



Western Australia

Court Security and Custodial Services Act 1999

Compare between:

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Western Australia

Court Security and Custodial Services Act 1999

An Act to provide for the administration of court security and custodial services; for persons to have certain powers in respect of those services; and for related matters.

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Court Security and Custodial Services Act 1999*¹.

2. Commencement

- (1) This Act subject to subsection (2), comes into operation on such day as is, or such days as are respectively, fixed by proclamation¹.
- (2) Part 5 comes into operation on the day on which the Inspector provisions as defined in section 2(4) of the *Prisons Amendment Act 1999* come into operation².

3. Definitions

In this Act, unless the contrary appears —

“**administrator**” means a person appointed or engaged under section 61 or 62;

“**adult**” means anyone except a young person;

“**authorised person**”, in relation to a Schedule power, means a person who is authorised to exercise the power;

“**CEO**” means the chief executive officer of the Department;

“**CEO’s rules**” means rules made under section 32;

“**chief judicial officer of a court**” includes the person in charge of proceedings at a place which is not a court but is a place —

- (a) at which a person or body acts judicially; or
- (b) that a person can be required to attend under a summons issued under a written law;

“**contract**” means a contract entered into under section 18;

“**contractor**” means a person, other than the CEO, who has entered into a contract;

“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;

“court custodial services” means the custodial services referred to in sections 9, 10, and 11;

“court custody centre” means a part of court premises, other than the dock in a courtroom —

- (a) that is set aside as a place where persons in custody are detained; and
- (b) that is not accessible to the members of the public without permission of the person in charge of the place;

“court premises” includes —

- (a) a courtroom;
- (b) a court custody centre;
- (c) the building in which a courtroom or court custody centre is located;
- (d) where a portion only of a building is used for court purposes, that portion of the building; and
- (e) the car parking and other areas within the external precincts of the building that are used for court purposes;

“court security service” means a matter for which the CEO is responsible under section 8;

“courtroom” means —

- (a) a place at which a person or body acts judicially;
- (b) a place that a person can be required to attend under a summons issued under a written law; or
- (c) a place at which a videolink or other device exists whereby, at the same time, the person presiding in a

place referred to in paragraph (a) or (b) can see and hear a person who is at another place and who would otherwise be attending the place referred to in paragraph (a) or (b) in person, and vice versa;

“custodial place” means any of the following places —

- (a) a police station;
- (b) a lock-up;
- (c) a court custody centre;
- (d) any other part of court premises;
- (e) a hospital or other place outside a prison or detention centre when attended by a person in custody for medical treatment;
- (f) an authorised hospital or a declared place as those terms are defined in section 23 of the *Criminal Law (Mentally Impaired Accused) Act 1996*;
- (g) a prison;
- (h) a detention centre;
- (i) a place to which a prisoner has been removed under section 28 of the *Prisons Act 1981*;
- (j) a place attended by a prisoner under section 83 of the *Prisons Act 1981*;
- (k) a place to which a young person is remanded under section 49 of the *Young Offenders Act 1994* for observation;
- (l) a place attended by a detainee under section 188(4) of the *Young Offenders Act 1994*;

“custodial service” means a matter for which the CEO is responsible under Subdivision 2 of Division 1 of Part 2;

“custodial status”, in relation to a person, means the person’s status of being in legal custody or otherwise;

“Department” means the department of the Public Service principally assisting the Minister in the administration of this Act;

“detainee” has the definition that it has in the *Young Offenders Act 1994*;

“detention centre” has the definition that it has in the *Young Offenders Act 1994*;

“doctor” means a person who is registered under the *Medical Act 1894* and who has a current entitlement to practise under that Act;

“document” includes any means of storing or recording information;

“frisk search”, in relation to a person, means a quick search of the person by the rapid and methodical running of hands over the person’s outer garments;

“high-level security work” means —

- (a) work specified in section 48 as high-level security work; and
- (b) work declared as high-level security work under section 49;

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

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

“intoxicated detainee” means a person detained under the *Protective Custody Act 2000*;

“law enforcement officer” means a person who is authorised under a law of the State or the Commonwealth to arrest or apprehend a person;

“lock-up”, subject to section 6, means a place prescribed by the regulations to be a lock-up for the purposes of this Act;

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“medical treatment” includes psychiatric treatment as defined in section 3 of the *Mental Health Act 1996* and dental treatment;

“nurse” means a registered nurse, that is, a person whose name is entered in Division 1 of the register as defined in the *Nurses Act 1992*;

“permit” means a permit issued under section 51 to do high-level security work;

“person in court custody” means —

- (a) a person who has appeared in court as required by his or her bail undertaking;
- (b) a person other than a prisoner or detainee who is remanded to be held in custody at court premises;
- (c) a person who a court has ordered to be taken into custody at court premises; or
- (d) a person who is taken into custody by the sheriff or a bailiff outside court premises and brought directly to the court;

“person in custody” means a person of any age who is in custody under a law of the State or the Commonwealth and in the case of a written law, whether or not that law has been repealed, except —

- (a) an intoxicated detainee; and
- (b) a person who is in custody only because he or she is an involuntary patient as defined in the *Mental Health Act 1996* or is otherwise detained under that Act unless the person is apprehended under an order made under section 34, 41, 71, 84 or 195 of that Act and placed in a lock-up while arrangements are made for a police officer to take the person to a place under that Act;

“police officer” means a person appointed —

- (a) under Part I of the *Police Act 1892* to be a member of the Police Force of Western Australia;
- (b) under Part III of the *Police Act 1892* to be a special constable; or
- (c) under section 38A of the *Police Act 1892* to be an aboriginal aide;

“prison” has the definition that it has in the *Prisons Act 1981*;

“prison officer” has the definition that it has in the *Prisons Act 1981*;

“prisoner” has the definition that it has in the *Prisons Act 1981*;

“Schedule power” means a power that is set out in Schedule 1, 2 or 3;

“security” includes watching, guarding, keeping secure or protecting;

“sheriff” means the sheriff referred to in section 156 of the *Supreme Court Act 1935*;

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

“vehicle” means any means of transporting people including aircraft and vessels;

“young person” has the definition that it has in the *Young Offenders Act 1994*.

[Section 3 amended by No. 50 of 2000 s. 30; No. 84 of 2004 s. 82.]

4. Interpretation of “hospital” and “person apprehended under the Mental Health Act”

- (1) Except in paragraph (f) of the definition of “custodial place”, a reference in this Act to a hospital does not include a reference to an authorised hospital as defined in section 23 of the *Criminal Law (Mentally Impaired Accused) Act 1996*.

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- (2) A reference in this Act to a person apprehended under the Mental Health Act is a reference to a person who has been apprehended under an order made under section 34, 41, 71, 84 or 195 of the *Mental Health Act 1996*.

[Section 4 amended by No. 84 of 2004 s. 82.]

5. Interpretation of “security, good order or management”

A reference in this Act to the security, good order or management of a place or vehicle includes, without limiting any other interpretation —

- (a) the safety of all persons who work at, or otherwise attend, the place or who work on, near or in the vehicle;
- (b) the safety and welfare of all persons in custody and intoxicated detainees at the place or in the vehicle; and
- (c) the good order or management of legal proceedings or other business conducted at the place.

6. Application of certain provisions to lock-ups that are not prescribed as lock-ups for the purposes of this Act

- (1) In this section —

“non-prescribed lock-up” means a lock-up other than a place that is prescribed by the regulations to be a lock-up for the purposes of this Act.

- (2) A reference in section 16 or 72 or in Schedule 2 clause 2(2), 3(2), 5, 10 or 13 to a custodial place includes a reference to a non-prescribed lock-up.
- (3) A reference in section 81(a)(ii) to a lock-up includes a reference to a non-prescribed lock-up.
- (4) A reference in section 93 or in Schedule 2 clause 7, 8, 9, 11, 12, 14 or 15 or in Schedule 3 clause 1(1)(b) to a person being moved between custodial places includes a reference to a person being moved to or from a non-prescribed lock-up.

7. Crown bound

This Act binds the Crown not only in right of the State but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

Part 2 — Administration of court security and custodial services

Division 1 — CEO's responsibilities

Subdivision 1 — Court security services

8. Court security services

(1) In this section —

“court premises” does not include any court custody centre that is part of those premises.

(2) The CEO is responsible for —

(a) providing for the protection of —

(i) people who work at court premises;

(ii) people who are required to attend court premises as a witness or juror or in the course of work; and

(iii) other people in a courtroom,

from physical harm or loss of liberty that is threatened or deliberately imposed by another person;

(b) providing for the maintenance of order in court premises;

(c) the security of buildings and other real property located within or comprising court premises; and

(d) the management and safekeeping of personal property held on behalf of visitors to court premises.

Subdivision 2 — Custodial services

9. Management etc. of court custody centres

The CEO is responsible for the management, control and security of court custody centres.

10. Responsibilities as to persons in custody at court premises

The CEO is responsible for the security, control, safety, care and welfare of —

- (a) a person in custody who is in a court custody centre; and
- (b) a person in custody who is within any other part of court premises except a person who is in the custody of a law enforcement officer other than the sheriff or a bailiff and who has not been dealt with by a court.

11. Property management at court custody centres

The CEO is responsible for the management and safekeeping of personal property held on behalf of —

- (a) persons in custody for whom the CEO is responsible under section 10; or
- (b) visitors to court custody centres.

