

INSPECTOR OF CUSTODIAL SERVICES AMENDMENT BILL 2011

Second Reading

Resumed from 19 October.

HON GIZ WATSON (North Metropolitan) [5.29 pm]: I would like to make some comments on the Inspector of Custodial Services Amendment Bill 2011 and to offer the support of the Greens (WA) for the bill. The bill will amend the Inspector of Custodial Services Act 2003 in two ways. Currently, section 22 of the Inspector of Custodial Services Act grants to the inspector the function of reviewing custodial services or any aspect of them. The Inspector of Custodial Services Amendment Bill 2011 adds to this a further function of reviewing a custodial service in relation to one or more particular prisoners, and makes consequential amendments to facilitate this. In addition, if the inspector suspects on reasonable grounds that there either is or has been a serious risk to the security, control, safety, care or welfare of a person in custody, or that a person in custody is being or has been subjected to cruel, inhumane or degrading treatment, the inspector is granted power to give the CEO a written show-cause notice specifying the matters relating to that suspicion and requiring the CEO to show cause why the inspector should not refer these matters to the minister. The show-cause notice must give at least three days for compliance and the CEO may within that time make an oral or written submission or provide evidence regarding the matter in the show-cause notice. The inspector is to consider the submissions and evidence and then decide whether to refer the matter to the minister. If the inspector does refer the matter to the minister, the inspector must also give the minister advice or recommendations as to what the inspector considers to be appropriate. In his or her next annual report, the inspector is to include details of any show-cause notice issued and also details of any submission or evidence given by the CEO in response. Under section 35 of the act, annual reports are tabled in Parliament, making them accessible to members of Parliament and the public. Members of the public and certain community groups can access the inspector's annual reports directly from the inspector's website and selected tabled papers on the WA Parliament website.

By way of background to this bill, following the coronial inquiry into the entirely preventable death of Mr Ward in a prison van on 27 January 2008 during the term of the former government, on 12 June 2009 the coroner issued a report that included two recommendations. Recommendation 1 on page 133 of his report states —

I recommend that a statutory system be put in place which would enable the Inspector of Custodial Services to issue the Department of Corrective Services with a "Show Cause" Notice in cases where the Inspector is aware of issues relating to the human rights and safety of persons in custody.

The second recommendation on page 134 states —

I recommend that the terms of sections 34 and 39 of the Terrorism (Preventative Detention) Act 2006 be inserted in relevant legislation dealing with the Inspector's powers so that those protections be extended to all persons in custody and to all areas of the Inspector's jurisdiction.

The coroner's rationale for these two recommendations included that before Mr Ward's death the Department of Corrective Services was well aware of the defects in the prisoner transport vehicles, the Inspector of Custodial Services having described the problems in reports published in 2001 and 2007. In addition, a duty of care was owed to the deceased by the department as well as the private prisoner transport provider.

The Leader of the Opposition introduced a private member's bill, the Acts Amendment (Safety and Human Rights of Persons in Custody) Bill 2009. That bill was opposed by the then Minister for Corrective Services, Christian Porter, who said that he could do better, and therefore that bill has never been debated. It was removed from the notice paper on 21 September 2010 and was restored two days later. It was removed again on 27 September 2011 and, as far as I know, has not been restored to the notice paper as of yesterday; I do not think it has been restored today. This bill is what the government has described as the "better bill". It is disappointing to us that the government has taken so long to introduce this legislation which, in effect, has taken a couple of years. In the meantime, the government has upgraded its fleet of prisoner transport vehicles, ensured that the new contract for prisoner transport services has more teeth in the event of another death and has granted compensation to the family of Mr Ward, all of which we support. Had the former government paid as much attention to the quality of its vehicles upon being alerted to the defects of those vehicles, it is very clear that Mr Ward would not have died in the manner he did.

During the two years that have elapsed between the publication of the coroner's recommendations and the government's bill, the Standing Committee on Environment and Public Affairs has conducted an inquiry. That was triggered by a petition I tabled in this place in September 2009 on behalf of the Deaths in Custody Watch Committee. The petition, which contained 4 950 signatures, requested that the house recommend, amongst other things "full and prompt implementation of the coroner's findings". The committee's review of the petition led it to self-refer an inquiry that covered, among other things, the two coronial recommendations that I just cited. The

committee published its report entitled “Inquiry into the Transportation of Detained Persons: The implementation of the Coroner’s recommendations in relation to the death of Mr Ward and related matters” in July this year. The government has four months from the tabling of that report to provide a response. To my knowledge the government has not tabled a response to it as yet, although it is not out of time; there is still a little while. However, I note that that response is not available to inform this debate.

I will cover the issues that this bill raises, beginning with the audit of individual prisoners and the alternative presented by the government to implement the second of the coroner’s recommendations. In contrast, the opposition’s private member’s bill fully implemented that recommendation, amending relevant legislation to insert sections 34 and 39 of the Terrorism (Preventative Detention) Act 2006. The wording “cruel, inhuman and degrading treatment” in the government’s bill reflects the words in section 39 of the Terrorism (Preventative Detention) Act, which in turn reflects the language of human rights—for example, the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, especially article 16, and also the International Covenant on Civil and Political Rights, especially article 7.

The report by the Standing Committee on Environment and Public Affairs to which I just referred states on pages 5 and 7 that the coroner considered it unfortunate that there is less protection for a person detained on relatively minor charges, such as those that Mr Ward was detained on, than for suspected terrorists. The coroner considered that the implementation of his second recommendation would provide a mechanism for monitoring Western Australia’s compliance with Australia’s international legal obligations. The Attorney General considers that that recommendation is impractical because the powers in the Terrorism (Preventative Detention) Act relate to only a few people, not the 10 000 or so people who go through detention in Western Australia each year, and that there is no proper resourcing in place for this. He also considers that an audit function would be more practical. In 2010–11, \$594 000 was allocated for this. As I have already noted, the Attorney General said that \$600 000 in recurrent funding was available for the inspector to carry out the further functions in this bill. The inspector welcomes the audit powers as providing a way to audit the passage of a group of prisoners or individuals through the system or to conduct themed audits—for example, prisoners with a mental illness, pregnant women in prisons and double-bunking et cetera.

