

2017

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Corrections)

Inspector of Correctional Services Bill 2017

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(As presented)

(Minister for Corrections)

Inspector of Correctional Services Bill 2017

A Bill for

An Act to provide for an inspector of correctional services, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Part 1 Preliminary

1 Name of Act

This Act is the *Inspector of Correctional Services Act 2017*.

2 Commencement

- (1) This Act (other than section 40 and schedule 1) commences on the day after its notification day.

Note The naming and commencement provisions automatically commence on the notification day (see [Legislation Act](#), s 75 (1)).

- (2) Section 40 and schedule 1 commence on a day fixed by the Minister by written notice, after consulting with the Minister responsible for the *Children and Young People Act 2008*.

Note A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see [Legislation Act](#), s 77 (1)).

- (3) If section 40 and schedule 1 have not commenced within 2 years beginning on the notification day, they automatically commence on the first day after that period.

- (4) The [Legislation Act](#), section 79 (Automatic commencement of postponed law) does not apply to this Act.

3 Dictionary

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere.

For example, the signpost definition ‘*young detainee*—see the *Children and Young People Act 2008*, section 95.’ means that the term ‘young detainee’ is defined in that section and the definition applies to this Act.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see *Legislation Act*, s 155 and s 156 (1)).

4 Notes

A note included in this Act is explanatory and is not part of this Act.

Note See the *Legislation Act*, s 127 (1), (4) and (5) for the legal status of notes.

5 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 *Criminal Code*

The *Criminal Code*, ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

Note 2 *Penalty units*

The *Legislation Act*, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

6 Object of Act

- (1) The main object of this Act is to promote the continuous improvement of correctional centres and correctional services.
- (2) This is to be achieved particularly by providing a framework for—
 - (a) the systematic review and scrutiny of the correctional centres and services; and
 - (b) independent and transparent reporting.

7 What is a *correctional centre*?

In this Act:

correctional centre means—

- (a) a place declared to be a correctional centre under the *Corrections Management Act 2007*, section 24; or
- (b) a place where a detainee is held in custody under a declaration under the *Corrections Management Act 2007*, section 34; or
- (c) a place, including a vehicle, where a detainee is held in custody while being escorted by a corrections officer under the *Corrections Management Act 2007*; or
- (d) any other place where a detainee is held in custody under the *Corrections Management Act 2007*.

Examples—par (d)

- 1 a place where a detainee is directed to work or participate in an activity
- 2 a police or court cell
- 3 a health facility

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see *Legislation Act*, s 126 and s 132).

8 What is a *correctional service*?

In this Act:

correctional service—

- (a) means—
 - (i) the management, control and security of a correctional centre; or
 - (ii) the security, control, safety, care and welfare of a detainee at a correctional centre; and
- (b) includes policies, processes and procedures in relation to the matters mentioned in paragraph (a).

Part 2 Inspector of correctional services

Division 2.1 Appointment of inspector

9 Appointment of inspector of correctional services

- (1) The Executive must appoint a person as the inspector of correctional services.

Note 1 For the making of appointments (including acting appointments), see the [Legislation Act](#), pt 19.3.

Note 2 In particular, an appointment may be made by naming a person or nominating the occupant of a position (see [Legislation Act](#), s 207).

- (2) The appointment must be made in accordance with an open and accountable selection process.
- (3) However, the Executive must not appoint a person as the inspector unless satisfied that the person has the experience or expertise necessary to exercise the inspector's functions.
- (4) A person must not be appointed for a term of longer than 5 years.

Note A person may be reappointed to a position if the person is eligible to be appointed to the position (see [Legislation Act](#), s 208 and dict, pt 1, def *appoint*).

- (5) The inspector's conditions of appointment are the conditions agreed between the Executive and the inspector that are stated in the instrument of appointment, subject to any determination under the [Remuneration Tribunal Act 1995](#).
- (6) The appointment of the inspector is a notifiable instrument.

Note A notifiable instrument must be notified under the [Legislation Act](#).

10 Disclosure of interests

The inspector must give the Executive a written statement of the inspector's personal and financial interests within 7 days after—

- (a) the day the inspector is appointed; and
- (b) the first day of each financial year; and
- (c) the day there is a change in the interest.

11 Inspector must not do inconsistent work etc

The inspector must not—

- (a) have paid employment that is inconsistent with the inspector's functions; or
- (b) engage in any unpaid activity that is inconsistent with the inspector's functions.

