

Western Australia

**Inspector of Custodial Services Amendment  
Act 2011**

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As at 11 Nov 2011

No. 52 of 2011

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Western Australia

# Inspector of Custodial Services Amendment Act 2011

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Western Australia

# **Inspector of Custodial Services Amendment Act 2011**

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**No. 52 of 2011**

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**An Act to amend the *Inspector of Custodial Services Act 2003*.**

*[Assented to 11 November 2011]*

The Parliament of Western Australia enacts as follows:

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**1. Short title**

This is the *Inspector of Custodial Services Amendment Act 2011*.

**2. Commencement**

This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

**3. Act amended**

This Act amends the *Inspector of Custodial Services Act 2003*.

**4. Section 22 amended**

- (1) In section 22 delete “The” and insert:

(1) The

- (2) At the end of section 22 insert:

- (2) Without limiting subsection (1), a review may be carried out under that subsection of the following or any aspect of the following —
- (a) a custodial service in relation to one or more particular prisoners;
  - (b) a custodial service in relation to one or more particular detainees;
  - (c) a custodial service (CSCS Act) in relation to one or more particular persons in custody.

**5. Section 28 amended**

In section 28(1):

- (a) delete “section 22(a),” and insert:

section 22(1)(a) or (2)(a),

- (b) in paragraph (g) delete “prison; and” and insert:

prison or to a person who is, or has been, a prisoner; and

- (c) in paragraph (h)(ii) delete “contract.” and insert:

contract; or

- (d) after paragraph (h)(ii) insert:

- (iii) a person who is, or has been, a prisoner  
in a prison that is a subject of a contract.

- (e) after each of paragraphs (a) to (f) insert:

and

**6. Section 29 amended**

In section 29(1):

- (a) delete “section 22(b),” and insert:

section 22(1)(b) or (2)(b),

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- (b) in paragraph (g) delete “centre.” and insert:  
  
centre or to a person who is, or has been, a detainee.
- (c) after each of paragraphs (a) to (e) insert:  
  
and

**7. Section 30 amended**

In section 30(1):

- (a) delete “section 22(c),” and insert:  
  
section 22(1)(c) or (2)(c),
- (b) delete paragraph (g) and insert:  
  
(g) all documents in the possession of the Department in relation to a court custody centre or lock-up or a custodial service (CSCS Act) or to a person who is, or has been, a person in custody —
  - (i) in a court custody centre or lock-up; or
  - (ii) in a vehicle described in paragraph (d);  
or
  - (iii) in relation to whom a custodial service (CSCS Act) is, or has been, provided;and
- (c) in paragraph (h)(ii) delete “contract.” and insert:  
  
contract; or



- (d) after paragraph (h)(ii) insert:
- (iii) a person who is, or has been, a person in custody —
    - (I) in a court custody centre or lock-up that is a subject of a contract; or
    - (II) in a vehicle described in paragraph (d); or
    - (III) in relation to whom a custodial service (CSCS Act) that is a subject of a contract is, or has been, provided.
- (e) after each of paragraphs (a) to (f) insert:
- and

**8. Section 33A inserted**

At the end of Part 4 Division 2 insert:

**33A. Inspector may give chief executive officer or CEO show cause notice**

- (1) In this section —
- responsible officer* means —
- (a) in relation to a prisoner — the chief executive officer as defined in the *Prisons Act 1981* section 3(1); or
  - (b) in relation to a detainee — the chief executive officer as defined in the *Young Offenders Act 1994* section 3; or

- (c) in relation to a person in custody — the CEO.
- (2) Subsection (3) applies if the Inspector suspects on reasonable grounds —
  - (a) that there is, or has been, a serious risk to the security, control, safety, care or welfare of a prisoner, detainee or person in custody; or
  - (b) that a prisoner, detainee or person in custody is being, or has been, subjected to cruel, inhuman or degrading treatment.
- (3) The Inspector may give the responsible officer a written notice (a *show cause notice*) —
  - (a) specifying the matters in relation to which subsection (2)(a) or (b) applies; and
  - (b) requiring the responsible officer to show cause why the Inspector should not refer those matters to the Minister.
- (4) The show cause notice must specify a period of at least 3 days within which the notice must be complied with.
- (5) The responsible officer may, within the period specified in the show cause notice, make submissions, either orally or in writing, or provide evidence to the Inspector with respect to the matters specified in the notice.
- (6) Having considered any submissions made or evidence provided under subsection (5), the Inspector —
  - (a) may refer any matter specified in the show cause notice to the Minister; or
  - (b) may decide to take no further action with respect to the matter.
- (7) If the Inspector refers a matter to the Minister under subsection (6)(a), the Inspector must give advice or

make recommendations to the Minister as the Inspector considers appropriate in relation to the matter.

- (8) The Inspector may, by written notice given to the responsible officer, withdraw a show cause notice.

**9. Section 33 amended**

- (1) In section 33(2):

- (a) in paragraph (e) delete “June.” and insert:

June; and

- (b) after paragraph (e) insert:

- (f) if the Inspector considers it appropriate to include those details in the report — details of any show cause notice given under section 33A(3) in the period of 12 months ending on the preceding 30 June.

- (c) after each of paragraphs (a) to (c) insert:

and

- (2) After section 33(2) insert:

- (3A) If, under subsection (2)(f), the Inspector includes in the report details of a show cause notice, the Inspector must also include details of any submissions made or evidence provided to the Inspector under section 33A(5) with respect to the matters specified in the notice.

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- (3B) If the Inspector considers it appropriate to do so because of the extent of the submissions made or evidence provided to the Inspector under section 33A(5), the Inspector may comply with subsection (3A) by including in the report a summary of those submissions or that evidence.

**10. Section 36 amended**

In section 36(1)(b) delete “section 22(c),” and insert:

section 22(1)(c) or (2)(c),

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