

Inspector of Custodial Services Act 2012 No 55

[2012-55]



New South Wales

Status Information

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Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **See also**
[Courts and Other Legislation Amendment Bill 2014](#)

Authorisation

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New South Wales

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Inspector of Custodial Services Act 2012 No 55



New South Wales

An Act to provide for an Inspector of Custodial Services; and for other purposes.

Part 1 Preliminary

1 Name of Act

This Act is the *Inspector of Custodial Services Act 2012*.

2 Commencement

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

3 Definitions

(1) In this Act:

Corrective Services NSW means that part of the Department comprising the group of staff who are principally involved in the administration of the *Crimes (Administration of Sentences) Act 1999*.

custodial centre means the following:

- (a) a correctional centre (including a juvenile correctional centre, a managed correctional centre and a periodic detention centre),
- (b) a residential facility,
- (c) a transitional centre,
- (d) a juvenile justice centre,

but does not include any police station or court cell complex that is not managed by Corrective Services NSW or Juvenile Justice.

custodial centre staff member means any person employed or engaged to provide custodial services (whether they are employed or engaged at a custodial centre or elsewhere).

custodial service means the following:

- (a) the management, direction, control or security of a custodial centre,
- (b) the security, management, control, safety, care or welfare (including health care) of persons in custody, detained or residing at a custodial centre,
- (c) the transport of persons in custody or otherwise detained to or from a custodial centre by or on behalf of Corrective Services NSW or Juvenile Justice,

but does not include any function of, or service provided by, the NSW Police Force, the Serious Offenders Review Council, the Serious Young Offenders Review Panel or the State Parole Authority.

Department means the Department of Attorney General and Justice.

function includes a power, authority or duty, and **exercise** a function includes perform a duty.

Inspector means the Inspector of Custodial Services, appointed under this Act.

Joint Committee means the joint committee called the Committee on the Office of the Ombudsman and the Police Integrity Commission constituted under the [Ombudsman Act 1974](#).

Juvenile Justice means that part of the Department comprising the group of staff who are principally involved in the administration of the following Acts:

- (a) the [Children \(Community Service Orders\) Act 1987](#),
- (b) the [Children \(Detention Centres\) Act 1987](#),
- (c) the [Children \(Interstate Transfer of Offenders\) Act 1988](#),

and includes the group of staff within the Department who are known as the Juvenile Justice Branch.

juvenile justice centre means a detention centre within the meaning of the [Children \(Detention Centres\) Act 1987](#).

member of staff of the Inspector means a person employed or engaged under section 5.

Official Visitor means an Official Visitor within the meaning of the [Crimes \(Administration of Sentences\) Act 1999](#) or the [Children \(Detention Centres\) Act 1987](#).

- (2) The following terms used in this Act have the same meanings as in the [Crimes \(Administration of Sentences\) Act 1999](#), except in so far as they are defined differently in this Act or the context or subject-matter otherwise indicates or requires:

- (a) correctional centre,

- (b) juvenile correctional centre,
- (c) managed correctional centre,
- (d) periodic detention centre,
- (e) residential facility,
- (f) Serious Offenders Review Council,
- (g) State Parole Authority,
- (h) transitional centre.

(3) Notes included in this Act do not form part of this Act.

Part 2 Inspector of Custodial Services

Division 1 Appointment and staff of Inspector of Custodial Services

4 Inspector of Custodial Services

- (1) The Governor may appoint an Inspector of Custodial Services.
- (2) A person is not to be appointed as Inspector until:
 - (a) a proposal that the person be so appointed has been referred to the Joint Committee under section 18, and
 - (b) the period that the Committee has under that section to veto the proposed appointment has ended without the Committee having vetoed the proposed appointment or the Committee notifies the Minister that it has decided not to veto the proposed appointment.
- (3) A person may be proposed for appointment on more than one occasion.
- (4) In this section, **appointment** includes re-appointment.
- (5) Schedule 1 contains provisions relating to the Inspector.