The standing committee supported legislation giving the inspector audit powers in recommendation 1 of the standing committee’s report and recommended that audit reports be tabled in Parliament. Recommendation 2 was to refer audit reports to a parliamentary committee for consideration. As occurs with other review reports, section 23 of the Inspector of Custodial Services Act enables the inspector to report to the minister on any matter arising out of an audit report and to give advice or make recommendations as the inspector considers appropriate. Section 24 of that act enables the inspector to deliver an audit report to the minister or any other person with a special interest in the subject matter. Section 34 requires the inspector to as soon as practicable provide a copy of the audit report for tabling in Parliament provided the inspector is of the opinion that it should be laid before the houses of Parliament. I will discuss a little further the issue of the referral of audit reports to parliamentary committees in a little while.

My reading of the Inspector of Custodial Services Amendment Bill is that any failure of the CEO to provide a submission or evidence in response to a show-cause notice will not prevent the inspector from going ahead with referring the matter to the minister when the time for compliance expires. I am interested to hear in the government response confirmation that that is the case. Hon Simon O’Brien no doubt will have taken a note of that question and be ready with a reply. This aspect of the bill implements the first of the coroner’s recommendations. In the past, the inspector has on occasions issued risk notices to the Minister for Corrective Services. I understand the previous inspector did so about the defective prisoner transport vehicles but, as we know, his warnings were not heeded, which had fatal consequences for Mr Ward. Such risk notices are not subject to parliamentary scrutiny, which means the role of MPs to put pressure on the government to implement changes in accordance with risk notices does not operate. This bill will change that, so information about show-cause notices will be included in the inspector’s next annual report unless she or he considers it inappropriate to do so. The inspector’s annual reports are made available to both MPs and the public via the inspector’s own website and the parliamentary tabling process. As I understand it, the past and present inspectors support this aspect of the bill. The Standing Committee on Environment and Public Affairs, which did not have this bill before it during its inquiry, supported legislation empowering the inspector to issue a show-cause notice; in fact, that was its first recommendation.

The first issue with the show-cause notice process in the bill is that if the CEO and the minister failed to act, MPs and members of the public will not know of the existence of an unheeded show-cause notice until the inspector’s next annual report became available. Obviously, it might be quite some time before that report became available, depending on the timing. Secondly, under part 7 of the act, the inspector chooses to publicise or disclose the show-cause notice. Section 44 permits disclosure for the purpose of consultation with the Corruption and Crime Commission, the Director of Public Prosecutions or the Parliamentary Commissioner for Administrative

Investigations. Section 45 permits disclosure to the CCC, DPP or the Parliamentary Commissioner for Administrative Investigations concerning matters relevant to the function of those bodies. Section 46 allows disclosure to be made if in the inspector's opinion it is in the interest of any person or it is otherwise in the public interest. Given the serious circumstances that attract a show-cause notice, the inspector may choose to disclose the information that the notice is being ignored by a CEO and/or a minister. Thirdly, I guess the public may become aware of a show-cause notice by way of a leak of information or a fortuitous question asked by a member of this place, for example, which leads to information being revealed.

The standing committee was of the view that show-cause notices should be tabled in both houses of Parliament and also referred to a parliamentary committee for consideration. Clause 4 of the opposition's private member's bill included a provision for show-cause notices to be tabled in Parliament within five sitting days of receipt. A problem with legislating a requirement that all show-cause notices be tabled in Parliament is that there may be show-cause notices that identify particular prisoners and reveal confidential information about them. Such information should not necessarily be made public, but this would happen if the notice was required to be tabled. On balance, I think it is best to retain flexibility so that the show-cause notices do not have to be tabled, but the inspector has the option to make the notice public at any time through the act's existing disclosure and publication provisions in circumstances in which it is appropriate to do so.

On the matter of referring audit reports and show-cause notices to a parliamentary committee for consideration, I go again to the standing committee's report. Pages 8 and 9 of the report state that a few years ago, the former inspector sought to have a parliamentary standing committee meet with the Office of the Inspector of Custodial Services on a regular basis; however, during the inquiry the committee was advised by an acting inspector that the current level of parliamentary oversight is appropriate and adequate to scrutinise the work and findings of the office and to support the role of the inspector. Some parliamentary oversight is provided by the Standing Committee on Public Administration via hearings or briefings with the inspector regularly or intermittently. That committee is able to consult a number of statutory officeholders but its capacity may depend on its inquiry workload. That committee has the power to summons the department to answer questions and historically that committee has looked at all the office's reports and decided to write to the minister or inspector about particular matters. In comparison, some other statutory officeholders and agencies are provided with more targeted and robust parliamentary oversight—for example, the Joint Standing Committee on the Commissioner for Children and Young People and the Joint Standing Committee on the Corruption and Crime Commission as per their respective legislation. Both the Public Accounts Committee and the Standing Committee on Estimates and Financial Operations, under their terms of reference consult regularly with the Auditor General. Given the importance of the role of the inspector and the real impact his office's work has on reducing risk to prisoners and persons in custody, the committee stated that Parliament should consider providing the inspector with greater access to Parliament and to members of Parliament.

