



# **Inspector of Detention Services Act 2022**

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Queensland

# Inspector of Detention Services Act 2022

## Contents

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		Page
<b>Part 1</b>	<b>Preliminary</b>	
1	Short title . . . . .	5
2	Commencement . . . . .	5
3	Main purpose . . . . .	5
4	Definitions . . . . .	6
5	Meaning of detention service . . . . .	6
6	Meaning of place of detention . . . . .	6
<b>Part 2</b>	<b>Inspector of detention services</b>	
<b>Division 1</b>	<b>Establishment</b>	
7	Inspector of detention services . . . . .	7
<b>Division 2</b>	<b>Functions</b>	
8	Functions . . . . .	7
9	Arranging for suitable person to help carry out review or inspection . . . . .	9
10	Inspector not subject to direction . . . . .	11
<b>Division 3</b>	<b>Powers</b>	
11	General and other powers . . . . .	11
12	Requiring information or attendance of person for review or inspection . . . . .	11
13	Requesting particular information from particular persons . . . . .	12
14	Entering and accessing place of detention . . . . .	13
15	Carrying out review or inspection . . . . .	14
16	Power to require reasonable help for review or inspection . . . . .	16
17	Referral of particular matters to responsible Minister . . . . .	16
<b>Division 4</b>	<b>Relationship with other entities</b>	
18	Relationship with service providers . . . . .	18
19	Relationship to functions under other particular laws . . . . .	18
20	Referral of matter to referral entity . . . . .	19

Contents

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<b>Part 3</b>	<b>Reporting</b>	
<b>Division 1</b>	<b>Annual reporting</b>	
21	Reporting annually on operations .....	21
<b>Division 2</b>	<b>Other reports to Parliament</b>	
22	Preparing reports for Speaker .....	22
23	Public interest considerations .....	23
24	Draft report to notifiable entities .....	25
25	Giving final report to Speaker .....	26
26	Tabling of report .....	26
<b>Part 4</b>	<b>Disclosure of information</b>	
<b>Division 1</b>	<b>Disclosure of information to inspector</b>	
27	Authorisation to disclose relevant information .....	27
28	Disclosure of particular matters not required .....	28
<b>Division 2</b>	<b>Disclosure of information obtained by or for inspector</b>	
29	Definition for division .....	29
30	Confidentiality .....	30
31	Disclosure of information in public interest .....	32
32	Limits on use of confidential information and derived evidence .	33
<b>Part 5</b>	<b>Administration</b>	
33	Appointment of inspector .....	34
34	Control of part of ombudsman office .....	34
35	Administrative support for inspector .....	34
36	Delegation .....	34
37	Officer subject to direction of inspector .....	35
38	Consulting with or engaging professionals and others .....	35
<b>Part 6</b>	<b>Miscellaneous</b>	
<b>Division 1</b>	<b>Offences</b>	
39	Definition for division .....	36
40	Reprisal and grounds for reprisals .....	36
41	Offence for taking reprisal .....	37
42	Giving official false or misleading information .....	37
43	Obstructing official .....	38
<b>Division 2</b>	<b>Identity cards</b>	
44	Definition for division .....	38
45	Issue of identity card .....	38
46	Production or display of identity card .....	39

		Contents
47	Return of identity card .....	39
<b>Division 3 Other provisions</b>		
48	Security and safety considerations .....	39
49	Evidential immunity for individuals complying with particular requirements .....	40
50	Review of Act .....	40
51	Regulation-making power .....	40
<b>Schedule 1</b>	<b>Dictionary</b> .....	41



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# Inspector of Detention Services Act 2022

## An Act to provide for an inspector of detention services

### Part 1 Preliminary

#### 1 Short title

This Act may be cited as the *Inspector of Detention Services Act 2022*.

#### 2 Commencement

This Act commences on a day to be fixed by proclamation.

#### 3 Main purpose

- (1) The main purpose of this Act is to promote the improvement of detention services and places of detention with a focus on—
  - (a) promoting and upholding the humane treatment of detainees, including humane conditions of their detention; and
  - (b) preventing detainees from being subjected to harm, including torture and cruel, inhuman or degrading treatment.
- (2) The main purpose is to be achieved by providing a framework for—
  - (a) the review of detention services and inspection of places of detention; and
  - (b) independent and transparent reporting.

## 4 Definitions

The dictionary in schedule 1 defines particular words used in this Act.

## 5 Meaning of *detention service*

- (1) Each of the following is a *detention service*—
  - (a) the operation, management, direction, control or security of a place of detention;
  - (b) the security, management, control, safety, care or wellbeing (including health care and education) of a detainee at a place of detention;
  - (c) the transport of a detainee while in the custody of a relevant custodial entity—
    - (i) from any place of detention; or
    - (ii) to a place of detention other than a watch-house; or
    - (iii) to a watch-house from a court in which the detainee has appeared or another watch-house or place of detention.
- (2) However, a *detention service* does not include the transport of a person by an authorised person under the *Mental Health Act 2016*, section 359 between a place of detention and an authorised mental health service or public sector health service facility for the purposes of that Act.
- (3) In this section—

*authorised mental health service* see the *Mental Health Act 2016*, schedule 3.

*public sector health service facility* see the *Mental Health Act 2016*, schedule 3.

## 6 Meaning of *place of detention*

Each of the following is a *place of detention*—

- (a) a community corrections centre;
- (b) a prison;
- (c) a watch-house;
- (d) a work camp;
- (e) a youth detention centre.

## **Part 2                    Inspector of detention services**

### **Division 1                Establishment**

#### **7            Inspector of detention services**

- (1) There is to be an inspector of detention services.
- (2) The inspector is an officer of the Parliament.

