

2017

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

INSPECTOR OF CORRECTIONAL SERVICES BILL 2017

EXPLANATORY STATEMENT

**Presented by
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INSPECTOR OF CORRECTIONAL SERVICES BILL 2017

INTRODUCTION

This explanatory statement relates to the Inspector of Correctional Services Bill 2017 (the Bill) as presented to the ACT Legislative Assembly. It has been prepared in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.

The Statement must be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

BACKGROUND

In November 2016, following the death in custody of Mr Steven Freeman, the ACT Government commissioned a review by Mr Philip Moss AM to examine Steven Freeman's care and supervision during his period of incarceration, including whether ACT Corrective Services' (ACTCS) systems operated effectively and in compliance with human rights obligations. Mr Moss's report - 'So Much Sadness in Our Lives' (Moss Report) – was provided to the Minister for Corrections on 7 November 2016. On 10 November 2016, the Minister for Corrections made the Moss Review publicly available. In response to recommendation 8 of the Moss Report, the Government agreed to develop an Inspectorate of Custodial Services function to be operational by the end of 2017.

Since the ACT's only adult correctional centre, the Alexander Maconochie Centre, opened in 2009, a number of reviews have called for the establishment of a similar role or regime. These include: the 2007 Human Rights Audit of the Operations of ACT Correctional Facilities under Corrections Legislation, the 2016 Justice and Community Safety Standing Committee's Inquiry into the Auditor-General's Report on the Rehabilitation of Male Detainees and the 2016 Morison security review.

The Inspector of Correctional Services Bill 2017 (the Bill) establishes a new oversight mechanism and independent statutory authority called the Inspector of Correctional Services, to oversee and critically examine the operations of the adult and youth correctional system with a preventive focus.

Implementing the Inspector of Correctional Services for both adult and youth custodial environments and services will provide an additional level of external oversight that complements existing mechanisms.

These robust mechanisms for transparency and accountability work together to protect the most vulnerable people in the ACT and prevent harm. The inclusion of youth justice centres

within the remit of the Inspector will further strengthen the ACT position in ensuring transparent and accountable services to young people who are detained.

As an additional level of oversight, the establishment of the Inspector supports a comprehensive agenda for the continuous improvement of corrections in the ACT, to increase transparency and deter mismanagement, unfairness and corruption.

The establishment of the Inspector is an opportunity to take a collaborative approach to identify strengths and areas for improvement. It will also be an opportunity to identify achievements, increase staff engagement and lead sustainable change towards best practice.

OVERVIEW OF THE BILL

The Bill establishes an independent Inspector of Correctional Services for the ACT. The Bill provides a broad and flexible operational structure for the Inspector of Correctional Services. It is constituted by the Inspector of Correctional Services, support staff and contractors with diverse or specialised expertise.

The Bill reflects stakeholder consultation on the most appropriate preventive oversight mechanism model for the new role. It also aims to reflect the requirements and expectations around the establishment of a national preventive mechanism under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), and other international documents created to ensure the humane treatment of people deprived of liberty, including (but not limited to) the *United Nations Standard Minimum Rules for the Treatment of Prisoners* and the *United Nations Principles for the Protection of All Persons under Any Form of Detention*.

The purpose of the Bill is to:

- establish a preventive, proactive and independent role with the expertise and resources to conduct a systematic examination of adult and youth correctional centres and services
- establish a review framework for correctional centres and services based on delivery of the objects of the *Corrections Management Act 2007* (CM Act), *Children and Young People Act 2008* (CYP Act) and other legislative and international obligations to promote continuous improvement and facilitate best practice
- ensure detainees' rights are protected and promote the wellbeing, rehabilitation and reintegration into the community of detainees
- ensure accountability and transparency of correctional centres and services by providing independent reports about the effectiveness of centres and services to the Legislative Assembly.

The role of the Inspector is to:

- undertake inspections of correctional centres and services every two years against a review framework
- review critical incidents to ensure policies, procedures and legislation promote best practice
- undertake the review of a particular issue in the youth or adult corrections environment referred by the responsible Minister or Director-General, to ensure policies, procedures and legislation promote best practice
- be able to conduct an unannounced visit in accordance with the role
- provide independent reports to the ACT Legislative Assembly
- 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. This includes if a review or critical incident relates to an Aboriginal or Torres Strait Islander detainee, female detainee, detainee with disability or detainee from a culturally or linguistically diverse background.

The Inspector will cooperate and refer relevant matters to existing oversight agencies or investigative entities in the ACT. This is an important mechanism to support the mandate of the new role, ensure a co-ordinated approach to the review of correctional centres and services, and prevent oversight fatigue. The Bill does not alter the mandate of existing oversight agencies in the ACT.

The following facilities are within the scope of the Inspector:

- ACT correctional centres
- ACTCS court cells
- any other area managed by ACTCS (including detainee transport or when a detainee is on escort under ACTCS custody)
- ACT youth detention places (includes Bimberi Youth Justice Centre, transport of young detainees by ACTCS or CSD, or when a young detainee is on escort by a corrections or youth detention officer).

