

Western Australia

## **Inspector of Custodial Services Act 2003**

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## Inspector of Custodial Services Act 2003

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Western Australia

## **Inspector of Custodial Services Act 2003**

**An Act to provide for an independent agency to inspect certain places where prisoners, detainees or other persons in custody are held and to review certain custodial services, to provide for an independent visitor service for prisons and detention centres, to consequentially amend various Acts and regulations<sup>2</sup>, and for related purposes.**

## **Part 1 — Preliminary**

### **1. Short title**

This Act may be cited as the *Inspector of Custodial Services Act 2003*<sup>1</sup>.

### **2. Commencement**

This Act comes into operation on the day on which it receives the Royal Assent<sup>1</sup>.

### **3. Terms used in this Act**

In this Act, unless the contrary intention appears —

**CEO** has the meaning giving to that term in the *Court Security and Custodial Services Act 1999* section 3;

**chief judicial officer of a court** has the meaning given to that term in the *Court Security and Custodial Services Act 1999* section 3;

**court custodial services** has the meaning given to that term in the *Court Security and Custodial Services Act 1999* section 3;

**court custody centre** has the meaning given to that term in the *Court Security and Custodial Services Act 1999* section 3;

**court premises** has the meaning given to that term in the *Court Security and Custodial Services Act 1999* section 3;

**custodial service**, in relation to a detention centre, means —

- (a) the management, control or security of the centre; or
- (b) the security, control, safety, care or welfare of detainees at the centre,

and includes an administrative arrangement in relation to a matter mentioned in paragraph (a) or (b);

**custodial service**, in relation to a prison, means —

- (a) the management, control or security of the prison; or



- (b) the security, control, safety, care or welfare of prisoners committed to the prison,

and includes an administrative arrangement in relation to a matter mentioned in paragraph (a) or (b);

**custodial service (CSCS Act)** has the meaning given to “custodial service” in the *Court Security and Custodial Services Act 1999* section 3 and includes an administrative arrangement in relation to such a matter;

**detainee** means a person who is detained in a detention centre;

**detention centre** has the same meaning as it has in the *Young Offenders Act 1994* section 3 and includes any other place where a detainee is detained under that Act that is managed or otherwise controlled by the chief executive officer as defined in that section;

**independent detention centre visitor** means a person appointed under section 41 to be an independent detention centre visitor;

**independent prison visitor** means a person appointed under section 39 to be an independent prison visitor;

**inspection report** means a report under section 20;

**Inspector** means the holder of the office of Inspector of Custodial Services continued by section 5;

**lock-up** has the meaning given to that term in the *Court Security and Custodial Services Act 1999* section 3;

Note: “lock-up” in this Act does not include a lock-up that is managed or controlled by the Commissioner of Police.

**person in custody** means —

- (a) a person in custody as defined in the *Court Security and Custodial Services Act 1999* section 3 for whom the CEO is responsible under that Act; or
- (b) an intoxicated detainee as defined in the *Court Security and Custodial Services Act 1999* section 3 for whom the CEO is responsible under that Act;

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***prison*** has the meaning given to that term in the *Prisons Act 1981* section 3(1) and includes any other place where a prisoner is confined or kept under that Act that is managed or otherwise controlled by the chief executive officer as defined in that section;

***prisoner*** has the meaning given to that term in the *Prisons Act 1981* section 3(1);

***public service officer*** has the meaning given to that term in the *Public Sector Management Act 1994* section 3(1);

***staff***, in relation to the Inspector, means a person referred to in section 16(1), (2) or (3).

**4. Notes not part of the law**

Notes in this Act are provided to assist understanding and do not form part of the Act.

## **Part 2 — Office of Inspector**

### **Division 1 — Inspector**

#### **5. Office of Inspector continued**

The office of Inspector of Custodial Services created by the *Prisons Act 1981* section 109A is continued.

#### **6. Appointment of Inspector**

- (1) The Governor is to appoint an appropriately qualified person to the office of Inspector.
- (2) The *Public Sector Management Act 1994* does not apply to, or in relation to, the appointment of the Inspector and the Inspector is not subject to that Act.
- (3) Subject to this Act, the Inspector holds office for such term of not more than 7 years as is specified in the appointment and is eligible for reappointment for one or more terms each of not more than 7 years.
- (4) A person who is or has been within the preceding 3 years a member of the Parliament of the Commonwealth or any State or Territory cannot be appointed as Inspector.

#### **7. Conditions of appointment**

- (1) The Inspector —
  - (a) is to be paid salary and allowances at the yearly rates that are determined by the Salaries and Allowances Tribunal established by the *Salaries and Allowances Act 1975*; and
  - (b) has the leave and other entitlements that are determined by the Governor and which cannot be reduced during a term of appointment.

- (2) The salary and allowances payable to the Inspector are to be charged to the Consolidated Account and this subsection appropriates the Consolidated Account accordingly.