### **Division 2                Functions**

#### **8            Functions**

- (1) The functions of the inspector are—
  - (a) to review or monitor a detention service at any time; and
  - (b) to inspect a place of detention at any time; and
  - (c) without limiting paragraph (b)—
    - (i) to inspect each youth detention centre at least once every year; and
    - (ii) to inspect each prison that is a secure facility at least once every 5 years; and
    - (iii) to inspect all or a part of a particular place of detention prescribed by regulation at least once every 5 years; and

- (d) to prepare and publish standards in relation to carrying out inspections; and
  - (e) to report to the Legislative Assembly on—
    - (i) each review carried out by the inspector; and
    - (ii) each inspection carried out by the inspector under paragraph (c); and
    - (iii) other inspections carried out by the inspector, as the inspector considers appropriate; and
  - (f) to report to the Legislative Assembly on any matter relating to the functions of the inspector if, in the inspector's opinion, it is in the interest of any person or in the public interest to do so; and
  - (g) to include in any report to the Legislative Assembly advice or recommendations the inspector considers appropriate about a detention service or place of detention; and
  - (h) any other functions conferred on the inspector under this Act or any other Act.
- (2) In carrying out a review or inspection mentioned in subsection (1)(a), (b) or (c), the inspector must have regard to the cultural background or vulnerability of detainees to whom the review or inspection is relevant.
- (3) The inspector may perform any function on the inspector's own initiative.
- (4) The inspector may, but is not required to, perform a function mentioned in subsection (1)(a), (b), (d), (e)(iii), (f), (g) or (h) at the request of—
- (a) the Minister; or
  - (b) a responsible Minister in relation to a relevant matter of interest for the Minister.
- (5) In this section—

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*secure facility* see the *Corrective Services Act 2006*, schedule 4.

## **9 Arranging for suitable person to help carry out review or inspection**

- (1) This section applies if—
  - (a) the inspector is carrying out a review of a detention service or an inspection of a place of detention; and
  - (b) the review or inspection is relevant to a detainee.
- (2) The inspector must, if appropriate and practicable, arrange for a person, whom the inspector considers is a suitable person, to help the inspector carry out the review or inspection.
- (3) Without limiting subsection (2), in considering who is a suitable person for the subsection, the inspector may have regard to—
  - (a) the cultural background or vulnerability of the detainee; or
  - (b) any views or wishes expressed by the detainee about who may be a suitable person to help the inspector carry out the review or inspection.

*Examples of arranging for suitable persons for subsections (2) and (3)—*

- 1 For a review relating to a detainee with a disability, it may be appropriate for the inspector to consult with a parent, legal guardian or close friend of the detainee or a representative from an advocacy services agency whom the inspector considers can help the detainee communicate the detainee's views or wishes relevant to the review.
  - 2 For an inspection involving interviewing a detainee who is unable to speak with reasonable fluency in English, it may be appropriate for the inspector to engage an interpreter who can communicate with the detainee to translate during the interview.
- (4) Subsection (5) applies if the review or inspection relates to a detainee who identifies as an Aboriginal person or Torres Strait Islander.

- (5) Without limiting subsection (2), the inspector must arrange for an appropriate representative for the detainee to help the inspector carry out the review or inspection.
- (6) Subsection (7) applies if the review or inspection relates to the detention of a child.
- (7) Without limiting subsection (2), the inspector must arrange for a person whom the inspector considers has appropriate expertise in the areas of child trauma and the prevention and identification of child sexual abuse to help the inspector carry out the review or inspection.
- (8) In this section—

***appropriate representative***, for a detainee who identifies as an Aboriginal person or Torres Strait Islander, means a person who—

- (a) identifies as an Aboriginal person or Torres Strait Islander; and
- (b) has appropriate authority to speak about Aboriginal tradition or Island custom in relation to the detainee.

***arrange***, for a person to help carry out a review or inspection, includes—

- (a) engage the person to help carry out the review or inspection; and
- (b) consult with the person about a matter relevant to the review or inspection.

***trauma*** includes—

- (a) trauma related to—
  - (i) sexual abuse or suspected sexual abuse; or
  - (ii) violent crime; or
  - (iii) domestic violence; or
  - (iv) neglect; and
- (b) suspected trauma.

## **10 Inspector not subject to direction**

Subject to any other Act or law, the inspector is not subject to direction by any person about the way the inspector performs the inspector's functions under this Act.

## **Division 3 Powers**

### **11 General and other powers**

- (1) The inspector has the power to do all things that are necessary or convenient to be done for or in connection with the performance of the inspector's functions under this Act.
- (2) Without limiting subsection (1), the inspector has the other powers given to the inspector under this Act or another Act.

### **12 Requiring information or attendance of person for review or inspection**

- (1) This section applies if the inspector—
  - (a) is carrying out a review of a detention service or has carried out, or proposes to carry out, an inspection of a place of detention; and
  - (b) believes a person can give information relevant to the review or inspection.
- (2) The inspector may, by notice given to the person, require the person to do either or both of the following—
  - (a) give the inspector the information within a stated reasonable time and in a stated reasonable way;
  - (b) if the person is employed or engaged to provide a detention service for a place of detention—
    - (i) attend before the inspector at a stated reasonable place and time; and

- (ii) answer questions relevant to the review or inspection the inspector reasonably requires to be answered.
- (3) A person of whom a requirement is made under subsection (2) must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

- (4) It is not a reasonable excuse for the person to fail to comply with the requirement on the basis that complying with the requirement might tend to incriminate the person or expose the person to a penalty.

*Note—*

See, however, section 49.