The Bill allows deferred commencement of certain provisions to accommodate the phased inclusion of youth justice centres. These provisions are detailed in Schedule 1.

Phased implementation enables the Inspector to accommodate and understand the needs of young people. The Inspector must have appropriate trauma-informed expertise to ensure the specific needs of young people are met, including disability.

An inspection framework will be developed to articulate standards the Inspector will use to examine and review adult and youth correctional facilities in the ACT.

The Bill also provides for consequential amendments to reflect the new role in other Territory Acts.

HUMAN RIGHTS IMPLICATIONS

During the Bill's development due regard was given to its compatibility with human rights as set out in the *Human Rights Act 2004* (HRA).

The measures introduced in the Bill support the Government's commitment to a safe community by ensuring people held in custody are treated humanely and in accordance with legislative requirements and community expectations.

This Bill engages a number of rights protected under the HRA, it:

- supports section 10 – protection from torture, inhuman or degrading treatment, section 11 – protection of the family and children, section 19 – humane treatment when deprived of liberty, section 20 - children in the criminal process, and section 27 – cultural and other rights of Aboriginal and Torres Strait Islander peoples and other minorities
- engages section 8 – recognition and equality before the law and section 22 – rights in criminal proceedings
- may limit section 12 – right to privacy and reputation.

Section 10 – Protection from torture and cruel, inhuman or degrading treatment etc.

This Bill **supports** section 10 of the HRA, the right to protection from torture and cruel, inhuman or degrading treatment.

Section 10 is based on article 7 of the *International Covenant on Civil and Political Rights* (ICCPR) and is consistent with article 5 of the *Universal Declaration of Human Rights*. The *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (OPCAT) was developed having regard to these two articles¹.

The objective of OPCAT is to 'establish a system of regular visits undertaken by independent and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment'².

This Bill establishes an independent statutory authority and systematic review framework to facilitate a preventive regime to oversee correctional centres and youth detention places in the ACT.

¹ [Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#), adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984, ratified by Australia 8 August 1989.

² [Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment](#), adopted on 18 December 2002 at the fifty-seventh session of the General Assembly of the United Nations by resolution A/RES/57/199.

Section 19 – Humane treatment when deprived of liberty

This Bill **supports** section 19 of the HRA, the right to humane treatment when deprived of liberty.

The UN *General comment no. 21* on article 10 of the ICCPR, on which the right is based, recognises that this right applies to anyone deprived of liberty under the authority of local laws, including in correctional institutions³. The *General comment* identifies that this right imposes a positive obligation on the jurisdiction towards people who are ‘particularly vulnerable because of their status as persons deprived of liberty, and complements ... the ban on torture or other cruel inhuman or degrading treatment or punishment ...’ (para 4).

By establishing an independent statutory authority and systematic review framework to facilitate a preventive regime to oversee correctional centres and youth detention places in the ACT, this Bill establishes a mechanism through which the ACT will meet its positive obligations under this right.

Section 11 – Protection of the family and children and Section 20 – Children in the criminal process

This Bill **supports** sections 11 and 20 of the HRA, the right to protection of the family and children, and children in the criminal process.

By establishing an independent statutory authority and systematic review framework to facilitate a preventive regime to oversee youth detention places in the ACT, this Bill establishes a mechanism through which the ACT will meet its positive obligation under this right.

Section 27 – Cultural and other rights of Aboriginal and Torres Strait Islander peoples and other minorities

This Bill **supports** section 27 of the HRA, the right to cultural and other rights of Aboriginal and Torres Strait Islander peoples and other minorities.

Clause 18(2) of the Bill requires the Inspector to, 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. One specific example provided in the Bill is ‘if a review relates to Aboriginal or Torres Strait Islander detainees, it may be appropriate to consult with Aboriginal and Torres Strait Islander representatives’.

This inclusion recognises the inherent inequality faced by Aboriginal or Torres Strait Islander detainees in custody, and acknowledges the distinct rights of Aboriginal and Torres Strait Islander peoples in relation to their cultural heritage, traditional languages and knowledge

³ United Nations, Office of the High Commissioner for Human Rights, [General Comment No. 21 Replaces general comment 9 concerning humane treatment of persons deprived of liberty \(Art. 10\):10/04/1992](#).

under Article 27 of the International Covenant on Civil and Political Rights, and Articles 25 and 31 of the UN Declaration on the Rights of Indigenous Peoples.

Section 8 – Recognition and Equality before the law

Clause 18(2) engages an individual’s right to recognition and equality before the law by providing for the Inspector to, 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.

This inclusion in the Bill recognises the inherent inequality faced by Aboriginal or Torres Strait Islander, female, culturally and linguistically diverse detainees or a detainees with disability in custody.