*[Section 7 amended by No. 77 of 2006 s. 4.]*

**8. Oath or affirmation**

- (1) Before performing the functions of his or her office the Inspector is to take an oath or affirmation that he or she will faithfully and impartially perform the duties of the office, and that he or she will not, except in accordance with this Act, divulge any information received by him or her under this Act or any other law.
- (2) The oath or affirmation is to be administered by the Governor.

**9. Removal of Inspector from office**

- (1) The Governor may remove the Inspector from office —
- (a) for —
- (i) misbehaviour or incompetence; or
- (ii) physical or mental incapacity, other than temporary illness, impairing the performance of the Inspector's functions;
- or
- (b) if the Inspector is, according to the *Interpretation Act 1984* section 13D, a bankrupt or a person whose affairs are under insolvency laws.
- (2) In subsection (1)(a)(i) —
- misbehaviour*** includes conduct that renders the Inspector unfit to hold office as Inspector even though the conduct does not relate to any function of the office.

*[Section 9 amended by No. 18 of 2009 s. 46.]*

**10. Portability of superannuation and other entitlements**

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

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

**Division 2 — Acting appointments**

**11. Acting appointments made by Governor**

The Governor may appoint a person to act in the office of the Inspector —

- (a) during a vacancy in the office; or
- (b) during any period or during all periods when the person holding or appointed to act in that office is absent from duty or is for any other reason unable to perform the functions of the office.

**12. Acting appointments made by Inspector**

- (1) If the Governor has not appointed a person under section 11 the Inspector may appoint a person to act in the office of the Inspector in the circumstances referred to in section 11(b) —
  - (a) for not more than 4 weeks at a time; and
  - (b) for not more than 6 weeks in a 12 month period.
- (2) If the Inspector appoints a person under subsection (1) and the Governor later appoints a person under section 11 whose term of appointment is to begin before the term of the Inspector's appointee has ended, the term of appointment of the Inspector's appointee has no effect on and from the day when the term of the Governor's appointee begins.

**13. Matters relevant to all acting appointments**

- (1) A person who is or has been within the preceding 3 years a member of the Parliament of the Commonwealth or any State or Territory cannot be appointed to act in the office of Inspector.
- (2) An appointment under section 11 or 12 may be made at any time and may be expressed to have effect only in the circumstances specified in the instrument of appointment.

**14. Acting Inspector: functions etc.**

A person who is acting in the office of Inspector is to perform all the Inspector's functions and, when performing those functions, is subject to all relevant provisions of this Act and any other law applying to the Inspector.

**15. Savings**

The validity of anything done by or in relation to a person purporting to act in the office of Inspector under an appointment made under section 11 or 12 cannot be called in question on the ground that —

- (a) the occasion for the appointment had not arisen;

- (b) there is a defect or irregularity in the appointment;
- (c) the appointment had ceased to have effect; or
- (d) the occasion for the person to act had not arisen or had ceased.

### **Division 3 — Staff**

#### **16. Staff**

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

### **Part 3 — Relationship with Minister**

#### **17. Directions of Minister**

- (1) Except as provided in this section, the Inspector is not subject to direction by the Minister or any other person in the performance of the Inspector's functions.
- (2) The Minister may, in writing, direct the Inspector to —
  - (a) inspect a prison, detention centre, court custody centre or lock-up;
  - (b) to review a custodial service in relation to a prison or detention centre or a custodial service (CSCS Act) or an aspect of that service,and report on a specified matter of significance.
- (3) The Minister, after consultation with the Inspector, may issue to the Inspector written directions as to the performance of any of the Inspector's functions but a direction cannot be issued in respect of a particular case.
- (4) The text of each direction under subsection (2) or (3) is to be included in the Inspector's annual report under section 33.
- (5) The Inspector must comply with a direction under subsection (2) or (3) unless, in the Inspector's opinion, there are exceptional circumstances for not complying.
- (6) If the Inspector refuses to comply with a direction under subsection (2) or (3) he or she must prepare written reasons for the failure to comply and cause the text of those reasons to be included in the Inspector's annual report under section 33.

#### **18. Minister to have access to information**

- (1) Subject to this section the Minister is entitled —
  - (a) to have information in the possession of the Inspector;and



- (b) where the information is in or on a document, to have, and make and retain copies of, that document.
- (2) For the purposes of subsection (1) the Minister may —
    - (a) request the Inspector to furnish information to the Minister;
    - (b) request the Inspector to give the Minister access to information;
    - (c) for the purposes of paragraph (b) make use of the Inspector's staff to obtain the information and furnish it to the Minister.
  - (3) The Inspector must comply with a request under subsection (2) and make his or her staff and facilities available to the Minister for the purposes of subsection (2)(c) unless, in the Inspector's opinion, it would not be in the public interest to provide the information.
  - (4) If the Inspector refuses to comply with a request under subsection (2) he or she must prepare written reasons for the failure to comply and cause the text of those reasons to be included in the Inspector's annual report under section 33.
  - (5) In this section —
    - document** includes any tape, disc or other device or medium on which information is recorded or stored;
    - information** means information specified, or of a description specified, by the Minister that relates to the Inspector's functions.