### **13 Requesting particular information from particular persons**

- (1) This section applies if the inspector—
  - (a) is carrying out a review of a detention service provided for a place of detention; or
  - (b) has carried out, or proposes to carry out, an inspection of a place of detention.
- (2) The inspector may ask the responsible officer for the place of detention to give the inspector relevant information about the detention service or place of detention.
- (3) The inspector may ask the health service chief executive of a Hospital and Health Service or the chief executive of the health department to give the inspector relevant information relating to a health service provided by or for the Service or department to a detainee at the place of detention.
- (4) The inspector may ask a person who has provided a service relating to the education of a detainee while the detainee was detained at the place of detention to give the inspector relevant information relating to the service.

- (5) Subsection (4) applies whether the service was provided at, or away from, the place of detention.
- (6) A person of whom a request is made under subsection (2), (3) or (4) must comply with the request unless the person has a reasonable excuse.
- (7) This section does not limit section 12.
- (8) In this section—
  - detainee* includes a former detainee.
  - relevant*, in relation to information, means information the inspector believes is relevant to the review or inspection.

## 14 Entering and accessing place of detention

- (1) The inspector may, at any time, enter a place of detention to—
  - (a) carry out a review of a detention service provided for the place of detention; or
  - (b) carry out an inspection of the place of detention.
- (2) The inspector need not notify the person in charge of the place of detention or any other person of the proposed entry.
- (3) The inspector may require the person in charge of the place of detention or a person involved in providing a detention service for the place of detention to ensure—
  - (a) the inspector is given access to—
    - (i) all parts of the place of detention; and
    - (ii) any vehicle, equipment or other thing used at the place of detention or for providing a detention service; and
  - (b) the inspector is able to talk to any detainee at the place of detention at any time.
- (4) A person of whom a requirement is made under subsection (3) must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

## 15 Carrying out review or inspection

- (1) For carrying out a review of a detention service provided for a place of detention or an inspection of a place of detention, the inspector may—
- (a) inspect or film—
    - (i) any part of the place of detention; or
    - (ii) any vehicle, equipment or other thing used for providing the detention service; and
  - (b) speak to, or privately interview—
    - (i) a detainee; or
    - (ii) a person involved in providing a detention service for the place of detention; or
      - Examples of types of persons for subparagraph (ii)—*
        - a health worker providing a health service to a detainee
        - a contractor providing an educational service to a detainee
    - (iii) for a place of detention that is a community corrections centre, prison or work camp—an official visitor who is assigned to visit the place of detention under the *Corrective Services Act 2006*, section 286; or
    - (iv) another person at the place of detention; and
  - (c) inspect any document relating to—
    - (i) a detainee at the place of detention; or
    - (ii) a person who was a detainee at the place of detention; or
    - (iii) the provision of a detention service for the place of detention; and

- (d) inspect any document or other thing required to be kept by the responsible officer for the place of detention; and
- (e) take an extract from, or copy, a document that may be inspected under paragraph (c) or (d) and remove and keep the extract or copy; and
- (f) produce an image or writing from an electronic document that may be inspected under paragraph (c) or (d); and
- (g) take to, into or onto the place of detention a person mentioned in section 9 or 38 to help the inspector carry out the review or inspection and enable the person to give the help as arranged with the inspector; and
- (h) take to, into or onto the place of detention and use any person, equipment or other thing the inspector reasonably requires for exercising the inspector's powers under this section; and

*Examples of types of equipment for paragraph (h)—*

- a camera
  - a recording device
  - a document scanner
  - an electronic device including software for helping a detainee communicate with the inspector
- (i) remain at the place of detention for the time necessary to carry out the review or inspection.
- (2) Subsection (1)(b)(ii) or (iii) does not prevent the inspector from speaking to a person mentioned in the subparagraph at a place other than the place of detention.
- (3) In this section—

***film*** includes photograph, videotape and record an image in another way.

***privately interview***, a person, means to speak to the person in the absence of, and out of the hearing of, anyone else other than someone who is present with the person's consent.

## **16 Power to require reasonable help for review or inspection**

- (1) This section applies if the inspector is carrying out a review of a detention service provided for a place of detention or an inspection of a place of detention.
- (2) The inspector may require a person involved in providing a detention service for the place of detention to give the inspector reasonable help to exercise a power for carrying out the review or inspection, including, for example, to give information.
- (3) A person of whom a requirement is made under subsection (2) must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

- (4) For a requirement to give information, it is not a reasonable excuse for the person to fail to comply with the requirement on the basis that complying with the requirement might tend to incriminate the person or expose the person to a penalty.

*Note—*

See, however, section 49.

## **17 Referral of particular matters to responsible Minister**

- (1) This section applies if the inspector suspects on reasonable grounds—
  - (a) there is, or has been, a serious risk to the security, management, control, safety, care or wellbeing of a detainee at a place of detention (a *relevant matter*); or
  - (b) a detainee is being, or has been, subjected to torture or cruel, inhuman or degrading treatment at a place of detention (also a *relevant matter*).
- (2) The inspector must give the responsible officer for the place of detention a notice stating—

- (a) that the inspector proposes to refer the relevant matter to a stated responsible Minister (the *relevant responsible Minister*); and
  - (b) details of the facts and circumstances of the relevant matter; and
  - (c) that the responsible officer must, within a stated period of at least 3 days (the *show cause period*), show why the inspector should not refer the relevant matter to the relevant responsible Minister.
- (3) The responsible officer for the place of detention must, within the show cause period, make oral or written submissions or provide evidence about the relevant matter.
  - (4) The inspector must consider any submissions made or evidence provided under subsection (3).
  - (5) After the show cause period has finished, the inspector may—
    - (a) decide to take no further action about the proposed referral; or
    - (b) if the inspector still has a reasonable suspicion about the relevant matter—refer the relevant matter to the relevant responsible Minister.
  - (6) The inspector must give the responsible officer for the place of detention notice of the decision under subsection (5).
  - (7) If the inspector refers the relevant matter to the relevant responsible Minister under subsection (5)(b), the inspector must give advice or make recommendations to the relevant responsible Minister, as the inspector considers appropriate, about the relevant matter.
  - (8) In this section—

*detainee* includes a former detainee.

