



New South Wales

Correctional Centres Amendment (Inspector-General) Act 1997 No 18

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Correctional Centres Act 1952 No 9	2
4 Amendment of other Acts	2

Schedules

1 Amendment of Correctional Centres Act 1952	3
2 Amendment of other Acts	16



New South Wales

Correctional Centres Amendment (Inspector-General) Act 1997 No 18

Act No 18, 1997

An Act to amend the *Correctional Centres Act 1952* to establish the position of Inspector-General of Corrective Services and to specify the functions of that position; to make related amendments to certain other Acts; and for other purposes. [Assented to 12 June 1997]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Correctional Centres Amendment (Inspector-General) Act 1997*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Correctional Centres Act 1952 No 9

The *Correctional Centres Act 1952* is amended as set out in Schedule 1.

4 Amendment of other Acts

Each Act mentioned in Schedule 2 is amended as set out in that Schedule.

Schedule 1 Amendment of Correctional Centres Act 1952

(Section 3)

[1] Section 4 Definitions

Insert in alphabetical order in section 4 (1):

Department means the Department of Corrective Services.

ICAC means the Independent Commission Against Corruption constituted by the *Independent Commission Against Corruption Act 1988*.

Inspector-General means the Inspector-General appointed under section 11B.

Parole Board means the Parole Board constituted by the *Sentencing Act 1989*.

[2] Section 8A Official Visitors

Insert after section 8A (4):

(4A) The Minister may refer a report received under this section to the Inspector-General for investigation or comment.

[3] Part 2A

Insert after Part 2:

Part 2A Inspector-General of Corrective Services

Division 1 Appointment of Inspector-General and staff

11B Inspector-General of Corrective Services

(1) The Governor may appoint an Inspector-General of Corrective Services.

- (2) The following persons are not eligible to be appointed as Inspector-General:
 - (a) a person who is, or has been within the previous 3 years, employed as an officer or temporary employee of the Department,
 - (b) a person who is to any extent responsible for the management of, or who is employed at or in connection with, a correctional centre,
 - (c) a person who has, or who has had, any interest in an agreement under Part 6A.
- (3) Schedule 3 has effect with respect to the Inspector-General.

11C Staff of Inspector-General

- (1) Such staff as may be necessary to assist the Inspector-General may be employed under Part 2 of the *Public Sector Management Act 1988*.
- (2) The Inspector-General may engage consultants for the purposes of giving expert advice.
- (3) The Inspector-General may arrange for the use of the services of any staff (by secondment or otherwise) or facilities of the Department, any other government department or a public or local authority.
- (4) For the purposes of this Act, a person who is a member of staff referred to in subsection (1) or whose services are made use of under this section is taken to be an officer of the Inspector-General.

Division 2 Functions of Inspector-General

11D Definitions

In this Division:

correctional centre includes a correctional centre that is being managed under an agreement in accordance with Part 6A.

Department includes a correctional centre.

officer of the Department includes a correctional officer or a person employed for the purposes of an agreement in accordance with Part 6A.

11E Principal functions of Inspector-General

- (1) The principal functions of the Inspector-General are (subject to this Part):
 - (a) to investigate any aspect of the operations of the Department or any conduct of officers of the Department, and
 - (b) to investigate and attempt to resolve complaints made by any person relating to matters within the administration of the Department, and
 - (c) to encourage the mediation and informal resolution of complaints relating to matters within the administration of the Department, and
 - (d) to train Official Visitors appointed under section 8A, and
 - (e) to examine reports of Official Visitors referred to the Inspector-General by the Minister and to investigate or comment on those reports, and
 - (f) to examine reports received from monitors appointed under section 31E and to investigate or comment on those reports, and
 - (g) to examine reports received from the Community Advisory Council appointed under section 31E and make recommendations to the Minister in relation to those reports, and
 - (h) to investigate a matter within the administration of the Department if directed to do so by the Minister, and
 - (i) to promote integrity and professionalism among officers of the Department, and