## **Part 4 — Functions and powers of Inspector**

### **Division 1 — Functions**

#### **19. Inspection of places: mandatory**

At least once every 3 years the Inspector is to inspect each —

- (a) prison;
- (b) detention centre;
- (c) court custody centre; and
- (d) lock-up.

#### **20. Inspection report**

- (1) The Inspector is to prepare an inspection report on his or her findings in relation to each inspection under section 19.
- (2) An inspection report may contain such advice or recommendations as the Inspector considers appropriate in relation to the findings.

#### **21. Inspection of places: occasional**

In addition to the requirement to inspect a place under section 19, the Inspector may inspect the place at any other time and on any number of occasions.

#### **22. Review of custodial services: occasional**

The Inspector may, at any time, review any of the following or any aspect of the following —

- (a) a custodial service in relation to a prison;
- (b) a custodial service in relation to a detention centre;
- (c) a custodial service (CSCS Act).

**23. Reporting on occasional inspections and reviews**

The Inspector may, at any time, report to the Minister on any matter relating to an inspection under section 21 or a review under section 22 and give advice or make recommendations as the Inspector considers appropriate in relation to the matter.

**24. Providing reports, draft inspection reports to interested persons**

The Inspector may, at any time, deliver to the Minister or any other person having an interest in the subject matter of the document —

- (a) a draft inspection report; or
- (b) a report prepared by the Inspector on a matter relating to an inspection under section 21 or a review under section 22.

**25. Notifications**

- (1) Subject to subsection (2), it is not necessary for any person to be given notice of the Inspector's intention to perform any of the Inspector's functions.
- (2) The Inspector is to give, within a reasonable time, the chief judicial officer of a court written notice of the Inspector's intention —
  - (a) to inspect a court custody centre that is part of the court premises; or
  - (b) to review any court custodial services, or any aspect of court custodial services, affecting the court.
- (3) The Inspector is to consult the chief judicial officer of a court in relation to —
  - (a) an inspection of a court custody centre that is part of the court premises; and
  - (b) a review of any court custodial services, or any aspect of court custodial services, affecting the court.

**26. Relationship of Inspector's functions to other laws**

- (1) The Inspector is to ensure that the performance of any of the Inspector's functions is not likely to delay, interfere with or duplicate —
  - (a) an inquiry under the *Prisons Act 1981* section 9; or
  - (b) an inquiry under the *Court Security and Custodial Services Act 1999* section 44; or
  - (c) an investigation or other action taken by the Corruption and Crime Commission under the *Corruption and Crime Commission Act 2003*; or
  - (d) an investigation by the Parliamentary Commissioner for Administrative Investigations under the *Parliamentary Commissioner Act 1971*.
- (2) The Inspector may refer a complaint or grievance concerning a particular individual to the Parliamentary Commissioner for Administrative Investigations or any other government agency having a function to deal with the matter but it is not a function of the Inspector to deal with the matter other than —
  - (a) to inform the complainant of the role of the Inspector; or
  - (b) to deal with the matter in the context of an inspection of a place or a review of a custodial service.

*[Section 26 amended by No. 8 of 2009 s. 78(2).]*

**Division 2 — Powers**

**27. Powers of Inspector**

The Inspector has power to do all things necessary or convenient to be done for or in connection with the performance of the Inspector's functions.

**28. Access to prisons etc.**

- (1) For the purpose of performing the Inspector's functions under section 19(a), section 21 in relation to a prison, or section 22(a),

the Inspector or any person authorised by the Inspector, at any time and with any assistants and equipment that the Inspector or authorised person thinks are necessary, may have free and unfettered access to —

- (a) a prison or any part of a prison;
- (b) a prisoner in a prison;
- (c) a person whose work is concerned with a prison;
- (d) a vehicle used to transport prisoners;
- (e) a prisoner in such a vehicle;
- (f) a person whose work is concerned with such a vehicle;
- (g) all documents in the possession of the Department in relation to a prison or to a custodial service in relation to a prison; and
- (h) all documents in the possession of a contractor or a subcontractor in relation to —
  - (i) a prison that is a subject of a contract; or
  - (ii) a custodial service in relation to a prison that is a subject of a contract.

(2) In subsection (1) —

*contract*, *contractor*, *Department* and *subcontractor* each has the meaning given to that term in the *Prisons Act 1981* section 3(1).