Referring an audit report and/or show-cause notice to a parliamentary committee would enable parliamentary scrutiny without making personal information about a prisoner generally publicly available as occurs, for example, in the tabling process, unless the committee decides the information should be published. Obviously, parliamentary standing committees would retain the capacity to make that judgement and decide whether it is in the public interest to make the information available. The inspector would no longer have sole control of this information. As I said already, I understand the office receives some very personal information about prisoners and that under the act the inspector has considerable discretion to reveal information in circumstances he thinks appropriate. The Standing Committee on Public Administration has the ability to obtain information from the inspector and/or the department if it so wishes. On balance, it appears that the inspector has sufficient existing powers to access Parliament and members of Parliament and vice versa in that the Parliament through the Standing Committee on Public Administration has sufficient existing powers to access the inspector. For these reasons, I will not move an amendment to the bill in line with the recommendation of the Standing Committee on Environment and Public Affairs, but I express the hope in light of both that committee's comments and the new powers introduced by this bill that the Standing Committee on Public Administration will from now on meet regularly with the inspector in addition to monitoring the reports issued by the office.

The issue of the inspector's lack of enforcement powers has been raised in consultation on the Inspector of Custodial Services Amendment Bill. On 5 December 2003, in speaking on the bill that established the Office of the Inspector of Custodial Services, both the then opposition and the Greens (WA) discussed the issue of ensuring the inspector's recommendations are implemented. Hon Peter Foss had carriage of the bill for the opposition, and he saw the inspector's report as an effective aid to management. He said that prisons are specialists in preventing their minister from finding out about problems, so the function of reports is useful for not only Parliament as a whole but also the minister in particular. He also supported a delay between the prison being given a draft report and the final report being tabled in Parliament on the basis that it is better when the report is tabled if prison operators can say that they are taking steps, rather than going in with a big stick

afterwards. However, he expressed concern that little action had been taken by the department on the inspector's report on Hakea Prison. Similarly, the Greens expressed concern that both the government and the former government had been very lenient with the privately run Acacia Prison. Hon Peter Foss saw it as the role of parliamentarians to put pressure on the government to ensure the inspector's recommendations are carried out. At the time, the Greens preferred to see the legislation itself required changes but noted that this was a matter of judgement.

Under the act, the inspector's role does not include enforcement; it is the inspector's role to provide independent information to others who have that responsibility. As already noted, there are mechanisms in the act and this bill for the inspector to provide information to the CEO of the relevant facility—if the facility is a court custody centre, then to the chief judicial officer of the relevant court, under section 36—to the minister, to all MPs and, in certain circumstances, the CCC, the DPP, the Parliamentary Commissioner for Administrative Investigations or a person, the public or a section of the public if it is in the interests of any person or is otherwise in the public interest. In addition, the terms of reference of the Standing Committee on Public Administration allow it to receive information from the inspector. That committee can summons the department to answer questions. Also, members of the public and interested community groups can access the inspector's reports via various means. All these mechanisms are levers for enforcement action or for other pressures to be brought by bodies other than the inspector's office itself. The argument for the inspector to have a direct enforcement role is that the government can, and sometimes does, ignore the inspector's recommendations. The death of Mr Ward in 2008 arose out of that exact situation. It was not the first. As already noted, in 2003 the then opposition and the Greens raised concern about the lack of government implementation of the inspector's recommendations on Hakea and Acacia Prisons.

The arguments against the inspector having a direct enforcement role include the following. Firstly, given that prisoners are not publicly visible, it is extremely important that there is a reliable independent source of information regarding their welfare. That is the value of the inspector and his or her office. Having a direct enforcement role compromises that independence by placing the inspector in an adversarial position. Secondly, the inspector and his office have not been provided with resources for enforcement in addition to their other functions. Thirdly, the inspector and his office do not have direct responsibility for a prisoner's wellbeing. Prisoners are not held in custody by the Inspector of Custodial Services or his office. The standing committee report states at pages 6 to 7 that even if the coroner's second recommendation had been implemented as envisaged, the Attorney General's opinion is that the inspector would not be legally obliged to do anything with that person.

I wanted to touch on another matter that was raised in the other place during debate on this bill; that is, the extension of the inspector's role to police lockups. On 5 December 2003, when speaking on the bill that established the Office of the Inspector of Custodial Services, both the then opposition and I strongly supported the inspector's role eventually being extended to include inspection of police lockups. It is interesting that while we are debating this amendment bill with the then opposition now being the government, we are not going down this track. In 2003 Hon Peter Foss spoke for the opposition. He had been Minister for Justice when the office was first set up. In 2003, when the legislation was debated, he said that —

... it misses out on police lockups, which I regret. I do not know how they got left out of the legislation. I am sure they will be going in. ... the reality is that they look after police lockups and they incarcerate people. Many police lockups would be considered to be entirely substandard. It is disgraceful that they should be able to continue without being properly inspected. I hope that the minister will give me some sort of timetable for when the final part of the range of inspectors services will be added to the Act ...

Further, he said —

I look forward to seeing police lockups included in the legislation ...

My understanding is that the original undertaking by the then Liberal government when the office was first set up—that was before the legislation was introduced because the office was set up before the legislation was put in place—was that its functions would extend over time to include juvenile detention centres and police lockups. When the bill formally established the office—when the bill was debated in 2003 under the Labor government—it was extended to cover juvenile detention centres but not police lockups. It has never been extended to cover police lockups, despite the original intention. My understanding is that the inspector's office has no objection, in principle, to an extension to include police lockups since that was always the stated intention. There are, however, big resource implications given the number of lockups, the size of the state and the remote location of a considerable number of those lockups. There would also need to be a phasing in to allow for the planning of inspections and the education of police in the same way that prison staff had to be educated when the office was first established.

I note that when the bill was debated in the other place, the member for Girrawheen said that the police commissioner had told her he was largely supportive of an extension of the inspector's role to cover police lockups. However, the minister in the other place said that he was not supportive of such an extension, at least, it would seem, while WA is the only Australian jurisdiction to have an inspector at all. This seems to be a very strange excuse. I note particularly that the minister's excuse is not that he considers police lockups are satisfactory; the reason he did not say that is because they clearly are not, and the government knows it. My understanding is that some police lockups, particularly those in regional areas, are so bad that the police do all they can to get prisoners out of lockups and into prison or remand centres as soon as possible. They clearly want to avoid further deaths in custody in police lockups. For these reasons, the minister's excuse gives me a very strong sense of *déjà vu*. Before Mr Ward's death, the former government knew that its vehicles were defective but chose not to replace them until a man died in an incredibly horrible way. This government, albeit a different government, knows that its police lockups are defective and chooses not to permit the Inspector of Custodial Services to monitor and report on them. Further, it does so in the face of having previously said, and strongly, that there should be an extension of the inspector's powers to cover police lockups. I find this extremely concerning.

