

# Inspector of Detention Services Regulation 2023

Explanatory notes for SL 2023 No. 28

Made under the

*Corrective Services Act 2006*

*Inspector of Detention Services Act 2022*

*Public Sector Act 2022*

## General Outline

### Short Title

*Inspector of Detention Services Regulation 2023*

### Authorising law

Section 355 of the *Corrective Services Act 2006*

Section 51 of the *Inspector of Detention Services Act 2022*

Section 287 of the *Public Sector Act 2022*

### Policy objectives and the reasons for them

The Inspector of Detention Services Bill 2021 was passed by the Legislative Assembly on 30 August 2022 and received assent on 7 September 2022.

The *Inspector of Detention Services Act 2022* (Inspector Act) gives effect to the Queensland Government's commitment to establish an independent inspectorate to promote and uphold the humane treatment and conditions of people detained in prisons, community corrections centres, work camps, youth detention centres and police watch-houses (places of detention).

The Inspector Act establishes the Inspector of Detention Services (Inspector). The purpose of the Inspector is to promote the improvement of detention services and places of detention with a focus on promoting and upholding the humane treatment of detainees, including the conditions of their detention, and preventing detainees being subjected to harm, including torture and cruel, inhuman or degrading treatment.

This will facilitate greater transparency in the way that places of detention, and the people detained within them, are managed by establishing a framework for the review of detention services and inspection of places of detention, and independent and transparent reporting, to support their improvement.

The Inspector has a broad power to do all things necessary or convenient for, or in connection with, the performance of the Inspector's functions and to fulfil its preventative, proactive and independent mandate.

The position of Inspector is held by the Queensland Ombudsman (Ombudsman). The Inspector is supported by the Office of the Ombudsman and will be able to delegate the exercise of the Inspector's functions and powers to appropriately qualified staff of the Office of the Ombudsman. Staff exercising the Inspector's functions will not exercise the functions of the Ombudsman.

The *Inspector of Detention Services Regulation 2023* (the Regulation) is intended to support the Inspector's purpose and functions, including through consequential amendments to relevant Regulations.

The objectives of the Regulation are to:

- prescribe specific watch-houses as places of detention that the Inspector must inspect at least once every five years;
- amend the *Corrective Services Regulation 2017* (Corrective Services Regulation) to:
  - allow the Inspector to view a recording of a search of a prisoner where the prisoner is required to remove their clothing;
  - classify mail between the Inspector and a prisoner as privileged;
  - provide that phone calls between the Inspector and a prisoner are not classified as privileges for a prisoner; and
- amend the *Public Sector Regulation 2023* (Public Sector Regulation) to include the Inspector as a prescribed person for the purposes of the *Public Sector Act 2022* (Public Sector Act) to protect the Inspector and officers of the Office of the Ombudsman from civil liability for engaging in conduct in an official capacity.

#### *Prescribed places of detention*

The Inspector has scope to inspect all watch-houses in Queensland. Section 8(c) of the Inspector Act mandates certain mandatory inspections and their frequency and provides that certain places of detention may be prescribed by regulation as inspections at least once every 5 years (section 8(c)(iii)).

The purpose of prescribing specific watch-houses by regulation is to require the Inspector to conduct inspections specific places of detention (the Brisbane City Watch-house and Southport Watch-house) at least once every five years.

#### *Amendment of the Corrective Services Regulation*

The purpose of amending the Corrective Services Regulation to allow the Inspector to view a recording of a search of a prisoner where the prisoner is required to remove their clothing, is to ensure the Inspector has full access to documents and records that reflect how a place of detention is managed to properly fulfil its functions and proactive, preventative mandate. Given the sensitivity of such searches, it is important that the Inspector is able to access this material to provide an additional level of oversight and to inform recommendations by the Inspector to improve the treatment of detainees.