**29. Access to detention centres etc.**

- (1) For the purpose of performing the Inspector's functions under section 19(b), section 21 in relation to a detention centre, or section 22(b), the Inspector or any person authorised by the Inspector, at any time and with any assistants and equipment that the Inspector or authorised person thinks are necessary, may have free and unfettered access to —
  - (a) a detention centre or any part of a detention centre;
  - (b) a detainee in a detention centre;

- (c) a person whose work is concerned with a detention centre;
- (d) a vehicle used to transport detainees;
- (e) a detainee in such a vehicle;
- (f) a person whose work is concerned with such a vehicle; and
- (g) all documents in the possession of the Department in relation to a detention centre or to a custodial service in relation to a detention centre.

(2) In subsection (1) —

**Department** has the meaning given to that term in the *Young Offenders Act 1994* section 3.

**30. Access to court custody centres, lock-ups etc.**

- (1) For the purpose of performing the Inspector's functions under section 19(c) or (d), section 21 in relation to a court custody centre or lock-up, or section 22(c), the Inspector or any person authorised by the Inspector, at any time and with any assistants and equipment that the Inspector or authorised person thinks are necessary, may have free and unfettered access to —
- (a) a court custody centre, a lock-up or any part of such a place;
  - (b) a person in custody in a court custody centre or lock-up;
  - (c) a person whose work is concerned with a court custody centre or lock-up;
  - (d) a vehicle used for moving persons for whom the CEO is responsible under the *Court Security and Custodial Services Act 1999* section 16;
  - (e) a person in custody in such a vehicle;
  - (f) a person whose work is concerned with such a vehicle;
  - (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); and

- (h) all documents in the possession of a contractor or a subcontractor in relation to —
  - (i) a court custody centre or lock-up that is a subject of a contract; or
  - (ii) a custodial service (CSCS Act) that is a subject of a contract.
- (2) In subsection (1) —  
*contract, contractor, Department* and *subcontractor* each has the meaning given to that term in the *Court Security and Custodial Services Act 1999* section 3.

**31. Matters relevant to access powers**

- (1) The Inspector may authorise a person for the purposes of section 28(1), 29(1) or 30(1).
- (2) An authorisation must be in writing and may be made subject to such conditions and limitations specified in the authorisation as the Inspector thinks fit.
- (3) The Inspector may revoke an authorisation if the Inspector considers it appropriate to do so.
- (4) Without limiting subsection (3), the Minister may revoke a person's authorisation if the person has adversely affected, or is likely to adversely affect —
  - (a) the good order or the security of a prison, detention centre, court custody centre or lock-up, or vehicle referred to in section 28(1)(d), 29(1)(d) or 30(1)(d); or
  - (b) the safety of any person at such a place or in such a vehicle or whose work is connected with such a place or vehicle.
- (5) Nothing in this section or in section 28, 29 or 30 limits any entitlement that a person has, under a written law, to have access to a place, vehicle, person or document referred to in those sections.

- (6) A power under a written law to ban a person from visiting a prison, detention centre, court custody centre or lock-up cannot be exercised in respect of the Inspector or any person who is authorised for the purposes of section 28(1), 29(1) or 30(1).

**32. Offence to hinder etc. persons exercising access powers**

A person must not hinder or resist another person who is exercising or attempting to exercise a power under section 28(1), 29(1) or 30(1) if the other person is —

- (a) the Inspector;
- (b) a person authorised by the Inspector for the purposes of the relevant provision; or
- (c) a person assisting the Inspector or a person referred to in paragraph (b).

Penalty: \$20 000.



## Part 5 — Reporting

### 33. Annual reporting

- (1) The Inspector, as soon as is practicable in each year but not later than 30 September, is to deliver a copy of the report referred to in subsection (2) to each of —
  - (a) the Speaker of the Legislative Assembly and the President of the Legislative Council who are to keep the copies of the report in safe custody; and
  - (b) the Minister, who may prepare a response to the report.
- (2) The report, copies of which are to be delivered under subsection (1), is a report on the performance of the Inspector's functions for the period of 12 months ending on the preceding 30 June, including —
  - (a) if the *Financial Management Act 2006* and the *Auditor General Act 2006* apply at the particular time to the office of the Inspector —
    - (i) the annual report required under Part 5 Division 2 of the *Financial Management Act 2006* as that Division applies in respect of the office under section 38 of this Act; and
    - (ii) the opinion prepared and signed by the Auditor General under the *Auditor General Act 2006* section 15 (if applicable) on the financial statements and other information submitted for that period under the *Financial Management Act 2006* section 63 as that section applies in respect of the office under section 38 of this Act;
  - (b) the text of the directions given under section 17(2) and (3) in that period;
  - (c) the text of the reasons prepared under section 17(6) or 18(4);

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- (d) a list of the places referred to in section 19 that have been inspected since the preceding 30 June, noting the day on which the list was prepared; and
  - (e) a list of the places referred to in section 19 that are proposed to be inspected in the period up to the next 30 June.
- (3) If the Inspector is not able to cause to be prepared by 30 September in a year a report referred to in subsection (2) the Inspector, by that date, is to inform both Houses of Parliament of the inability to do so and the reasons for that inability.

