevant to the case ”.

- (5) Section 22A(1) is amended by inserting after “Commission” —

“ , the Inspector of Custodial Services ”.

- (6) Section 22B is amended after paragraph (a) by deleting “or” and inserting the following paragraph —

“

- (aa) is disclosed to a person who is —
- (i) the Inspector of Custodial Services; or
  - (ii) a member of the staff of the Inspector authorized for the purposes of this subparagraph by the Inspector,
- and concerns a matter that is relevant to the functions of the Inspector;

or

”

- (7) Schedule 1 is amended by inserting after the item about the Parliamentary Commissioner the following item —

“

The Inspector of Custodial Services under the *Prisons Act 1981*.

”

**6. *Spent Convictions Act 1988* amended**

Schedule 3 is amended by deleting item 5 in the Table to clause 1 and inserting the following item instead —

“

5. A person —
- |     |  |  |
|-----|--|--|
| (a) | who is employed, or who is being considered for employment, as a prison officer under the <i>Prisons Act 1981</i> ; or | Section 18,<br>19, 20, 22<br>and<br>Division 4 |
| (b) | who holds, or who is applying to be issued with, a permit to do high-level security work as defined in that Act.       |  |

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