## Division 4 Relationship with other entities

### 18 Relationship with service providers

(1) The inspector may enter into an arrangement with a service provider about the performance of a function of the inspector in relation to a detention service or another service provided by or for the service provider.

(2) In this section—

*service provider* means—

- (a) the chief executive (corrective services); or
- (b) the commissioner of the police service; or
- (c) the chief executive of the department in which the *Youth Justice Act 1992* is administered; or
- (d) the person in charge of another entity responsible for providing a service to a detainee.

*Examples of a person for paragraph (d)—*

- the health service chief executive of a Hospital and Health Service
- the chief executive of the health department
- the chief executive of the department in which the *Education (General Provisions) Act 2006* is administered

### 19 Relationship to functions under other particular laws

(1) The inspector must ensure the inspector's functions are performed in a way that does not delay, interfere with or duplicate—

- (a) an inspector under the *Corrective Services Act 2006* performing a function under section 294(2) of that Act; or
- (b) a police officer investigating a criminal offence; or

- (c) a person performing a function under any of the following Acts—
  - (i) the *Auditor-General Act 2009*;
  - (ii) the *Coroners Act 2003*;
  - (iii) the *Crime and Corruption Act 2001*;
  - (iv) the *Family and Child Commission Act 2014*;
  - (v) the *Guardianship and Administration Act 2000*;
  - (vi) the *Health Ombudsman Act 2013*;
  - (vii) the *Hospital and Health Boards Act 2011*;
  - (viii) the *Human Rights Act 2019*;
  - (ix) the *Mental Health Act 2016*;
  - (x) the *Ombudsman Act 2001*;
  - (xi) the *Public Guardian Act 2014*.
- (2) The inspector may enter into an arrangement with a person mentioned in subsection (1)(a), (b) or (c) to help avoid delay and unnecessary duplication of statutory functions of the parties to the arrangement.

## 20 Referral of matter to referral entity

- (1) The inspector may enter into an arrangement with a referral entity relating to—
  - (a) matters the subject of an action under the entity's authorising Act about which the entity will notify the inspector; and
  - (b) matters about which the inspector will notify the entity that could be made the subject of an action under the entity's authorising Act; and
  - (c) the handling of a review, inspection or other matter by the inspector that could be dealt with by the entity under the entity's authorising Act.

- (2) Subject to subsection (5), the inspector and the referral entity may perform their functions in accordance with an arrangement entered into under subsection (1).
- (3) Subsection (4) applies if the inspector considers a matter can be more appropriately dealt with by a referral entity other than the inspector.
- (4) The inspector may decide not to perform a function in relation to the matter and refer the matter to the referral entity.
- (5) If the inspector considers the matter may be dealt with by the referral entity as a complaint under the referral entity's authorising Act, the inspector may refer the matter under subsection (4) only with the consent of the person who would be the complainant if the referral entity dealt with the matter.
- (6) Nothing in this section requires a referral entity to deal with a matter referred under subsection (4).
- (7) In this section—

***action*** includes a complaint, inquiry and investigation.

***authorising Act***, of a referral entity, means the Act in relation to which the referral entity is mentioned in the definition *referral entity*, paragraphs (a) to (d).

***referral entity*** means—

- (a) the health ombudsman under the *Health Ombudsman Act 2013*; or
- (b) the human rights commissioner acting under the *Human Rights Act 2019*; or
- (c) the ombudsman under the *Ombudsman Act 2001*; or
- (d) the public guardian under the *Public Guardian Act 2014*.

## Part 3 Reporting

### Division 1 Annual reporting

#### 21 Reporting annually on operations

- (1) As soon as practicable after the end of each financial year, but no later than 31 October, the inspector must give the Speaker and the Minister a report about the inspector's operations during the preceding financial year (the *reporting period*).
- (2) The report must include—
  - (a) a description of the functions performed by the inspector during the reporting period; and
  - (b) any recommendations for changes in the law of the State the inspector considers should be made, or for administrative action the inspector considers should be taken, as a result of the performance of the inspector's functions; and
  - (c) for each recommendation made by the inspector whether during the reporting period or previously—an evaluation of any action taken in response to the recommendation during the reporting period; and
  - (d) for a ministerial request made during the reporting period or made previously but not finally dealt with by the inspector—
    - (i) a description of the request; and
    - (ii) a description of any action the inspector has taken in response to the request during the reporting period; and
    - (iii) if the inspector has decided not to take any action or further action in response to the request—a statement of the reasons for the decision; and

- (e) a description of any referral of a relevant matter to a responsible Minister under section 17(5)(b) made during the reporting period.
- (3) The Speaker must table a copy of the report in the Legislative Assembly within 14 sitting days after receiving the report.
- (4) In this section—  
*ministerial request* means a request made by a Minister under section 8(4) for the inspector to perform a function.

## Division 2                      Other reports to Parliament

### 22            Preparing reports for Speaker

- (1) The inspector must prepare the following reports for the Speaker—
  - (a) a report about each review of a detention service that is carried out;
  - (b) a report about each mandatory inspection of a place of detention that is carried out.
- (2) The inspector may prepare a report for the Speaker about—
  - (a) an inspection, other than a mandatory inspection, that is carried out; or
  - (b) the performance of another function as the inspector considers appropriate.
- (3) A report prepared under subsection (1) or (2)—
  - (a) may address—
    - (i) a review of 1 or more detention services relating to 1 or more places of detention; and
    - (ii) a review of a matter relating to 1 or more detention services or places of detention; and

- (b) must include any recommendations of the inspector relating to—
  - (i) taking action to promote the improvement of detention services and places of detention; or
  - (ii) changing a law of the State, or administrative actions relevant to detention services or places of detention; or
  - (iii) changing infrastructure at particular places of detention.
- (4) In this section—

*mandatory inspection* means an inspection mentioned in section 8(1)(c)(i), (ii) or (iii).