12 Ending appointment

(1) The Executive may end a person's appointment as the inspector—

- (a) for misconduct; or
- (b) if the person becomes bankrupt or personally insolvent; or

Note **Bankrupt or personally insolvent**—see the [Legislation Act](#), dict, pt 1.

- (c) if the person is convicted, in the ACT, of an offence punishable by imprisonment for at least 1 year; or
- (d) if the person is convicted outside the ACT, in Australia or elsewhere, of an offence that, if it had been committed in the ACT, would be punishable by imprisonment for at least 1 year.

- (2) The Executive must end the inspector's appointment for physical or mental incapacity, if the incapacity substantially affects the exercise of the inspector's functions.

Note A person's appointment also ends if the person resigns (see [Legislation Act](#), s 210).

Division 2.2 Office of the inspector

13 Inspector's staff

- (1) The inspector may employ staff on behalf of the Territory.
- (2) The inspector's staff must be employed under the [Public Sector Management Act 1994](#).

Note The [Public Sector Management Act 1994](#), div 8.2 applies to the inspector in relation to the employment of staff (see [Public Sector Management Act 1994](#), s 152).

14 Contractors

- (1) The inspector may, on behalf of the Territory, engage a person under a contract to assist in the exercise of any function of the inspector.
- (2) Consultants may be engaged on terms decided by the inspector.
- (3) However, this section does not give the inspector a power to enter into a contract of employment with a contractor.

15 Other arrangements for staff and facilities

The inspector may arrange with the head of service to use the services of a public servant or Territory facilities.

Note The head of service may delegate powers in relation to the management of public servants to a public servant or another person (see [Public Sector Management Act 1994](#), s 18).

16 Delegation

The inspector may delegate the inspector's functions under this Act to—

- (a) a member of staff mentioned in section 13 (Inspector's staff);
or
- (b) a person engaged by the inspector under section 14 (Contractors).

Note For the making of delegations and the exercise of delegated functions, see the [Legislation Act](#), pt 19.4.

Part 3 Inspector's functions and powers

17 Functions—generally

- (1) The inspector has the following functions:
 - (a) to examine and review correctional centres;
 - (b) to examine and review correctional services;
 - (c) to review critical incidents at correctional centres or in the provision of correctional services;
 - (d) to report under part 4 (Reports by inspector);
 - (e) to exercise any other function given to the inspector under this Act or another territory law.

- (2) In this section:

critical incident means any event in a correctional centre or in the provision of correctional services that involves any of the following:

- (a) the death of a person;
- (b) a person's life being endangered;
- (c) an escape from custody;
- (d) a person being taken hostage;
- (e) a riot that results in significant disruption to a centre or service;
- (f) a fire that results in significant property damage;
- (g) an assault or use of force that results in a person being admitted to a hospital;
- (h) any other incident identified as a critical incident by a relevant Minister or relevant director-general.

18 Functions—examination and review

- (1) Subject to this Act, the inspector—
- (a) must examine and review each place declared to be a correctional centre under the *Corrections Management Act 2007*, section 24 at least once every 2 years; and
 - (b) must examine and review correctional services at least once every 2 years; and
 - (c) may review a critical incident on the inspector's own initiative or as requested by a relevant Minister or relevant director-general.
- (2) In exercising a function under subsection (1), the inspector must, if appropriate and practicable, consult with people, or use staff, suitable to the cultural background or vulnerability of any detainee involved in a matter being examined or reviewed.

Examples

- 1 if a review relates to Aboriginal or Torres Strait Islander detainees, it may be appropriate to consult with Aboriginal and Torres Strait Islander representatives
- 2 if a critical incident involves a person from a culturally or linguistically diverse background, it may be appropriate to use a staff member who has the same background
- 3 if a review relates to a person with disability, it may be appropriate to consult with an organisation representing the interests of people with disability
- 4 if a critical incident involves an interview with a female detainee, it may be appropriate, given the nature of the critical incident, for the detainee to be interviewed by a female

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (3) In this section:
critical incident—see section 17 (2).

19 Inspector may enter correctional centre etc

- (1) The inspector may, at any time, enter a correctional centre at the inspector's own initiative.
- (2) The inspector may inspect the following:
 - (a) any document, including a health record, relating to—
 - (i) a detainee at the correctional centre; or
 - (ii) the provision of a correctional service;
 - (b) any other record required to be kept by the correctional centre;
 - (c) any part of the correctional centre;
 - (d) any vehicle or equipment used at a correctional centre or in the provision of correctional services.
- (3) The inspector may speak to, or privately interview—
 - (a) a person other than a detainee at the correctional centre; and
 - (b) a person involved in the provision of correctional services; and
 - (c) with the detainee's consent—a detainee.