This provision is included to ensure these vulnerable detainee cohorts have equal enjoyment of human rights to the broader detainee population. In particular, it acknowledges:

- Article 1.4 of the *Convention on the Elimination of all forms of Racial Discrimination* which states that ‘[s]pecial measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved’⁴.
- Article 4 of the *Convention on the Elimination of All Forms of Discrimination Against Women* which states that the ‘adoption of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved’⁵.

Taking into consideration these articles, as well as Article 18 (2) of the OPCAT, which requires a preventive mechanism to ‘have the required capabilities and professional knowledge. They shall strive for a gender balance and adequate representation of ethnic

⁴ [Convention on the Elimination of all forms of Racial Discrimination](#), Article 1.4, adopted and opened for signature and ratification by General Assembly resolution 2106 (XX) of 21 December 1965.

⁵ [Convention on the Elimination of All Forms of Discrimination Against Women](#), Article 4, adopted and opened for signature, ratification and accession by General Assembly resolution 34/180 of 18 December 1979.

and minority groups⁶, this specific differentiation in the Bill is considered reasonable and objective to promote equal enjoyment of human rights.

Rather than being characterised as a burden or legal discrimination this provision is better characterised as a protection for vulnerable detainee cohorts in custody.

Section 12 – Right to privacy and reputation

Clause 19 of the Bill may limit an individual’s right to privacy as it provides that the Inspector may enter a correctional centre at any time, and inspect any document, including a health record, relating to a detainee at the correctional centre, or record required to be kept by the correctional centre. Clause 22 gives the Inspector power to ask for information, documents, or any other things.

The right to privacy is relative and may be limited to the extent necessary, reasonable and proportionate to achieve a demonstrated and justifiable purpose (UN Human Rights Committee, General Comment 16). Such limits must not be ‘unlawful’ or ‘arbitrary’. This means that interferences must only be authorised by precise and circumscribed law (including clear and relevant criteria) and must not give overly broad or unnecessary discretion to authorities.

The purpose of this limitation is to ensure that the Inspector is able to undertake its mandate to undertake a proactive and systematic review and scrutiny of correctional centres and services, ensure that detainees’ rights under international and territory law are protected and provide independent reports about the effectiveness and efficiency of the correctional centres and services.

Article 20 of the OPCAT⁷ specifically states that in order to enable a preventive mechanism to fulfil the Inspector’s mandate, it must be granted:

- access to all information concerning the number of persons deprived of their liberty
- access to all information referring to the treatment of those persons as well as their conditions of detention
- access to all places of detention and their installations and facilities
- the liberty to choose the places they want to visit and the people they want to interview.

In order to protect against harm occurring a proactive inspection regime is required. This acts as a more effective prevention measure than simply responding to allegations of harm once they have occurred.

⁶ [Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment](#), Article 18.

⁷ [Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment](#), Article 20.

Without the required level of access to places of detention and relevant information, the Inspector will not be able to effectively carry out its role.

In view of the purpose of this Bill, and the protections provides to ensure an individual's right to privacy is protected under clause 37, any limitations on the right to privacy are the least restrictive available to achieve this purpose.

Section 22(2)(i) - Rights in Criminal Proceedings

Clause 25 engages an individual's right not to be compelled to testify against himself or herself or to confess to guilt. However, this limitation is reasonable and proportionate in that it is the least restrictive option to provide the Inspector with appropriate powers to discharge their role of independently overseeing correctional institutions. Any self-incriminating material obtained as a result of a person being compelled to provide information cannot be used as evidence against that person in later court proceedings, other than for an offence under clause 22 or 23 of the Act, or another offence in relation to the falsification of the information, document or other thing. This provision supports the Inspector being able to fully consider all available information when exercising its function, while protecting the people providing the information. This protection is a well-established practice in relation to investigative agencies in the ACT, including the Human Rights Commission.

CLAUSE NOTES

Part 1 – Preliminary

Part 1 of the Bill comprises clauses 1 to 8 dealing with formal matters including commencement, objects and key definitions for the purpose of the Bill.

Clause 1 **Name of Act**

This clause is a formal provision setting out the name of the new Act as the *Inspector of Correctional Services Act 2017* (the Act).

Clause 2 **Commencement**

This clause provides that the Act will commence on the day after it is notified on the Legislation Register, except for the provisions relating to young detainees, youth detention officers, youth detention places and services, and consequential amendments to the *Children and Young People Act 2008* (CYP Act) (section 40 and Schedule 1).

The provisions relating to young detainees, youth detention places and services, youth detention officers, and consequential amendments to the CYP Act commence by written notice on a day fixed by the Minister after consulting with the Minister responsible for the CYP Act. If this has not occurred within 2 years of the Act being notified on the Legislation Register, it commences automatically on the first day after this 2 year period ends.

Clause 3 **Dictionary**

This clause is a formal provision identifying the dictionary and explaining conventions used to define words and terms for the purposes of the Act.

Clause 4 **Notes**

This clause is a formal provision explaining the status of notes in the Act.