12. Management etc. of lock-ups

The CEO is responsible for the management, control and security of lock-ups.

13. Responsibilities as to persons in lock-ups

- (1) The CEO is responsible for the security, control, safety, care and welfare of a person in custody who is in a lock-up if —
 - (a) an authorised person has taken charge of the person in custody in response to a request under section 71(a) or 76; or
 - (b) a police officer assigned to the lock-up has taken charge of the person in custody.
- (2) The CEO is responsible for the security, control, safety, care and welfare of an intoxicated detainee who is in a lock-up if —
 - (a) an authorised person has taken charge of the intoxicated detainee in response to a request under section 80; or

- (b) a police officer assigned to the lock-up has taken charge of the intoxicated detainee.

14. Property management at lock-ups

The CEO is responsible for the management and safekeeping of personal property held on behalf of —

- (a) persons in custody and intoxicated detainees for whom the CEO is responsible under section 13; or
- (b) visitors to lock-ups.

15. Responsibilities as to persons in custody at certain other custodial places

- (1) The CEO is responsible for the security, control, safety, care and welfare of a person in court custody who is at a hospital or other place that is attended by the person in court custody for medical treatment if a court has ordered that the person be placed in the charge of a person who is authorised to exercise a power set out in clause 3(1)(c) of Schedule 2.
- (2) The CEO is responsible for the security, control, safety, care and welfare of a prisoner or detainee who is at —
 - (a) a hospital or other place that is outside a prison or detention centre and attended by the prisoner or detainee for medical treatment;
 - (b) a place to which the prisoner has been removed under section 28 of the *Prisons Act 1981*;
 - (c) a place attended by the prisoner under section 83 of the *Prisons Act 1981*; or
 - (d) a place attended by the detainee under section 188(4) of the *Young Offenders Act 1994*,

if, under the *Prisons Act 1981*, the *Young Offenders Act 1994*, or an order, direction, warrant or other instrument under those Acts or any other law, the person has been placed in the charge

of a person who is authorised to exercise a power set out in clause 2(1) of Schedule 2.

- (3) The CEO is responsible for the security, control, safety, care and welfare of a person in custody who is at a hospital or other place that is attended by the person in custody for medical treatment if an authorised person has taken charge of the person in custody in response to a request under section 71(b).

16. Moving persons in custody and intoxicated detainees between custodial places

- (1) The CEO is responsible for ensuring that the means of moving persons in custody and intoxicated detainees between custodial places are available as an alternative, or in addition, to the means used by police officers, prison officers and other persons who move persons in custody or intoxicated detainees between custodial places.
- (2) The CEO is responsible for the security, control, safety, care and welfare of a person in custody who is being moved, or being prepared to be moved, between custodial places —
- (a) by an authorised person in response to a request under section 72; or
 - (b) under the *Prisons Act 1981*, the *Young Offenders Act 1994*, the *Criminal Law (Mentally Impaired Accused) Act 1996* or an order, direction, warrant or other instrument under those Acts or any other law, by a person who is authorised to exercise a power set out in clause 2(2), 3(2), 4 or 5 of Schedule 2, as is relevant to the case.
- (3) The CEO is responsible for the security, control, safety, care and welfare of an intoxicated detainee who is being moved, or being prepared to be moved, between custodial places by an authorised person in response to a request under section 81.

[Section 16 amended by No. 84 of 2004 s. 82.]

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17. Property management for certain persons in custody

The CEO is responsible for the management and safekeeping of personal property held on behalf of persons in custody and intoxicated detainees for whom the CEO is responsible under section 15 or 16.

Division 2 — Framework for administering court security and custodial services

18. Contracts with private sector

- (1) For the purposes of providing any court security or custodial services the CEO may, for and on behalf of the State, enter into a contract with a person other than —
 - (a) the Commissioner of Police; or
 - (b) a member of the Public Sector as defined in the *Public Sector Management Act 1994*.
- (2) Part 3 applies to a contract entered into under this section.

19. Arrangements with Commissioner of Police and Public Sector

- (1) The CEO may arrange with the Commissioner of Police, whether by way of delegation under section 20 or otherwise, to provide court security or custodial services.
- (2) The CEO may arrange with any member of the Public Sector as defined in the *Public Sector Management Act 1994*, whether by way of delegation under section 20 or otherwise, to provide court security or custodial services other than the management, control and security of a lock-up or court custody centre.

20. Delegation

- (1) The CEO may, by instrument, delegate any of the CEO's functions under this Act other than a power specified in subsection (2) to any person except —
 - (a) a contractor or an employee or agent of a contractor; or

- (b) a subcontractor or an employee or agent of a subcontractor.
- (2) The following powers of the CEO cannot be delegated under subsection (1) —
- (a) the power to delegate under subsection (1);
 - (b) the power to enter into a contract under section 18;
 - (c) a Schedule power that the CEO has under section 21;
 - (d) the power to give directions under section 22(3) in relation to whether or not a Schedule power can be exercised by a contract worker or a member of a class of contract workers, or as to the manner in which, or conditions on which, a power is to be exercised;
 - (e) the power to authorise a person to exercise a Schedule power under section 25;
 - (f) the power to have access to a place, and to authorise a person to have access to a place under section 42(1);
 - (g) the power to declare work to be high-level security work under section 49;
 - (h) the power to intervene in a contract under section 59 or to terminate or suspend a contract under section 60;
 - (i) the power to appoint or engage an administrator under section 61 or 62;
 - (j) the power to sign an evidentiary certificate under section 99.
- (3) A function performed by a delegate under this section is to be taken to be performed by the CEO.
- (4) Where a delegate performs a function under a delegation under this section the delegate is to be taken to have performed the function in accordance with the delegation unless the contrary is shown.

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- (5) Nothing in this section is to be read as limiting the ability of the CEO to act through his or her officers and agents in the normal course of business.

21. CEO has Schedule powers

The CEO has all the Schedule powers and any exercise by the CEO of a Schedule power in relation to a matter prevails over the exercise of that power by any other person in relation to that matter.

22. Powers of contract workers

- (1) Subject to subsection (3), a contract worker who holds a permit may exercise the powers set out in Schedules 1 and 3 for the purposes of providing court security services under a contract.
- (2) Subject to subsection (3), a contract worker who holds a permit may exercise the powers set out in Schedules 2 and 3 for the purposes of providing custodial services under a contract.
- (3) The CEO may direct that a contract worker, or a member of a class of contract workers —
- (a) cannot exercise a Schedule power that is specified in the direction; or
 - (b) must exercise a Schedule power in a manner, or in accordance with a condition, specified in the direction.
- (4) A direction has effect according to its tenor.

23. Powers of police officers

- (1) A police officer may exercise the powers set out in Schedules 1 and 3 for the purposes of providing court security services under an arrangement between the CEO and the Commissioner of Police.
- (2) A police officer may exercise the powers set out in Schedules 2 and 3 for the purposes of providing custodial services under an arrangement between the CEO and the Commissioner of Police.

- (3) The powers that a police officer may exercise under this section are in addition to, and do not derogate from, the powers that the police officer has under any other law.

24. Powers of certain court officers

- (1) In this section —

“court officer” means —

- (a) the Sheriff or a deputy of the Sheriff; or
 - (b) the Marshal of the Family Court.
- (2) A court officer may exercise the powers set out in Schedules 1 and 3 for the purposes of providing court security services under an arrangement with the CEO.
- (3) A court officer may exercise the powers set out in Schedules 2 and 3 for the purposes of providing custodial services under an arrangement with the CEO.
- (4) The powers that a court officer may exercise under this section are in addition to, and do not derogate from, the powers that the court officer has under any other law.

[Section 24 amended by No. 59 of 2004 s. 141.]

25. CEO may authorise certain other persons to exercise powers

- (1) In this section —

“justice officer” means —

- (a) a public service officer working in the Department;
- (b) any other person engaged or appointed to work in or for the Department;
- (c) a prison officer;
- (d) a person appointed under section 11 of the *Young Offenders Act 1994*;
- (e) an officer of the sheriff;

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- (f) a person authorised by the Marshal of the Family Court to assist the Marshal in the performance of any of the Marshal's functions.
- (2) The CEO may authorise a justice officer to exercise any power set out in Schedules 1 and 3 for the purposes of providing court security services.
- (3) The CEO may authorise a justice officer to exercise any power set out in Schedules 2 and 3 for the purposes of providing custodial services.
- (4) The powers that a justice officer may exercise under an authorisation are in addition to, and do not derogate from, the powers that the officer has under any other law.
- (5) An authorisation must be in writing and, subject to subsection (4), may be made subject to such conditions or limitations specified in the authorisation as the CEO thinks fit.

[Section 25 amended by No. 59 of 2004 s. 141.]

26. Authorised persons may use reasonable force

- (1) An authorised person may use such reasonable force as is necessary for the purpose of exercising a Schedule power.
- (2) A person who is authorised to issue an order to a person in custody may use such reasonable force as is necessary to ensure that the order is complied with.

27. Responsibility of certain authorised persons for escapes etc.

- (1) A person who is authorised to exercise a power set out in Division 1 of Schedule 2 is liable to answer for —
 - (a) the escape of a person in custody while the person in custody is in the authorised person's charge, or is being moved, or is being prepared to be moved, by the authorised person; and

- (b) the absence without leave of a person apprehended under the Mental Health Act who is in the authorised person's charge at a lock-up.
- (2) A person who is authorised to exercise a power set out in Division 3 of Schedule 2 is liable to answer for the absence of an intoxicated detainee while the intoxicated detainee is in the authorised person's charge, or is being moved, or is being prepared to be moved, by the authorised person.

