



Australian Capital Territory

Custodial Inspector Act 2017

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(republication for expiry of provision (s 39))

About this republication

The republished law

This is a republication of the *Custodial Inspector Act 2017* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 9 December 2024. It also includes any commencement, amendment, repeal or expiry affecting this republished law to 9 December 2024.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at www.legislation.act.gov.au):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication does not include amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced, the symbol **U** appears immediately before the provision heading. Any uncommenced amendments that affect this republished law are accessible on the ACT legislation register (www.legislation.act.gov.au). For more information, see the home page for this law on the register.

Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see the *Legislation Act 2001*, section 95.

Penalties

At the republication date, the value of a penalty unit for an offence against this law is \$160 for an individual and \$810 for a corporation (see *Legislation Act 2001*, s 133).



Australian Capital Territory

Custodial Inspector Act 2017

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Australian Capital Territory

Custodial Inspector Act 2017

An Act to provide for a custodial inspector, and for other purposes

Part 1 Preliminary

1 Name of Act

This Act is the *Custodial Inspector Act 2017*.

3 Dictionary

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

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

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

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

4 Notes

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

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

5 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 *Criminal Code*

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

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

Note 2 *Penalty units*

The [Legislation Act](#), s 133 deals with the meaning of offence penalties that are expressed in penalty units.

6 Object of Act

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

7 What is a *correctional centre*?

- (1) In this Act:

correctional centre means—

- (a) a place declared to be a correctional centre under the *Corrections Management Act 2007*, section 24; or
- (b) a place where a detainee is held in custody under a declaration under the *Corrections Management Act 2007*, section 34; or
- (c) a place, including a vehicle, where a detainee is held in custody while being escorted by an escort officer under the *Corrections Management Act 2007*; or
- (d) any other place where a detainee is held in custody under the *Corrections Management Act 2007*; or
- (e) a place declared to be a detention place under the *Children and Young People Act 2008*, section 142; or
- (f) a place, including a vehicle, where a detainee is held in custody while being escorted by an escort officer under the *Children and Young People Act 2008*.

Examples—par (d)

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

(2) In this section:

escort officer means—

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

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

8 What is a *correctional service*?

In this Act:

correctional service—

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

Part 2 **Custodial inspector**

Division 2.1 **Appointment of inspector**

9 **Appointment of custodial inspector**

- (1) The Executive must appoint a person as the custodial inspector.
Note For laws about appointments, see the [Legislation Act](#), pt 19.3.
- (2) The appointment must be made in accordance with an open and accountable selection process.
- (3) However, the Executive must not appoint a person as the inspector unless satisfied that the person has the experience or expertise necessary to exercise the inspector's functions.
- (4) A person must not be appointed for a term of longer than 5 years.

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

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

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

10 **Disclosure of interests**

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

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

11 Inspector must not do inconsistent work etc

The inspector must not—

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

12 Ending appointment

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

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

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

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

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

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

Division 2.2 Office of the inspector

13 Inspector's staff

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

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

14 Contractors

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

15 Other arrangements for staff and facilities

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

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

16 Delegation

The inspector may delegate the inspector's functions under this Act or any other territory law to—

- (a) a member of staff mentioned in section 13 (Inspector's staff); or

(b) a person engaged by the inspector under section 14 (Contractors).

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

Part 3 Inspector's functions and powers

17 Functions—generally

The inspector has the following functions:

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

18 Functions—examination and review

- (1) Subject to this Act, the inspector—
 - (a) must examine and review each correctional centre declared under the *Corrections Management Act 2007*, section 24 and each detention place declared under the *Children and Young People Act 2008*, section 142—
 - (i) within 2 years after the day the centre or place was declared; and
 - (ii) at least once every subsequent 3 years; and
 - (b) may, but not more than once every 2 years, examine and review correctional services on the inspector's own initiative; and
 - (c) may review a critical incident on the inspector's own initiative or as requested by a relevant Minister or relevant director-general.

- (2) In exercising a function under subsection (1), the inspector must, if appropriate and practicable, consult with people, or use staff, suitable to the cultural background or vulnerability of any detainee involved in a matter being examined or reviewed.

Examples

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

19 Inspector may enter correctional centre etc

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

- (b) a person involved in the provision of correctional services; and
- (c) with the detainee's consent—a detainee.