I might just touch on a specific case that was brought to my attention relating to police lockups. It relates to the health treatment that is provided to people who find themselves in police lockups, particularly Aboriginal people. As we know, a higher proportion of the Aboriginal population has diabetes. As members may be aware—I know some members are very aware of this—if a person has diabetes and they do not have the appropriate dose of insulin administered regularly, they can lapse into a coma and die. When a person is brought into a police lockup, often the circumstances are that they have been drinking and they are fairly incoherent; without a full interview by someone who is medically trained, it is very hard to ascertain whether their symptoms are related to the fact that they might be drunk, they might have had a blow to the head, they might be suffering symptoms of their diabetic condition, or all three. Police lockups do not have trained and qualified medical professionals on hand all the time. Therefore, assessments are being made of the medical circumstances of people who are brought into those lockups by people who are not qualified. That has been raised directly with me by people working in the lockups. I have no reason to doubt that information. I have been trying to follow that up for some considerable time. That is an example of why we would argue that the reach of the Inspector of Custodial Services needs to go into those police lockups. We know very well that people die in police lockups. The case that was brought to my attention involved a young Aboriginal man who lapsed into a diabetic coma in a lockup. It is likely to be connected to the fact that he was not assessed by a qualified medical professional. That is just one example. If I had more than 45 minutes in which to speak, I could probably think of others. That information about one of the police lockups in WA was brought to my attention in the last 12 months.

Given the resource implications, I will not move amendments relating to the extension of the reach of the Inspector of Custodial Services into police lockups but I remind the government of its former strong position, which had the support of the Greens (WA) and clearly now also has the support of the opposition. It seems to me that formally at least the Liberal Party gave a very strong indication when it was in government that we would extend the reach of the inspector's office to deal with police lockups when the office was established.

Sitting suspended from 6.00 to 7.30 pm

Hon GIZ WATSON: I was fairly close to concluding my comments before we broke for dinner, but I want to reiterate the point I was making. Whether the reach of the Inspector of Custodial Services should extend into police facilities—police lockups in particular—has been the subject of quite extensive discussion ever since the position was created. I note that there was support from the previous Liberal government when it was in a position of establishing the Office of the Inspector of Custodial Services. It was clearly stated that it was always the intention that the legislation be extended to include those facilities. Clearly, the opposition is also supportive of that proposition. The Greens (WA) have always argued that that would be appropriate. I seek a response from the minister, when he responds to the second reading of this bill, as to whether the government will rethink its current position on police lockups during this term and whether it will fulfil its promise by providing sufficient resources and further amendments to the act necessary under the legislation to extend the inspector's role to cover police lockups; and, if not, will he state for the record whether he considers that all police lockups in Western Australia are of an appropriate standard for the incarceration of prisoners?

Hon Simon O'Brien: I think we should send you and the estimates committee to examine every single one of them!

Hon GIZ WATSON: Excellent.

Hon Simon O'Brien: You can tell us what you think.

Hon GIZ WATSON: Yes. I have a pretty good idea already.

Hon Simon O'Brien: I will move an amendment to that effect!

Hon GIZ WATSON: Thanks. Some response on that would be useful, and perhaps an indication whether there has been any movement in that direction. I have some additional questions which perhaps more appropriately will be dealt with in committee, but let me try them now.

Hon Simon O'Brien: If I can deal with things, we may not require a committee stage. I am in your hands, though.

Hon GIZ WATSON: That is right. Let me pose the questions now and we will see whether they can be dealt with in the minister's second reading response. I refer to clause 4, which seeks to amend section 22. Proposed subsection (2) states —

Without limiting subsection (1), a review may be carried out under that subsection of the following or any aspect of the following —

- (a) a custodial service in relation to one or more particular prisoners;
- (b) a custodial service in relation to one or more particular detainees;
- (c) a custodial service ... in relation to one or more particular persons in custody.

How will the inspector, or the inspector's office, identify particular prisoners or detainees?

Hon Simon O'Brien: Do you mean how we select the 40-odd prisoners a year?

Hon GIZ WATSON: Yes. Is it random? Can prisoners or detainees correspond directly with the inspector and put that they have a case they would like investigated, or is it a random process? Are they freely able to communicate with the Inspector of Custodial Services? I understand that correspondence with prisoners is monitored; I am not saying that is not appropriate, but asking whether that is an impediment. Does it only pertain to prisoners and detainees who are currently in detention? If someone has been in detention and would like their case to be —

Hon Simon O'Brien: Do you mean a former prisoner to be audited to see if they were dealt with?

Hon GIZ WATSON: Former prisoners or detainees who might be in a position to lodge a complaint, whether the amendments allow for that or not. With those comments, we support the bill, but I will be interested to hear the minister's response to those concerns.

HON KATE DOUST (South Metropolitan — Deputy Leader of the Opposition) [7.35 pm]: I think Hon Giz Watson has given an excellent speech on this bill tonight and has probably covered all bases. But I will say a few words; I cannot let it go.