## 23 Public interest considerations

- (1) For preparing a report under section 22(1) or (2), the inspector must consider whether any information in the report must be kept confidential because—
  - (a) there are public interest considerations against disclosing the information; and
  - (b) those considerations outweigh the public interest in favour of disclosing the information.
- (2) There is a public interest against disclosing the information if disclosing it could reasonably be expected to have any of the following effects—
  - (a) undermining security or good order at a place of detention;
  - (b) helping anyone in escaping or attempting to escape from detention;
  - (c) prejudicing national security;
  - (d) revealing or tending to reveal the identity of a person disclosing information to the inspector or undermining the future supply of information to the inspector;

- (e) identifying or allowing the identification of—
    - (i) any person who is, or was, detained at a place of detention; or
    - (ii) a relative of a person mentioned in subparagraph (i);
  - (f) undermining any system or procedure for protecting the life, health or safety of a detainee at a place of detention;
  - (g) identifying or allowing the identification of a corrective services officer, police officer (including a watch-house manager), watch-house officer, youth justice staff member or another person who is, or was, working at a place of detention;
  - (h) undermining any system or procedure for protecting the life, health or safety of a person mentioned in paragraph (g) who is working at a place of detention.
- (3) The following matters must not be taken into account in deciding whether there is a public interest against disclosing the information—
- (a) causing embarrassment to, or a loss of confidence in, the Government;
  - (b) the possibility that the information may be misunderstood or misinterpreted by a person.
- (4) In this section—

***corrective services officer*** see the *Corrective Services Act 2006*, schedule 4.

***national security*** means national security within the meaning of the *National Security Information (Criminal and Civil Proceedings) Act 2004* (Cwlth).

***youth justice staff member*** see the *Youth Justice Act 1992*, section 59B.

## 24 Draft report to notifiable entities

- (1) This section applies if the inspector prepares a report under section 22(1) or (2).
- (2) At least 6 weeks before giving the report to the Speaker under section 25, the inspector must give each notifiable entity for the report—
  - (a) a copy of the draft report; and
  - (b) a notice stating—
    - (i) that the person may make submissions under subsection (4); and
    - (ii) a reasonable period (the *submission period*) in which the person must make any submissions to the inspector under subsection (4).
- (3) The inspector may also give a copy of the draft report to another person the inspector considers has an interest in the subject matter of the report.
- (4) A notifiable entity given a copy of the draft report under subsection (2) may make written submissions to the inspector in response to the report in the submission period.
- (5) If a notifiable entity makes submissions under subsection (4), the inspector must—
  - (a) consider the submissions; and
  - (b) reproduce the submissions, or include a statement reflecting the submissions, in the final report.
- (6) The inspector may, if the inspector considers it appropriate, amend the report in response to a submission made under subsection (4).
- (7) In this section—

*notifiable entity*, for a report prepared under section 22(1) or (2), means each of the following—

  - (a) the Minister;

- (b) for a report relating to a relevant matter of interest for a responsible Minister—the responsible Minister;
- (c) for a report relating to a matter relevant to a place of detention that is a community corrections centre, prison or work camp, or a detention service provided for the place of detention—the chief executive (corrective services);
- (d) for a report relating to a matter relevant to a watch-house or a detention service provided for a watch-house—the commissioner of the police service;
- (e) for a report relating to a matter relevant to a youth detention centre or a detention service provided for a youth detention centre—the chief executive of the department in which the *Youth Justice Act 1992* is administered;
- (f) for a report disclosing information or setting out an opinion that is expressly or impliedly critical of another person or public sector entity—that person or entity.

## **25 Giving final report to Speaker**

The inspector must—

- (a) give a report prepared under section 22(1) or (2) to the Speaker; and
- (b) give a copy of the report to each notifiable entity for the report.

## **26 Tabling of report**

- (1) The Speaker must table a report given under section 25 in the Legislative Assembly on the next sitting day after the Speaker receives the report.
- (2) If the Speaker receives the report when the Legislative Assembly is not sitting, the Speaker must deliver the report to the Clerk of the Parliament.

- (3) The Clerk must authorise the report to be published.
- (4) A report published under subsection (3) is taken, for all purposes, to have been tabled in and published by order of the Legislative Assembly and is to be granted all the immunities and privileges of a report so tabled and published.

## **Part 4                      Disclosure of information**

### **Division 1                  Disclosure of information to inspector**

#### **27                      Authorisation to disclose relevant information**

- (1) A person is authorised to disclose to the inspector any information that is relevant to the inspector performing a function under this Act.
- (2) Without limiting subsection (1)—
  - (a) an informed person within the meaning of the *Corrective Services Act 2006*, section 341(1), including, for example, an official visitor, may disclose confidential information within the meaning of section 341 of that Act to the inspector; and
  - (b) a person mentioned in the *Police Service Administration Act 1990*, section 10.1 may disclose information mentioned in that section to the inspector; and
  - (c) a person mentioned in the *Youth Justice Act 1992*, section 287 may disclose confidential information within the meaning of part 9 of that Act to the inspector; and
  - (d) a person mentioned in the *Public Guardian Act 2014*, section 140(2) may disclose confidential information within the meaning of that Act to the inspector.
- (3) Also, without limiting subsection (1)—

- (a) the inspector may ask a person to whom the *Police Service Administration Act 1990*, section 5AA.14(1)(a)(i) and (b) applies to disclose relevant information about someone else; and
- (b) the person may disclose the relevant information to the inspector.