Clause 5 **Offences against Act—application of Criminal Code etc.**

This clause clarifies that other legislation applies to this Act and in particular notes the operation of the *Criminal Code 2002*, which applies to all offences against the Act, and the *Legislation Act 2001*, which provides for interpretation, common definitions, and legislative machinery for the Bill and applicable offence penalty units.

Clause 6 **Object of Act**

Clause 6 outlines the main object of the Act is to promote the continuous improvement of correctional centres and services through: systematic review and scrutiny of correctional centres and services and independent and transparent reporting.

The purpose also reflects the requirements and expectations around the establishment of a national preventive mechanism under OPCAT, and other international documents created

to ensure the humane treatment of people deprived of liberty, including the *United Nations Standard Minimum Rules for the Treatment of Prisoners* and the *United Nations Principles for the Protection of All Persons under Any Form of Detention*.

Clause 7 What is a *correctional centre*?

This clause defines a correctional centre for the purpose of this Act as any of the following:

- a correctional centre declared under the *Corrections Management Act 2007* (CM Act)
- a place where a detainee is held in custody under a declaration of the CM Act
- a place, including a vehicle where a detainee is held in custody while being escorted by a corrections officer under the CM Act
- any other place where a detainee is held under the CM Act (such as a police or court cell, a place where a detainee is directed to work or participate in activity, or health facility).

This definition ensures any place a detainee in custody under the CM Act is detained or located is covered by the scope of this Act.

Clause 8 What is a *correctional service*?

This clause defines a correctional service for the purpose of this Act as:

- the management, control and security of a correctional centre or
- the security, control, safety, care and welfare of a detainee at a correctional centre.

A correctional service includes policies, processes and procedures in relation to these matters.

This definition ensures any service provided to, or impacting on a detainee in custody under the CM Act, is covered by the scope of this Act.

Part 2 – Inspector of Correctional Services

Part 2 of the Bill comprises clauses 9 to 16 dealing with the appointment of the Inspector and the office of the Inspector.

Clause 9 Appointment of inspector of correctional services

This clause requires the Executive to appoint an Inspector of Correctional Services. Under section 253 of the *Legislation Act 2001*, two Ministers acting in concert is taken to be the exercise of the function by the Executive.

Clause 9(3) also provides that the Executive must not appoint a person as the Inspector unless satisfied that the person has the expertise or experience necessary to exercise the Inspector's functions. The inclusion of this requirement reflects Rule 55 of the *United*

Nations Standard Minimum Rules for the Treatment of Prisoners adopted in 1955, and Principle 29 of the *United Nations Principles for the Protection of All Persons under Any Form of Detention*.

Clause 9(4) requires that a person must not be appointed for a term longer than 5 years (but the person may be reappointed), and clause 9(5) provides that the conditions of the Inspector's appointment are agreed between the Executive and the Inspector subject to any determination made under the *Remuneration Tribunal Act 1995*. These clauses are consistent with the requirements for equivalent statutory authorities in the ACT.

Clause 9(2) requires the appointment to be made in accordance with an open and accountable selection process, and clause 9(6) requires the appointment to be a notifiable instrument. The inclusion of these clauses are necessary to ensure the appointment process is unbiased and transparent and there is certainty around the appointment decision.

The provisions in clause 9 also reflect the expectations set out in the OPCAT Guidelines for the establishment of a national preventive mechanism.⁸

Clause 10 Disclosure of interests

This clause requires the Inspector to provide the Executive with a written statement of personal and financial interests within seven days of appointment, seven days of the first day of each financial year, or when there is a change in the interest. This clause is included to proactively manage potential or perceived conflicts of interests and uphold the integrity of the position. This clause is also consistent with the requirements for equivalent statutory authorities in the ACT.

Clause 11 Inspector must not do inconsistent work etc.

Clause 11 requires the Inspector not have paid employment or engage in unpaid activity that is inconsistent with their functions. The inclusion of this clause acknowledges the role of the Inspector may be exercised in a part-time or per diem capacity depending on the workload requirements to ensure the efficient and effective function of the Act. It allows the person appointed as the Inspector to engage in employment or unpaid work, as long as there is no inconsistency with their functions as the Inspector.

⁸ [Guidelines on national preventive mechanisms, United Nations Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#), twelfth session, Geneva, 15-19 November 2010.

Clause 12 Ending appointment

Clause 12 allows the Executive to end a person's appointment as the Inspector in any of the following circumstances:

- for misconduct
- if the person becomes bankrupt or personally insolvent
- if the person is convicted, in the ACT, of an offence punishable by imprisonment for at least one year
- 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 one year.

Clause 12(2) requires the appointment to be ended if the Inspector has a mental or physical incapacity of a kind that substantially affects the performance of the Inspector's functions.

These clauses are consistent with the requirements for equivalent statutory authorities in the ACT.

Clause 13 Inspector's staff

Clause 13 allows the Inspector to employ staff, and provides for all the staff of the inspector to be employed under the *Public Sector Management Act 1994*, which regulates the employment of ACT Government employees.