The opposition supports the Inspector of Custodial Services Amendment Bill 2011. Indeed, it adds the final part to address the coroner's recommendations into Mr Ward's death. As Hon Giz Watson has already noted, the detail is primarily focused around two areas; firstly, the show-cause notices, which are essentially the inspector's last resort to give the department notice that it needs to take action before he takes an issue up with the minister. Some of the discussion at the briefing I had yesterday was interesting. I suppose I was a bit surprised, because I have not been involved in this area, that there has not previously been some sort of mechanism that would get the department to the point it could address these issues. Having listened to Hon Giz Watson's speech, I was interested to pick up on some of the points she made about things that had been put to one side or had not been addressed properly. This change is quite important because the department will now be compelled to address those issues over a very short period, which I think is very important. The best example of a similar situation I can think of would be an improvement notice under the Occupational Safety and Health Act. An improvement notice can have a minimum of about 55 days before action has to be taken or notification needs to be provided as to which action will be taken to remedy the issue. The change that will occur under this bill is quite significant. It adds to the importance and the seriousness of the matters that the inspector is canvassing with the department, and the action that needs to be taken to rectify the situation. The fact that the CEO will be the officer responsible to respond to show-cause notices is also very important. Although I understand that he or she may have the capacity to delegate to an individual to deal with these things, at the end of the day the buck has to stop with someone. The CEO is the appropriate person.

The second part of this bill which is quite significant—as the inspector said to me yesterday, in his view it is probably of paramount importance—is the audit capacity. I note Hon Giz Watson has already referred to the very, very good report tabled recently from the Standing Committee on Environment and Public Affairs on the inquiry into the transportation of detained persons, in which there were a number of findings and recommendations. I too look forward with great anticipation to the government's formal response to the 20 recommendations and 14 findings of that committee. I know the committee commented on the matters we are

canvassing in this legislation. In fact, the committee, at the time of writing the report, was concerned about the delay in getting this legislation into this place. I am pleased that we are finally dealing with this bill. I know that comments have already been made about the importance of the audits, but when going through the detail of the bill yesterday it was interesting to discover that this capacity will enable the inspector and his staff to perhaps broaden out the types of matters they look at, and take them back to the level of individuals. They may want to look at a matter specific to a particular group in the system, and an example given yesterday was that of the number of pregnant women in the prison system and how that and other aspects impact on their pregnancy. Having visited Boronia prison a number of years ago, I know that a number of programs have been put in place to assist pregnant women, particularly those who had no parenting experience. If this is part of the process whereby they—to use a word Hon Paul Llewellyn used; is it “break down” the package?

Hon Simon O'Brien: Unpacking.

Hon KATE DOUST: Unpacking! Thank you.

Given that we have such a large number of people, unfortunately, in the prison system, from all walks of life, it is important that the inspector has access to a range of places for these individuals—not only inmates, but those who have left the system—to gauge their views and opinions on the various aspects of their experiences. That is important because we always need to evolve, change and improve, and a very important part of the inspector's role is to inquire into these matters and inform us and government so that government can get things done better. Over time, we have seen some aspects of corrective services improve, although obviously there are always other things that can be done. I pick up on Hon Giz Watson's point about lockups. She is right—perhaps this is a good time because we have all the parties in agreement—about the appropriateness of the inspector's capacity to inquire into standards in lockups. I know that this matter was canvassed in the other place and that part of the reason given for not providing that type of change in the bill was that it is very complicated and requires amendments to a range of other pieces of legislation.

Hon Giz Watson: Just a few. I would argue not many.

Hon KATE DOUST: I am not too sure how many. It may be more than half a dozen, but I do not know. Even so, at some point it would be very useful. We have seen the very infamous case of Mr Spratt in the Perth lockup and a number of incidents involving the mistreatment of prisoners in the Fremantle lockup—or is that the Fremantle Police Station rather than the lockup? There are a number of examples. It may be that the government needs to give due consideration to incorporating inspections of lockups at some point soon, whilst it has everyone around the political spectrum on board to support it.

It is very fortuitous that we are dealing with the legislation today, because the Inspector of Custodial Services, Professor Neil Morgan, has tabled in the Parliament his annual report for 2010–11, in which he notes that this legislation is pending. I am sure that by the end of tonight, hopefully, this bill will have gone through to its final stages. In his annual report, Professor Morgan goes through the range of work that has been done by him and his team, and there is quite a detailed section on the audit function. On page 10 of the report he refers to the importance of the audit function. I know that the types of issues that can be canvassed will change once this bill is passed, and I think that is a positive outcome. However, he states in the report that —

... audits lead to findings and/or recommendations that may be published. However, audits differ from other inspection activities in terms of ... their focus and their methodology.

He goes on to talk about how some of the work done this year has been to develop methodology that can be applied for future audits. I understand that this bill will enable a minimum of about 40 audits of individuals a year. That is a substantial piece of work. I imagine that the report we will receive next year will contain some quite interesting detail about the types of themes and issues that arise from those audits, and give guidance to the government on how to introduce the changes to deal with the types of issues resulting from those audits.

I refer members to page 11 of the report and the types of audits conducted, including some in relation to health service coverage at five key high-risk prisons. One issue that again was canvassed yesterday during the briefing was that of the audit conducted into the use of bunk beds. I am not too sure whether Hon Giz Watson mentioned that, but I understand that there have been a number of incidents to do with prisoners falling from bunk beds and the size or heights of bunk beds. These are issues that we probably do not think about or countenance as being significant. However, looking at the health and safety issues associated with the welfare of prisoners in that environment, I imagine that it is necessary to look at these types of nuts-and-bolts issues. It may be that there will be recommendations about how the corrective services department might provide appropriate bedding arrangements for prisoners. An audit was also conducted into the key indicators in the management of adult offenders. The report gives us a bit of a taste of the diversity of the types of audits conducted. Once this bill is passed and the inspector is able to conduct a range of other types of inquiries or seek other types of information, it will add value to and assist in the improvement required in the system.

It was interesting to note that Western Australia is the only state with an Inspector of Custodial Services. It is good that we are leading the way. I was quite surprised that states such as Victoria and New South Wales, given their long penal history, do not have an inspector.

Hon Giz Watson: Do you know the history of that?

Hon KATE DOUST: No, I do not. But I am sure Hon Giz Watson will be able to tell me.

Hon Giz Watson: It was a trade-off for private prisons. We opposed it. The Democrats and the Liberals passed it as a trade-off—for an Inspector of Custodial Services.