*[Section 33 amended by No. 5 of 2005 s. 41(2); No. 77 of 2006 s. 17.]*

**34. Inspection reports and reports of occasional inspections and reviews**

- (1) As soon as is practicable after the completion of an inspection report, but not before the expiry of a reasonable period for submissions to be made under section 37 if applicable, the Inspector is to deliver a copy of the inspection report to each of —
- (a) the Speaker of the Legislative Assembly and the President of the Legislative Council who are to keep the copies of the inspection report in safe custody; and
  - (b) the Minister, who may prepare a response to the inspection report.
- (2) Subsection (1) also applies to a report —
- (a) prepared on a matter relating to an inspection under section 21 or a review under section 22; and
  - (b) that, in the Inspector's opinion, should be laid before the Houses of Parliament.

**35. Laying before Parliament annual reports, inspection reports and reports of occasional inspections and reviews**

- (1) The Speaker and the President are to lay each document delivered under section 33 or 34 before their respective Houses of Parliament —
  - (a) not before 30 days after the document is delivered; and
  - (b) as soon as practicable after the expiration of that 30 day period.
- (2) If, in relation to a document required by subsection (1) to be laid before a House of Parliament —
  - (a) a House is not sitting on the day when the 30 day period referred to in subsection (1) expires in relation to the document;
  - (b) the document has not been laid before that House; and
  - (c) the Inspector is of the opinion that that House will not sit during a period after that day that is reasonable having regard to the contents of the document,

the Inspector is to transmit a copy of the document to the Clerk of that House.
- (3) A copy of a document transmitted to the Clerk of a House is to be regarded as having been laid before that House.
- (4) The laying of a copy of a document that is regarded as having occurred under subsection (3) is to be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the Clerk received the copy.

**36. Chief judicial officers to receive copy of inspection reports, reports of occasional inspections and reviews affecting the court**

- (1) If, under section 34, the Inspector delivers to the Speaker of the Legislative Assembly and the President of the Legislative Council —

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- (a) an inspection report concerning a court custody centre;  
or
- (b) a report prepared by the Inspector on a matter relating to an inspection of a court custody centre under section 21 or a review of any court custodial services under section 22(c),

the Inspector is to ensure that a copy of the report is delivered as soon as practicable to the chief judicial officer of the relevant court.

- (2) A chief judicial officer who receives a report under subsection (1) may prepare a response to the report.

**37. Submissions in certain cases before completion of reports**

- (1) The Inspector must not, in a document referred to in section 33 or 34, disclose information or make a statement setting out an opinion that is, either expressly or impliedly, critical of the Department, a contractor or any other person unless the Inspector has complied with subsection (2) in relation to the matter.
- (2) If the Inspector proposes to disclose information or make a statement setting out an opinion referred to in subsection (1) the Inspector must, before doing so, afford the following persons the opportunity to make submissions, either orally or in writing, in relation to the matter —
  - (a) if the opinion relates to a Department, the chief executive officer or the CEO as is applicable to the case;
  - (b) if the opinion relates to a contractor, the contractor;
  - (c) if the opinion relates to another person, the person.
- (3) In this section —

*chief executive officer* has the meaning given to that term in the *Prisons Act 1981* section 3(1) or the *Young Offenders Act 1994* section 3, as is applicable to the case;

**contractor** has the meaning given to that term in the *Court Security and Custodial Services Act 1999* section 3 or the *Prisons Act 1981* section 3(1), as is applicable to the case;

**Department** has the meaning given to that term in the *Court Security and Custodial Services Act 1999* section 3, the *Prisons Act 1981* section 3(1) or the *Young Offenders Act 1994* section 3, as is applicable to the case.

**38. Reporting requirements under *Financial Management Act 2006***

If the *Financial Management Act 2006* applies at a particular time to the office of the Inspector then Part 5 Division 2 of that Act is to be read as if the provisions that are set out in Schedule 1 of this Act are the provisions of that Division that apply in respect of the office.

*[Section 38 amended by No. 5 of 2005 s. 41(3); No. 77 of 2006 s. 17.]*

## Part 6 — Independent visitor service

### 39. Appointment of independent prison visitors

- (1) The Minister, after having regard to the advice of the Inspector, may for every prison appoint visitors to be known as independent prison visitors.
- (2) A person is not to be appointed as an independent prison visitor for a prison where prison services are being provided under a contract if —
  - (a) the person has any financial interest in the contract; or
  - (b) the person is, or to any extent controls, manages or owns, the contractor or a subcontractor under the contract.
- (3) An independent prison visitor cannot carry out the duties of a visiting justice.
- (4) Appointments under this section are to be for a term of 2 years, but an independent prison visitor may resign at any time by notice in writing delivered to the Minister.
- (5) In subsections (2) and (3) —  
*contract, contractor, prison services, subcontractor* and *visiting justice* each has the meaning given to that term in the *Prisons Act 1981* section 3(1).