Clause 14 Contractors

Clause 14 allows the Inspector to engage contractors to assist in the exercise of any function under the Act. This inclusion recognises the occasional need for specific expertise (for example, forensic mental health services or rehabilitation programs) when undertaking a review or examination of correctional centres and services.

The inclusion of this clause also reflect the expectations set out in OPCAT⁹ which requires a national preventive mechanism to have the required capabilities and professional knowledge.

Clause 15 Other arrangements for staff and facilities

This clause allows the Inspector to arrange with the Head of Service to use the services of a public servant or Territory facilities. The inclusion of this provision supports the Inspector in the efficient and effective management of its functions, particularly regarding administrative, secretariat or specialised public service staff support or expertise.

⁹ [Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment](#), Article 18(2).

The inclusion of this clause also reflect the expectations set out in OPCAT¹⁰ to make available the necessary resources for the functioning of the national preventive mechanism.

Clause 16 Delegation

Clause 16 provides that the Inspector may delegate their functions to a member of staff or a person engaged by it. This ensures that authorisation can be given to staff or contractors to assist the Inspector in the performance of their function, for example to enter a correctional centre or request documents.

Part 3 – Inspector’s functions and powers

Part 3 of the Bill comprises clauses 17 to 26 dealing with the Inspector’s functions and powers.

Clause 17 Functions—generally

Clause 17 provides for the general functions of the Inspector, including to:

- examine and review correctional centres and correctional services
- review critical incidents
- provide independent reports.

The inclusion of clause 17(c) provides for the external review of critical incidents by the Inspector to support public transparency and a preventive approach to serious incidents in correctional centres.

Clause 17(2) defines a critical incident to mean any event in a correctional centre or in the provision of correctional services that involves any of the following:

- the death of a person
- a person’s life being endangered
- an escape from custody
- a person being taken hostage
- a riot that results in significant disruption to a centre or service
- a fire that results in significant property damage
- an assault or use of force that results in a person being admitted to a hospital
- any other incident identified as a critical incident by the responsible Minister or Director-General.

¹⁰ [Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment](#), Article 18(3).

The definition of a ‘critical incident’ establishes a high threshold for incidents that occur in a custodial environment. This definition aims to ensure accountability and public transparency of events that may cause significant impact or harm in a custodial setting. It also reflects that there are appropriate existing internal review mechanisms within correctional centres for the oversight of events or incidents which do not cause significant harm.

Clause 17(2)(h) provides for the responsible Minister or Director-General to identify an incident as a ‘critical incident’ if it does not fall within the legislative definition, depending on the circumstances of the incident. The inclusion of this clause allows for an event which may not normally be considered a ‘critical incident’ to be included in the definition for the purpose of the Inspector’s review.

Clause 18 Functions—examination and review

Clause 18 describes the Inspector’s mandated and discretionary functions, and where applicable required timings.

Clauses 18(1)(a) and (b) require the Inspector to examine and review correctional places and services at least once every two years. This requirement ensures the systematic and preventive approach to the oversight of these facilities and services.

Clause 18(1)(c) provides the Inspector discretion about whether or not to review a critical incident. This allows the Inspector the ability to refer a matter to another oversight agency or entity if determined more appropriate. It also does not compel the Inspector to undertake a critical incident review on a matter referred by the responsible Minister or Director-General, if not considered appropriate.

Clause 18(2) requires the Inspector to, 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.

The examples given for clause 18(2) provide guidance on how the provision may be interpreted, including engaging staff or including consultation with a person or representative from the Aboriginal and Torres Strait Islander or same culturally or linguistically diverse community, a female or person with disability. The inclusion of this clause reflects the expectations set out in OPCAT¹¹ which requires a national preventive mechanism to have the required capabilities and professional knowledge, and strive for gender balance and the adequate representation of ethnic and minority groups.

¹¹ [Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment](#), Article 18(2).

Clause 19 Inspector may enter correctional centre etc.

Clause 19 authorises the Inspector to enter a correctional centre at any time, and inspect any document, including a health record, relating to a correctional centre, a detainee at a correctional centre, or the provision of correctional services. It also allows the Inspector to take any equipment required to effectively conduct an inspection of a correctional centre.

A 'document' is defined in the *Legislation Act 2001* to mean any record of information, and includes—

- (a) anything on which there is writing; or
- (b) anything on which there are figures, marks, numbers, perforations, symbols or anything else having a meaning for people qualified to interpret them; or
- (c) anything from which images, sounds, messages or writings can be produced or reproduced, whether with or without the aid of anything else; or
- (d) a drawing, map, photograph or plan.

Clause 19(3) authorises the Inspector to speak to or privately interview a detainee (with the detainee's consent), or any person at a correctional centre or involved in the provision of correctional services.

Clause 19(4) requires the Inspector to ask a detainee if they would like a support person present during a talk or interview, and to ensure the detainee is able to contact a support person as soon as practicable for this purpose.

These provisions recognise that without the required level of access to places of detention, relevant information and equipment, the Inspector is not able to effectively carry out its role. These provisions also ensure detainees are adequately supported when speaking with the Inspector during an inspection or review.