Hon KATE DOUST: Right; Hon Giz Watson will be able to tell me more about that later.

However, I understand that there are now moves afoot in at least one state to look at the option of an Inspector of Custodial Services, and looking at the model we have in Western Australia—although I think it is important that we always seek to improve it—that would be very helpful.

Another matter that was canvassed in the other place, which has already been canvassed tonight, is that of funding. I note that a team of about 15 or 16 people work with the inspector. I understand that there has been an allocation in this year's budget, but given that one anticipates that there will be a significant increase in work in putting together show-cause notices, where relevant, and conducting these types of audits, at some point the government may have to give further consideration to additional funding.

One of the other aspects in this annual report that I thought was interesting is that the Inspector of Custodial Services not only conducts audits and inquires into the management and running of our prisons, but also he develops standards for our state. I think that is an important area of work that is not advertised a lot. I understand that the office of the inspector now has three distinct sets of standards, one for adult custodial services, one for Aboriginal prisoners and one for young people in detention. As time moves on, I imagine more work will be done in those areas to establish standards that people can work to and for the department to adhere to.

The other issue that has already been canvassed is the inspector's role of reporting to Parliament. I note that this year the inspector has engaged with the Legislative Council Standing Committee on Public Administration. The inspector also provided evidence to the Standing Committee on Environment and Public Affairs as part of its inquiry into the transportation of detained persons. I think it is important that the inspector has that connection. Some discussion is in our report about the oversight of his role. The Standing Committee on Public Administration is probably the best vehicle at this time, other than the Standing Committee on Estimates and Financial Operations of course. Once we take away the budgetary elements, and look at broader issues, I hope the Standing Committee on Public Administration will call the inspector in on a fairly regular basis. It is an interesting area of work and there are some great opportunities to do this well. I always refer to the work that has been done at the Boronia Women's Prison because compared with what was in place at Bandyup, which is pretty awful —

Hon Giz Watson: What is in place.

Hon KATE DOUST: What is in Bandyup; I have not been there for five or six years. I have been through the old Nyandi women's prison, which I understand is now used as a training environment, at least it was until 2008, and has now been replaced by Boronia. I must give Jim McGinty due credit for the work he did in developing Boronia to what it is today. It is a very good model. One can feel the difference in the atmosphere in how people interact. It provides opportunities in education, training and counselling to assist the women to get themselves back on track so that they can have a future once they have completed their time. Part of the work of the inspector is very important in measuring the work done there and the outcomes. We hope that, based on the reports and information provided by the inspector to the department and the minister, change can be implemented in due course even at prisons such as Bandyup and others. It is very important that these amendments have been introduced.

We all know, and I agree with Hon Giz Watson, that Mr Ward's death was entirely preventable and nothing will ever provide any form of emotional compensation to his family for his loss. But in some ways, as a result of the recommendations from the coroner and a range of other work that has been done, we have been able, hopefully, to make sure, as best as possible, that those types of mistakes do not occur to other people. Having these show-cause notices in the legislation and broadening and changing the audit capacity certainly opens the door to providing better and more opportunities for improvement in our corrective services system. With those few words, there is not much more to add because I think Hon Giz Watson gave a very extensive and detailed second reading contribution to this bill. The Labor opposition supports the passage of this bill.

HON COL HOLT (South West) [7.54 pm]: I want to add my support and that of the Nationals to the Inspector of Custodial Services Amendment Bill 2011. As Hon Kate Doust said, Hon Giz Watson gave a nice history of the need for this sort of change. After the coroner had looked into the death of Mr Ward he spelt out pretty

clearly some recommendations for legislative change. I would have thought that would result in a fair amount of urgency to get on with implementing those changes. In a past career, I worked with people in rural areas and often talked to them about change. A nice model was developed by Shanka Chamala from the University of Queensland, who talked about four components needed to bring about change. One of them is the pressure for change arising from a critical moment. In other words, something has gone very wrong so we need to fix it. In this case, the critical watershed moment is the death of Mr Ward, when we thought, “Gee, something has failed here, we need to change it.” The next component is the need for a vision of where we want to head. It is pretty clear that everyone in this Parliament and this government wants to ensure that people in custody are treated humanely and do not have unfortunate or unscheduled accidents such as what occurred to Mr Ward. I am sure that is a vision everyone in this Parliament shares.

One of the other components that Shanka Chamala talks about is the capacity to change. We must have the ability to not only think about where we want to head but whether we have the skills and knowledge to work towards it. In this case, with this legislation, we certainly have the ability. It is a great initiative to provide the Inspector of Custodial Services with the capacity to look after the welfare of those in custody. I know that the previous inspector and this inspector are very keen to see this legislation pass to provide the inspector with even more capacity to address some of the things that might come up during their duties. The last component of the Shanka Chamala model is to consider the first step: how do we take that first step on the journey of change? I think the coroner spelt out the first step by suggesting legislative changes that we can adopt to make the system better.

Given those four components were obviously relevant to this situation, I would have thought we could get on with the job pretty quickly, but, for whatever reason, it has been delayed a little. Now that we are here, I congratulate the government for finally introducing the legislation and congratulate the minister for driving it to this point. Importantly, we need to give people such as the Inspector of Custodial Services the tools to drive some change, and when the show-cause notices are issued, the Department of Corrective Services will have to respond to the issues raised in a timely manner. The show-cause notices will become an important tool for the inspector to drive change. With those very few words and in support of what Hon Giz Watson and Hon Kate Doust said, the Nationals will support the legislation. We think it is a great bill.