5 Staff of Inspector

- (1) Staff may be employed under Chapter 1A of the *Public Sector Employment and Management Act 2002* to assist the Inspector.
- (2) The Inspector may engage persons as consultants to the Inspector or to perform services for the Inspector.
- (3) The Inspector may arrange for the use of the services of:
 - (a) any staff or facilities of a Division of the Government Service or a local or public

authority, or

- (b) any staff who are employed by or for or assigned to the person who is the Inspector, in his or her capacity as the holder of some other position (for example, as a Judge).
- (4) The Division Head of a Division in which staff of the Inspector are employed may delegate to the Inspector or a member of staff of the Inspector any of the Division Head's functions under the *Public Sector Employment and Management Act 2002* with respect to those staff (other than this power of delegation).
- (5) Such provisions of this Act as are prescribed by the regulations apply to persons referred to in subsections (1)–(4) in the same way as they apply to staff of the Inspector, with any necessary adaptations and with such modifications as are prescribed.

Division 2 Functions and powers of Inspector of Custodial Services

6 Principal functions of Inspector

- (1) The principal functions of the Inspector are as follows:
 - (a) to inspect each custodial centre (other than juvenile justice centres and juvenile correctional centres) at least once every 5 years,
 - (b) to inspect each juvenile justice centre and juvenile correctional centre at least once every 3 years,
 - (c) to examine and review any custodial service at any time,
 - (d) to report to Parliament on each such inspection, examination or review,
 - (e) to report to Parliament on any particular issue or general 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,
 - (f) to report to Parliament on any particular issue or general matter relating to the functions of the Inspector if requested to do so by the Minister,
 - (g) to include in any report such advice or recommendations as the Inspector thinks appropriate (including advice or recommendations relating to the efficiency, economy and proper administration of custodial centres and custodial services),
 - (h) to oversee Official Visitor programs conducted under the *Crimes (Administration of Sentences) Act 1999* and the *Children (Detention Centres) Act 1987*,
 - (i) to advise, train and assist Official Visitors in the exercise of the functions conferred or imposed on them under those Acts,

(j) such other functions as may be conferred or imposed on the Inspector under this or any other Act.

(2) The functions of the Inspector may be exercised on the Inspector's own initiative, at the request of the Minister or in response to a reference by the Joint Committee or any public authority or public official.

7 Powers of Inspector

The Inspector in the exercise of the Inspector's functions:

- (a) is entitled to full access to the records of any custodial centre (including health records) and may make copies of, or take extracts from, those records and may remove and retain those copies or extracts, and
- (b) may visit and examine any custodial centre at any time the Inspector thinks fit, and
- (c) may require custodial centre staff members to supply information or produce documents or other things relating to any matter, or any class or kind of matters, concerning a custodial centre's operations, and
- (d) may require custodial centre staff members to attend before the Inspector to answer questions or produce documents or other things relating to a custodial centre's operations, and
- (e) may refer matters relating to a custodial centre to other appropriate agencies for consideration or action, and
- (f) is entitled to be given access to persons in custody, detained or residing at any custodial centre for the purpose of communicating with them.

8 Incidental powers

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

Division 3 Relationship of Inspector with other agencies

9 Relationship with Corrective Services NSW, Juvenile Justice and Justice and Forensic Mental Health Network

- (1) The Inspector and the Director-General of the Department may enter into arrangements regarding the exercise of the Inspector's functions in relation to Corrective Services NSW and Juvenile Justice.
- (2) The Inspector and the Chief Executive of the Justice and Forensic Mental Health Network may enter into arrangements regarding the exercise of the Inspector's

functions in relation to that Network.

10 Relationship with Ombudsman

- (1) The Inspector 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, and
 - (b) matters about which the Inspector will notify the Ombudsman that could be made the subject of such a complaint, inquiry, investigation or other action, and
 - (c) the handling of reviews, inspections, investigations or other matters by the Inspector that could be dealt with by the Ombudsman under that Act.
- (2) The Inspector and the Ombudsman are empowered and required to exercise their functions in conformity with any relevant arrangements entered into under this section.

11 Relationship with ICAC

- (1) The Inspector has the same duty to report to the Independent Commission Against Corruption (**the ICAC**) any matter that the Inspector suspects on reasonable grounds concerns or may concern corrupt conduct as the principal officer of a public authority has under section 11 of the *Independent Commission Against Corruption Act 1988*.
- (2) The Inspector must not exercise functions in relation to any such matter unless authorised to do so by arrangements entered into under this section.
- (3) The Inspector and the ICAC may enter into arrangements regarding:
 - (a) matters about which the ICAC will notify the Inspector where the ICAC suspects misconduct of a custodial centre staff member exists, and
 - (b) the handling of matters by the Inspector that may involve misconduct of a custodial centre staff member and that could be dealt with by the ICAC under that Act.
- (4) The Inspector and the ICAC are empowered and required to exercise their functions in conformity with any relevant arrangements entered into under this section.