### 40. Duties of independent prison visitors

- (1) An independent prison visitor is to —
  - (a) visit and inspect the prison for which the visitor is appointed as soon as practicable after being appointed and thereafter at intervals of not more than 3 months;
  - (b) furnish a report in writing to the Inspector after each visit and inspection made under paragraph (a); and

(c) make a record of any complaint made to the visitor by or on behalf of a prisoner and report that complaint to the Inspector.

(2) An independent prison visitor may, after a visit and inspection made under subsection (1)(a), immediately communicate directly with the Inspector, or the chief executive officer as defined in the *Prisons Act 1981*, if it seems desirable to make a personal report to the Inspector or the chief executive officer.

(3) An independent prison visitor must not interfere with the management of, or discipline at, the prison or give or purport to give any instructions to a person employed at the prison.

**41. Appointment of independent detention centre visitors**

(1) The Minister, after having regard to the advice of the Inspector, may for every detention centre appoint visitors to be known as independent detention centre visitors.

(2) An independent detention centre visitor cannot carry out the duties of a visiting justice appointed under the *Young Offenders Act 1994* section 166.

(3) Appointments under this section are to be for a term of 2 years, but an independent detention centre visitor may resign at any time by notice in writing delivered to the Minister.

**42. Duties of independent detention centre visitors**

(1) An independent detention centre visitor is to —

(a) visit and inspect the detention centre for which the visitor is appointed as soon as practicable after being appointed and thereafter at intervals of not more than 3 months;

(b) furnish a report in writing to the Inspector after each visit and inspection made under paragraph (a); and

(c) make a record of any complaint made to the visitor by or on behalf of a detainee and report that complaint to the Inspector.

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- (2) An independent detention centre visitor may, after a visit and inspection made under subsection (1)(a), immediately communicate directly with the Inspector, or the chief executive officer as defined in the *Young Offenders Act 1994*, if it seems desirable to make a personal report to the Inspector or the chief executive officer.
- (3) An independent detention centre visitor must not interfere with the management of, or discipline at, the detention centre or give or purport to give any instructions to a person employed at the centre.

**43. Inspector to deal with reports of independent prison visitors and independent detention centre visitors**

- (1) The Inspector —
  - (a) is to review each report received under section 40(1) or (2) from each independent prison visitor;
  - (b) is to review each report received under section 42(1) or (2) from each independent detention centre visitor;
  - (c) may seek from the chief executive officer, or the contractor for a prison that is a subject of the report, comments in relation to any matter arising from a report if the Inspector considers it appropriate to do so;
  - (d) is to report to the Minister in relation to the content of, and matters arising from, the reports including the comments, if any, sought under paragraph (c); and
  - (e) may take such action in relation to a matter arising from a report as the Inspector is able to take under this Act.
- (2) In subsection (1) —  
*chief executive officer* and *contractor* each has the meaning given to that term in the *Prisons Act 1981* section 3(1) or the *Young Offenders Act 1994* section 3, as is applicable to the case.



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## Part 7 — Disclosure of information

### 44. Disclosure of information permitted for consultation purposes

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

*[Section 44 amended by No. 8 of 2009 s. 78(3).]*

### 45. Disclosure of certain other information permitted

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

- (a) is disclosed to a person who is —
  - (i) a member of the Corruption and Crime Commission; or
  - (ii) an officer or a seconded officer of the Corruption and Crime Commission authorised for the purposes of this subparagraph by the Corruption and Crime Commission,and concerns a matter that is relevant to the functions of the Corruption and Crime Commission; or
- (b) is disclosed to a person who is —
  - (i) the Director of Public Prosecutions;
  - (ii) the Deputy Director of Public Prosecutions; or

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(iii) a member of the staff of the Director of Public Prosecutions authorised for the purposes of this subparagraph by the Director of Public Prosecutions or the Deputy Director of Public Prosecutions,

and concerns a matter that is relevant to the functions of either the Corruption and Crime Commission or the Director of Public Prosecutions; or

- (c) is disclosed to a person who is —
- (i) the Parliamentary Commissioner for Administrative Investigations;
  - (ii) the Deputy Parliamentary Commissioner for Administrative Investigations; or
  - (iii) an officer of the Parliamentary Commissioner authorised for the purposes of this subparagraph by the Parliamentary Commissioner or the Deputy Parliamentary Commissioner,

and concerns a matter that is relevant to the functions of the Parliamentary Commissioner.