The inclusion of this clause also reflects the expectations set out in OPCAT¹² which requires preventive mechanisms to be granted the following in order to fulfil their mandate:

- access to all information concerning the number of persons deprived of their liberty
- access to all information referring to the treatment of those persons as well as their conditions of detention
- access to all places of detention and their installations and facilities
- the liberty to choose the places they want to visit and the persons they want to interview.

¹² [Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment](#), Article 20.

Clause 20 Inspection guidelines

Clause 20 enable the Minister to make guidelines about a matter the Inspector must review, examine or report on in relation to a correctional centre or services. This enables the Government to implement a corrections standards or framework the Inspector must consider when exercising its functions.

Clause 21 Access to correctional centres

Clause 21 requires the relevant Director-General to ensure the Inspector has access to all parts of the correctional centre, any vehicle or equipment used in a correctional centre or in the provision of correctional services, and is able to talk to each detainee in the correctional centre at any time.

Clause 21(2) creates an offence of 50 penalty units, imprisonment for six months or both, if a person obstructs or hinders the Inspector in the exercise of its functions without reasonable excuse.

This provision is intended to allow the Inspector to fully consider all available information when exercising its function and reflects the expectations set out in OPCAT,¹³ which requires preventive mechanisms to be granted access to all places of detention and their installations and facilities.

The criminal penalties need only apply as a last resort protection against organisational non-compliance.

Clause 22 Power to ask for information, documents and other things

Clause 22 provides the Inspector the power to ask people to provide documents or information relevant to an examination or review under the Act. The Inspector has to write to the person and tell the person how and when they are to comply with the request. Clauses 22 (4) and (6) create offences if a person is required to provide information or a document to the Inspector and fails to do so without a reasonable excuse. The maximum penalty is 50 penalty units. Detainees are not liable for these offences.

This provision allows the Inspector to fully consider all available information when exercising their function and reflects the expectations set out in OPCAT¹⁴ which requires preventive mechanisms to be granted access to all information referring to the treatment of those persons as well as their conditions of detention.

¹³ [Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment](#), Article 20.

¹⁴ [Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment](#), Article 20.

This power is one that is commonly given to investigative bodies and is consistent with the powers currently available to equivalent statutory authorities in the ACT.

It is intended that the criminal penalties serve as a deterrent to obstruction of the Inspector carrying out its functions and that they need only apply as a last resort protection against organisational non-compliance.

Clause 23 Requiring attendance etc.

Clause 23 gives the Inspector power to ask people to present themselves to answer questions relating to an examination or review under the Act. The Inspector must give the person a written notice of the time and place and the person they will be speaking to.

Clauses 23 (3), (5) and (7) create offences where a person is required to attend to answer questions in relation to an examination or review by the Inspector, and does not attend as required, or fails to continue to attend, or fails to answer a question, without a reasonable excuse. The maximum penalty for these offences is 50 penalty units. These offences do not apply to detainees.

This provision allows the Inspector to fully consider all available information when exercising their function and reflects the expectations set out in OPCAT¹⁵ which requires preventive mechanisms to be granted access to all information referring to the treatment of those persons as well as their conditions of detention.

This power is one that is commonly given to investigative bodies and is consistent with the powers currently available to equivalent statutory authorities in the ACT.

It is intended that the criminal penalties serve as a deterrent to obstruction of the Inspector carrying out its functions and that they need only apply as a last resort protection against non-compliance.

Clause 24 Inspector may keep document or other thing etc.

If the Inspector has asked a person to provide it with documents or other things (under clause 22) clause 24 allows the Inspector to keep them for as long as necessary for the consideration to which the document relates, and to make copies. The Inspector must return the items when they are no longer needed for consideration. While the Inspector has them, they must let people who would ordinarily be entitled to have access to them inspect or copy them.

¹⁵ [Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment](#), Article 20.

This power is one commonly given to investigative bodies and is consistent with the powers currently available to equivalent statutory authorities in the ACT.

Clause 25 Privileges against self-incrimination and exposure to civil penalty

Clause 25 removes the common law privilege against self-incrimination and civil liability that would otherwise allow a person to refuse to answer questions or produce documents as requested by the Inspector. It provides that material obtained as a result of a person having to act without the protection of the privilege cannot be used as evidence against them in court proceedings, other than for an offence under clause 22 or 23 of the Act or another offence in relation to the falsification of the information, document or other thing.

This provision supports the Inspector being able to fully consider all available information when exercising its function, while protecting the people providing the information.

Clause 26 Offence—taking detrimental action

This clause creates an offence of 100 penalty units, imprisonment for 1 year or both, if a person takes discriminating, harassing or intimidating action, or injures a person or damages a person's property because they intend to disclose, have disclosed, or are thought to have disclosed information to the Inspector. This clause is modelled on section 40 of the *Public Interest Disclosure Act 2012*.

This clause is important to ensure the appropriate safeguards are in place for detainees, staff and other people who may provide, or wish to provide information to the Inspector. This may be particularly important, if the information a person wishes to provide is seen as compromising the reputation of a person or agency.