Division 3 — Other matters relating to administration of court security and custodial services

28. Minister may give directions

- (1) The Minister may give directions to the CEO with respect to the performance of the CEO's functions under this Act, either generally or in relation to a particular matter.
- (2) Where practicable, the Minister is to consult with the chief judicial officer of a court before giving directions to the CEO about court security and court custodial services affecting the court.
- (3) The subject matter of any direction given under subsection (1) is to be included in the annual report submitted by the accountable officer^{authority} of the Department under ~~section 66~~Part 5 of the *Financial Administration and Audit Management Act 1985* 2006 unless publication of the subject matter would adversely affect the effectiveness of a security procedure or an arrangement for the safety of an individual.

[Section 28 amended by No. 5 of 2005 s. 3737; No. 77 of 2006 s. 17.]

29. Minister to be informed of certain events

The CEO must notify the Minister as soon as practicable of —

- (a) any escape by a person for whom the CEO is responsible under section 10, 13, 15 or 16;

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- (b) the death of a person for whom the CEO is responsible under section 10, 13, 15 or 16; and
- (c) any matter that, in the opinion of the CEO, is an emergency or serious irregularity involving a person for whom the CEO is responsible under section 10, 13, 15 or 16.

30. Separation of certain kinds of persons in custody and intoxicated detainees

- (1) Where practicable, a person in custody is not to be confined with a person of the opposite sex in a lock-up, a court custody centre or a vehicle used for moving persons for whom the CEO is responsible under section 16.
- (2) Where practicable, a young person in custody is not to be confined with an adult person in custody in a lock-up, a court custody centre or a vehicle used for moving persons for whom the CEO is responsible under section 16.
- (3) Where practicable, an intoxicated detainee is not to be confined with a person who is not an intoxicated detainee in a lock-up or a vehicle used for moving persons for whom the CEO is responsible under section 16.
- (4) Where practicable, a person apprehended under the Mental Health Act is not to be confined in a lock-up with another person.

31. Young persons to be dealt with in accordance with *Young Offenders Act 1994*

A person who is authorised under this Act to deal with a young person is to do so in accordance with the *Young Offenders Act 1994*.

32. CEO may make rules

- (1) The CEO may make rules in relation to court security and custodial services.

- (2) The CEO's rules must only be made —
 - (a) after consultation with the Commissioner of Police, if any police officer is to be involved in the provision of the relevant service; and
 - (b) after consultation with the contractor, if a contract has been entered into for the provision of the relevant service.
- (3) If there is any inconsistency between a CEO's rule and a regulation under this Act the rule, to the extent of the inconsistency, has effect subject to the regulation.
- (4) The CEO's rules may confer a discretionary authority on a person or a member of a class of persons.
- (5) The CEO's rules are to be published in such manner as the CEO considers necessary to bring rules to the attention of persons affected by them.

33. CEO may ban certain persons from visiting lock-ups or court custody centres

- (1) The CEO may ban a person from visiting a lock-up or court custody centre for up to 3 months if, in the opinion of the CEO, the person's presence at that place is likely to adversely affect the security, good order or management of that place.
- (2) There is no limit on the number of times a person can be banned.

34. Right of entry of certain judicial officers to lock-ups and court custody centres

- (1) In this section —

“judicial officer” means —

 - (a) a Judge of the Supreme Court, the Family Court or the District Court;
 - (b) the President of the Children's Court;

- (c) any person acting in an office referred to in paragraph (a) or (b); or
 - (d) a magistrate.
- (2) A judicial officer may, upon providing satisfactory proof of his or her identity to the person in charge of a lock-up or court custody centre, enter and examine the lock-up or court custody centre at any time.

Division 4 — Court security and court custodial services

35. Court powers not affected by this Act

Nothing in this Act limits any power that a court has to issue orders or directions or to make rules in relation to court security and court custodial services affecting the court.

36. CEO to consult relevant chief judicial officer on certain matters

The CEO is to consult the chief judicial officer of a court that is, or might be, affected by —

- (a) a proposed contract for the provision of court security or court custodial services;
- (b) a proposed change to a contract for the provision of court security or court custodial services;
- (c) proposed minimum standards applicable to the provision of court security or court custodial services under a contract;
- (d) a proposed change to the minimum standards applicable to the provision of court security or court custodial services under a contract;
- (e) a proposed arrangement under section 19 for the provision of court security or court custodial services;

- (f) a proposed change to an arrangement under section 19 for the provision of court security or court custodial services;
- (g) proposed regulations in relation to court security or court custodial services;
- (h) a proposed change to regulations in relation to court security or court custodial services;
- (i) proposed CEO's rules in relation to court security or court custodial services;
- (j) a proposed change to CEO's rules in relation to court security or court custodial services;
- (k) a proposed code of ethics or conduct to apply to persons providing court security or court custodial services;
- (l) a proposed change to a code of ethics or conduct to apply to persons providing court security or court custodial services;
- (m) a proposed direction under section 58 to a contract worker concerning court security or court custodial services; or
- (n) a proposed change to a direction under section 58 to a contract worker concerning court security or court custodial services.

37. Sheriff's role

- (1) The sheriff is to perform the following functions when requested to do so by the chief judicial officer of a court —
 - (a) consult with the chief judicial officer on matters concerning any court security or court custodial service provided at the court under a contract or an arrangement under section 19;
 - (b) represent the chief judicial officer in discussions with the CEO or the CEO's representative on matters referred to in paragraph (a); and

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- (c) represent the chief judicial officer for the purposes of section 36.
- (2) Nothing in this section affects the functions that the sheriff has under this Act or any other law.

Part 3 — Contracts for court security and custodial services

Division 1 — Matters relating to contracts generally

38. 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 CEO's rules;
- (b) objectives and performance standards in relation to the provision of 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 39 in relation to the provision of 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 CEO in the contract;
- (g) the financial and other consequences of intervening in a contract under section 59, terminating or suspending a contract under section 60 and of requisitioning property under section 65;
- (h) codes of ethics and conduct, as approved by the CEO, to apply to the contractor, any subcontractor and their employees and agents;

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- (i) reporting procedures to notify the CEO of escapes, deaths of persons in custody or intoxicated detainees and other emergencies or serious irregularities;
- (j) investigation procedures and dispute resolution mechanisms for complaints about the provision of 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 *Corruption and Crime Commission Act 2003*, the *Freedom of Information Act 1992* and the *Parliamentary Commissioner Act 1971*, respectively; and
- (m) any other matter prescribed by regulation.

[Section 38 amended by No. 48 of 2003 s. 62; No. 78 of 2003 s. 74(2).]

39. Minimum standards

- (1) The CEO must establish minimum standards applicable to the provision of services under a contract and the CEO 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.

40. Contract workers in court premises are subject to judicial direction

- (1) A contract worker who provides court security or court custodial services is taken to be an officer of the court.

- (2) A contract worker who provides court security or court custodial services must obey the directions of —
- (a) the person presiding in a courtroom; and
 - (b) the chief judicial officer of the court concerned.

41. *Public Sector Management Act 1994* not applicable

- (1) The *Public Sector Management Act 1994* does not apply to —
- (a) a contractor or an employee or agent of a contractor; or
 - (b) a subcontractor or an employee or agent of a subcontractor.
- (2) A reference in subsection (1) to an agent of a contractor or subcontractor does not include a reference to a public service officer who is seconded under section 66 of the *Public Sector Management Act 1994* to perform functions or services for, or duties in the service of, the contractor or subcontractor during the secondment period.

42. Minister, CEO etc. may have access to certain places, persons, vehicles and documents

- (1) The Minister, the CEO and any person authorised by the CEO may, at any time (with any assistants and equipment that the Minister, the CEO or authorised person thinks are necessary), have free and unfettered access to a place, person, vehicle or document referred to in subsection (2) for the purpose of —
- (a) ensuring compliance with this Act, the CEO's rules or a contract; or
 - (b) ensuring that a 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 custodial place at which, or in respect of which, services are provided under a contract, or any part of such a place;

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- (b) a person in custody or intoxicated detainee in such a place;
 - (c) a contract worker whose work is concerned with such a place;
 - (d) a vehicle used by a contractor to provide services under a contract;
 - (e) a person in custody or intoxicated detainee in such a vehicle;
 - (f) a contract worker whose work is concerned with such a vehicle;
 - (g) all documents in the possession of the contractor or a subcontractor in relation to any service that is a subject of a contract.
- (3) The CEO may authorise a person for the purposes of subsection (1).
- (4) An authorisation must be in writing and may be made subject to such conditions and limitations specified in the authorisation as the CEO 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, person, vehicle or document referred to in subsection (2).

43. Administrators and investigators may have access to certain places, persons, vehicles and documents

- (1) An administrator and an investigator appointed under section 44 may, at any time (with any assistants and equipment that the administrator or investigator thinks are necessary), have free and unfettered access to a place, person, vehicle, or document

referred to in section 42(2) for the purpose of enabling the administrator or investigator to perform his or her functions.

- (2) A person must not hinder or resist an administrator or investigator when the administrator or investigator 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, person, vehicle or document referred to in section 42(2).

44. CEO may set up inquiry

- (1) The CEO may, and upon the request of the Minister must, appoint a suitably qualified person (an “**investigator**”) to inquire into and report upon any matter, incident or occurrence concerning any service that is a subject of a contract other than whether or not an offence has been committed.