Division 4 Reports by Inspector

12 Annual reports to Parliament

- (1) The Inspector is required to make, within the period of 4 months after 30 June in each year, a report to Parliament of the Inspector's operations during the year ended on that 30 June.

- (2) A report by the Inspector under this section must include the following:
- (a) a description of the Inspector's activities during that year in relation to each of the Inspector's principal functions,
 - (b) an evaluation of the response of relevant authorities to the recommendations of the Inspector,
 - (c) any recommendations for changes in the laws of the State, or for administrative action, that the Inspector considers should be made as a result of the exercise of the Inspector's functions.

13 Other reports to be provided to Parliament

Any report to Parliament made by the Inspector under this Act is to be made by furnishing the report to the Presiding Officer of each House of Parliament.

14 Furnishing of draft reports to Minister and others

- (1) The Inspector is to provide the Minister with a draft of each report to Parliament to be made by the Inspector under this Act and give the Minister a reasonable opportunity to make submissions, either orally or in writing, in relation to the draft report.
- (2) The Inspector must not make a report to Parliament under this Act that sets out an opinion that is, either expressly or impliedly, critical of a Division of the Government Service (other than an opinion critical of Corrective Services NSW or Juvenile Justice) or any person unless the Inspector has afforded 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 Division of the Government Service—the Division Head,
 - (b) if the opinion relates to another person—the person.
- (3) The Inspector is not bound to amend a report in light of any submissions made by the Minister, a Division Head or other person, but must:
 - (a) before finalising a report, consider any such submissions before the report is furnished to the Presiding Officers, and
 - (b) include in the report a statement that the Minister, the Division Head or other person concerned has made submissions in relation to the Inspector's draft report.

15 Public interest considerations

- (1) The Inspector must not disclose information in a report to Parliament if there is an overriding public interest against disclosure of the information.
- (2) There is an **overriding public interest against disclosure** of information for the purposes of this Act if (and only if) there are public interest considerations against

disclosure and, on balance, those considerations outweigh the public interest considerations in favour of disclosure.

- (3) There are public interest considerations against disclosure of information for the purposes of this Act if disclosure of the information could reasonably be expected to have one or more of the following effects (whether in a particular case or generally):
 - (a) prejudice the supervision of, or facilitate the escape of, any person in lawful custody or detention,
 - (b) prejudice the security, discipline or good order of any custodial centre,
 - (c) prejudice national security (within the meaning of the *National Security Information (Criminal and Civil Proceedings) Act 2004* of the Commonwealth),
 - (d) reveal or tend to reveal the identity of an informant or prejudice the future supply of information from an informant,
 - (e) identify or allow the identification of a person who is or was detained at a juvenile justice centre or in custody in a juvenile correctional centre,
 - (f) endanger, or prejudice any system or procedure for protecting, the life, health or safety of any person who is in custody, detained or residing at a custodial centre (including but not limited to systems or procedures to protect witnesses and other persons who may be separated from other persons at the centre for their safety),
 - (g) identify or allow the identification of a custodial centre staff member or endanger, or prejudice any system or procedure for protecting, the life, health or safety of such a staff member.
- (4) A determination as to whether there is an overriding public interest against disclosure of information is to be made in accordance with the following principles:
 - (a) The fact that disclosure of information might cause embarrassment to, or a loss of confidence in, the Government is irrelevant and must not be taken into account.
 - (b) The fact that disclosure of information might be misinterpreted or misunderstood by any person is irrelevant and must not be taken into account.

16 Provisions relating to reports to Parliament

- (1) A copy of a report furnished to the Presiding Officer of a House of Parliament under this Part is to be laid before that House within 15 sitting days of that House after it is received by the Presiding Officer.
- (2) The Inspector may include in a report a recommendation that the report be made public immediately.
- (3) If a report includes a recommendation by the Inspector that the report be made public

immediately, a Presiding Officer of a House of Parliament may make it public whether or not that House is in session and whether or not the report has been laid before that House.

- (4) If such a report is made public by a Presiding Officer of a House of Parliament before it is laid before that House, it attracts the same privileges and immunities as if it had been laid before that House.
- (5) A Presiding Officer need not inquire whether all or any conditions precedent have been satisfied as regards a report purporting to have been made and furnished in accordance with this Act.