Examples—par (b)

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

- (4) If the inspector wants to speak to or interview a detainee, the inspector must—
 - (a) ask the detainee if the detainee wants a support person to be present during the talk or interview; and
 - (b) ensure the detainee is able to contact a support person as soon as practicable.
- (5) The inspector may take any equipment reasonably required to effectively conduct an inspection of a correctional centre.

Examples—equipment reasonably required

- 1 a recording device
- 2 a camera

- (6) In this section:

health record—see the [Health Records \(Privacy and Access\) Act 1997](#), dictionary.

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

20 Inspection guidelines

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

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

21 Access to correctional centres etc

- (1) If requested by the inspector, the relevant director-general must ensure that the inspector—
 - (a) is given access to—
 - (i) all parts of a correctional centre; and
 - (ii) any vehicle or equipment used in a correctional centre or in the provision of a correctional service; and
 - (b) is able to talk to each detainee in the correctional centre at any time.
- (2) A person must not, without reasonable excuse, obstruct or hinder the inspector in the exercise of the inspector's functions.

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

22 Power to ask for information, documents and other things

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

- (b) the person fails to provide the information to the inspector as required.

Maximum penalty: 50 penalty units.

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

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

- (5) Subsection (4) does not apply—
 - (a) to a detainee; or
 - (b) if the person has a reasonable excuse for failing to provide the information to the inspector as required.
- (6) A person commits an offence if—
 - (a) the person is required by a notice under this section to produce to the inspector a document or other thing; and
 - (b) the person fails to produce the document or other thing to the inspector as required.

Maximum penalty: 50 penalty units.

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

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

23 Requiring attendance etc

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

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

- (2) A person who attends before an interviewer under a notice under subsection (1) must continue to attend as reasonably required by the interviewer to answer questions relevant to the examination or review.
- (3) A person commits an offence if—
- (a) the person is required by a notice under subsection (1) to attend before an interviewer to answer questions in relation to an examination or review; and
 - (b) the person does not attend before the interviewer as required.

Maximum penalty: 50 penalty units.

- (4) Subsection (3) does not apply—
- (a) to a detainee; or
 - (b) if the person has a reasonable excuse for not attending before the interviewer as required.
- (5) A person commits an offence if—
- (a) the person is required by a notice under subsection (1) to attend before an interviewer to answer questions in relation to an examination or review; and
 - (b) the person attends before the interviewer as required; and

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

Maximum penalty: 50 penalty units.

- (6) Subsection (5) does not apply—
 - (a) to a detainee; or
 - (b) if the person has a reasonable excuse for failing to continue to attend as required by the interviewer.
- (7) A person commits an offence if—
 - (a) the person is required by a notice under subsection (1) to attend before an interviewer to answer questions in relation to an examination or review; and
 - (b) the person attends before the interviewer as required; and
 - (c) the interviewer requires the person to answer a question; and
 - (d) the person fails to answer the question.

Maximum penalty: 50 penalty units.

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

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

- (8) Subsection (7) does not apply—
 - (a) to a detainee; or
 - (b) if the person has a reasonable excuse for failing to answer the question.

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

24 Inspector may keep document or other thing etc

- (1) If a document or something else is produced in accordance with a requirement under section 22, the inspector—
 - (a) may take possession of, make copies of, or take extracts from, the document or may take possession of the other thing; and
 - (b) may keep the document or other thing for the period that is necessary for the consideration to which the document or thing relates; and
 - (c) during that period, must allow anyone who would be entitled to inspect the document or other thing, if it were not in the possession of the inspector, to inspect it and, for a document, make copies of, or take extracts from, it.
- (2) The inspector must return a document or something else produced in accordance with a requirement under section 22, if the inspector is no longer entitled to keep the document or thing under this section.

25 Privileges against self-incrimination and exposure to civil penalty

- (1) This section applies if a person is required by a notice under section 22 to provide information or produce a document or other thing.
- (2) This section also applies if—
 - (a) a person is attending before an interviewer in accordance with a requirement under section 23; and
 - (b) the interviewer requires the person to answer a question.

- (3) The person cannot rely on the common law privileges against self-incrimination and exposure to the imposition of a civil penalty to refuse to provide the information, produce the document or other thing or answer the question.

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

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

26 Offence—taking detrimental action

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

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

- (2) For this section, a retaliator *takes* detrimental action because of a disclosure if the retaliator takes, or threatens to take, detrimental action against someone else because—
- (a) a person has made, or intends to make, a disclosure; or
 - (b) the retaliator believes that a person has made or intends to make a disclosure.