- (2) For the purposes of carrying out an inquiry, an investigator may require —

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

to give the investigator such information as the investigator requires or to answer any question put to the person in relation to any matter, incident or occurrence that is the subject of the inquiry.

- (3) An investigator may specify the form or manner in which the information or answer is to be given.
- (4) A person is not excused from giving any information or answering any question, when required to do so by an investigator, on the ground that the information or answer might incriminate the person or render the person liable to a penalty,

but that information or answer is not admissible in evidence against the person who gives it in any proceedings, whether civil or criminal, in any court except in proceedings for an offence under subsection (5).

- (5) A person must not, in response to a requirement under subsection (2) —
- (a) fail or refuse to supply the required information or answer the question; or
 - (b) give information or an answer that is false or misleading in a material particular.

Penalty: \$1 000.

- (6) Before an investigator requests a person to give information or asks a person a question for the purposes of an inquiry the investigator must advise the person —
- (a) that the person does not have to give the information or answer the question unless the investigator requires the person to do so;
 - (b) that if the person gives the information or answers the question on the request of the investigator but without having been required by the investigator 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 investigator to do so, as mentioned in subsection (4); and
 - (d) of the offences and the penalty as mentioned in subsection (5).
- (7) A requirement of an investigator 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.

45. Annual reports

- (1) The CEO is to prepare and deliver to the Minister by 30 September each year a report on each contractor who provided 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 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 manner prescribed.

46. No contracting out

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

Division 2 — Vetting and control of contract workers in relation to high-level security work

47. 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 contract worker 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.

48. High-level security work

- (1) A court security service provided by a contract worker is high-level security work.
- (2) A custodial service is high-level security work if —
 - (a) it is of a kind that requires the person providing it to exercise a power set out in Schedule 2 or 3; and
 - (b) it is provided by a contract worker.

49. CEO may declare other kinds of work to be high-level security work

- (1) The CEO may, in writing, declare as high-level security work —
 - (a) a custodial service that requires a contract worker to deal directly with persons in custody or intoxicated detainees except a custodial service referred to in section 48(2);
 - (b) work that requires a contract worker to have access to information about persons in custody or intoxicated detainees; or

- (c) any other work to be done by a contract worker that in the opinion of the CEO should be declared to be high-level security work.
- (2) The CEO may amend a declaration.
- (3) The CEO 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.

50. 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.

51. Issue of permits to do high-level security work

- (1) On application by a contract worker in a manner approved by the CEO, the CEO 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 CEO may —
 - (a) have regard to the information referred to in section 52(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 CEO thinks fit.

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- (4) A permit is not transferable.

52. Information about applicants for permits

- (1) The CEO 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 authorise the Commissioner of Police to provide to the CEO 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 CEO 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.

53. Taking of fingerprints and palmprints

- (1) The CEO 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.

54. Refusal to issue permits

- (1) The CEO may refuse to issue a contract worker with a permit to do high-level security work if, in the opinion of the CEO —
 - (a) the contract worker has not complied with a requirement under section 52(1);
 - (b) the contract worker has not given an authority under section 52(3);
 - (c) the contract worker has not complied with a requirement under section 53(1);
 - (d) the contract worker has not completed training approved by the CEO;
 - (e) the contract worker has failed to satisfy the CEO 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.

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- (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.

55. 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 CEO 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 CEO 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 CEO may, at any time, in writing require the contract worker to authorise the Commissioner of Police to provide to the CEO 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 CEO 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.

56. Suspension or revocation of permits

- (1) The CEO may, at any time, suspend or revoke a permit held by a contract worker if, in the opinion of the CEO —
- (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 54(1)(d) to (h); or
 - (b) the contract worker has failed to comply with —
 - (i) this Act or the CEO's rules;
 - (ii) a direction given to the contract worker under this Act or the relevant contract or by a court;
 - (iii) an order, direction, warrant or other instrument under any law concerning the charge of a person in custody or intoxicated detainee at a custodial place or the movement of a person in custody or intoxicated detainee between custodial places;
 - (iv) a code of ethics or conduct provided for under the relevant contract; or
 - (v) a requirement under section 55(2) or (4).

- (2) The CEO may suspend or revoke any permit held by a contract worker if —
 - (a) the CEO intervenes in the relevant contract under section 59 or terminates or suspends the relevant contract under section 60; 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).

57. Gazettal of permit details

- (1) The CEO 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.

58. Directions to contract workers about high-level security work

- (1) The CEO may give directions to a contract worker who holds a permit to do high-level security work.
- (2) A direction may be given with respect to any matter relating to high-level security work, either generally or in a particular case.
- (3) A direction must not be inconsistent with the regulations or the relevant contract.

Division 3 — Intervention in, and termination of, contracts

59. Intervention in contracts

- (1) The CEO may intervene in a contract if, in the opinion of the CEO —

- (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 service that is the subject of a contract.
- (2) The grounds for intervening in a contract are that —
- (a) there is an emergency in a service that is a subject of the contract; or
 - (b) the contractor has failed to effectively provide a service that is a subject of the contract.

60. Termination or suspension of contracts

- (1) The CEO, with the Minister's approval, may on behalf of the State terminate or suspend a contract (wholly or partially) if, in the opinion of the CEO —
- (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 CEO;
 - (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 CEO 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.

61. Administrator where intervention in contract

- (1) If the CEO intervenes in a contract under section 59 the CEO may appoint or engage an administrator —
 - (a) to give directions as to the manner in which a service that is a subject of the contract is to be provided; or
 - (b) to provide a service that is a subject of the contract.
- (2) The directions given by an administrator and the provision by an administrator of a 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 CEO determines that the reason for the intervention still exists.

62. Administrator where termination or suspension of contract

- (1) If the CEO terminates or suspends a contract under section 60 the CEO may appoint or engage an administrator —
 - (a) to provide any service that was a subject of the terminated contract; or
 - (b) to provide any service that is a subject of the suspended contract.
- (2) The provision by an administrator of a 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 CEO 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.

63. 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 Schedule power.

64. Compliance with administrator's directions

- (1) If an administrator is appointed or engaged under section 61 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 61 then for the period of the appointment or engagement any contract worker who has a function in respect of a 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.

65. Requisitioning property on intervention in, or termination of, contract

If the CEO intervenes in a contract under section 59 or terminates or suspends a contract under section 60, the CEO or an administrator (with the CEO'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 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 service for no longer than 12 months after the requisition of the property.

**Part 4 — How authorised persons take charge of, and
move, persons in the custody of law enforcement
officers**

Division 1 — General

66. Meaning of “request” in this Division

In this Division —

“request” means a request under section 71, 72, 76, 80 or 81.

**67. Authorised persons to comply with requests, subject to
contract**

- (1) Subject to subsection (2), an authorised person must comply with a request.
- (2) An authorised person who is a contract worker may refuse to comply with a request if the refusal is in accordance with the provisions of the relevant contract.

68. Presumption that persons are in legal custody

An authorised person may presume that a person in custody or an intoxicated detainee who is the subject of a request is in legal custody.

69. Custodial status not affected by requests

The custodial status of a person in custody or an intoxicated detainee who is the subject of a request is not affected by an authorised person’s taking charge of, or moving, the person in accordance with the request.

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Part 4 How authorised persons take charge of, and move, persons in the custody of law enforcement officers

Division 2 Law enforcement officers may request authorised persons to take charge of, and move, persons in custody

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Division 2 — Law enforcement officers may request authorised persons to take charge of, and move, persons in custody

70. Meaning of “authorised person” and “person in custody” in this Division

In this Division —

“**authorised person**” means a person who is authorised to exercise a power set out in clause 1 of Schedule 2;

“**person in custody**” does not include a person apprehended under the Mental Health Act.

71. Law enforcement officers may request authorised persons to take charge of persons in custody at certain custodial places

A law enforcement officer who has the custody of a person may request an authorised person to take charge of the person in custody at any of the following custodial places —

- (a) a lock-up or court custody centre (but if the authorised person is a contract worker, the lock-up or court custody centre must be one that is managed under the relevant contract); or
- (b) a hospital or other place that is attended by the person in custody for medical treatment.

72. Law enforcement officers may request authorised persons to move persons in custody between custodial places

A law enforcement officer who has the custody of a person may request an authorised person to move the person in custody between custodial places and to take charge of the person in custody while he or she is moved or is being prepared to be moved.

73. Law enforcement officers' powers not affected

A law enforcement officer may, when making a request under section 71 or 72 in relation to a person in custody, reserve the right, or nominate or approve another law enforcement officer, to take charge of, or move, the person in custody at a subsequent time.

74. Form of requests

A request under section 71 or 72 is to be in a form approved by the CEO.

Division 3 — Police officers may request authorised persons to take charge of persons apprehended under the Mental Health Act

75. Meaning of “authorised person” in this Division

In this Division —

“**authorised person**” means a person who is authorised to exercise a power set out in clause 1 of Schedule 2.

76. Police officers may request authorised persons to take charge of persons apprehended under the Mental Health Act, at lock-ups

A police officer who has the custody of a person apprehended under the Mental Health Act may request an authorised person to take charge of the apprehended person at a lock-up (but if the authorised person is a contract worker, the lock-up must be one that is managed under the relevant contract) for the purpose of holding the apprehended person at the lock-up while arrangements are made for a police officer to take the apprehended person to a place under the *Mental Health Act 1996*.