Part 3 Parliamentary Joint Committee

17 Oversight of functions of Joint Committee

- (1) The Joint Committee has the following functions under this Act:
 - (a) to monitor and to review the exercise by the Inspector of the Inspector's functions,
 - (b) to report to both Houses of Parliament, with such comments as it thinks fit, on any matter appertaining to the Inspector or connected with the exercise of the Inspector's functions to which, in the opinion of the Joint Committee, the attention of Parliament should be directed,
 - (c) to examine each annual and other report to Parliament of the Inspector and report to both Houses of Parliament on any matter appearing in, or arising out of, any such report,
 - (d) to report to both Houses of Parliament any change which the Joint Committee thinks desirable to the functions, structures and procedures of the Inspector,
 - (e) to inquire into any question in connection with the Inspector's functions which is referred to it by both Houses of Parliament, and report to both Houses on that question.
- (2) Nothing in this Part authorises the Joint Committee:
 - (a) to investigate a matter relating to particular conduct, or
 - (b) to reconsider a decision to investigate, not to investigate or to discontinue investigation of a particular complaint, or
 - (c) to reconsider the findings, recommendations, determinations or other decisions of the Inspector in relation to a particular investigation or complaint in relation to any particular conduct the subject of a report.
- (3) The functions of the Joint Committee may be exercised in respect of matters occurring

before or after the commencement of this section.

18 Power to veto proposed appointment of Inspector

- (1) The Minister is to refer a proposal to appoint a person as Inspector to the Joint Committee and the Committee is empowered to veto the proposed appointment as provided by this section. The Minister may withdraw a referral at any time.
- (2) The Joint Committee has 14 days after the proposed appointment is referred to it to veto the proposal and has a further 30 days (after the initial 14 days) to veto the proposal if it notifies the Minister within that 14 days that it requires more time to consider the matter.
- (3) The Joint Committee is to notify the Minister, within the time that it has to veto a proposed appointment, whether or not it vetoes it.
- (4) A referral or notification under this section is to be in writing.

Part 4 Miscellaneous

19 Obstruction of Inspector

A person must not:

- (a) without reasonable excuse, wilfully obstruct, hinder, resist or threaten the Inspector or a member of staff of the Inspector 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 or a member of staff of the Inspector, or
- (c) wilfully make any false statement to or mislead, or attempt to mislead, the Inspector or a member of staff of the Inspector in the exercise of functions under this Act.

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

20 Protection of complainant against retribution

- (1) A person must not take or threaten to take detrimental action against another person because that other person or any other person provides, or proposes to provide, information, documents or evidence to the Inspector or a member of staff of the Inspector in the exercise of functions under this Act.

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

- (2) It is a defence to a prosecution for an offence under this section if it is proved:
 - (a) that the provision, or proposed provision, of information, documents or evidence referred to in subsection (1) on which the prosecution was based was made or proposed in bad faith, or

(b) that any material allegation concerned was known by the person making it to be false.

(3) In this section, **detrimental action** means action causing, comprising or involving any of the following:

- (a) injury, damage or loss,
- (b) intimidation or harassment,
- (c) discrimination, disadvantage or adverse treatment in relation to employment,
- (d) dismissal from, or prejudice in, employment,
- (e) disciplinary proceedings.

21 Exercise of functions in other jurisdictions

- (1) The Minister may enter into an arrangement with a Minister of another State or Territory providing for the exercise, in the other State or Territory, of functions conferred on or delegated to the Inspector or a member of staff of the Inspector under the law of the other State or Territory.
- (2) The Inspector or member of staff, in the other State or Territory, may, in accordance with any such arrangement, exercise functions under the law of the other State or Territory.

22 Protection from liability

A matter or thing done or omitted to be done by the Inspector, a member of staff of the Inspector or a person acting under the direction of the Inspector 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, staff member or person so acting personally to any action, liability, claim or demand.

23 Delegation

The Inspector may delegate the exercise of any function of the Inspector under this Act (other than this power of delegation) to:

- (a) any member of staff of the Inspector, or
- (b) any person, or any class of persons, authorised for the purposes of this section by the regulations.

24 Nature of proceedings for offences

Proceedings for an offence under this Act or the regulations may be dealt with summarily before the Local Court.

25 Disclosure of information

A person must not disclose any information obtained in connection with the administration or execution of this Act (or any other Act conferring or imposing functions on the Inspector) unless that disclosure is made:

- (a) with the consent of the person from whom the information was obtained, or
- (b) in connection with the administration or execution of this Act (or any such other Act), or
- (c) for the purposes of any legal proceedings arising out of this Act (or any such other Act) or of any report of any such proceedings, or
- (d) in accordance with a requirement imposed under the *Ombudsman Act 1974*, or
- (e) with other lawful excuse.