*[Section 45 amended by No. 8 of 2009 s. 78(4).]*

**46. Disclosure of information permitted if in certain interests to do so**

- (1) The Inspector may disclose information, or make a statement, to any person or to the public or a section of the public with respect to the performance of a function of the Inspector if, in the Inspector's opinion, it is in the interests of any person, or is otherwise in the public interest, to disclose the information or to make the statement.
- (2) If the information to be disclosed, or the statement to be made, under subsection (1) contains an opinion that is, either expressly or impliedly, critical of a department or a person, the Inspector is to notify the department or the person before disclosing the information or making the statement if it is practicable to do so.

- (3) Subsection (2) does not apply if section 37(1) applies to the information or statement and section 37(2) has been complied with in relation to the information or statement.

**47. Confidentiality**

- (1) A person must not disclose information that was obtained by the Inspector or the Inspector's staff in the course of, or for the purpose of, performing a function of the Inspector, except —
- (a) for the purposes of the performance of a function of the Inspector;
  - (b) for the purposes of any proceedings for perjury or for an offence under this Act;
  - (c) as authorised by section 44, 45 or 46; or
  - (d) in other circumstances prescribed by the regulations.

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

- (2) Subsection (1) does not apply to the disclosure of statistical or other information that could not reasonably be expected to lead to the identification of any person to whom it relates.

**48. Directions to not disclose information**

- (1) The Inspector may in writing direct the person to whom a document is sent by the Inspector not to disclose to any other person any information contained in the document except for the purposes of the performance of a function of the Inspector to which the document relates.
- (2) A person to whom a direction is given under subsection (1) must comply with the direction.

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

## **Part 8 — Other offences**

### **49. Hindering and other offences**

- (1) A person must not, without reasonable excuse, hinder or resist or threaten —
  - (a) the Inspector or a person assisting the Inspector in the performance or attempted performance of a function of the Inspector; or
  - (b) a person authorised by the Inspector for the purposes of section 28(1), 29(1) or 30(1), or a person assisting such an authorised person, in the performance or attempted performance of a function of the person under the respective provision.
- (2) A person must not make a statement that the person knows to be false or misleading to —
  - (a) the Inspector or a person assisting the Inspector in the performance or attempted performance of a function of the Inspector; or
  - (b) a person authorised by the Inspector for the purposes of section 28(1), 29(1) or 30(1), or a person assisting such an authorised person, in the performance or attempted performance of a function of the person under the respective provision.
- (3) A person must not deliberately mislead or attempt to mislead —
  - (a) the Inspector or a person assisting the Inspector in the performance or attempted performance of a function of the Inspector; or
  - (b) a person authorised by the Inspector for the purposes of section 28(1), 29(1) or 30(1), or a person assisting such an authorised person, in the performance or attempted performance of a function of the person under the respective provision.

Penalty applicable to subsections (1), (2) and (3): \$6 000 and imprisonment for 12 months.

**50. Victimisation**

- (1) A person must not —
- (a) prejudice, or threaten to prejudice, the safety or career of;
  - (b) intimidate or harass, or threaten to intimidate or harass; or
  - (c) do any act that is, or is likely to be, to the detriment of, another person because the other person —
    - (d) has provided, is providing or will or may in the future provide information to the Inspector in the performance of a function of the Inspector; or
    - (e) has performed a function of the Inspector in relation to the other person or is performing, or will or may in the future perform, any such function.

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

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

## **Part 9 — Miscellaneous**

### **51. Security and safety considerations**

When performing a function under this Act a person is to have regard to —

- (a) the good order and the security of a prison, detention centre, court custody centre or lock-up, or vehicle referred to in section 28(1)(d), 29(1)(d) or 30(1)(d); and
- (b) the safety of any person at such a place or in or near such a vehicle or whose work is connected with such a place or vehicle.

### **52. Protection from liability**

- (1) An action in tort does not lie against a person for anything that the person has done, in good faith, in the performance or purported performance of a function under this Act.
- (2) The Crown is also relieved of any liability that it might otherwise have had for another person having done anything as described in subsection (1).
- (3) The protection given by this section applies even though the thing done as described in subsection (1) may have been capable of being done whether or not this Act had been enacted.
- (4) In this section, a reference to the doing of anything includes a reference to the omission to do anything.

### **53. Documents sent to or by the Inspector not admissible**

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

- (a) in the course of, or for the purposes of, the performance of a function of the Inspector; and

- (b) that was prepared specifically for the purposes of the performance of the function,

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

**54. Protection for proceedings in Cabinet**

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

**55. Regulations**

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.

**56. Amendment of the *Prisons Regulations 1982***

*[(1) Omitted under the Reprints Act 1984 s. 7(4)(e).]*

- (2) Nothing in this Act prevents any of the *Prisons Regulations 1982* from being amended in accordance with the *Prisons Act 1981*.