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Part 4 How authorised persons take charge of, and move, persons in the custody of law enforcement officers

Division 4 Police officers may request authorised persons to take charge of, and move, intoxicated detainees

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77. Police officers' powers not affected

A police officer may, when making a request under section 76 in relation to a person apprehended under the Mental Health Act, reserve the right, or nominate or approve another police officer, to take charge of the apprehended person at a subsequent time.

78. Form of requests

A request under section 76 is to be in a form approved by the CEO.

Division 4 — Police officers may request authorised persons to take charge of, and move, intoxicated detainees

79. Meaning of “authorised person” in this Division

In this Division —

“**authorised person**” means a person who is authorised to exercise a power set out in clause 16 of Schedule 2.

80. Police officers may request authorised persons to take charge of intoxicated detainees at lock-ups

A police officer who has the custody of an intoxicated detainee may request an authorised person to take charge of the intoxicated detainee at a lock-up (but if the authorised person is a contract worker, the lock-up must be one that is managed under the relevant contract).

81. Police officers may request authorised persons to move intoxicated detainees between certain custodial places

A police officer who has the custody of an intoxicated detainee may request an authorised person —

- (a) to move the intoxicated detainee between any of the following custodial places —
 - (i) a police station;

- (ii) a lock-up (whether the lock-up is managed under a contract or managed by a police officer); or
- (iii) an appropriate facility as defined in section 3 of the *Protective Custody Act 2000*;

and

- (b) to take charge of the intoxicated detainee while he or she is moved or is being prepared to be moved.

[Section 81 amended by No. 50 of 2000 s. 30.]

82. Police officers' powers not affected

A police officer may, when making a request under section 80 or 81 in relation to an intoxicated detainee, reserve the right, or nominate or approve another police officer to take charge of, or move, the intoxicated detainee at a subsequent time.

83. Form of requests

A request under section 80 or 81 is to be in a form approved by the CEO.

[Part 5 (s. 84-89) repealed by No. 75 of 2003 s. 56(1).]

Part 6 — Offences

90. Possession of firearms and other weapons at certain custodial places and in vehicles

- (1) A person commits a crime if the person, without lawful excuse, carries or possesses a firearm or a weapon —
- (a) at a custodial place referred to in subsection (2); or
 - (b) in a vehicle used for moving people for whom the CEO is responsible under section 16.

Penalty: Imprisonment for 7 years.

Summary conviction penalty: imprisonment for 2 years or a fine of \$8 000.

- (2) Subsection (1)(a) applies to the following custodial places —
- (a) a court custody centre;
 - (b) any other part of court premises;
 - (c) a lock-up;
 - (d) a hospital or other place that is outside a prison or detention centre and attended by a person in custody for medical treatment;
 - (e) a place to which a prisoner has been removed under section 28 of the *Prisons Act 1981*;
 - (f) a place attended by a prisoner under section 83 of the *Prisons Act 1981*;
 - (g) a place attended by a detainee under section 188(4) of the *Young Offenders Act 1994*.

[(3) repealed]

- (4) In this section —
- “firearm”** has the meaning that it has in the *Firearms Act 1973*;
- “weapon”** has the meaning that it has in the *Weapons Act 1999*.

[Section 90 amended by No. 4 of 2004 s. 58.]

91. Certain articles not to be brought into certain custodial places and vehicles

A person must not convey, bring or in any manner introduce into —

- (a) a custodial place referred to in section 90(2); or
- (b) a vehicle used for moving people for whom the CEO is responsible under section 16,

an article of a kind that is likely to adversely affect the security, good order or management of a custodial place (whether or not referred to in section 90(2)) or the vehicle.

Penalty: \$6 000 or imprisonment for 18 months.

92. Hindering or resisting

A person must not hinder or resist an authorised person in the exercise or attempted exercise of a Schedule power.

Penalty: \$6 000 or imprisonment for 18 months.

Part 7 — Miscellaneous

93. Courts may order or direct authorised persons to take charge of, and move, persons in custody

Where, under any law, a court may order or direct a particular person to take charge of a person in custody at a custodial place or to move a person in custody between custodial places, the court may order or direct a person who is authorised to exercise a power set out in such of clauses 2, 3, 4 or 5 of Schedule 2 as is relevant to the case, as if the authorised person were the particular person.

94. Protection from liability

- (1) Subject to subsections (4) and (5), an action in tort does not lie against a person (except a contractor or subcontractor) for anything that the person has done, in good faith —
 - (a) in the performance or purported performance of a function under this Act;
 - (b) in the exercise or purported exercise of a Schedule power that the person is authorised to exercise; or
 - (c) in doing, or purporting to do, any high-level security work for which the person has a permit.
- (2) Subsection (1) does not relieve a contractor or subcontractor of any liability that it might otherwise have for anything done as described in that subsection by another person.
- (3) Subsection (1) does not relieve the Crown of any liability that it might otherwise have for anything done as described in that subsection by another person.
- (4) An action for false imprisonment of a person in custody or an intoxicated detainee does not lie against a contract worker if, in good faith, the contract worker took charge of the person in custody or intoxicated detainee in response to a request under section 71, 72, 76, 80 or 81, as is relevant to the case.

- (5) A contractor and subcontractor are also relieved of any liability that either of them might otherwise have had for a contract worker having done anything as described in subsection (4).
- (6) The protection given by this section applies even though the thing done may have been capable of being done whether or not this Act had been enacted.
- (7) In this section, a reference to doing anything includes a reference to an omission to do anything.

95. Possession of firearms, prohibited drugs etc. by authorised persons

A person who comes into possession of property as a result of exercising a power set out in clause 5 or 7 of Schedule 1 or clause 9 or 21 of Schedule 2 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 authorised person possesses the property only so as to deliver it into the custody of a member of the Police Force or an employee of the Police Service.

96. Exchange of information

- (1) The CEO may, in writing, request a government department or an instrumentality or agency of the Crown that holds information about a person for whom the CEO is, or may become, responsible under section 10, 13, 15 or 16 to produce such information as is relevant to the person's security, control, safety, care and welfare.
- (2) The CEO and the Commissioner of Police may, in writing, request one another to produce such information held by the

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other about a person for whom the CEO is, or may become, responsible under section 10, 13, 15 or 16 to produce such information as is relevant to the person's security, control, safety, care and welfare.

- (3) The production of any information to the CEO or the Commissioner of Police in compliance with a request under subsection (1) or (2) is not to be regarded as a breach of any duty of confidentiality or secrecy imposed by any law.

97. Confidentiality

- (1) Except as provided in this section, a person must not, directly or indirectly, record, disclose or make use of any information obtained by reason of any function that person has, or at any time had, in the administration of this Act other than Part 5, or in the course of duty in the provision of court security or custodial services.

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

- (2) Subsection (1) does not apply to the recording, disclosure or use of information —
- (a) for the purpose of performing a function under this Act;
 - (b) for the purpose of exercising a Schedule power that the person is authorised to exercise;
 - (c) for the purpose of doing any high-level security work for which the person has a permit;
 - (d) for the purpose of providing court security or custodial services;
 - (e) as required or allowed by this Act or under another law;
or
 - (f) in prescribed circumstances.

98. Assistance by police officers

- (1) Subject to the directions of the Commissioner of Police, a police officer —

- (a) may upon the request of the CEO, assist another person in the exercise of a Schedule power; or
 - (b) may upon the request of a person authorised to exercise a Schedule power, assist the person in the exercise of the power.
- (2) A police officer acting under subsection (1), in addition to the powers and duties conferred and imposed on the police officer by or under any other law, has the powers and is subject to the responsibilities and has the protection from liability which would be conferred or imposed on the authorised person in similar circumstances.
- (3) Nothing in this Act limits any entitlement —
- (a) that a court, under a law, has to obtain police assistance; or
 - (b) that a police officer, under a law, has to act on his or her own volition.
- (4) A police officer —
- (a) may search a person, or any thing in the possession of a person, who is charged, or about to be charged, with having committed an offence under clause 4(7) of Schedule 1; and
 - (b) may seize any property found in the course of the search that the police officer believes on reasonable grounds was likely to have adversely affected the security, good order or management of the court premises, had the person entered or remained in the court premises,
- and may use such force as is reasonable to do so.

99. Evidentiary provision

In any proceedings a certificate purporting to be signed by the CEO certifying as to a matter relating to —

- (a) a person's authority to exercise a Schedule power;

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- (b) any high-level security work or a permit;
- (c) a direction of the CEO;
- (d) an authorisation for the purposes of section 42(1);
- (e) a direction of an administrator;
- (f) a request under section 71, 72, 76, 80 or 81; or
- (g) the custodial status of a person,

constitutes proof, in the absence of proof to the contrary, of the matter so certified.

100. Regulations

- (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for giving effect to this Act.
- (2) Without limiting subsection (1), regulations may make provision for —
 - (a) searches under clause 4(1) of Schedule 1 or clause 8 or 20 of Schedule 2;
 - (b) the management, safekeeping and disposal of property —
 - (i) of persons for whom the CEO is responsible under section 10, 13, 15 or 16; or
 - (ii) held on behalf of visitors to lock-ups, court custody centres or any other part of court premises;
 - (c) the health services to be provided to persons in custody for whom the CEO is responsible under section 10, 13, 15 or 16;
 - (d) the procedure to be followed in the event of the death of a person for whom the CEO is responsible under section 10, 13, 15 or 16;
 - (e) visits to, and communications with, persons in custody for whom the CEO is responsible under section 10, 13, 15 or 16;

- (f) matters relating to persons appointed to visit, inspect and report on —
 - (i) lock-ups and court custody centres; and
 - (ii) vehicles and other facilities used by a contractor to provide services under a contract;
 - (g) investigation procedures and dispute resolution mechanisms for complaints about the provision of services under a contract or an arrangement under section 19.
- (3) Regulations made under this Act may provide that contravention of a regulation or a provision of a regulation constitutes an offence and provide for penalties not exceeding \$5 000.