*Note—*

See also the *Hospital and Health Boards Act 2011*, section 157A, the *Mental Health Act 2016*, section 785A and the *Ombudsman Act 2001*, section 91A.

- (4) In this section—

*relevant information* see the *Police Service Administration Act 1990*, section 1.4.

## **28 Disclosure of particular matters not required**

- (1) This Act does not require or authorise a person—
  - (a) to give any information or answer any question relating to proceedings of Cabinet or a committee of Cabinet; or
  - (b) to produce or inspect a document to the extent it relates to proceedings mentioned in paragraph (a).
- (2) For subsection (1), a certificate issued by the chief executive of a department administered by the Premier, with the Premier's approval, certifying that any information or question, or any document or part of a document, relates to any proceedings mentioned in subsection (1) is conclusive of the fact so certified.
- (3) The inspector must not require any information or answer to be given, or any document or thing to be produced, if the Attorney-General certifies in writing that the giving of the information or answer, or the production of the document or thing, might prejudice the security of the State or the investigation or detection of offences.
- (4) In this section—

*information* does not include a document.

## **Division 2                    Disclosure of information obtained by or for inspector**

### **29            Definition for division**

In this division—

*confidential information*—

- (a) includes—
  - (i) generally, information about a person’s affairs; and
  - (ii) information that is confidential information under—
    - (A) the *Corrective Services Act 2006*, section 341; or
    - (B) the *Hospital and Health Boards Act 2011*, section 139; or
    - (C) the *Youth Justice Act 1992*, section 284; and
  - (iii) information mentioned in the *Police Powers and Responsibilities Act 2000*, section 803(2); and
  - (iv) personal information under the *Mental Health Act 2016*, section 776; but
- (b) does not include—
  - (i) information already publicly disclosed unless further disclosure of the information is prohibited by law; or
  - (ii) statistical or other information that could not reasonably be expected to result in the identification of the person to whom the information relates.

### 30 Confidentiality

- (1) This section applies to a person who—
  - (a) is, or has been, any of the following persons—
    - (i) the inspector;
    - (ii) an officer of the ombudsman involved in the administration of this Act (a *relevant officer of the ombudsman*);
    - (iii) a person mentioned in section 9 whom the inspector has arranged to help carry out a review or inspection;
    - (iv) a person mentioned in section 38 whom the inspector has consulted with or engaged to help the inspector perform the inspector's functions; and
  - (b) in that capacity, has acquired or has had access to confidential information.
- (2) The person must not disclose the confidential information to anyone else, or use the information, other than under this section.

Maximum penalty—100 penalty units.
- (3) Subject to section 32, a person mentioned in subsection (1) may disclose or use the confidential information to the extent the disclosure or use is—
  - (a) necessary to perform the person's functions under or relating to this Act; or
  - (b) otherwise required or permitted under this Act or another law.
- (4) Also, the inspector or a relevant officer of the ombudsman may disclose or use the confidential information—
  - (a) for confidential information about a person who is an adult—
    - (i) with the person's consent; or

- (ii) if the person is unable to consent—with the consent of a legal guardian of the person; or
  - (b) for confidential information about a child—
    - (i) with the consent of the child, if the child has been told—
      - (A) the information to be disclosed or used; and
      - (B) the reason for the disclosure or use; and
      - (C) for disclosure of the information—to whom it is to be disclosed; or
    - (ii) with the consent of a parent or legal guardian of the child.
- (5) Further, the inspector may disclose the confidential information—
  - (a) to a person mentioned in section 9 for helping the inspector carry out a review or inspection, to the extent the disclosure is necessary to help carry out the review or inspection; or
  - (b) to a referral entity for—
    - (i) performing a function of the inspector in accordance with an arrangement entered into with the entity under section 20(1); or
    - (ii) referring a matter to the entity under section 20(4); or
  - (c) for disclosing information in the public interest under section 31; or
  - (d) to a person mentioned in section 38 for helping the inspector perform a function, to the extent the disclosure is necessary to help perform the function.
- (6) A person mentioned in subsection (1), other than a person who is the inspector or a relevant officer of the ombudsman, may also disclose or use the confidential information under

subsection (4)(a) or (b), but only with the consent of the inspector or a relevant officer of the ombudsman.

### **31 Disclosure of information in public interest**

- (1) The inspector may disclose information to any person or the public in relation to the performance of a function of the inspector if the inspector believes on reasonable grounds disclosing the information is in the interests of any person or is otherwise in the public interest.
- (2) For deciding whether to disclose information under subsection (1), the inspector must consider whether all or part of the information must be kept confidential because—
  - (a) there are public interest considerations against disclosing the information; and
  - (b) those considerations outweigh the public interest in favour of disclosing the information.
- (3) Section 23(2) and (3) applies for deciding whether there are public interest considerations against disclosing the information.
- (4) If the information to be disclosed under subsection (1) includes an opinion that is expressly or impliedly critical of a person or a public sector entity (each an *affected entity*), the inspector must notify the affected entity before disclosing the information, if practicable to do so.
- (5) Subsection (4) does not apply if—
  - (a) the information is disclosed in a report prepared under section 22(1) or (2); and
  - (b) the affected entity is a notifiable entity for the report; and
  - (c) the inspector has given the affected entity a copy of the draft report under section 24(2).