HON SIMON O'BRIEN (South Metropolitan — Minister for Finance) [7.58 pm] — in reply: I thank members for their contributions to the second reading debate. Each of the several speeches we have heard was quite different. All were thoughtful and all made a contribution. I would like to thank members for displaying diligence and taking the care to approach the debate on this bill in that manner. I will come in turn to each of the members who contributed. None was finer than the contribution from Hon Col Holt on behalf of the National Party, and I thank him for his indication of support. In addition, Hon Kate Doust chose to range over a number of matters related to the Inspector of Custodial Services Amendment Bill 2011 and invited us to contemplate, with reference to the 2010–11 annual report, how the changes to the principal act that we hope to progress tonight will be reflected in the next annual report and those that follow. I think she is right; the elements that we are progressing through this bill—relatively few in number but important in their nature—will be noticed in future annual reports because they add some extra dimensions to the Inspector of Custodial Services' duties, and we will watch out for that with interest.

Hon Giz Watson also clearly put a lot of thought into the matters contained in the bill and, in addition to that, asked me to contemplate some specific questions, which I will seek to answer presently. I am not aware of any supplementary notice paper in relation to this bill, so I will take particular care to hopefully answer the member's questions in my response to the second reading debate, so that the house does not have the inconvenience of having to resolve itself into the Committee of the Whole House. If we need to do that, of course we will, but I will give it my best shot.

Hon Giz Watson asked a number of specific questions, the first of which was: what action is likely to be taken if a show-cause notice is effectively disregarded by the chief executive officer? Specifically, could the inspector in that circumstance still refer to the minister the matter that has given rise to the concern? The answer is yes. Furthermore, not only is it possible for the inspector to refer a matter to the minister in such a circumstance, I think it is almost inevitable that he would refer the matter to the minister's attention, and I think that is probably a satisfactory outcome, given the way that question was couched.

Hon Giz Watson also discussed, both before and after the break this evening, the question of the coverage of police lockups by the Inspector of Custodial Services. This is a matter that has been the subject of debate before, in this place and elsewhere, and the honourable member has indicated that she wishes us to pursue it again on another occasion but has, in the meantime, asked me to respond to some specific elements, and I will do the best I can. Hon Giz Watson looked to draw a comparison between government action, or lack thereof, on police lockups, and the tragic case of Mr Ward a few years ago. She reminded us that it had been brought to the

attention of the then government that the vehicles available for the transport of people in custody were quite unsuitable and posed a risk; I think that is the summary, in general terms. The government of the day, even though it contemplated this matter more than once through the cabinet processes, on both occasions, having considered the matter, decided not to allocate money to renew the vehicle fleet. We know that subsequently and, perhaps, to some extent consequently, there was the tragedy of the Mr Ward case. Hon Giz Watson is right to decry that example, and she gave some credit to the current government for belatedly addressing the matter by purchasing new and suitable vehicles, at some cost.

The honourable member then went on to draw a parallel—I think I am characterising her remarks fairly here—between that situation and the situation that currently exists for police lockups. If I am quoting the member fairly, she indicated that it has been brought to this government's attention that the state of sundry police lockups is not up to scratch and asked why we are not doing anything about it. I am not in a position at the moment to comment in great detail about police lockups, because I do not have particular day-to-day responsibility for them and so do not have current knowledge, but I think, with the greatest respect, that the parallel the member has sought to draw is unfair. I think there is a very, very big difference between the vehicle transport issue that I have just summarised and the suggestion that police lockups around the state are not acceptable.

I am not sure how the honourable member came to the conclusion that she has presented to us, and I do not know what aspect of the police lockups she considers inadequate—whether it is the actual physical premises or the systems that the police resort to in managing those facilities. If it is the case that it is the facilities that are inadequate, I do not believe that a parallel can be drawn; it is a quite different situation, in my view, but I would be interested to know what the general accusation of inadequacy is about.

Hon Giz Watson: If the suggestion is that we will not go into the committee stage, I might just offer an explanation by way of interjection. In 2003, Hon Peter Foss made the comment that many police lockups would be considered to be entirely substandard and that it was disgraceful that they should continue without being properly inspected. I would suggest that not much has changed since 2003, unless you can suggest otherwise. It is partly the nature of the facilities; a lot of them are very old and inadequate. It is also the allegations of inappropriate behaviour within the lockups, such as the tasing of Mr Spratt. Thirdly, it is the matter that I raised in my contribution to the second reading debate about the inadequacy of supervision of health matters in police lockups, including detainees who are diabetic. There are three things.

Hon SIMON O'BRIEN: I thank the member for that, and you, Mr Deputy President, for allowing me to entertain that lengthy interjection; it has clarified matters somewhat. Firstly, it has clarified that I do not think this case is the same as the Mr Ward situation. If there exists in any of the police lockups around the state a physical situation that poses a threat to someone's life, that is the sort of thing that needs to be addressed and should be addressed, and if any can be brought to attention, I am sure that they will be addressed. I do not know how many police lockups there are across the length and breadth of the state. There would be a heck of a lot, I should think. I imagine that they are of various ages and are exposed to various levels of wear and tear. A police lockup is, by definition, a fairly austere and grim place. It receives people in stressful circumstances; possibly they are people who have been arrested in the wake of violent crime, whereby the people's behaviour is affected by drink or drugs and so on. The lockups themselves have to be maintained in a way that minimises the risk of injury—for example, in a way that does not exhibit any hanging points. They are fairly austere and unwelcoming places at the best of times.

The question of whether lockups individually or over the whole system are inadequate is something that I am not really equipped to discuss with the member now. It is not the matter that is immediately before us, and I do not have any firsthand knowledge. I think it is legitimate, though, for the member to raise it as an issue that needs to be addressed, so I do not begrudge the member that. However, the question is whether or not police lockups should be covered by the inspector. I would have thought that this is perhaps not the time for us to have that debate.

