

INSPECTOR OF CUSTODIAL SERVICES AMENDMENT BILL 2011

Receipt and First Reading

Bill received from the Assembly; and, on motion by **Hon Simon O'Brien (Minister for Finance)**, read a first time.

Second Reading

HON SIMON O'BRIEN (South Metropolitan — Minister for Finance) [7.43 pm]: I move —

That the bill be now read a second time.

On 13 December 2003, the Inspector of Custodial Services Act was assented to and came into operation. The act not only extends the powers of the jurisdiction of the Inspector of Custodial Services to juvenile detention centres, but also draws the enabling legislation for the Office of the Inspector of Custodial Services into one discrete statute, whereas it had previously been dispersed across several acts.

Since and before the commencement of the act, the Office of the Inspector of Custodial Services has provided valuable assessments of the operations of prisons, other custodial services, and statewide prisoner transport services in this state. Although the responsibilities contained within the act have always been performed to the highest standard by the Office of the Inspector of Custodial Services, the recommendations and observations of the inspector have not always been acted on in a timely manner. This was clearly communicated by the State Coroner during his inquest into the death in custody of Mr Ward; he observed that many of the problems highlighted by the case had been identified by the previous Inspector of Custodial Services, who had stressed the need for urgent action. The delay of action in responding to the OICS recommendations was identified as a factor contributing to Mr Ward's death.

As a consequence of the perceived lack of action on reports prepared by the Office of the Inspector of Custodial Services, the first two recommendations contained in the findings of the State Coroner related to further expansions to the inspector's powers. The first recommendation was that a statutory system be put in place to enable the inspector to issue the Department of Corrective Services with show-cause notices in cases in which the inspector is aware of issues relating to the human rights and safety of persons in custody. The second recommendation was that the terms of sections 34 and 39 of the Terrorism (Preventative Detention) Act 2006 be inserted in the relevant legislation that deals with the inspector's powers, so that those protections extend to all persons in custody and to all areas of the inspector's jurisdiction.

Although recommendation 1 has been accepted and has been incorporated into the bill, it is considered that recommendation 2 presents as an impractical means of implementing the change sought. This is largely because the powers set out in the Terrorism (Preventative Detention) Act 2006 were drafted in the context of only a small number of persons being subject to preventive detention. In the context of approximately 10 000 individual persons going through detention in various forms of custody each year, protections of the nature provided by that act would very likely be largely symbolic. A far more workable solution is to legislate for measures that enhance the role of the OICS in a practical way. As such, the proposed bill will effect amendments to the act that are designed to allow the inspector to perform audits of individual prisoners.

This house has acknowledged that Mr Ward's death was a tragic event for the state of Western Australia. Giving priority to the implementation of the recommendations of the State Coroner, including those effected by this bill, will go a long way to achieving that outcome. I commend the bill to the house.

Debate adjourned, pursuant to standing orders.