- (3) In determining whether a retaliator has taken detrimental action because of a disclosure, it is sufficient if a reason mentioned in subsection (2) is a contributing reason.
- (4) In this section:
- detrimental action*** includes the following:
- (a) discriminating against a person by treating, or proposing to treat, the person unfavourably, including in relation to—
 - (i) the person's reputation; or
 - (ii) the person's career, profession, employment or trade; or
 - (iii) the person's access to a correctional centre or a detainee; or
 - (iv) if the person is a detainee—
 - (A) the detainee's living conditions; or
 - (B) the detainee's privileges; or
 - (C) the surveillance or searches the detainee is subject to; or
 - (D) where the detainee is held in a correctional centre;
 - (b) treating, or proposing to treat, a relevant organisation unfavourably, including in relation to—
 - (i) the funding the organisation receives; or
 - (ii) the organisation's access to a correctional centre or detainee; or
 - (iii) the conditions on the organisation's service delivery in relation to a correctional centre or detainee;
 - (c) harassing or intimidating a person;
 - (d) injuring a person;

- (e) damaging a person's property;
- (f) treating, or proposing to treat, a person unfavourably in any other way.

living conditions of a detainee, means, as relevant to the detainee, living conditions mentioned in—

- (a) the *Corrections Management Act 2007*, chapter 6 (Living conditions at correctional centres); or
- (b) the *Children and Young People Act 2008*, part 6.5 (Living conditions at detention places).

privilege of a detainee, means, as relevant to the detainee, a privilege mentioned in—

- (a) the *Corrections Management Act 2007*, section 154; or
- (b) the *Children and Young People Act 2008*, section 289.

relevant organisation means a body that has as 1 of its activities—

- (a) promoting the interests of detainees; or
- (b) delivering services to detainees.

Part 4 Reports by inspector

27 Report about examination and review

- (1) The inspector must prepare a report after conducting the following:
 - (a) an examination and review of a correctional centre under section 18 (1) (a);
 - (b) an examination and review of correctional services under section 18 (1) (b);
 - (c) a review of a critical incident under section 18 (1) (c).
- (2) Any recommendations included in a report must further the objects of this Act.

Note The main object of this Act is to promote the continuous improvement of correctional centres and correctional services (see s 6).

28 Public interest considerations

- (1) In preparing a report under section 27, the inspector must consider whether any part of the report must be kept confidential because—
 - (a) there are public interest considerations against disclosure; and
 - (b) those considerations outweigh the public interest in favour of disclosure.
- (2) There is a public interest against disclosure if disclosure of the information could reasonably have any of the following effects:
 - (a) undermining security or good order at a correctional centre;
 - (b) assisting anyone in escaping or attempting to escape from detention;
 - (c) undermining national security (within the meaning of the *National Security Information (Criminal and Civil Proceedings) Act 2004* (Cwlth));

- (d) identifying or allowing the identification of any person detained, working or otherwise at a correctional centre;
 - (e) undermining the procedures or systems in place to safeguard the life, health and safety of a corrections officer or any other person at a correctional centre;
 - (f) revealing or tending to reveal the identity of a person disclosing information to the inspector or undermining the future supply of information to the inspector.
- (3) The following matters must not be taken into account in deciding whether there is a public interest against disclosure:
- (a) causing embarrassment to, or a loss of confidence in, the Executive, a Minister or a director-general;
 - (b) the possibility that the information may be misunderstood or misinterpreted by a person.

29 Draft report to relevant Minister and director-general

- (1) Before presenting a report prepared under section 27 to the Legislative Assembly, the inspector must give the relevant Minister and relevant director-general a reasonable opportunity to comment on a draft report.
- (2) For subsection (1), a reasonable opportunity to comment is a period that is either—
 - (a) 6 weeks; or
 - (b) another period as agreed between the inspector, relevant Minister and relevant director-general.
- (3) The relevant Minister and relevant director-general may provide comments in relation to the draft report to the inspector within the period mentioned in subsection (2).

- (4) The inspector—
- (a) must consider any comments made under subsection (3); and
 - (b) may include the comments provided by the relevant Minister and relevant director-general as an attachment to the report; and
 - (c) may, if the inspector is satisfied that amendment is an appropriate response to the comments, amend the draft report.