The honourable member alluded to the fact that the extension of the inspector's powers to police lockups would involve some fairly major changes—as Hon Kate Doust pointed out earlier—to the Police Act, amongst others possibly. It deals with quite a different portfolio—the corrective services portfolio versus the police portfolio. Although there would be similarities in that some people who are taken into custody are held in either type of institution, different systems are in place for police operational services at their lockups. It is not the same as our prisons. Having said that, I do not deny that there could be a case for the Inspector of Custodial Services in due course to conduct inquiries at police lockups. I do not see that there is a reason that that should not be contemplated. However, it is not part of the bill that is in front of us now, so there is limited point in us dwelling on it. I think Hon Giz Watson made reference to other matters that restrict the capacity of the inspector to inspect lockups. Quite apart from the legal impediment, there is the possibility of another regime being created in due course, a national system of supervision of prisoners, including prisoners in lockups. At the moment the

inspector does not have the legal prerogative and does not have the resources to do the inspection of lockups in the same way that he does with other places of detention, so there is probably not much point discussing that more tonight, but I acknowledge the member's pursuit of the issue and the fact that she continues to raise it.

Hon Giz Watson raised a number of other questions on clause 4 of the bill, including how it amends section 22 of the principal act and what its impacts are on detainees and prisoners. The first of the three questions that she asked about clause 4 and its amendments was: how will prisoners or detainees be selected by the inspector for auditing? This will occur in a number of ways. There will be a thematic review of selected cohorts of prisoners according to risk and need. Hon Kate Doust, I think, has spoken to Professor Morgan, because she exhibited an awareness that maybe prisoners who are pregnant, as an example of the cohort, might be assessed according to their risk and need. There will also be a random selection of prisoners each year, so there is the combination of risk assessment and thematic examination as well as a genuinely random approach. This leads me to the member's next question.

Hon Giz Watson: Could the minister perhaps give me some more information about the random process? I can understand the thematic process, but I cannot quite understand how a random process would work.

Hon SIMON O'BRIEN: A random process is just that; a subject is selected for no other criteria other than they are selected on a random basis. Generally, in compliance terms, the only real purposes of a random selection process are, firstly, to make sure that everyone is kept on their toes because they never know when they might be tested, or in this case the systems might be tested. The second purpose is as a control mechanism. If a subject is thematically assessed or risk assessed, and auditing was not turning up any results but random assessments were, perhaps there would be a need to reassess the thematic approach. I can think of lots of other approaches in which there are random selections—booze buses are a classic example of random tests rather than risk-assessed tests.

Hon Giz Watson: Will the fact that there will be three approaches, as it were—other than the assurance that the minister has given the house now—be prescribed in policy? It is not actually in the legislation, is it?

Hon SIMON O'BRIEN: No, and neither should it be. We give the inspector roles to carry out. Through these provisions that we are looking at this evening, we are widening his brief and giving him the power to examine individual cases not only for their own sake but also as part of his review of the systems that he is responsible to report to the minister about.

That leads me to the member's next question, which is: are prisoners freely able to communicate with the inspector? My understanding is that they are. However, that does not imply that the Inspector of Custodial Services is there simply to receive prisoner complaints and take their side against the authorities, though some prisoners might well desire that and on some occasions that might be exactly what he has to do. But that is not the reason he is there. I discussed this matter with Professor Morgan and discovered that in practice prisoner's individual complaints are the province of the Ombudsman generally, whereas the inspector tends to look more at systemic issues. It might be a statewide systemic issue or it might just be inside a detention facility or an individual prison that a systemic issue comes to light.

In practice an inspector might receive an isolated complaint about the food in such and such a prison, which may or may not generate application of his investigative resources. If he gets a lot of complaints about inadequacy of food, which are all from the same part of the world, that might cause him to risk assess and decide that resources need to be allocated in the particular area that is the subject of those several complaints. In that way, individual complaints can become part of a systemic review. I understand that the Ombudsman and the Inspector of Custodial Services generally have a good working relationship, and, when required, the inspector might refer an individual's complaint to the Ombudsman for more appropriate investigation; and vice versa the Ombudsman will refer matters to the inspector. I understand it is a good working relationship.

Hon Giz Watson: It is my understanding that prisoners' correspondence is read by prison officers. They cannot communicate in private with either of those bodies.

Hon SIMON O'BRIEN: My discussion with the inspector also extended to considering the question of how a complaint that has been received from an individual prisoner is progressed, particularly if an inquiry has to be made of the prison in question or if the matter has to be referred to the Ombudsman. I am advised that confidentiality is something that is respected and preserved. The member is asking how confidentiality is respected before we get to that point—that is, when a prisoner is trying to communicate with the inspector. With a bit of luck I might be able to find that information for the member before I sit down. I am not sure exactly what happens. It is not in the bill, but it is important and relevant, so I will see whether I can find out.

Finally, the honourable member asked about former prisoners. The inspector will also have access to all documents relating to people who have been prisoners or detained persons or people in custody. Clauses 5, 6 and 7 refer to that issue.

It has been useful to have this debate at this time. I think all members are interested in the subject matter addressed by this bill, and that is reflected in the contributions that have been made. It has also given us the opportunity to consider the annual report, as Hon Kate Doust invited us to do. The debate has served to increase the awareness of the inspector's office and his functions and that is very useful. This debate also gives me the opportunity to reassure Hon Giz Watson that prisoners are indeed able to send correspondence to the Ombudsman or the Inspector of Custodial Services in a confidential envelope. My advice is that this is available in all prisons and is not vetted by the department.

I know that I have taken a few minutes to do so, but I have, hopefully, answered all the questions that were asked of me so that members from all parties can continue to give their support as we now close the second reading debate.

Hon Giz Watson: Before the minister sits down, you said that in terms of former prisoners and detainees, the inspector has access to documents.

Hon SIMON O'BRIEN: Yes.

Hon Giz Watson: My question is: can a former prisoner or detainee have a matter investigated by the inspector?

Hon SIMON O'BRIEN: I thought that was implicit in my answer, but I will make it explicit. Yes, they have the power to do that and that is now extended through the clauses that I mentioned here.

Question put and passed.

Bill read a second time.

Leave granted to proceed forthwith to third reading.

Third Reading

Bill read a third time, on motion by **Hon Simon O'Brien (Minister for Finance)**, and passed.