Examples—par (b)

- 1 a health worker providing a health service to a detainee
- 2 a contractor providing an educational service to a detainee

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (4) If the inspector wants to speak to or interview a detainee, the inspector must—
 - (a) ask the detainee if the detainee wants a support person to be present during the talk or interview; and
 - (b) ensure the detainee is able to contact a support person as soon as practicable.

- (5) The inspector may take any equipment reasonably required to effectively conduct an inspection of a correctional centre.

Examples—equipment reasonably required

- 1 a recording device
- 2 a camera

- (6) In this section:

health record—see the *Health Records (Privacy and Access) Act 1997*, dictionary.

privately interview means speaking with a person without the presence of any other person and without surveillance by electronic or other means.

20 Inspection guidelines

- (1) The Minister may make guidelines about a matter the inspector must review, examine or report on in relation to a correctional centre or service.
- (2) A guideline is a notifiable instrument.

Note A notifiable instrument must be notified under the [Legislation Act](#).

21 Access to correctional centres etc

- (1) If requested by the inspector, the relevant director-general must ensure that the inspector—
- (a) is given access to—
 - (i) all parts of a correctional centre; and
 - (ii) any vehicle or equipment used in a correctional centre or in the provision of a correctional service; and
 - (b) is able to talk to each detainee in the correctional centre at any time.

- (2) A person must not, without reasonable excuse, obstruct or hinder the inspector in the exercise of the inspector's functions.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

22 Power to ask for information, documents and other things

- (1) This section applies if the inspector believes, on reasonable grounds, that a person can provide information or produce a document or something else relevant to an examination or review under section 18.
- (2) The inspector may, by written notice given to the person, require the person to provide the information or produce the document or other thing.
- (3) The notice must state how, and the time within which, the person must comply with the requirement.
- (4) A person commits an offence if—
- (a) the person is required by a notice under this section to provide information to the inspector; and
 - (b) the person fails to provide the information to the inspector as required.

Maximum penalty: 50 penalty units.

Note 1 The [Legislation Act](#), s 170 and s 171 deal with the application of the privilege against self-incrimination and client legal privilege.

Note 2 Giving false information is an offence against the [Criminal Code](#), s 338.

- (5) Subsection (4) does not apply—
- (a) to a detainee; or
 - (b) if the person has a reasonable excuse for failing to provide the information to the inspector as required.

- (6) A person commits an offence if—
- (a) the person is required by a notice under this section to produce to the inspector a document or other thing; and
 - (b) the person fails to produce the document or other thing to the inspector as required.

Maximum penalty: 50 penalty units.

- (7) Subsection (6) does not apply—
- (a) to a detainee; or
 - (b) if the person has a reasonable excuse for failing to produce the document or other thing to the inspector as required.

Note The defendant has an evidential burden in relation to the matters mentioned in ss (5) and (7) (see [Criminal Code](#), s 58).

23 Requiring attendance etc

- (1) If the inspector believes, on reasonable grounds, that someone can provide information relevant to an examination or review under section 18, the inspector may, by written notice given to the person, require the person to attend before a named person (an *interviewer*), at a reasonable time and place stated in the notice, to answer questions relevant to the examination or review.

Note For how documents may be served, see the [Legislation Act](#), pt 19.5.

- (2) A person who attends before an interviewer under a notice under subsection (1) must continue to attend as reasonably required by the interviewer to answer questions relevant to the examination or review.
- (3) A person commits an offence if—
- (a) the person is required by a notice under subsection (1) to attend before an interviewer to answer questions in relation to an examination or review; and

(b) the person does not attend before the interviewer as required.

Maximum penalty: 50 penalty units.

(4) Subsection (3) does not apply—

(a) to a detainee; or

(b) if the person has a reasonable excuse for not attending before the interviewer as required.

(5) A person commits an offence if—

(a) the person is required by a notice under subsection (1) to attend before an interviewer to answer questions in relation to an examination or review; and

(b) the person attends before the interviewer as required; and

(c) the person fails to continue to attend as reasonably required by the interviewer to answer questions relevant to the examination or review.

Maximum penalty: 50 penalty units.

(6) Subsection (5) does not apply—

(a) to a detainee; or

(b) if the person has a reasonable excuse for failing to continue to attend as required by the interviewer.