30 Presentation of report to Legislative Assembly

- (1) The inspector must give the Speaker a report prepared under section 27—
- (a) for an examination and review of a correctional centre conducted under section 18 (1) (a) or of correctional services conducted under section 18 (1) (b)—within 6 months of completing the examination and review; and
 - (b) for a review of a critical incident conducted under section 18 (1) (c)—at a time the inspector considers appropriate having regard to the circumstances of the critical incident.
- (2) The relevant Minister may extend the period mentioned in subsection (1) (a) by an additional period of not more than 12 months.
- (3) If the Legislative Assembly is sitting when the inspector gives a report to the Speaker, the Speaker must present the report to the Legislative Assembly within 5 sitting days after receiving the report.
- (4) If the Legislative Assembly is not sitting when the inspector gives the report to the Speaker—
- (a) the report is taken to have been presented to the Legislative Assembly on the day the inspector gives it to the Speaker (the *report day*); and
 - (b) the Speaker must arrange for a copy of the report to be given to each member of the Legislative Assembly on the report day; and

- (c) the Speaker must present the report to the Legislative Assembly—
 - (i) on the next sitting day; or
 - (ii) if the next sitting day is the first meeting of the Legislative Assembly after a general election of members of the Assembly—on the second sitting day after the election.
- (5) In this section:
 - Speaker* includes—
 - (a) if the Speaker is unavailable—the Deputy Speaker; and
 - (b) if both the Speaker and Deputy Speaker are unavailable—the clerk of the Legislative Assembly.
 - unavailable*—the Speaker or Deputy Speaker is *unavailable* if—
 - (a) they are absent from duty; or
 - (b) there is a vacancy in the office of Speaker or Deputy Speaker.

Part 5 Cooperation and referral between inspector and other entities

31 Cooperation with other entities

- (1) The inspector must ensure that the inspector's functions are exercised in a way that does not delay or unnecessarily duplicate the exercise of functions by the following entities:
 - (a) a person exercising a function under—
 - (i) the *Auditor-General Act 1996*; or
 - (ii) the *Human Rights Act 2004*; or
 - (iii) the *Human Rights Commission Act 2005*; or
 - (iv) the *Integrity Commission Act 2018*; or
 - (v) the *Ombudsman Act 1989*;
 - (b) an official visitor under the *Official Visitor Act 2012*;
 - (c) an adjudicator conducting a review of a segregation or disciplinary decision under the *Corrections Management Act 2007*;
 - (d) a person conducting a review of a segregation or disciplinary decision under the *Children and Young People Act 2008*;
 - (e) a police officer investigating a fraud or other criminal matter;
 - (f) a coroner exercising a function under the *Coroners Act 1997*.
- (2) The inspector may enter into an arrangement with an entity mentioned in subsection (1) to assist in—
 - (a) avoiding delay and unnecessary duplication of statutory functions; or
 - (b) efficiently managing the interaction of the statutory functions of the parties to the arrangement.

32 Inspector may refer matter to investigative entity

- (1) This section applies if the inspector reasonably believes that a matter can be more appropriately dealt with by an investigative entity other than the inspector.
- (2) The inspector may decide not to review or examine the matter and to refer the matter together with any relevant documents or information in the inspector's possession or control, to an investigative entity.
- (3) The inspector may enter into arrangements with an investigative entity about the referral of matters under this section.
- (4) Nothing in this section requires the investigative entity to deal with the referred matter.
- (5) In this section:

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

matter includes part of a matter.

33 Cooperation with inspector

- (1) This section applies if an oversight entity deals with a matter that involves a detainee, a correctional centre or a correctional service in the exercise of a function under—
 - (a) the *Auditor-General Act 1996*, section 10 (1) (a) and (d) (Functions) (which are about public administration and performance audits); or
 - (b) the *Human Rights Commission Act 2005*, section 48 (Consideration without complaint or appropriate complainant); or
 - (c) the *Integrity Commission Act 2018*, section 23 (1) (a) or (b) (Functions of commission); or

- (d) the *Ombudsman Act 1989*, section 5 (1) (b) (Functions—investigating complaints under Act) (which is about own motion investigations).
- (2) The oversight entity must—
- (a) consult with the inspector about the matter; and
 - (b) ensure that the entity’s functions are exercised in a way that does not delay or unnecessarily duplicate the exercise of functions by the inspector.
- (3) The oversight entity may enter into an arrangement with the inspector to assist in—
- (a) avoiding delay and unnecessary duplication of statutory functions; or
 - (b) efficiently managing the interaction of the statutory functions of the parties to the arrangement.
- (4) In this section:
- matter*** includes a part of a matter.
- oversight entity*** means any of the following:
- (a) the auditor-general;
 - (b) the human rights commission;
 - (c) the integrity commission;
 - (d) an official visitor;
 - (e) the ombudsman.