The purpose of the amending the Corrective Services Regulation regarding classifying mail between the Inspector and a prisoner as privileged is to facilitate full and frank disclosure of information to the Inspector. Classifying mail as privileged prohibits a corrective service officer from reading or disclosing the contents of the mail, unless certain circumstances are met under section 45 of the *Corrective Services Act 2006* (Corrective Services Act). This is consistent with the current approach for mail between a prisoner and an Official Visitor, and other external oversight agencies including the Queensland Ombudsman, the Health Ombudsman and the Queensland Human Rights Commission.

The amendment to the Corrective Services Regulation to provide that phone calls between the Inspector and a prisoner are not classified as privileges for a prisoner is to allow prisoners to communicate with the Inspector without restriction. This is intended to facilitate effective engagement with the Inspector. This is consistent with the current approach for phone calls between prisoners and their lawyer or the Queensland Ombudsman.

#### *Amendment of the Public Sector Regulation*

The purpose of amending the Public Sector Regulation to include the Inspector as a prescribed person for the purposes of the Public Sector Act is to protect the Inspector from civil liability when engaging, or as a result of engaging, in conduct in an official capacity. This protection will also extend to officers of the Office of the Ombudsman who exercise delegated functions under the Inspector Act. This approach is consistent with the existing inclusion of the Queensland Ombudsman as a prescribed person.

## **Achievement of policy objectives**

#### *Prescribed places of detention*

Section 3 of the Regulation prescribes the following watch-houses as places of detention to be inspected at least once every five years under section 8(1)(c)(iii) of the Act:

- the Brisbane City Watch-house located at 240 Roma Street, Brisbane; and
- the Southport Watch-house located at Scarborough Street, Southport.

The Inspector will be required to inspect these facilities at least once every five years from the date of commencement of section 8 of the Inspector Act.

#### *Amendment of the Corrective Services Regulation*

Section 7 of the Regulation amends section 10 of the Corrective Services Regulation to include the Inspector as a person to whom the chief executive (Queensland Corrective Services) can show a recording of a search carried out under section 38 of the Corrective Services Act. Section 38 of the Corrective Services Act provides that a corrective services officer may conduct a search of a prisoner that requires the removal of the prisoner's clothing. Section 10 of the Corrective Services Regulation outlines that if a recording of such a search is made under section 9 of the Corrective Services Regulation, it must be held securely by the chief executive and may only be shown to specific persons.

Section 8 of the Regulation amends section 17 of the Corrective Services Regulation to include the Inspector in Schedule 4 of the Corrective Services Act as a person to whom a detainee may send privileged mail. Sections 45(3) and (4) of the Corrective Services Act provide that a corrective services officer must not read or disclose the contents of a prisoner's privileged mail, unless certain circumstances are met.

Section 9 of the Regulation amends section 18 of the Corrective Services Regulation to outline that phone calls to or from the Inspector are not classified as privileges for a prisoner for the purpose of the Corrective Services Act. This means that a prisoner may receive or make calls to the Inspector even if their privileges have been limited as provided for in the Corrective Services Act.

#### Amendment of Public Sector Regulation

Section 11 of the Regulation amends schedule 1 of the Public Sector Regulation to prescribe the Inspector as a prescribed person for the purposes of the Public Sector Act. This has the effect of protecting the Inspector and employees of the Office of the Ombudsman from civil liability for engaging, or as a result of engaging, in conduct in an official capacity, as provided for in section 269 of the Public Sector Act.

### **Consistency with policy objectives of authorising law**

The policy objectives of the Inspector Act are to promote the improvement of detention services and places of detention with a focus on promoting and upholding the humane treatment of detainees, including the conditions of their detention, and preventing detainees being subjected to harm, including torture and cruel, inhuman or degrading treatment.

The Regulation is consistent with these policy objectives as it prescribes specific places of detention that will form part of the mandatory inspection regime which is a function of the Inspector; makes consequential amendments to the Corrective Service Regulation to allow the Inspector to access relevant information and to facilitate effective communication between the Inspector and detainees at prisons; and extends civil liability protection to the Inspector and delegates, to support the effective performance and exercise of the Inspector's powers and functions.