(7) A person commits an offence if—

(a) the person is required by a notice under subsection (1) to attend before an interviewer to answer questions in relation to an examination or review; and

(b) the person attends before the interviewer as required; and

(c) the interviewer requires the person to answer a question; and

(d) the person fails to answer the question.

Maximum penalty: 50 penalty units.

Note 1 The [Legislation Act](#), s 170 and s 171 deal with the application of the privilege against self-incrimination and client legal privilege.

Note 2 Giving false information is an offence against the [Criminal Code](#), s 338.

(8) Subsection (7) does not apply—

(a) to a detainee; or

(b) if the person has a reasonable excuse for failing to answer the question.

Note The defendant has an evidential burden in relation to the matters mentioned in ss (4), (6) and (8) (see [Criminal Code](#), s 58).

24 Inspector may keep document or other thing etc

(1) If a document or something else is produced in accordance with a requirement under section 22, the inspector—

(a) may take possession of, make copies of, or take extracts from, the document or may take possession of the other thing; and

(b) may keep the document or other thing for the period that is necessary for the consideration to which the document or thing relates; and

(c) during that period, must allow anyone who would be entitled to inspect the document or other thing, if it were not in the possession of the inspector, to inspect it and, for a document, make copies of, or take extracts from, it.

(2) The inspector must return a document or something else produced in accordance with a requirement under section 22, if the inspector is no longer entitled to keep the document or thing under this section.

25 Privileges against self-incrimination and exposure to civil penalty

- (1) This section applies if a person is required by a notice under section 22 to provide information or produce a document or other thing.
- (2) This section also applies if—
 - (a) a person is attending before an interviewer in accordance with a requirement under section 23; and
 - (b) the interviewer requires the person to answer a question.
- (3) The person cannot rely on the common law privileges against self-incrimination and exposure to the imposition of a civil penalty to refuse to provide the information, produce the document or other thing or answer the question.

Note The [Legislation Act](#), s 171 deals with client legal privilege.

- (4) However, any information, document or other thing obtained, directly or indirectly, because of providing the information, the producing of the document or other thing, or the answering of the question is not admissible in evidence against the person in a civil or criminal proceeding, other than a proceeding for—
 - (a) an offence under section 22 or section 23; or
 - (b) any other offence in relation to the falsity of the information, document, other thing or answer.

26 Offence—taking detrimental action

- (1) A person (the *retaliator*) commits an offence if—
 - (a) another person gives, or proposes to give, information, documents or evidence (a *disclosure*) to the inspector for this Act; and

- (b) the retaliator takes detrimental action against another person because of a disclosure.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (2) For this section, a retaliator *takes* detrimental action because of a disclosure if the retaliator takes, or threatens to take, detrimental action against someone else because—
 - (a) a person has made, or intends to make, a disclosure; or
 - (b) the retaliator believes that a person has made or intends to make a disclosure.
- (3) In determining whether a retaliator has taken detrimental action because of a disclosure, it is sufficient if a reason mentioned in subsection (2) is a contributing reason.
- (4) For this section:

detrimental action is action that involves—

 - (a) discriminating against a person by treating, or proposing to treat, the person unfavourably in relation to the person's reputation, career, profession, employment or trade; or
 - (b) harassing or intimidating a person; or
 - (c) injuring a person; or
 - (d) damaging a person's property.

Part 4 Reports by inspector

27 Inspector to give reports to Legislative Assembly

- (1) The inspector must give a report on each examination and review conducted by the inspector to the Legislative Assembly within 6 months of completing the examination and review.
- (2) A report must include the following:
 - (a) an evaluation of the correctional centre and correctional services that were subject to examination and review;
 - (b) an assessment of the delivery of correctional services and the operation of correctional centres that were subject to examination and review;
 - (c) an assessment about whether the rights under international and territory law of detainees at a correctional centre subject to review are protected;
 - (d) an assessment about whether law, policy and procedures applying to the correctional centre or service subject to review reflect best practice standards;
 - (e) any recommendations of the inspector in relation to changes required to the infrastructure at correctional centres, correctional policies and procedures or the law applying to correctional centres or services;
 - (f) a statement about a matter that has been referred under section 32 (Inspector may refer matter to investigative entity) or section 34 (Oversight entities may refer matter to inspector);
 - (g) a statement about whether any part of the report is to be kept confidential due to public interest considerations against disclosure.
- (3) The relevant Minister may extend a period mentioned in subsection (1) by an additional period of no more than 12 months.