It is intended that this will allow the Inspector to fully consider all available information when exercising their function and reflects the expectations set out in OPCAT¹⁶ which requires preventive mechanisms to be granted access to all information referring to the treatment of those persons as well as their conditions of detention.

This power is one that is commonly given to investigative bodies and is consistent with the powers currently available to equivalent statutory authorities in the ACT.

It is intended that the criminal penalties serve as a deterrent to obstruction of the Inspector carrying out its functions and that they need only apply as a last resort protection against non-compliance.

¹⁶ [Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment](#), Article 20.

Part 4 – Reports by Inspector

Part 4 of the Bill comprises clauses 27 to 30 dealing with reports by the Inspector.

Clause 27 Inspector to give reports to Legislative Assembly

Clause 27 requires the Inspector to give a report on any examination and review to the Legislative Assembly within six months of its completion.

It specifies the minimum requirements for a report, including:

- an evaluation and assessment of correctional centres and services examined and reviewed
- an assessment about whether detainee rights under international and territory law are protected, and whether law, policy and procedures reflect best practice standards
- any recommendations on changes required to infrastructure, policies, procedures or the law
- a statement of any matter that was referred to or from the Inspector
- whether any part of the report is to be kept confidential due to public interest considerations against disclosure.

Clause 27(3) allows the responsible Minister to extend the Inspector's reporting timeframe for up to 12 months.

Clause 28 Public interest considerations

Clause 28 requires the Inspector to consider whether any part of a report under section 27 must remain confidential because there are public interest considerations against disclosure and those considerations outweigh the public interest in favour of disclosure.

Clause 28(2) lists a number of consequences of disclosure which demonstrate a public interest against disclosure.

Clause 28(3) makes clear that potential embarrassment or misunderstanding or misinterpretation, arising from a disclosure, are not to be taken into account in deciding whether there is a public interest in disclosure.

This clause ensures the security of correctional centres or services, individuals, or the general public is not compromised by disclosures in a report by the Inspector, while providing for accountability and transparency.

Clause 29 Draft report to relevant Minister and director-general

Clause 29 requires the Inspector to give a draft copy of a report prepared for the Legislative Assembly under section 27 to the responsible Minister and Director-General at least six weeks before giving the report to the Legislative Assembly.

Clause 29(2) allows the responsible Minister and Director-General to provide comments to the Inspector in relation to the draft report.

Clause 29 (3) requires the Inspector to consider the comments and allows the inclusion of the comments as an attachment to the report, but does not compel the Inspector to amend the draft report in response to the responsible Minister or Director-General's comments. This provision ensures the independence of the Inspector and the integrity of their functions is not compromised.

Clause 29 does not include a separate requirement for the Government to formally respond to a report by the Inspector. Instead, this provision provides a mechanism for the ongoing review and Government response to issues raised or recommendations made by the Inspector. It acknowledges the nature of systematic review for this oversight mechanism and provides the opportunity for a collaborative inquiry approach to focus on strengths, identify achievements, and engage agency participation to produce sustainable change in the direction of best practice.

Clause 30 Report to Legislative Assembly

Clause 30 requires the Inspector to give a report prepared for the Legislative Assembly to the Speaker. Clause 30(2) requires the Speaker to present the report within five sitting days after receiving it.

This clause ensures accountability and transparency of correctional centres and services by ensuring independent reports about the effectiveness of centres and services are publicly available.

Part 5 – Cooperation and referral between Inspector and other entities

Part 5 of the Bill comprises clauses 31 to 35 dealing with the way in which the Inspector and other entities with oversight roles and responsibilities cooperate to avoid delay or duplication.

Clause 31 Cooperation with other entities

Clause 31 requires the Inspector to ensure its functions are exercised in a way that does not delay or unnecessarily duplicate the exercise of functions by existing oversight agencies or investigative entities in the ACT. This includes Human Rights Commissioners, the Auditor-General, Ombudsman, Official Visitors, and an adjudicator conducting a review under the CM Act, police officer investigating a fraud or other criminal matter or Coroner exercising a function under the *Coroners Act 1997*.

Clause 31(2) allows the Inspector to enter into an arrangement with an oversight agency or investigative entity to efficiently manage the interaction of each of the parties' statutory functions.

This clause aims to ensure a co-ordinated approach to the oversight of correctional centres and services in the ACT.

Clause 32 Inspector may refer matter to investigative entity

To support clause 31, this clause allows the Inspector to refer a matter (with any relevant documentation) to another oversight agency or investigative entity, if it believes the matter can be more appropriately dealt with by that agency or entity. Nothing in this clause compels the receiving oversight agency or entity to deal with the referred matter.

This clause aims to ensure a co-ordinated approach to the oversight of correctional centres and services in the ACT.