- (j) to assess the effectiveness and appropriateness of the procedures of the Department, and
 - (k) to provide independent monitoring and auditing of contracts entered into by the Department with private contractors, and
 - (l) to oversee contracts for community-based post-release services, and
 - (m) to make recommendations to the Minister on ways in which the procedures of the Department could be improved, and
 - (n) to facilitate a coroner's inquiries into a death or suspected death in a correctional centre.
- (2) The functions of the Inspector-General relating to the investigation of complaints may be exercised on the Inspector-General's own initiative, at the request of the Minister, in response to a complaint made to the Inspector-General or in response to a reference by the Ombudsman, the ICAC or any other agency.
- (3) The Inspector-General has such other functions as are conferred or imposed on the Inspector-General by or under this or any other Act.

11F Powers of Inspector-General

For the purpose of exercising the Inspector-General's functions, the Inspector-General:

- (a) is entitled to full access to the records of the Department and to take or have copies made of any of them, and
- (b) may visit and examine any premises of the Department at any time the Inspector-General thinks fit, and
- (c) may require officers of the Department to supply information or produce documents or other things about any matter, or any class or kind of matters, relating to the Department's operations or any conduct of officers of the Department, and

- (d) may require officers of the Department to attend before the Inspector-General to answer questions or produce documents or other things relating to the Department's operations or any conduct of officers of the Department, and
- (e) may refer matters relating to the Department or officers of the Department to investigation units within the Department or to other appropriate agencies for consideration or action, and
- (f) may recommend disciplinary action or criminal prosecution against officers of the Department, and
- (g) is entitled to be given access to inmates of correctional centres for the purpose of questioning them and obtaining information from them, and
- (h) may undertake systematic inspections of correctional centres.

11G Incidental powers

The Inspector-General has power to do all things necessary to be done for or in connection with, or reasonably incidental to, the exercise of the Inspector-General's functions. Any specific powers conferred on the Inspector-General by this Act are not taken to limit by implication the generality of this section.

11H Limitations on Inspector-General's functions

- (1) The Inspector-General cannot exercise functions in relation to the following matters:
 - (a) a matter that is the subject of an inquiry under section 10 (3) or 11A,
 - (b) a complaint about the conduct of a public authority that is listed in Schedule 1 to the *Ombudsman Act 1974* as being excluded from the operation of that Act,

- (c) a complaint about a decision, procedure or member of the Parole Board or the Review Council.
- (2) Subsection (1) (b) does not affect the powers of the Inspector-General in relation to the recommendation of disciplinary action or criminal prosecution against officers of the Department.
- (3) If the Inspector-General receives a complaint that would fall within the charter of an investigation unit within the Department, the Inspector-General must refer the complaint to the investigation unit unless directed to deal with the complaint by the Minister.
- (4) Nothing in subsection (3) prevents the Inspector-General from:
 - (a) monitoring the way in which a complaint is dealt with by an investigation unit within the Department, or
 - (b) recommending that the Minister direct investigation of a complaint by the Inspector-General or another investigative body, or
 - (c) requiring a copy of any report by any investigation unit within the Department and making recommendations with respect to the report.
- (5) The Inspector-General must notify the Commissioner if the Inspector-General is directed to deal with a complaint under subsection (3).

11I Discretion of Inspector-General to investigate complaints

- (1) The Inspector-General may decide not to investigate a complaint or to discontinue the investigation of a complaint for any reason that the Inspector-General considers appropriate.
- (2) Without limiting the generality of subsection (1), the Inspector-General may decide not to investigate a complaint or may discontinue the investigation of a complaint if the Inspector-General considers that:

- (a) the complaint is frivolous, vexatious or not in good faith, or
 - (b) the subject-matter of the complaint is trivial, or
 - (c) the conduct complained of occurred at too remote a time to justify investigation, or
 - (d) there is or was available to the complainant an alternative and satisfactory means of redress, or
 - (e) the complainant has no interest or an insufficient interest in the conduct complained of.
- (3) This section does not apply to any matter that is referred to the Inspector-General for investigation or other action under Part 5 of the *Independent Commission Against Corruption Act 1988*.