34 Oversight entities may refer matter to inspector

- (1) This section applies if an oversight entity reasonably believes that a matter can be more appropriately dealt with by the inspector.
- (2) The oversight entity may decide not to deal with the matter and to refer the matter together with any relevant documents or information in the entity's possession or control, to the inspector.
- (3) The oversight entity may enter into arrangements with the inspector about the referral of matters under this section.
- (4) Nothing in this section requires the inspector to deal with the referred matter.
- (5) In this section:
 - matter*—
 - (a) means a complaint or other matter; and
 - (b) includes a part of a complaint or other matter.
 - oversight entity*—see section 33 (4).

35 Information sharing

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

Part 6 Miscellaneous

36 Protection of inspector from liability

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

37 Offence—use or divulge protected information

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

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

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

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

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

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

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

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

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

divulge includes—

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

person to whom this section applies means—

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

produce includes allow access to.

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

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

use information includes make a record of the information.

38 Regulation-making power

The Executive may make regulations for this Act.

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

Dictionary

(see s 3)

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

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

- bankrupt or personally insolvent
- body
- chief police officer
- coroner
- corrections officer
- director-general (see s 163)
- document
- entity
- Executive
- function
- human rights commissioner
- integrity commission
- integrity commissioner
- Legislative Assembly
- Minister (see s 162)
- official visitor
- ombudsman
- person (see s 160)
- police officer
- public servant
- sitting day
- Speaker
- territory law
- the Territory
- tribunal.

correctional centre—see section 7.

correctional service—see section 8.

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

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

detainee—

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

inspector means the custodial inspector appointed under section 9.

relevant director-general means, for a matter that relates to—

- (a) a correctional centre under the *Corrections Management Act 2007* or a correctional service provided in relation to a correctional centre—the director-general responsible for administering that Act; or
- (b) a detention place under the *Children and Young People Act 2008* or a correctional service provided in relation to a detention place—the director-general responsible for administering that Act.

relevant Minister means, for a matter that relates to—

- (a) a correctional centre under the *Corrections Management Act 2007* or a correctional service provided in relation to a correctional centre—the Minister responsible for administering that Act; or
- (b) a detention place under the *Children and Young People Act 2008* or a correctional service provided in relation to a detention place—the Minister responsible for administering that Act.

Endnotes

1 About the endnotes

Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws are not included in the republished law. The details of these laws are underlined in the legislation history. Uncommenced expiries are underlined in the legislation history and amendment history.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

2 Abbreviation key

A = Act	NI = Notifiable instrument
AF = Approved form	o = order
am = amended	om = omitted/repealed
amdt = amendment	ord = ordinance
AR = Assembly resolution	orig = original
ch = chapter	par = paragraph/subparagraph
CN = Commencement notice	pres = present
def = definition	prev = previous
DI = Disallowable instrument	(prev...) = previously
dict = dictionary	pt = part
disallowed = disallowed by the Legislative Assembly	r = rule/subrule
div = division	reloc = relocated
exp = expires/expired	renum = renumbered
Gaz = gazette	R[X] = Republication No
hdg = heading	RI = reissue
IA = Interpretation Act 1967	s = section/subsection
ins = inserted/added	sch = schedule
LA = Legislation Act 2001	sdiv = subdivision
LR = legislation register	SL = Subordinate law
LRA = Legislation (Republication) Act 1996	sub = substituted
mod = modified/modification	<u>underlining</u> = whole or part not commenced or to be expired

3 Legislation history

The *Custodial Inspector Act 2017* was originally the *Inspector of Correctional Services Act 2017*. It was renamed by the [Monitoring of Places of Detention Legislation Amendment Act 2024](#) A2024-41 (see s 6).