Schedule 1 — Powers in relation to court security services

[s. 3, 22, 23, 24, 25, 95, 98 and 100]

1. Meaning of “court premises” in this Schedule

In this Schedule —

“**court premises**” does not include any court custody centre that is part of those premises.

2. Power to identify persons at court premises

- (1) The power to ask a person who is about to enter, or who is already within, court premises —
- (a) for the person’s name, address and date of birth;
 - (b) for the person’s reason for wishing to enter, or being within, the court premises; and
 - (c) to produce evidence of the person’s identity,
- if the authorised person believes on reasonable grounds that —
- (d) the person is behaving, or is about to behave, in a disorderly manner at the court premises;
 - (e) the person has committed, or is about to commit, an offence at the court premises; or
 - (f) the person wishes to enter, or remain in, the court premises for an inappropriate purpose.
- (2) A person must not, in response to a request under subclause (1) —
- (a) fail or refuse to provide the requested information;
 - (b) give information that is false or misleading in a material particular; or
 - (c) provide any false evidence of identity.

Penalty: \$1 000.

3. Power to deal with disorderly or suspicious persons at court premises

- (1) The power to prevent a person from entering court premises if the person —
 - (a) is behaving in a disorderly manner at or in the immediate vicinity of the court premises; or
 - (b) does not satisfy the authorised person that he or she has a proper reason for wishing to enter the court premises.
- (2) The power to ask a person to leave court premises and, if the person refuses to leave the court premises, to remove the person from the court premises, if the person —
 - (a) is behaving in a disorderly manner at the court premises; or
 - (b) does not satisfy the authorised person that he or she has a proper reason for being at the court premises.
- (3) A person —
 - (a) must not behave in a disorderly manner at court premises; and
 - (b) must comply with a request under subclause (2).

Penalty: \$1 000.

4. Power to search persons and their possessions at court premises

- (1) The power to ask a person who is about to enter, or who is already within, court premises —
 - (a) to allow a search to be made of his or her person; and
 - (b) to allow a search to be made of any thing in the person's possession,for any property that the authorised person believes on reasonable grounds is likely to adversely affect the security, good order or management of the court premises.
- (2) Regulations may prescribe persons or members of classes of persons who are not to be searched under subclause (1).

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- (3) A search under subclause (1) —
- (a) may be conducted by one or more of the following means —
 - (i) by using an electronic or other device that is designed to locate property that is a subject of the search;
 - (ii) by visual inspection; or
 - (iii) by frisk search;and
 - (b) must be conducted expeditiously and with regard to decency and self-respect.
- (4) For the purpose of conducting a search under subclause (1) the authorised person may require the person to be searched to remove —
- (a) an outer garment, but only if other outer clothing is worn underneath; and
 - (b) gloves, headwear or footwear.
- (5) A search under subclause (1) of a person apparently 10 or more years of age that involves the removal of clothing —
- (a) is not to be conducted unless the person to be searched has first been asked whether the person has with him or her any property that is likely to adversely affect the security, good order or management of the court premises and the person has been given the opportunity to produce the property;
 - (b) is not to be conducted unless the person to be searched has been given the opportunity to have the search conducted in private and, if the person so chooses, the search is conducted in private;
 - (c) is to be conducted, where practicable, by an authorised person of the same sex as the person searched;
 - (d) is to be conducted, where practicable, in the presence of only persons of the same sex as the person searched; and
 - (e) is to be conducted in the presence of not more than 2 authorised persons.
- (6) A search under subclause (1) of a child apparently under 10 years of age that involves the removal of clothing is to be conducted —
- (a) by a female authorised person;

- (b) in the presence of the person accompanying the child unless that person refuses to be present; and
 - (c) otherwise in the presence only of female persons.
- (7) A person must comply with a request made under subclause (1).
Penalty: \$1 000.

5. Power to require property to be deposited at court premises

- (1) The power to ask a person who is about to enter, or who is already within, court premises to deposit for safekeeping for the duration of the person's presence within the court premises —
- (a) any property that the authorised person believes on reasonable grounds is likely to adversely affect the security, good order or management of the court premises; or
 - (b) any thing in the person's possession that is reasonably capable of concealing such property.
- (2) A person must comply with a request under subclause (1).
Penalty: \$1 000.

6. Further powers to refuse entry to, or remove persons from, court premises

The power —

- (a) to prevent a person from entering court premises; and
- (b) to ask a person to leave court premises and, if the person refuses to leave the court premises, to remove the person from the court premises,

if —

- (c) the authorised person is not satisfied on reasonable grounds as to the person's identity;
- (d) the person does not comply with a request under clause 4(1) to allow a search of his or her person or a thing in the person's possession;
- (e) the person does not comply with a request under clause 5(1) to deposit property; or

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- (f) in the case of a courtroom, the person presiding has ordered that proceedings in the courtroom be conducted in private.

7. Power to seize property from persons visiting court premises

- (1) The power to seize, without warrant, from a person who is about to enter, or who is already within, court premises any property that the authorised person believes on reasonable grounds is relevant to the commission of an offence under this Act.
- (2) An authorised person who seizes property under subclause (1) —
 - (a) must deliver the property to a member of the Police Force to be dealt with according to law; and
 - (b) subject to section 95 of this Act and to section 6(2) of the *Weapons Act 1999*, has lawful possession of the item during the period referred to in paragraph (a).

Schedule 2 — Powers in relation to custodial services

[s. 3, 15, 16, 22, 23, 24, 25, 27, 48, 70, 75, 79, 93, 95 and 100]

Division 1 — Powers in relation to taking charge of, and moving, persons in custody

1. Power to take charge of, and move, persons in the custody of law enforcement officers

The power to take charge of, and move, a person in the custody of a law enforcement officer in accordance with a request under section 71, 72 or 76.

2. Power to take charge of, and move, prisoners and detainees

(1) The power to take charge of a prisoner or detainee at any of the following custodial places —

- (a) a court custody centre or lock-up (but if the authorised person is a contract worker, the court custody centre or lock-up must be one that is managed under the relevant contract);
- (b) any other part of court premises;
- (c) a hospital or other place that is outside a prison or detention centre and attended by the prisoner or detainee for medical treatment;
- (d) a place to which the prisoner has been removed under section 28 of the *Prisons Act 1981*;
- (e) a place attended by the prisoner under section 83 of the *Prisons Act 1981*; or
- (f) a place attended by the detainee under section 188(4) of the *Young Offenders Act 1994*,

in accordance with such of the provisions of the *Prisons Act 1981* or the *Young Offenders Act 1994* or of an order, direction, warrant or other instrument under those Acts or any other law, as are relevant to the authorised person's taking charge of the prisoner or detainee at such a place.

(2) The power to move a prisoner or detainee between custodial places and to take charge of the prisoner or detainee while he or she is so

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Division 1 Powers in relation to taking charge of, and moving, persons in custody

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moved or is being prepared to be moved, in accordance with such of the provisions of the *Prisons Act 1981* or the *Young Offenders Act 1994* or of an order, direction, warrant or other instrument under those Acts or any other law, as are relevant to the movement of the prisoner or detainee between such places.

3. Power to take charge of, and move, persons in court custody

(1) The power to take charge of a person in court custody at any of the following custodial places —

- (a) a court custody centre (but if the authorised person is a contract worker, the court custody centre must be one that is managed under the relevant contract);
- (b) any other part of court premises; or
- (c) a hospital or other place that is attended by the person in court custody for medical treatment,

in accordance with the provisions of a court order.

(2) The power to move a person in court custody between custodial places and to take charge of the person while he or she is so moved or is being prepared to be moved, in accordance with the provisions of a court order.

4. Power to move young persons remanded for observation

The power to move a young person between court premises and a place to which the court has, under section 49 of the *Young Offenders Act 1994*, remanded the young person for observation and to take charge of the young person while he or she is so moved or is being prepared to be moved, in accordance with the provisions of the order.

5. Power to move mentally ill or mentally impaired accused

The power to move a person who is the subject of a hospital order or a custody order under the *Criminal Law (Mentally Impaired Accused) Act 1996* between custodial places and to take charge of the person while he or she is so moved or is being prepared to be moved, in accordance with the provisions of the relevant order.

[Clause 5 amended by No. 84 of 2004 s. 82.]

Division 2 — Powers in relation to keeping persons in custody

6. Powers in this Division apply in relation to exercise of Division 1 powers

The powers set out in this Division may only be exercised —

- (a) by a person who is authorised to exercise a power under Division 1 in relation to a person in custody; and
- (b) for the purposes of the authorised person's taking charge of, or moving, the person in custody in accordance with the relevant request, provision, order, direction, warrant or other instrument.