28 Public interest considerations

- (1) In preparing a report under section 27, the inspector must consider whether any part of the report must be kept confidential because—
 - (a) there are public interest considerations against disclosure; and
 - (b) those considerations outweigh the public interest in favour of disclosure.
- (2) There is a public interest against disclosure if disclosure of the information could reasonably have any of the following effects:
 - (a) undermining security or good order at a correctional centre;
 - (b) assisting anyone in escaping or attempting to escape from detention;
 - (c) undermining national security (within the meaning of the *National Security Information (Criminal and Civil Proceedings) Act 2004* (Cwlth));
 - (d) identifying or allowing the identification of any person detained, working or otherwise at a correctional centre;
 - (e) undermining the procedures or systems in place to safeguard the life, health and safety of a corrections officer or any other person at a correctional centre;
 - (f) 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.
- (3) The following matters must not be taken into account in deciding whether there is a public interest against disclosure:
 - (a) causing embarrassment to, or a loss of confidence in, the Executive, a Minister or a director-general;
 - (b) the possibility that the information may be misunderstood or misinterpreted by a person.

29 Draft report to relevant Minister and director-general

- (1) The inspector must give a draft copy of a report prepared under section 27 to the relevant Minister and relevant director-general at least 6 weeks before giving the report to the Legislative Assembly.
- (2) The relevant Minister and relevant director-general may provide comments in relation to the draft report to the inspector within the 6-week period.
- (3) The inspector—
 - (a) must consider any comments made under subsection (2); and
 - (b) may include the comments provided by the relevant Minister and relevant director-general as an attachment to the report; and
 - (c) may, if the inspector is satisfied that amendment is an appropriate response to the comments, amend the draft report.

30 Report to Legislative Assembly

- (1) The inspector must give a report prepared under section 27 to the Speaker.
- (2) The Speaker must present the report to the Legislative Assembly within 5 sitting days after receiving the report.

Part 5 Cooperation and referral between inspector and other entities

31 Cooperation with other entities

- (1) The inspector must ensure that the inspector's functions are exercised in a way that does not delay or unnecessarily duplicate the exercise of functions by the following entities:
 - (a) a person exercising a function under the *Auditor-General Act 1996*, the *Human Rights Act 2004*, the *Human Rights Commission Act 2005* or the *Ombudsman Act 1989*;
 - (b) an official visitor under the *Official Visitor Act 2012*;
 - (c) an adjudicator conducting a review of a segregation or disciplinary decision under the *Corrections Management Act 2007*;
 - (d) a police officer investigating a fraud or other criminal matter;
 - (e) a coroner exercising a function under the *Coroners Act 1997*.
- (2) The inspector may enter into an arrangement with an entity mentioned in subsection (1) to assist in—
 - (a) avoiding delay and unnecessary duplication of statutory functions; or
 - (b) efficiently managing the interaction of the statutory functions of the parties to the arrangement.

32 Inspector may refer matter to investigative entity

- (1) This section applies if the inspector reasonably believes that a matter can be more appropriately dealt with by an investigative entity other than the inspector.

- (2) The inspector may decide not to review or examine the matter and to refer the matter together with any relevant documents or information in the inspector's possession or control, to an investigative entity.
- (3) The inspector may enter into arrangements with an investigative entity about the referral of matters under this section.
- (4) Nothing in this section requires the investigative entity to deal with the referred matter.
- (5) In this section:

investigative entity means an entity with power to require the production of documents or the answering of questions including, for example, the chief police officer, the human rights commission and the ombudsman.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

matter includes part of a matter.

33 Cooperation with inspector

- (1) This section applies if an oversight entity deals with a matter that involves a detainee, a correctional centre or a correctional service in the exercise of a function under—
 - (a) the *Auditor-General Act 1996*, section 10 (1) (a) and (d) (Functions) (which are about public administration and performance audits); or
 - (b) the *Human Rights Commission Act 2005*, section 48 (Consideration without complaint or appropriate complainant); or
 - (c) the *Ombudsman Act 1989*, section 5 (1) (b) (Functions—investigating complaints under Act) (which is about own motion investigations).

- (2) The oversight entity must—
 - (a) consult with the inspector about the matter; and
 - (b) ensure that the entity's functions are exercised in a way that does not delay or unnecessarily duplicate the exercise of functions by the inspector.
- (3) The oversight entity may enter into an arrangement with the inspector to assist in—
 - (a) avoiding delay and unnecessary duplication of statutory functions; or
 - (b) efficiently managing the interaction of the statutory functions of the parties to the arrangement.
- (4) In this section:

matter includes a part of a matter.

oversight entity means any of the following:

 - (a) the auditor-general;
 - (b) the human rights commission;
 - (c) an official visitor;
 - (d) the ombudsman.