Custodial Inspector Act 2017 A2017-47

notified LR 7 December 2017

s 1, s 2 commenced 7 December 2017 (LA s 75 (1))

s 40, sch 1 commenced 7 December 2019 (s 2 (3))

remainder commenced 8 December 2017 (s 2 (1))

as amended by

Integrity Commission Act 2018 A2018-52 sch 1 pt 1.14 (as am by A2019-18 s 4)

notified LR 11 December 2018

s 1, s 2 commenced 11 December 2018 (LA s 75 (1))

sch 1 pt 1.14 commenced 1 December 2019 (s 2 (2) (a) as am by

[A2019-18](#) s 4)

Integrity Commission Amendment Act 2019 A2019-18 s 4

notified LR 14 June 2019

s 1, s 2 commenced 14 June 2019 (LA s 75 (1))

s 3, s 4 commenced 15 June 2019 (s 2 (1))

Note This Act only amends the [Integrity Commission Act 2018](#) A2018-52.

Crimes Legislation Amendment Act 2021 (No 2) A2021-18 pt 5

notified LR 11 August 2021

s 1, s 2 commenced 11 August 2021 (LA s 75 (1))

pt 5 commenced 12 August 2021 (s 2 (1))

Monitoring of Places of Detention Legislation Amendment Act 2024 A2024-41 pt 2

notified LR 17 September 2024

s 1, s 2 commenced 17 September 2024 (LA s 75 (1))

pt 2 commenced 18 September 2024 (s 2 (1))

Endnotes

4 Amendment history

4 Amendment history

Long title

long title sub [A2024-41](#) s 5

Name of Act

s 1 sub [A2024-41](#) s 6

Commencement

s 2 om LA s 89 (4)

What is a *correctional centre*?

s 7 am [A2017-47](#) amdts 1.17-1.19

Custodial inspector

pt 2 hdg sub [A2024-41](#) s 7

Appointment of custodial inspector

s 9 hdg sub [A2024-41](#) s 8

s 9 am [A2024-41](#) s 9

Delegation

s 16 am [A2024-41](#) s 10

Functions—generally

s 17 am [A2024-41](#) s 11

Functions—examination and review

s 18 am [A2017-47](#) amdt 1.20; [A2021-18](#) s 14; [A2024-41](#) s 12, s 13

Offence—taking detrimental action

s 26 am [A2024-41](#) s 14

Report about examination and review

s 27 sub [A2024-41](#) s 15

Draft report to relevant Minister and director-general

s 29 am [A2024-41](#) s 16; ss renum R5 LA

Presentation of report to Legislative Assembly

s 30 sub [A2024-41](#) s 17

Cooperation with other entities

s 31 am [A2018-52](#) amdt 1.85; [A2017-47](#) amdt 1.21; pars renum R3
LA

Inspector may refer matter to investigative entity

s 32 am [A2018-52](#) amdt 1.86

Cooperation with inspector

s 33 am [A2018-52](#) amdt 1.87, amdt 1.88; pars renum R2 LA

Review of Act

s 39 exp 8 December 2024 (s 39 (3))

Amendments

pt 7 hdg om LA s 89 (3)

Legislation amended—sch 1

s 40 om LA s 89 (3)

Legislation amended—sch 2

s 41 om LA s 89 (3)

Amendments—extended application of Act

sch 1 om LA s 89 (3)

Consequential amendments

sch 2 om LA s 89 (3)

Dictionary

dict am [A2018-52](#) amdt 1.89; [A2024-41](#) s 18, s 19
def **critical incident** ins [A2024-41](#) s 20
def **detainee** sub [A2017-47](#) amdt 1.22
def **inspector** am [A2024-41](#) s 21

Endnotes

5 Earlier republications

5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (*) in column 1. Electronic and printed versions of an authorised republication are identical.

Republication No and date	Effective	Last amendment made by	Republication for
R1 8 Dec 2017	8 Dec 2017– 30 Nov 2019	not amended	new Act
R2 1 Dec 2019	1 Dec 2019– 6 Dec 2019	A2019-18	amendments by A2018-52 as am by A2019-18
R3 7 Dec 2019	7 Dec 2019– 11 Aug 2021	A2019-18	commenced provisions and amendments by A2017-47
R4 12 Aug 2021	12 Aug 2021– 17 Sept 2024	A2021-18	amendments by A2021-18
R5 18 Sept 2024	18 Sept 2024– 8 Dec 2024	A2024-41	renaming and other amendments by A2024-41

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