## 32 Limits on use of confidential information and derived evidence

- (1) This section applies in relation to—
  - (a) confidential information that a person mentioned in section 30(1)(a) has acquired, or to which the person has had access, under section 30(1)(b); or
  - (b) any information or other thing obtained as a direct or indirect result of confidential information to which paragraph (a) applies (*derived evidence*).
- (2) The confidential information or derived evidence—
  - (a) can not be accessed under any order, whether of a judicial or administrative nature; and
  - (b) is not admissible in any proceeding.
- (3) A person can not be compelled to produce the confidential information or derived evidence, or give evidence relating to the confidential information or derived evidence—
  - (a) in any proceeding; or
  - (b) in compliance with a requirement under an Act or legal process.
- (4) In this section—

*order* includes—

  - (a) a direction; and
  - (b) a decision on an application under an Act for access to information; and

*Example of an application for paragraph (b)—*  
an application under the *Right to Information Act 2009*

  - (c) another process.

## Part 5 Administration

### 33 Appointment of inspector

The ombudsman is appointed as the inspector of detention services under the *Ombudsman Act 2001*, section 58(2) for the term mentioned in section 61 of that Act.

*Note—*

The *Ombudsman Act 2001*, part 7 provides for matters relating to the appointment of the inspector.

### 34 Control of part of ombudsman office

The inspector controls the ombudsman office to the extent that officers of the ombudsman are involved, and other resources of the office are used, exclusively in the administration of this Act.

### 35 Administrative support for inspector

The ombudsman office must give the inspector the administrative support services the inspector requires to perform the inspector's functions effectively.

*Note—*

The *Ombudsman Act 2001*, part 8 provides for other matters relating to the administration of the ombudsman office.

### 36 Delegation

- (1) The inspector may delegate the inspector's functions under this Act to an appropriately qualified officer of the ombudsman.
- (2) However—
  - (a) the inspector may not delegate a function mentioned in section 8(1)(e), (f) or (g); and

- (b) the inspector may not delegate a function to an officer of the ombudsman to whom the ombudsman has delegated a function under the *Ombudsman Act 2001*.
- (3) For delegating functions to persons under subsection (1), the inspector must take into account the desirability of delegates—
- (a) having a range of knowledge, experience or skills relevant to the performance of the functions of the inspector; and
- (b) reflecting the social and cultural diversity of, and vulnerabilities within, the population of detainees in the State, including representing persons who identify as Aboriginal persons or Torres Strait Islanders.

### **37 Officer subject to direction of inspector**

- (1) An officer of the ombudsman to whom a function is delegated under section 36 is subject to the direction of the inspector in performing the function or exercising a power under this Act.
- (2) An officer of the ombudsman, other than an officer mentioned in subsection (1), is subject to the direction of the inspector to the extent the officer is involved in the administration of this Act.

### **38 Consulting with or engaging professionals and others**

To help the inspector perform the inspector's functions, the inspector may consult with or engage—

- (a) a person who has professional skills or expertise the inspector considers appropriate; or

*Examples of a person for paragraph (a)—*

- a lawyer
- a medical practitioner
- a person who has professional experience of working with vulnerable persons, including, for example, children

- (b) a person who has other skills or experience the inspector considers appropriate.

*Example of a person for paragraph (b)—*

a person who has experience of the effects of detention as a former detainee, or as a family member or close friend of a former detainee, and whom the inspector considers can use that experience to—

- (a) communicate appropriately and effectively with detainees; and  
(b) give the inspector insight into the effects of detention on detainees and their communities

## Part 6 Miscellaneous

### Division 1 Offences

#### 39 Definition for division

In this division—

*official* means—

- (a) the inspector; or  
(b) an officer of the ombudsman involved in the administration of this Act.

#### 40 Reprisal and grounds for reprisals

- (1) A person must not cause, or attempt or conspire to cause, detriment to another person because, or in the belief that, any person has provided or may provide information or other assistance to an official.
- (2) An attempt to cause detriment includes an attempt to induce a person to cause detriment.
- (3) A contravention of subsection (1) is a reprisal or the taking of a reprisal.

- (4) A ground mentioned in subsection (1) as the ground for a reprisal is the unlawful ground for the reprisal.
- (5) For the contravention mentioned in subsection (3) to happen, it is sufficient if the unlawful ground is a substantial ground for the act or omission that is the reprisal, even if there is another ground for the act or omission.
- (6) In this section—  
*detriment*, to a person, includes—
  - (a) prejudice to the person’s safety; and
  - (b) prejudice to the person’s career, including, for example, dismissal of the person from the person’s employment.

#### **41 Offence for taking reprisal**

A person who takes a reprisal commits an offence.

Maximum penalty—100 penalty units.

#### **42 Giving official false or misleading information**

- (1) A person must not, in relation to the administration of this Act, give an official information that the person knows is false or misleading in a material particular.  
Maximum penalty—100 penalty units.
- (2) Subsection (1) applies to information whether or not the information was given in response to a specific power under this Act.
- (3) Subsection (1) does not apply to a person if the person, when giving information in a document—
  - (a) tells the official, to the best of the person’s ability, how the document is false or misleading; and
  - (b) if the person has, or can reasonably obtain, the correct information—gives the correct information.

### **43 Obstructing official**

- (1) A person must not obstruct an official exercising a power, or someone helping an official exercising a power, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

- (2) If a person has obstructed an official, or someone helping an official, and the official decides to proceed with the exercise of the power, the official must warn the person that—
- (a) it is an offence to cause an obstruction unless the person has a reasonable excuse; and
  - (b) the official considers the person’s conduct an obstruction.
- (3) In this section—

*obstruct* includes hinder, resist, attempt to obstruct and threaten to obstruct.

## **Division 2 Identity cards**

### **44 Definition for division**

In this division—

*officer* means an officer of the ombudsman involved in performing a function mentioned in section 8(1)(a), (b) or (c).