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**57.        **Savings and transitional provisions****

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



**Schedule 1 — Application of *Financial Management Act 2006* to office of the Inspector**

[s. 38]

*[Heading inserted by No. 77 of 2006 s. 17.]*

For the purposes of section 38 of this Act, the *Financial Management Act 2006* Part 5 Division 2 is to be read as follows —

“

**Division 2 — Reports by accountable authority of office of Inspector of Custodial Services**

**61. Reports by accountable authority of office of Inspector of Custodial Services**

- (1) The accountable authority of the office of the Inspector of Custodial Services is to prepare, as part of the report referred to in the *Inspector of Custodial Services Act 2003* section 33(2), an annual report that contains —
  - (a) financial statements for the relevant financial year; and
  - (b) key performance indicators; and
  - (c) a report on the operations of the office during the relevant financial year; and
  - (d) any information prescribed by the Treasurer's instructions; and
  - (e) if applicable, the report referred to in subsection (2).
- (2) If the relevant financial year is covered by a resource agreement, the accountable authority of the office of the Inspector of Custodial Services is to include in the annual report a report on the extent to which the office achieved any objectives described in the resource agreement.

**62. Financial statements**

- (1) Unless the Treasurer approves otherwise, the financial statements referred to in section 61(1)(a) are to be prepared in accordance with the accounting standards and other requirements issued by the Australian Accounting Standards Board.
- (2) Without limiting subsection (1), the financial statements referred to in section 61(1)(a) —
  - (a) are to include any financial statements and information prescribed by the Treasurer's instructions; and
  - (b) are to be certified in the manner prescribed by the Treasurer's instructions.
- (3) In subsection (1) —

*Australian Accounting Standards Board* means the body of that name continued in existence under the Commonwealth *Australian Securities and Investments Commission Act 2001*.

**63. Accountable authority to submit financial reports and other information**

The accountable authority of the office of the Inspector of Custodial Services is to submit to the Auditor General —

- (a) the financial statements and key performance indicators referred to in section 61(1)(a) and (b); and
- (b) any other information referred to in section 61(1)(d) that is required by the Treasurer's instructions to be submitted to the Auditor General under this section.

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*[Schedule 1 inserted by No. 77 of 2006 s. 17.]*

*[Schedule 2 omitted under the Reprints Act 1984 s. 7(4)(e).]*

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## Schedule 3 — Savings and transitional

[s. 57]

### 1. Terms used in this Schedule

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<sup>5</sup>.

### 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.

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**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<sup>2</sup>.

**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.

### Notes

<sup>1</sup> This is a compilation of the *Inspector of Custodial Services Act 2003* and includes the amendments made by the other written laws referred to in the following table <sup>1a</sup>. The table also contains information about any reprint.

#### Compilation table

Short title	Number and year	Assent	Commencement
<i>Inspector of Custodial Services Act 2003</i>	75 of 2003	15 Dec 2003	15 Dec 2003 (see s. 2)
<i>Financial Administration Legislation Amendment Act 2005</i> s. 41	5 of 2005	27 Jun 2005	1 Jan 2006 (see s. 2 and <i>Gazette</i> 23 Dec 2005 p. 6243)
<i>Financial Legislation Amendment and Repeal Act 2006</i> s. 4 and 17	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2(1) and <i>Gazette</i> 19 Jan 2007 p. 137)
<b>Reprint 1: The <i>Inspector of Custodial Services Act 2003</i> as at 20 Apr 2007</b> (includes amendments listed above)			
<i>Statutes (Repeals and Miscellaneous Amendments) Act 2009</i> s. 78	8 of 2009	21 May 2009	22 May 2009 (see s. 2(b))
<i>Acts Amendment (Bankruptcy) Act 2009</i> s. 46	18 of 2009	16 Sep 2009	17 Sep 2009 (see s. 2(b))

<sup>1a</sup> 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>Inspector of Custodial Services Amendment Act 2011</i> s. 3-10 <sup>4</sup>	52 of 2011	11 Nov 2011	To be proclaimed (see s. 2(b))

<sup>2</sup> The provision in this Act amending these Acts and regulations has been omitted under the *Reprints Act 1984* s. 7(4)(e).

<sup>3</sup> Repealed by the *Corruption and Crime Commission Amendment and Repeal Act 2003*.

Under the *Corruption and Crime Commission Amendment and Repeal Act 2003* Pt. 3 Div. 3 Subdiv. 2 s. 55, in any written law or document, a reference to the *Anti-Corruption Commission Act 1988* may, if the context permits, be taken as a reference to the *Corruption and Crime Commission Act 2003*.

<sup>4</sup> On the date as at which this compilation was prepared, the *Inspector of Custodial Services Amendment Act 2011* s. 3-10 had not come into operation. They read as follows:

**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),

(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.
- (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),

<sup>5</sup> The provision in this Act repealing the *Prisons Act 1981* Part XA was omitted under the *Reprints Act 1984* s. 7(4)(e).