34 Oversight entities may refer matter to inspector

- (1) This section applies if an oversight entity reasonably believes that a matter can be more appropriately dealt with by the inspector.
- (2) The oversight entity may decide not to deal with the matter and to refer the matter together with any relevant documents or information in the entity's possession or control, to the inspector.
- (3) The oversight entity may enter into arrangements with the inspector about the referral of matters under this section.

- (4) Nothing in this section requires the inspector to deal with the referred matter.
 - (5) In this section:
 - matter*—
 - (a) means a complaint or other matter; and
 - (b) includes a part of a complaint or other matter.
- oversight entity*—see section 33 (4).

35 Information sharing

- (1) An information sharing entity may disclose to the inspector relevant information held by the entity to the extent that it is reasonably necessary for this part.
- (2) The inspector may disclose to an information sharing entity relevant information held by the inspector to the extent that it is reasonably necessary for this part.
- (3) The inspector and an information sharing entity may enter into an information sharing protocol for this section.
- (4) In this section:
 - information sharing entity* means an entity mentioned in section 31 (1).

Part 6 Miscellaneous

36 Protection of inspector from liability

- (1) The inspector is not civilly liable for conduct engaged in honestly and without recklessness—
 - (a) in the exercise of a function under this Act or another territory law; or
 - (b) in the reasonable belief that the conduct was in the exercise of a function under this Act or another territory law.
- (2) Any liability that would, apart from this section, attach to the inspector attaches instead to the Territory.
- (3) In this section:
conduct means an act or an omission to do an act.

37 Offence—use or divulge protected information

- (1) A person to whom this section applies commits an offence if—
 - (a) the person uses information; and
 - (b) the information is protected information about someone else; and
 - (c) the person is reckless about whether the information is protected information about someone else.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) A person to whom this section applies commits an offence if—
 - (a) the person does something that divulges information; and
 - (b) the information is protected information about someone else; and

- (c) the person is reckless about whether—
 - (i) the information is protected information about someone else; and
 - (ii) doing the thing would result in the information being divulged to someone else.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (3) Subsections (1) and (2) do not apply if the information is used or divulged—
 - (a) under this Act or another territory law; or
 - (b) in relation to the exercise of a function, as a person to whom this section applies, under this Act or another territory law; or
 - (c) in a court proceeding.
- (4) Subsections (1) and (2) do not apply to the using or divulging of protected information about a person with the person's consent.

Note The defendant has an evidential burden in relation to the matters mentioned in ss (3) and (4) (see [Criminal Code](#), s 58).

- (5) A person to whom this section applies need not divulge protected information to a court, or produce a document containing protected information to a court, unless it is necessary to do so for this Act or another law applying in the Territory.
- (6) In this section:

court includes a tribunal, authority or person having power to require the production of documents or the answering of questions.

divulge includes—

- (a) communicate; or
- (b) publish.

person to whom this section applies means—

- (a) a person who is, or has been, an inspector; or
- (b) anyone else who exercises, or has exercised, a function under this Act; or
- (c) a person who is, or has been, otherwise involved in the administration of this Act; or
- (d) a person who has been given information under this Act by a person mentioned in paragraph (a), (b) or (c).

produce includes allow access to.

protected information means information about a person that is disclosed to, or obtained by, a person to whom this section applies because of—

- (a) the exercise of a function under this Act by the person or someone else; or
- (b) the involvement of the person, or someone else, in the administration of this Act.

use information includes make a record of the information.

38 Regulation-making power

The Executive may make regulations for this Act.

Note A regulation must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

39 Review of Act

- (1) The Minister must arrange for a review of the operation of this Act as soon as practicable after the end of its 5th year of operation.
- (2) The Minister must present a report of the review to the Legislative Assembly within 12 months after the day the review is started.
- (3) This section expires 7 years after the day it commences.

Part 7 Amendments

40 Legislation amended—sch 1

This Act amends the legislation mentioned in schedule 1.

41 Legislation amended—sch 2

This Act amends the legislation mentioned in schedule 2.