7. Power to take particulars of identity of persons in custody

- (1) The power to take or cause to be taken from a person in custody who is at a custodial place or being moved between custodial places, all such particulars as the authorised person thinks necessary or desirable for the identification of the person in custody, including the photograph, measurements, fingerprints and palmprints of the person in custody.
- (2) Section 50AA(2) of the *Police Act 1892* applies to photographs, fingerprints, palmprints or other identification particulars of a person in custody that are taken under subclause (1).

8. Power to search persons in custody and their possessions

The power to search a person in custody who is at a custodial place or being moved between custodial places and any thing in the person's possession for any property that the authorised person believes on reasonable grounds is likely to adversely affect the security, good order or management of —

- (a) a custodial place; or
- (b) a vehicle used for moving persons between custodial places.

9. Power to seize property from persons in custody

- (1) The power to seize, without warrant, from a person in custody who is at a custodial place or being moved between custodial places any property that the authorised person believes on reasonable grounds is

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likely to adversely affect the security, good order or management of —

- (a) a custodial place; or
 - (b) a vehicle used for moving persons between custodial places.
- (2) Property may be seized under subclause (1) from a prisoner or detainee even though it was issued to, or is retained by, the prisoner or detainee with the approval of the superintendent of the relevant prison or detention centre.
- (3) The power to seize, without warrant, from a prisoner or detainee who is at a custodial place or being moved between custodial places any property —
- (a) which apparently was not issued to the prisoner or detainee with the approval of the superintendent of the relevant prison or detention centre; or
 - (b) which is retained by the prisoner or detainee without the approval of that superintendent.
- (4) An authorised person who seizes property under subclause (1) or (3) has lawful possession of the property subject to section 95 of this Act and to section 6(2) of the *Weapons Act 1999*.
- (5) Property seized under subclause (1) or (3) is to be dealt with in accordance with the CEO's rules.

10. Power to take persons in custody from certain custodial places for medical treatment

- (1) In this clause —
- “custodial place”** means a custodial place other than a prison or a detention centre;
- “medical treatment”** means medical treatment that cannot, by reason of impracticality or urgency, be administered within a custodial place.
- (2) The power —
- (a) to take a person in custody from a custodial place to a place for medical treatment and, after the treatment, to return the person in custody to the custodial place; and

- (b) to take charge of a person in custody while the person in custody is admitted to a place for medical treatment.
- (3) The custodial status of a person is not affected by the person being taken, under subclause (2), to a place for medical treatment.

11. Power to issue orders to persons in custody

- (1) The power to issue to a person in custody, other than a prisoner or a detainee, who is at a custodial place or being moved between custodial places such orders as are necessary for the security, good order or management of —
 - (a) a custodial place; or
 - (b) a vehicle used for moving persons in custody between custodial places.
- (2) A person in custody referred to in subclause (1) must comply with an order under that subclause.
Penalty: \$300.
- (3) The power to issue orders to a prisoner in accordance with section 14(2) of *Prisons Act 1981*.
- (4) The power to issue orders to a detainee as if the authorised person were a person having authority to give orders to a detainee for the purposes of the *Young Offenders Act 1994*.

12. Power to restrain persons in custody

- (1) The power to restrain a person in custody who is at a custodial place or being moved between custodial places.
- (2) The power to restrain a person in custody is limited to circumstances in which, in the opinion of the authorised person, the restraint is necessary —
 - (a) to prevent a person in custody injuring himself or herself or any other person;
 - (b) to prevent a person in custody from causing damage to property;
 - (c) on medical grounds but only if a doctor or nurse considers the restraint necessary; or

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cl. 13

- (d) to prevent the escape of a person in custody —
 - (i) where no physical barriers exist to prevent escape; or
 - (ii) during the person's movement within a custodial place or between custodial places.
- (3) Despite subclause (2), the power to restrain a person in custody in a courtroom —
 - (a) is not to be exercised unless the person presiding in the courtroom has directed that the person in custody be restrained in the courtroom; and
 - (b) is to be exercised in accordance with any direction of the person presiding in the courtroom.
- (4) An authorised person must not restrain a person in custody by the use of medication unless the restraint is on medical grounds and has the approval of a doctor.
- (5) If a person in custody is restrained by an authorised person under subclause (2)(a), (b) or (c), the use and circumstances of the restraint must be recorded in accordance with the CEO's rules.
- (6) If —
 - (a) an adult person in custody is restrained by an authorised person for a continuing period of more than 24 hours; or
 - (b) a young person in custody is restrained by an authorised person for a continuing period of more than 8 hours,the use and the circumstances of the restraint must be reported forthwith to the CEO by the authorised person.
- (7) Regulations are to provide for —
 - (a) the kinds of devices or substances other than medication that can or cannot be used to restrain persons in custody;
 - (b) the manner in which a device or substance must, or must not, be used to restrain persons in custody; and
 - (c) the procedures to be followed in respect of the use of restraints on persons in custody.

13. Power to prevent communication etc. with persons in custody

The power to prevent another person from communicating or interfering with, or giving or passing anything to, a person in custody if, in the opinion of the authorised person, that action is likely to adversely affect the security, good order or management of —

- (a) a custodial place; or
- (b) a vehicle used for moving persons between custodial places.

14. Power to make charges of prison offences

The power to make a charge of a prison offence as defined in the *Prisons Act 1981* that is alleged to have been committed by a prisoner —

- (a) at a custodial place or when being moved between custodial places; and
- (b) when the prisoner was in the charge of the authorised person.

15. Power to make charges of detention offences

The power to make a charge of a detention offence referred to in section 170 of the *Young Offenders Act 1994* that is alleged to have been committed by a detainee —

- (a) at a custodial place or when being moved between custodial places; and
- (b) when the detainee was in the charge of the authorised person.

Division 3 — Powers in relation to intoxicated detainees

16. Powers as to intoxicated detainees

The power to take charge of, and move, an intoxicated detainee in accordance with a request under section 80 or 81.

Division 4 — Powers in relation to visitors to lock-ups and court custody centres

17. Interpretation

- (1) A reference in this Division to a lock-up or court custody centre is, if the authorised person is a contract worker, a reference to a lock-up or court custody centre that is managed under the relevant contract.
- (2) A reference in this Division to a person does not include a reference to a person in custody.

18. Power to identify visitors to lock-ups and court custody centres

- (1) The power to ask a person who is about to enter, or who is already within, a lock-up or a court custody centre —
 - (a) for the person's name, address and date of birth;
 - (b) for the person's reason for wishing to enter, or being within, the lock-up or court custody centre; and
 - (c) to produce evidence of the person's identity.
- (2) A person must not, in response to a request under subclause (1) —
 - (a) fail or refuse to provide the requested information;
 - (b) give information that is false or misleading in a material particular; or
 - (c) provide any false evidence of identity.

Penalty: \$1 000.

19. Power to deal with disorderly or suspicious visitors to lock-ups and court custody centres

- (1) The power to prevent a person from entering a lock-up or a court custody centre if the person —
 - (a) is behaving in a disorderly manner at or in the immediate vicinity of the lock-up or court custody centre; or
 - (b) does not satisfy the authorised person that he or she has a proper reason for wishing to enter the lock-up or court custody centre.

- (2) The power to ask a person to leave a lock-up or court custody centre and, if the person refuses to leave that place, to remove the person from that place, if the person —
- (a) is behaving in a disorderly manner at the lock-up or court custody centre; or
 - (b) does not satisfy the authorised person that he or she has a proper reason for being in the lock-up or court custody centre.

20. Power to search visitors and their possessions at lock-ups and court custody centres

The power to ask a person who is about to enter, or who is already within, a lock-up or court custody centre —

- (a) to allow a search to be made of his or her person; and
- (b) to allow a search to be made of any thing in the person's possession,

for any property that the authorised person believes on reasonable grounds is likely to adversely affect the security, good order or management of the lock-up or court custody centre.

21. Power to require visitors to lock-ups and court custody centres to deposit property

The power to ask a person who is about to enter, or who is already within, a lock-up or court custody centre to deposit with an authorised person for the duration of the person's presence within that place —

- (a) any property that the authorised person believes on reasonable grounds is likely to adversely affect the security, good order or management of that place; or
- (b) any thing in the person's possession that is reasonably capable of concealing such property.

22. Further powers to refuse entry to, or remove visitors from, lock-ups and court custody centres

The power —

- (a) to prevent a person from entering a lock-up or court custody centre; and

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- (b) to ask a person to leave a lock-up or court custody centre and, if the person refuses to leave that place, to remove the person from that place,

if—

- (c) the authorised person is not satisfied on reasonable grounds as to the person's identity;
- (d) the person does not comply with a request under clause 20 to allow a search of his or her person or a thing in the person's possession; or
- (e) the person does not comply with a request under clause 21 to deposit property.

Schedule 3 — Powers in relation to apprehension

[s. 3, 22, 23, 24, 25 and 48]

1. Power to apprehend and detain certain persons

- (1) The power to apprehend, without warrant, a person who the authorised person believes on reasonable grounds —
 - (a) has committed an offence under this Act;
 - (b) has escaped from legal custody from a custodial place or when being moved between custodial places;
 - (c) in the case of a person apprehended under the Mental Health Act and placed in a lock-up, has become absent without leave from the lock-up or when being taken for medical treatment under clause 10 of Schedule 2; or
 - (d) in the case of an intoxicated detainee, has become absent without having being released in accordance with the *Protective Custody Act 2000*.
- (2) The power to apprehend a person under subclause (1)(a) is limited to apprehending the person —
 - (a) immediately after the commission of the offence or the time when the commission of the offence is discovered by the authorised person; and
 - (b) at the custodial place where the offence was committed.
- (3) The power to apprehend a person under subclause (1)(b), (c) or (d) is limited to apprehending the person immediately after, and in direct response to, the escape or absence.
- (4) Subject to subclause (5), an authorised person who apprehends a person under subclause (1) —
 - (a) must immediately inform a member of the Police Force of the commission of the offence or the escape or absence from legal custody and the apprehension; and
 - (b) may, in the case of an apprehended person who is not already in custody, detain that person until a member of the Police Force attends.