Division 3 Relationship of Inspector-General with other agencies

11J Relationship with Ombudsman regarding investigations

- (1) **Functions of Inspector-General in relation to matters under Ombudsman Act 1974**
The Inspector-General must not investigate a matter on complaint or on the Inspector-General's own initiative if the matter could be the subject of a complaint under the *Ombudsman Act 1974* until the Inspector-General has entered into arrangements with the Ombudsman under this section.
- (2) **Arrangements may be entered into**
The Inspector-General and the Ombudsman may enter into arrangements regarding:
- (a) matters the subject of a complaint, inquiry, investigation or other action under the *Ombudsman Act 1974* about which the Ombudsman will notify the Inspector-General, and
 - (b) matters about which the Inspector-General will notify the Ombudsman that could be made the subject of such a complaint, inquiry, investigation or other action, and

(c) the handling of such complaints, inquiries, investigations or other matters by the Inspector-General that could be dealt with by the Ombudsman under that Act.

(3) **Arrangements to be observed**

The Inspector-General and the Ombudsman are empowered and required to exercise their functions in conformity with any relevant arrangements entered into under this section.

11K Relationship with ICAC regarding investigations

(1) **Duty of Inspector-General to report corrupt conduct to ICAC**

The Inspector-General has the same duty to report to the ICAC any matter that the Inspector-General suspects on reasonable grounds concerns or may concern corrupt conduct as the principal officer of an authority has under section 11 of the *Independent Commission Against Corruption Act 1988*.

(2) **Functions of Inspector-General in relation to matters under Independent Commission Against Corruption Act 1988**

The Inspector-General must not exercise functions in relation to any such matter unless authorised to do so by arrangements entered into under this section.

(3) **Arrangements may be entered into**

The Inspector-General and the ICAC may enter into arrangements regarding:

(a) matters about which the ICAC will notify the Inspector-General where the ICAC suspects misconduct of an officer of the Department exists, and

(b) the handling of matters by the Inspector-General that may involve misconduct of an officer of the Department and that could be dealt with by the ICAC under that Act.

(4) **Arrangements to be observed**

The Inspector-General and the ICAC are empowered and required to exercise their functions in conformity with any relevant arrangements entered into under this section.

11L Functions of Inspector-General under Protected Disclosures Act 1994

A reference in the *Protected Disclosures Act 1994* to the principal officer of a public authority includes, where the public authority concerned is the Department of Corrective Services, a reference to the Inspector-General.

Division 4 Miscellaneous

11M Reports of Inspector-General

- (1) The Inspector-General must make an annual report in writing to the Minister on the operations of the Inspector-General and must make such other reports to the Minister as the Minister requires.
- (2) The annual report of the Inspector-General is to be included in the annual report of the Department of Corrective Services next following the date that the Inspector-General's report is submitted to the Minister.

11N Obstruction of Inspector-General

A person must not:

- (a) without reasonable excuse, wilfully obstruct, hinder, resist or threaten the Inspector-General or an officer of the Inspector-General in the exercise of functions under this Act, or
- (b) without reasonable excuse, refuse or wilfully fail to comply with any lawful requirement of the Inspector-General or an officer of the Inspector-General, or

- (c) wilfully make any false statement to or mislead, or attempt to mislead, the Inspector-General or an officer of the Inspector-General in the exercise of functions under this Act.

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

11O Protection from liability

A matter or thing done or omitted to be done by the Inspector-General, an officer of the Inspector-General or a person acting under the direction of the Inspector-General does not, if the matter or thing was done or omitted in good faith for the purpose of executing this or any other Act, subject the Inspector-General, officer or person so acting personally to any action, liability, claim or demand.

11P Delegation

The Inspector-General may delegate the exercise of any of the Inspector-General's functions to an officer of the Inspector-General.

11Q Review of Part

- (1) The Minister is to review this Part to evaluate the Inspector-General's contribution to the operation of the State's correctional system.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to the *Correctional Centres Amendment (Inspector-General) Act 1997*.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

11R Expiration of position of Inspector-General

- (1) A person must not be appointed to the position of Inspector-General after the period of 5 years from the commencement of section 11B.