Schedule 1 Amendments—extended application of Act

(see s 40)

Part 1.1 Children and Young People Act 2008

**[1.1] Section 137, definition of *accredited person*, new
paragraph (da)**

insert

(da) the inspector of correctional services;

[1.2] New section 144 (2) (b) (iiia)

insert

(iiia) the inspector of correctional services;

[1.3] Part 6.3 heading

substitute

Part 6.3 Access to and inspection of detention places

[1.4] Section 153 heading

substitute

153 Inspections by judicial officers and Assembly members

[1.5] Section 153 (1) and note

substitute

- (1) This section applies to each of the following:
- (a) a judge;
 - (b) a magistrate;
 - (c) a member of the Legislative Assembly.

Note 1 The inspector of correctional services may also enter and inspect a detention place (see *Inspector of Correctional Services Act 2017*, s 19).

Note 2 Official visitors must visit detention places (see pt 2.3 and *Official Visitor Act 2012*).

[1.6] New section 153A

insert

153A Access to detention places

A commissioner exercising functions under the *Human Rights Commission Act 2005* or the ombudsman may, at any reasonable time, enter a detention place for the purpose of exercising the person's functions under this Act.

[1.7] Section 154 (5), examples, new dot point

insert

- *Inspector of Correctional Services Act 2017*

[1.8] New section 179 (ba)

insert

- (ba) the inspector of correctional services;

[1.9] New section 195 (5) (ca)

insert

(ca) the inspector of correctional services;

[1.10] Section 200 (5), definition of *protected electronic communication*, new paragraph (ba)

insert

(ba) the inspector of correctional services;

[1.11] Section 201 (4), definition of *protected mail*, new paragraph (ba)

insert

(ba) the inspector of correctional services;

[1.12] New section 222 (3) (ca)

insert

(ca) the inspector of correctional services;

[1.13] Section 280 (5), definition of *protected mail*, new paragraph (ba)

insert

(ba) the inspector of correctional services;

[1.14] Section 576, definition of *accredited person*, new paragraph (da)

insert

(da) the inspector of correctional services;

[1.15] New section 634 (1) (ca)

insert

(ca) the inspector of correctional services;

[1.16] Dictionary, new definition of *inspector of correctional services*

insert

inspector of correctional services—see the *Inspector of Correctional Services Act 2017*, dictionary.

Part 1.2 Inspector of Correctional Services Act 2017

[1.17] Section 7, definition of *correctional centre*, paragraph (c)

omit

a corrections officer

substitute

an escort officer

[1.18] Section 7, definition of *correctional centre*, new paragraphs (e) and (f)

before the examples, insert

- (e) a place declared to be a detention place under the *Children and Young People Act 2008*, section 142; or
- (f) a place, including a vehicle, where a detainee is held in custody while being escorted by an escort officer under the *Children and Young People Act 2008*.

[1.19] New section 7 (2)

insert

(2) In this section:

escort officer means—

- (a) for the *Corrections Management Act 2007*—a corrections officer; or
- (b) for the *Children and Young People Act 2008*—a corrections officer or a youth detention officer.

youth detention officer—see the *Children and Young People Act 2008*, section 96.

[1.20] Section 18 (1) (a)

substitute

- (a) must examine and review at least once every 2 years each place declared to be—
 - (i) a correctional centre under the *Corrections Management Act 2007*, section 24; and
 - (ii) a detention place under the *Children and Young People Act 2008*, section 142;

[1.21] New section 31 (1) (ca)

insert

- (ca) a person conducting a review of a segregation or disciplinary decision under the *Children and Young People Act 2008*.

[1.22] Dictionary, definition of *detainee*

substitute

detainee—

- (a) for the *Corrections Management Act 2007*—see that Act, dictionary; or
- (b) for the *Children and Young People Act 2008*—means a young detainee as defined in that Act, section 95.

Schedule 2 Consequential amendments

(see s 41)

Part 2.1 Auditor-General Act 1996

[2.1] Section 10 (1), new note

insert

Note The auditor-general must consult with the inspector of correctional services in relation to the exercise of a function under pars (a) to (d) involving a detainee or correctional centre or service (see *Inspector of Correctional Services Act 2017*, s 33).

Part 2.2 Corrections Management Act 2007

[2.2] New section 15 (2) (b) (iiia)

insert

(iiia) the inspector of correctional services;

[2.3] New section 31A (2) (d) (ia)

insert

(ia) the inspector of correctional services;

[2.4] New section 33A (2) (d) (ia)

insert

(ia) the inspector of correctional services;

[2.5] New section 51 (ba)

insert

- (ba) the inspector of correctional services;

[2.6] Chapter 7 heading

substitute

Chapter 7 Access to and inspection of correctional centres

[2.7] Section 56 (1)

substitute

- (1) This section applies to each of the following:
- (a) a judge;
 - (b) a magistrate;
 - (c) a member of the Legislative Assembly.