### **Inconsistency with policy objectives of other legislation**

The Regulation is consistent with the policy objectives of other legislation.

### **Alternative ways of achieving policy objectives**

There are no alternative ways of achieving the policy objectives.

### **Benefits and costs of implementation**

The benefit of implementation of the Regulation is to facilitate the efficient and effective performance of functions and powers by the Inspector and to allow it to fulfil its mandate under the Inspector Act.

No costs of implementation of the Regulation have been identified.

## Consistency with fundamental legislative principles

The fundamental legislative principles as outlined in sections 4 of the *Legislative Standards Act 1992* (LS Act) that are engaged by the Regulation are outlined below and were considered during passage and debate of the Inspector of Detention Services Bill 2022.

Section 4(2)(a) of the LS Act outlines that legislation must have sufficient regard to the rights and liberties of individuals. This includes an individual's right to privacy. In addition, any immunity from proceeding or prosecution must be adequately justified.

### Privacy

Section 7 of the Regulation will allow the chief executive to show the Inspector a recording made of a search of a prisoner where the prisoner is required to remove their clothing. Given the sensitivity of such a search and recording, allowing the Inspector to view this material presents a departure from FLPs as it imposes upon a prisoner's privacy, particularly as the consent of the prisoner is not required for the Inspector to view this material.

The ability of the Inspector to view such a recording is necessary to:

- ensure the Inspector has access to all information relating to places of detention, in particular the treatment and conditions of people detained;
- enable the Inspector to fulfil the statutory functions of inspecting, examining and reviewing places of detention and the services within places of detention;
- enable the Inspector to assess the conditions and treatment of people detained against national and international materials that establish best practice in relation to the treatment and conditions of detained persons; and
- enable the Inspector to identify opportunities and develop recommendations for the improvement of the operations of places of detention that will prevent harm and ill treatment of people detained.

Section 13 of the Inspector Act allows the Inspector to request relevant information from the responsible officer of a place of detention if it is carrying out a review of a detention service provided at, or an inspection of, the place of detention. This will allow the Inspector to request a copy of a recording of a search.

The Inspector Act contains appropriate safeguards and limitations on disclosure of information to protect a person's privacy. Section 30 of the Inspector Act makes it an offence for the Inspector or an officer from the Office of the Ombudsman involved in the administration of the Act to disclose confidential information except in specific circumstances.

The Inspector Act includes additional safeguards on further publication of sensitive information. Section 31 of the Inspector Act outlines that the Inspector must consider whether any information in a report prepared by the Inspector should be kept confidential if the public interest against disclosure of the information outweighs the public interest in favour of disclosure. Factors that may support a public interest against disclosure include whether the information could identify or allow identification of any person detained or staff at a place of detention. This test must also be applied if the Inspector intends to exercise the general power of disclosure in the public interest.

As the Inspector Act includes safeguards on further distribution of information and permitting the Inspector to access all relevant information to fulfill its preventative, proactive and independent mandate is in the public interest, it is considered that the Regulation has sufficient regard to an individual's privacy.

### Immunity

Section 11 of the Regulation amends the Public Sector Regulation to include the Inspector as a prescribed person for the purposes of the Public Sector Act. This means that the Inspector, as well as an officer of the Office of the Ombudsman exercising a delegated function under the Inspector Act, will be exempt from civil liability when engaging, or as a result of engaging, in conduct in an official capacity as provided for in section 269 of the Public Sector Act.

The purpose of this is to ensure the Inspector and officers are able to carry out functions and powers under the Inspector Act without risk of civil liability. This is in the public interest, as it will allow for the effective and efficient operation of the Inspector Act.

## **Consultation**

The Inspector was consulted on the Regulation. Key government and non-government stakeholders across a range of sectors that either have direct involvement with, or an interest in, the detention environment in Queensland were consulted in the development of the Inspector Act.

The Office of Best Practice Regulation noted an agency-assessed exclusion from regulatory impact analysis under category (c) in the *Queensland Government Guide to Better Regulation* – Regulatory proposals for the internal management of the public sector or statutory authority.