- (2) A person who holds the office of Inspector-General on the day that is 5 years from the commencement of section 11B ceases to hold office on that day.
- (3) Subsections (1) and (2) do not operate if an Act of Parliament, or a resolution of both Houses of Parliament, so provides.

[4] Section 31E Monitoring

Insert after section 31E (4):

- (4A) When making a report to the Commissioner under subsection (4), a monitor must give a copy of the report to the Inspector-General.

[5] Section 31E (9)

Insert after section 31E (8):

- (9) When making a report to the Minister under subsection (8), the Community Advisory Council must give a copy of the report to the Inspector-General.

[6] Section 59 Definition

Omit the definition of *Parole Board*.

[7] Schedule 3

Insert after Schedule 2:

**Schedule 3 Provisions relating to
Inspector-General**

(Section 11B)

1 Acting Inspector-General

- (1) The Minister may, from time to time, appoint a person to act in the office of Inspector-General during the illness or absence of the Inspector-General. The person, while so acting, has all the functions of the Inspector-General and is taken to be the Inspector-General.

- (2) The Minister may, at any time, remove a person from the office to which the person was appointed under this clause.
- (3) A person while acting under this clause is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine.
- (4) For the purposes of this clause, a vacancy in the office of Inspector-General is taken to be an absence from the office of Inspector-General.

2 Basis of office

The office of Inspector-General may be a full-time or part-time office, according to the terms of appointment.

3 Terms of office

Subject to this Schedule, the Inspector-General holds office for such term not exceeding 3 years as may be specified in the instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

4 Remuneration

- (1) The Inspector-General is entitled to be paid:
 - (a) while holding office on a full-time basis, remuneration in accordance with the *Statutory and Other Offices Remuneration Act 1975*, or
 - (b) while holding office on a part-time basis, remuneration as determined by the Minister.
- (2) The Inspector-General is also entitled to be paid such travelling and subsistence allowances as the Minister may from time to time determine in respect of the Inspector-General.

5 Vacancy in office

- (1) The office of Inspector-General becomes vacant if the holder:
 - (a) dies, or
 - (b) completes a term of office and is not re-appointed, or

- (c) resigns the office by instrument in writing addressed to the Minister, or
 - (d) is removed from office by the Governor under subclause (2).
- (2) The Governor may remove a person from the office of the Inspector-General:
- (a) for incapacity, incompetence, misbehaviour or unsatisfactory performance, or
 - (b) if the person becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
 - (c) if the person becomes a mentally incapacitated person, or
 - (d) if the person is convicted in New South Wales of an offence that is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.

6 Filling of vacancy

If the office of Inspector-General becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

7 Public Sector Management Act 1988

The *Public Sector Management Act 1988* does not apply to the appointment of the Inspector-General, and the holder of that office is not, as holder, subject to that Act.

Schedule 2 Amendment of other Acts

(Section 4)

2.1 Defamation Act 1974 No 18

Section 17CB

Insert after section 17CA:

17CB Matters relating to the operation of the Inspector-General of Corrective Services

There is a defence of absolute privilege for a publication:

- (a) to or by the Inspector-General of Corrective Services appointed under the *Correctional Centres Act 1952* as Inspector-General, or
- (b) to or by an officer of the Inspector-General as such an officer.

2.2 Freedom of Information Act 1989 No 5

Schedule 2 Exempt bodies and offices

Insert at the end of Schedule 2:

The office of Inspector-General of Corrective Services—
operational auditing, complaint handling, investigative
and report functions.

**2.3 Statutory and Other Offices Remuneration Act 1975
(1976 No 4)**

Schedule 2—Public offices

Insert at the end of Schedule 2 Part 1:

Full-time Inspector-General of Corrective Services

[Minister's second reading speech made in—
Legislative Assembly on 23 April 1997
Legislative Council on 20 May 1997]