Note The inspector of correctional services may also enter and inspect a correctional centre (see *Inspector of Correctional Services Act 2017*, s 19).

[2.8] New section 56A

insert

56A Access to correctional centres

The human rights commissioner or the ombudsman may, at any reasonable time, enter a correctional centre for the purpose of exercising the person's functions under this Act.

[2.9] Section 62 (5), definition of *inspection law*, examples, new dot point

insert

- *Inspector of Correctional Services Act 2017*

[2.10] New section 66 (1) (ca)

insert

- (ca) the role of the inspector of correctional services;

[2.11] Section 103 (5), definition of *protected electronic communication*, new paragraph (ba)

insert

- (ba) the inspector of correctional services;

[2.12] Section 104 (4), definition of *protected mail*, new paragraph (ba)

insert

- (ba) the inspector of correctional services;

[2.13] Section 142 (3)

omit

an official visitor

substitute

the inspector of correctional services

[2.14] Dictionary, definition of *accredited person*, new paragraph (ca)

insert

- (ca) the inspector of correctional services;

[2.15] Dictionary, new definition of *inspector of correctional services*

insert

inspector of correctional services—means the inspector of correctional services appointed under the *Inspector of Correctional Services Act 2017*, section 9.

[2.16] Further amendments, mentions of (*Inspection of correctional centres*)

omit

(Inspection of correctional centres)

substitute

(Access to and inspection of correctional centres)

in

- section 76 (3)
- section 110 (4)
- section 142 (2) (b)
- section 189 (4)

Part 2.3 Human Rights Commission Act 2005

[2.17] Section 48 (1), note 2

substitute

Note 2 The commission—

- (a) must consult with the inspector of correctional services in relation to any commission-initiated consideration involving a detainee or correctional centre or service (see *Inspector of Correctional Services Act 2017*, s 33); and
- (b) may refer a matter to the inspector if the commission reasonably believes the matter can be more appropriately dealt with by the inspector (see *Inspector of Correctional Services Act 2017*, s 34).

Note 3 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

Part 2.4 Ombudsman Act 1989

[2.18] Section 5 (1), new note

insert

Note The ombudsman—

- (a) must consult with the inspector of correctional services in relation to any investigation under par (b) involving a detainee or correctional centre or service (see *Inspector of Correctional Services Act 2017*, s 33); and
- (b) may refer a matter to the inspector if the ombudsman reasonably believes the matter can be more appropriately dealt with by the inspector (see *Inspector of Correctional Services Act 2017*, s 34).

Part 2.5 **Remuneration Tribunal Act 1995**

[2.19] Schedule 1, part 1.2

insert

- inspector of correctional services

Dictionary

(see s 3)

Note 1 The [Legislation Act](#) contains definitions and other provisions relevant to this Act.

Note 2 For example, the [Legislation Act](#), dict, pt 1, defines the following terms:

- bankrupt or personally insolvent
- chief police officer
- coroner
- corrections officer
- director-general (see s 163)
- document
- entity
- Executive
- function
- human rights commissioner
- Legislative Assembly
- Minister (see s 162)
- official visitor
- ombudsman
- person (see s 169)
- police officer
- public servant
- sitting day
- Speaker
- territory law
- the Territory
- tribunal.

correctional centre—see section 7.

correctional service—see section 8.

detainee—see the [Corrections Management Act 2007](#), dictionary.

- 1 **inspector** means the inspector of correctional services appointed
2 under section 9.
- 3 **relevant director-general** means, for a matter that relates to—
- 4 (a) a correctional centre under the *Corrections Management*
5 *Act 2007* or a correctional service provided in relation to a
6 correctional centre—the director-general responsible for
7 administering that Act; or
- 8 (b) a detention place under the *Children and Young People*
9 *Act 2008* or a correctional service provided in relation to a
10 detention place—the director-general responsible for
11 administering that Act.
- 12 **relevant Minister** means, for a matter that relates to—
- 13 (a) a correctional centre under the *Corrections Management*
14 *Act 2007* or a correctional service provided in relation to a
15 correctional centre—the Minister responsible for administering
16 that Act; or
- 17 (b) a detention place under the *Children and Young People*
18 *Act 2008* or a correctional service provided in relation to a
19 detention place—the Minister responsible for administering
20 that Act.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 26 October 2017.

2 Notification

Notified under the [Legislation Act](#) on 2017.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

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