Maximum penalty: 10 penalty units.

26 Sharing of information with Ombudsman

- (1) The Inspector may, at any time, furnish to the Ombudsman information obtained by the Inspector in discharging functions under this or any other Act if the Inspector is of the opinion that the information relates to conduct that could be the subject of a complaint under the *Ombudsman Act 1974*.
- (2) The Ombudsman may at any time furnish to the Inspector information obtained by the Ombudsman in discharging functions under the *Ombudsman Act 1974* or any other Act if the Ombudsman is of the opinion that the information relates to a custodial centre or a custodial service that could be the subject of the exercise of the functions of the Inspector.
- (3) However:
 - (a) the Inspector must not disclose information that could not otherwise be disclosed under this Act or could not be obtained by the Ombudsman under the *Ombudsman Act 1974* or any other Act, and
 - (b) the Ombudsman must not disclose information that could not otherwise be disclosed under the *Ombudsman Act 1974* or could not be obtained by the Inspector under this or any other Act.

27 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

- (2) A regulation may create an offence punishable by a penalty not exceeding 100 penalty units.

28 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of commencement of this Act.
- (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.

Schedule 1 Provisions relating to Inspector

1 Eligibility for appointment

The following persons are not eligible to be appointed as Inspector or to act in that office:

- (a) a person who is a member of the Legislative Council or of the Legislative Assembly or is a member of a House of Parliament or legislature of another State or Territory or of the Commonwealth,
- (b) a person who is, or has been within the previous 3 years, employed as a custodial centre staff member,
- (c) a person who is to any extent responsible for the management of, or who is employed at or in connection with, a custodial centre,
- (d) a person who has, or who has had, any interest in an agreement under Part 12 (Engagement of contractors) of the *Crimes (Administration of Sentences) Act 1999*.

2 Acting Inspector

- (1) The Governor may, from time to time, appoint a person to act in the office of Inspector during the illness or absence of the Inspector. The person, while so acting, has all the functions of the Inspector and is taken to be the Inspector.
- (2) The Governor 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 Governor may from time to time determine.
- (4) For the purposes of this clause, a vacancy in the office of Inspector is taken to be an absence from the office of Inspector.

3 Basis of office

- (1) The office of Inspector may be a full-time or part-time office, according to the terms of appointment.
- (2) The holder of a full-time office referred to in subclause (1) is required to hold it on that basis, except to the extent permitted by the Governor.

4 Terms of office

- (1) Subject to this Schedule, the Inspector holds office for such term not exceeding 5 years as may be specified in the instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.
- (2) A person may not hold the office of Inspector for terms totalling more than 10 years.

5 Remuneration

The Inspector is entitled to be paid:

- (a) remuneration in accordance with the [Statutory and Other Offices Remuneration Act 1975](#), and
- (b) such travelling and subsistence allowances as the Minister may from time to time determine.

6 Vacancy in office

- (1) The office of Inspector becomes vacant if the holder:
 - (a) dies, or
 - (b) completes a term of office and is not re-appointed, or
 - (c) holds office for longer than the relevant term mentioned in clause 4, or
 - (d) resigns the office by instrument in writing addressed to the Governor, or
 - (e) is nominated for election as a member of the Legislative Council or of the Legislative Assembly or as a member of a House of Parliament or a legislature of another State or Territory or of the Commonwealth, or
 - (f) 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
 - (g) becomes a mentally incapacitated person, or
 - (h) is convicted in New South Wales of an offence that is punishable by 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,
or

- (i) ceases to be eligible for appointment as Inspector under clause 1, or
- (j) is removed from office under subclause (2).

(2) The Governor may remove an Inspector from office for incapacity, incompetence, misbehaviour or unsatisfactory performance.

7 Filling of vacancy

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

8 Effect of certain other Acts

(1) The *Public Sector Employment and Management Act 2002* does not apply to the Inspector and, in particular, Chapter 5 of that Act does not apply to the person appointed to the office of Inspector.

(2) If by or under any other Act provision is made:

- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
- (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of Inspector or from accepting and retaining any remuneration payable to the person under this Act as Inspector.

Schedule 2 Savings, transitional and other provisions

Part 1 General

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Schedule 3 (Repealed)