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- (5) An authorised person who apprehends a prisoner or detainee under subclause (1)(b) must immediately inform the superintendent of the relevant prison or detention centre of the escape from legal custody and the apprehension.

[Clause 1 amended by No. 50 of 2000 s. 30.]

Notes

¹ This is a compilation of the *Court Security and Custodial Services Act 1999* and includes the amendments made by the other written laws referred to in the following table ^{1a}. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Court Security and Custodial Services Act 1999</i>	46 of 1999	8 Dec 1999	Act other than Pt. 5: 18 Dec 1999 (see s. 2(1) and <i>Gazette</i> 17 Dec 1999 p. 6175); Pt. 5: 18 Jun 2000 (see s. 2(2) and <i>Gazette</i> 16 Jun 2000 p. 2939)
<i>Protective Custody Act 2000</i> s. 30	50 of 2000	28 Nov 2000	1 Jan 2001 (see s. 2 and <i>Gazette</i> 29 Dec 2000 p. 7903)
Reprint of the <i>Court Security and Custodial Services Act 1999</i> as at 13 Jul 2001 (includes amendments listed above)			
<i>Corruption and Crime Commission Act 2003</i> s. 62	48 of 2003	3 Jul 2003	1 Jan 2004 (see s. 2 and <i>Gazette</i> 30 Dec 2003 p. 5723)
<i>Inspector of Custodial Services Act 2003</i> s. 56(1) ³	75 of 2003	15 Dec 2003	15 Dec 2003 (see s. 2)
<i>Corruption and Crime Commission Amendment and Repeal Act 2003</i> s. 74(2)	78 of 2003	22 Dec 2003	7 Jul 2004 (see s. 2 and <i>Gazette</i> 6 Jul 2004 p. 2697)
<i>Criminal Code Amendment Act 2004</i> s. 58	4 of 2004	23 Apr 2004	21 May 2004 (see s. 2)
<i>Courts Legislation Amendment and Repeal Act 2004</i> s. 141	59 of 2004	23 Nov 2004	1 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7128)
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004</i> s. 82	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53))
Reprint 2: The <i>Court Security and Custodial Services Act 1999</i> as at 9 Sep 2005 (includes amendments listed above)			
<i>Financial Administration Legislation Amendment Act 2005</i> s. 37	5 of 2005	27 Jun 2005	1 Jan 2006 (see s. 2 and <i>Gazette</i> 23 Dec 2005 p. 6243)

Short title	Number and year	Assent	Commencement
Financial Legislation Amendment and Repeal Act 2006 s. 17	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2 and Gazette 19 Jan 2007 p. 137)

^{1a} On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

Provisions that have not come into operation

Short title	Number and Year	Assent	Commencement
<i>Nurses and Midwives Act 2006 s. 114</i> ⁴	50 of 2006	6 Oct 2006	To be proclaimed (see s. 2)
<i>Criminal Investigation (Consequential Provisions) Act 2006 Pt. 4</i> ⁵	59 of 2006	16 Nov 2006	To be proclaimed (see s. 2)

² The “Inspector provisions” as defined in the *Prisons Amendment Act 1999* s. 2(4) came into operation on 18 Jun 2000 (see *Gazette* 16 Jun 2000 p. 2939).

³ The *Inspector of Custodial Services Act 2003* s. 57 and Sch. 3 read as follows:

“

57. Savings and transitional provisions

Schedule 3 has effect in relation to the repeal, by section 56, of the *Prisons Act 1981* Part_XA and the *Court Security and Custodial Services Act 1999* Part 5.

Schedule 3 — Savings and transitional

[s. 57]

1. Definitions

In this Schedule —

“**commencement**” means the day on which this Act comes into operation;

“**repealed provisions**” means Part XA of the *Prisons Act 1981* repealed by section 56.

2. Interpretation Act 1984 applies

This Schedule does not limit the operation of the *Interpretation Act 1984*.

3. Persons holding offices under, or employed etc. for purposes of repealed provisions

- (1) A person who was —
- (a) appointed as Inspector or acting Inspector; or
 - (b) appointed, employed or engaged as a member of the Inspector's staff,

and whose appointment to, or employment or engagement in, that office or position was in effect immediately before commencement is to be regarded, on and after commencement, as having been appointed, employed or engaged, as the case requires, for the purposes of this Act, on the same terms and conditions, including as to remuneration, as those which applied to the person immediately before commencement.

- (2) A person to whom subclause (1) applies retains all existing and accruing rights and benefits as if the holding of the office, or the appointment, employment or engagement, for the purposes of this Act, were a continuation of the person's holding of the office, or the appointment, employment or engagement, for the purposes of the repealed provisions, immediately before commencement.

4. Reporting

- (1) Part 5 of this Act does not apply in respect of a financial year that has ended before this Act comes into operation; and the repealed provisions continue to apply in respect of such a financial year as if the repealed provisions had not been repealed.
- (2) Part 5 of this Act applies with respect to the period from 1 July in a financial year to a day that —
- (a) occurs in the same financial year; and
 - (b) immediately precedes commencement,

as if this Act were in effect when the matters to be reported on occurred.

5. Calculating maximum period between inspections for first inspection of a place under this Act

- (1) The 3 year period referred to in section 19 in relation to an inspection of a prison is to be calculated in the first instance from the time of the last inspection of that prison under the repealed provisions.

- (2) The 3 year period referred to in section 19 in relation to an inspection of a court custody centre or a lock-up is to be calculated in the first instance from the last inspection of that place under Part 5 of the *Court Security and Custodial Services Act 1999* repealed by section 56.

6. Independent prison visitors and independent detention centre visitors

- (1) A person who, immediately before commencement, was a person who had been appointed or was deemed to have been appointed to be a prison visitor under the *Prisons Act 1981* section 54 is to be regarded, on and from commencement, as a person who is appointed to be an independent prison visitor under section 39 of this Act on the same terms and conditions as applied to the person's appointment under the *Prisons Act 1981* section 54.
- (2) A person who, immediately before commencement, was a person who had been appointed to be a detention centre visitor under the *Young Offenders Act 1994* section 166 is to be regarded, on and from commencement, as a person who is appointed to be an independent detention centre visitor under section 41 of this Act on the same terms and conditions as applied to the person's appointment under the *Young Offenders Act 1994* section 166.

⁴ On the date as at which this compilation was prepared, the *Nurses and Midwives Act 2006* s. 114, which gives effect to Sch. 3, had not come into operation. It reads as follows:

“

114. Consequential amendments

Schedule 3 sets out consequential amendments.

“

Schedule 3 cl. 5 reads as follows:

Schedule 3 — Consequential amendments

[s. 114]

5. Court Security and Custodial Services Act 1999 amended

- (1) The amendments in this clause are to the *Court Security and Custodial Services Act 1999*.
- (2) Section 3 is amended by deleting the definition of “nurse” and inserting instead —

“

“nurse” has the meaning given to “registered nurse” in section 3 of the *Nurses and Midwives Act 2006*;

”

”

⁵ On the date as at which this compilation was prepared, the *Criminal Investigation (Consequential Provisions) Act 2006* Pt. 4 had not come into operation. It reads as follows:

“

**Part 4 — *Court Security and Custodial Services Act 1999*
amended**

13. The Act amended in this Part

The amendments in this Part are to the *Court Security and Custodial Services Act 1999*.

14. Section 3 amended

Section 3 is amended in the definition of “police officer” as follows:

- (a) by inserting “or” after paragraph (a);
- (b) by deleting paragraph (b) and “or” after it.

15. Schedule 2 amended

Schedule 2 clause 7 is repealed and the following clause is inserted instead —

“

7. Power to take identifying particulars of persons in custody

(1) In this clause —

“**identifying particular**” of a person means —

- (a) a print of the person’s hands (including fingers), feet (including toes) or ears;
- (b) a photograph of the person (including of an identifying feature of the person);
- (c) a measurement of any identifying feature of the person.

(2) In respect of a person in custody who is at a custodial place or being moved between custodial places, the power to take or cause to be taken from the person any identifying particular of the

person that an authorised person suspects on reasonable grounds —

- (a) is not or may not be held by the Police Force; or
 - (b) is or may be needed to verify the person's identity with identification particulars already held by the Police Force.
- (3) Sections 49 to 51 of the *Criminal Investigation (Identifying People) Act 2002*, with any necessary changes, apply to and in respect of taking an identifying particular from a person under subclause (2) as if the person were a charged suspect.
- (4) The taking of an identifying particular under subclause (2) must be done in accordance with Part 8 of the *Criminal Investigation (Identifying People) Act 2002* which applies with any necessary changes.
- (5) Sections 67 and 69 of the *Criminal Investigation (Identifying People) Act 2002*, with any necessary changes, apply to and in respect of any identifying particular taken under this clause from a person as if the particular had been obtained under Part 7 of that Act and the person were a suspect.

”

”