Clause 33 Cooperation with inspector

To complement the provisions in clause 31, this clause requires the Human Rights Commissioners, Auditor-General and Ombudsman to consult with the inspector prior to undertaking a broad investigation or own motion investigation relating to a correctional centre or services. It also requires these agencies to ensure when exercising these broad investigation or own motion investigation functions, they do so in a way that does not delay or unnecessarily duplicate the functions of the Inspector.

Clause 33(3) provides that the oversight agency may enter into an arrangement with the Inspector to efficiently manage the interaction of each of the parties' statutory functions.

This clause does not provide the Inspector with a veto power over an investigation, or impact on these existing agencies' abilities to review complaints or other core functions under their mandate. Instead this provision aims to ensure a coordinated approach to the broad oversight of correctional facilities where there is an overlap with the Inspector's role and mandate.

Clause 34 Oversight entities may refer matter to inspector

Clause 34 provides a reciprocal provision to clause 32. It enables an oversight entity to refer a matter to the Inspector, if it believes the matter can be more appropriately dealt with by the Inspector. Nothing in this clause compels the Inspector to deal with the referred matter.

This clause aims to ensure a coordinated approach to the oversight of correctional centres and services in the ACT.

Clause 35 Information sharing

This clause facilitates the cooperation and referral between the Inspector and other oversight agencies and investigative entities by authorising the sharing of relevant information necessary to appropriately accept, respond or deal with the matter.

This clause aims to ensure a coordinated approach to the oversight of correctional centres and services in the ACT.

Part 6 – Miscellaneous

Part 6 of the Bill comprises clauses 36 to 39 providing for protection of the Inspector from liability, offences for using or divulging protected information, a regulation-making power and a review of the Act.

Clause 36 Protection of inspector from liability

Clause 36 protects the Inspector from personal liability for things done for the purpose of putting the act into effect, provided that it acts honestly and not recklessly. The liability that would otherwise have attached to Inspector instead attaches to the Territory.

Clause 37 Offence—use or divulge protected information

Clause 37 ensures that any information a person has access to because of the Act, remains confidential.

Clauses 37(1) and (2) create offences for a person to use, share or divulge information in a private capacity. The information may only be exchanged or shared under the Act or another territory law, in relation to the exercise of a function under this Act or another territory law or in a court proceeding.

This is an important provision intended to ensure an individual's right to privacy is protected and the security of correctional centres is maintained.

Clause 38 Regulation-making power

Clause 38 is a formal provision giving the Executive power to make regulations under the Act.

The existence of a regulation making power does not oblige the Executive to make regulations. Any regulations made must be consistent with any provisions of the Act. Regulations are intended to provide for more detailed rules and operation of an Act where necessary.

Clause 39 Review of Act

Clause 39 requires the Minister to arrange for the review of the operation of the Act as soon as practicable after the end of its fifth year of operation. It also requires the Minister to present a report of the review to the Legislative Assembly within twelve months after the day the review is started.

As this Act establishes a new preventive oversight mechanism overseeing correctional centres and services in the ACT, it is important that the legislation empowering the Inspector is reviewed to ensure the Government's purpose, scope and objectives of the role are met.

Part 7 – Amendments

Part 7 of the Bill comprises clauses 40 and 41 providing for Schedule 1 and Schedule 2 to amend other Acts.

Clause 40 Legislation amended—sch 1

Clause 40 is a formal provision that outlines consequential amendments to the CYP Act and amendments to this Act in schedule one, once commenced under clause 2(2).

Schedule one provides that once commenced, youth detention places, services, young detainees and youth detention officers will be within the scope of the Act as it applies to adult correctional centres, services, detainees and corrections officers.

Schedule 1, items 1.1 to 1.10 insert references to the Inspector in provisions of the CYP Act dealing with:

- the definition of an *accredited person*, in relation to a young detainee
- entities able to inspect matters excluded from certain policies or procedures
- protected communications
- inspection of the register of searches
- the definition of *protected electronic communication*
- the definition of *protected mail*
- inspection of the register of segregation directions
- access to the therapeutic register.

Schedule 1, items 1.11 to 1.15 amend a heading and provisions in Part 6.3 of the CYP Act dealing with inspections by judicial officers, Assembly members and others of detention places. The amendments reflect that the Inspector is able to enter and inspect a detention place.

Schedule 1, Part 1.2 makes amendments to the new Act, which will apply the Act to young detainees.

The amendments made in Schedule 1 will commence when a day is fixed by the Minister or two years after the notification day for the Act, whichever is the later.

Clause 41 Legislation amended—sch 2

Clause 41 is a formal provision that outlines consequential amendments to other Territory Acts in schedule two.

Schedule 2 makes consequential amendments to the:

- *Auditor-General Act 1996*
- *Corrections Management Act 2007*
- *Human Rights Commission Act 2005*
- *Ombudsman Act 1989*
- *Remuneration Tribunal Act 1995*

These consequential amendments ensure a co-ordinated approach to the oversight of correctional centres and services in the ACT and provide that the new role of the Inspector is reflected in other relevant Territory laws.

Dictionary

The dictionary contains definitions for terms used in the Act.