### **45 Issue of identity card**

- (1) The inspector must issue an identity card to each officer.
- (2) The identity card must—
- (a) contain a recent photograph of the officer; and
  - (b) contain a copy of the officer’s signature; and
  - (c) identify the person as an officer under this division; and

- (d) state an expiry date for the card.

#### **46 Production or display of identity card**

- (1) In exercising a power in relation to another person in the other person's presence, an officer must—
  - (a) produce the officer's identity card for the other person's inspection before exercising the power; or
  - (b) have the identity card displayed so it is clearly visible to the other person when exercising the power.
- (2) However, if it is not practicable to comply with subsection (1), the officer must produce the identity card for the other person's inspection at the first reasonable opportunity.

#### **47 Return of identity card**

If the appointment of a person as an officer ends, the person must return the person's identity card to the inspector within 14 days after the appointment ends unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.

### **Division 3 Other provisions**

#### **48 Security and safety considerations**

When performing a function under this Act at, or relating to, a place of detention, a person must have regard to—

- (a) the good order and security of the place of detention; and
- (b) the safety of any person at, or whose work is connected with, the place of detention.

**49      **Evidential immunity for individuals complying with particular requirements****

- (1) Subsection (2) applies if an individual gives information to the inspector in response to a requirement made by the inspector under section 12(2) or 16(2).
- (2) Evidence of the information, and other evidence directly or indirectly derived from the information, is not admissible against the individual in any proceeding to the extent it tends to incriminate the individual, or expose the individual to a penalty, in the proceeding.
- (3) Subsection (2) does not apply to a proceeding about the false or misleading nature of the information or anything in which the false or misleading nature of the information is relevant evidence.

**50      **Review of Act****

- (1) The Minister must, as soon as practicable after the day that is 5 years after the commencement, review this Act to determine whether—
  - (a) the policy objectives of the Act remain valid; and
  - (b) the provisions of the Act remain appropriate for achieving the objectives.
- (2) As soon as practicable after finishing the review, the Minister must table a report about its outcome in the Legislative Assembly.

**51      **Regulation-making power****

The Governor in Council may make regulations under this Act.

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# Schedule 1      Dictionary

## section 4

***community corrections centre*** see the *Corrective Services Act 2006*, schedule 4.

***confidential information***, for part 4, division 2, see section 29.

***detainee***—

- (a) generally means a person who is detained in the custody of a relevant custodial entity at a place of detention; and
- (b) includes a person being transported to or from a place of detention while in the custody of a relevant custodial entity.

***detention service*** see section 5.

***disclose*** includes give access to.

***health department*** means the department in which the *Hospital and Health Boards Act 2011* is administered.

***health service*** means a health service under the *Hospital and Health Boards Act 2011*, section 15.

***health service chief executive*** see the *Hospital and Health Boards Act 2011*, schedule 2.

***Hospital and Health Service*** means a Hospital and Health Service established under the *Hospital and Health Boards Act 2011*, section 17.

***information*** includes a document.

***inspection***, of a place of detention, means an inspection of the place of detention under section 8(1)(b) or (c).

***inspector*** means the inspector of detention services under this Act.

***notice*** means written notice.

**notifiable entity**, for a report prepared under section 22(1) or (2), see section 24(7).

**officer**, for part 6, division 2, see section 44.

**officer of the ombudsman** see the *Ombudsman Act 2001*, schedule 3.

**official**, for part 6, division 1, see section 39.

**official visitor** see the *Corrective Services Act 2006*, schedule 4.

**ombudsman office** means the Office of the Ombudsman established under the *Ombudsman Act 2001*, section 73.

**place of detention** see section 6.

**prison** see the *Corrective Services Act 2006*, schedule 4.

**public sector entity** means—

- (a) a department or part of a department; or
- (b) a government owned corporation; or
- (c) an agency, authority, commission, corporation, instrumentality, office, or other entity, established under an Act for a public or State purpose.

**relevant custodial entity** means—

- (a) the chief executive (corrective services); or
- (b) the chief executive of the department in which the *Youth Justice Act 1992* is administered; or
- (c) the commissioner of the police service; or
- (d) a police officer, including a watch-house manager; or
- (e) a watch-house officer.

**relevant matter of interest**, for a responsible Minister, means—

- (a) for the responsible Minister administering the *Corrective Services Act 2006*—a matter relating to a place of detention that is a community corrections centre, prison or work camp or to a detention service provided for the place of detention; or

- (b) for the responsible Minister administering the *Police Service Administration Act 1990*—a matter relating to a watch-house or to a detention service provided for a watch-house; or
- (c) for the responsible Minister administering the *Youth Justice Act 1992*—a matter relating to a youth detention centre or to a detention service provided for a youth detention centre.

**responsible Minister** means—

- (a) the Minister administering the *Corrective Services Act 2006*; or
- (b) the Minister administering the *Police Service Administration Act 1990*; or
- (c) the Minister administering the *Youth Justice Act 1992*.

**responsible officer**, for a place of detention, means—

- (a) for a place of detention that is a community corrections centre, prison or work camp—the chief executive (corrective services); or
- (b) for a place of detention that is a watch-house—the commissioner of the police service; or
- (c) for a place of detention that is a youth detention centre—the chief executive of the department in which the *Youth Justice Act 1992* is administered.

**review**, of a detention service, means a review of the detention service under section 8(1)(a).

**watch-house manager** see the *Police Powers and Responsibilities Act 2000*, schedule 6.

**watch-house officer** means a person who is appointed to be a watch-house officer under the *Police Service Administration Act 1990*, section 5.18.

**work camp** see the *Corrective Services Act 2006*, schedule 4.

**youth detention centre** means a detention centre under the *Youth Justice Act 1992*.