



## Policy Directive 43

# Inspector Custodial Services

Legislation referred to: [Custodial Services Act 2003](#) ss 28, 31, 32, 49 and 50

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### 1. General

The Office of the Inspector of Custodial Services was established to act as an independent statutory office in order to ensure the very highest levels of accountability for all custody services provided by or on behalf of the Department of Corrective Services. The Inspector of Custodial Services Act 2003 provides the legislative authority for the Inspector of Custodial Services to undertake his/her duties.

The Inspector is required to inspect and report to Parliament on all custody services provided in adult prisons, court custody centres or custody transport arrangements and will inspect and report on both publicly managed services and services managed under contract.

### 2. Jurisdiction

The inspections may be of any prison service or custody related matter but will have a primary focus on:

- the treatment of and conditions for persons in custody
- the effects of custody on particular groups of persons in custody
- a prison service, or any aspect of a prison service
- any other matter of significance.

The Inspector will not investigate individual complaints or grievances.

Sections 28, 31 and 32 of the *Inspector of Custodial Services Act 2003* authorises the Inspector and any person authorised by the Inspector to have access to prisons and certain persons, vehicles and documents. These sections are couched in the following terms –

**28** (1) *For the purpose of performing the Inspector's functions under s 19(a), s 21 in relation to a prison, or s 22(a), the Inspector or any person authorised by the Inspector, at any time and with any assistants and equipment that the Inspector or authorised person thinks are necessary, may have free and unfettered access to:*

- a) a prison or any part of a prison*
- b) a prisoner in a prison*
- c) a person whose work is concerned with a prison*
- d) a vehicle used to transport prisoners*
- e) a prisoner in such a vehicle*
- f) a person whose work is concerned with such a vehicle*

- g) all documents in the possession of the Department in relation to a prison or to a custodial service in relation to a prison
- h) all documents in the possession of a contractor or a subcontractor in relation to:
  - i a prison that is a subject of a contract, or
  - ii a custodial service in relation to a prison that is a subject of a contract.

(2) In subsection (1) –

**"contract", "contractor", "Department" and "subcontractor"** each has the meaning given to that term in the Prisons Act 1981 s 3(1).

**31** (1) The Inspector may authorise a person for the purposes of ss 28(1), 29(1) or 30(1).

(2) An authorisation must be in writing and may be made subject to such conditions and limitations specified in the authorisation as the Inspector thinks fit.

(3) The Inspector may revoke an authorisation if the Inspector considers it appropriate to do so.

(4) Without limiting subsection (3), the Minister may revoke a person's authorisation if the person has adversely affected, or is likely to adversely affect –

a. the good order or the security of the prison, detention centre, court custody centre or lock-up, or vehicle referred to in s 28(1)(d), 29(1)(d) or 30(1)(d): or

b. the safety of any person at such place or in such a vehicle or whose work is connected with such a place or vehicle.

(5) Nothing in this section or in Section 28, 29 or 30 limits any entitlement that a person has, under a written law, to have access to a place, vehicle, person or document referred to in those sections.

(6) A power under a written law to ban a person from visiting a prison, detention centre, court custody centre or lock-up cannot be exercised in respect of the Inspector or any person who is authorised for the purposes of Section 28(1), 29(1) or 30(1).

**32** A person must not hinder or resist another person who is exercising or attempting to exercise a power under s 28(1), 29(1) or 30(1) if the other person is –

a. the Inspector

b. a person authorised by the Inspector for the purposes of the relevant provision; or

c. a person assisting the Inspector or a person referred to in paragraph (b).

Penalty: \$20 000.

### **3. Notice of an Inspection**

The Inspector may provide advance notice of an inspection or may conduct an unannounced inspection. Announced inspections will be scheduled in the Annual Report of the Office of the Inspector of Custodial Services.

Unannounced inspections may take place at any time and on any number of occasions. No notice of any kind need be given. It is therefore important for all staff, particularly staff who are rostered on duty at the Front Gate, to be aware of the purpose and powers of the Inspector of Custodial Services.

In addition to formal inspections, staff from the office may visit or otherwise be in contact with prisons and with staff associated with prison services. All requests for access to places, persons and documents are to be dealt with cooperatively and expeditiously.

With regard to requests by the Inspector or Inspections Officers to be provided with documents, a practice has evolved whereby such requests are normally made through the Manager Inspections and Research and for prisons, the Manager Projects and Inspectorate liaison (formerly Manager Operations Review). It is appropriate that this process be continued to ensure that there exists a mutually compatible record of documents sought and provided.

Superintendents are to ensure therefore, that the Manager Projects and Inspectorate liaison is advised of all requests for documentation as soon as practicable.

### **4. Identification**

The Inspector of Custodial Services will carry a document showing his appointment as the Inspector of Custodial Services. Authorised Inspections Officers will be issued a warrant, signed by the Inspector. (Staff should familiarise themselves with the pro-forma authorisations located in each gatehouse.)

Normally, this warrant will contain photographic identification, but any such warrant marked "Valid without photograph" constitutes sufficient identification as long as it is shown in conjunction with other identification. Warrants are normally valid for the specified period in relation to all prisons but may be issued subject to such conditions as the Inspector may determine - for example, as to only one particular prison or in relation to only one particular function.

### **5. Unfettered Access**

The Inspector and any person authorised by the Inspector are to be granted free and unfettered access to a prison at any time. Any request from the Inspector or a person authorised by the Inspector to be taken to a particular area within the prison is to be complied with immediately and the officer in charge of the Front Gate is responsible for making the necessary arrangements and notifying the superintendent. In such instances, a security briefing is not required.

Inspection Officers must be issued with keys upon request. However, to ensure personal safety and maintain security, they are in such cases to be given an appropriate orientation on security and the use of keys within the particular prison. Inspection Officers are to be allowed to move around unescorted however the Superintendent or Officer in

Charge has a duty to advise Inspection Officers of any actual, known or reasonably foreseeable danger.

## **6. Facilities and Assistance to be Provided at a Formal Inspection**

When requested, a Superintendent or Officer in Charge is to make the following facilities available to the inspection team:

- a secure room for the sole use of the inspection team for the period of the inspection and a secure filing cabinet and keys
- access to a confidential telephone
- a liaison officer whose task is to coordinate local arrangements for the purposes of the inspection
- access to all records and/or information
- any other reasonable facility requested.

## **7. Confidentiality**

Any person who brings information to the attention of the inspection team and who requests that the information be regarded as given in confidence will be treated as a confidential witness.

## **8. Cooperation by Prison Staff**

The office of the Inspector of Custodial Services derives its authority from the *Inspector of Custodial Services Act 2003*. This Act is available in all prisons as well as on the [State Law Publisher's website](#). Prison staff need to be familiar with this act, particularly those relating to the functions and powers of the Inspector's office. Particular attention also needs to be paid to ss 28, 31 and 32 (Reproduced in section 2 of this Directive), and s 49 (Hindering and other offences in relation to the Inspector) and s 50 (Victimisation).

The provisions in the *Inspector of Custodial Services Act 2003* take precedence over Prisons Regulation 22(1). As it is a part of the normal discharge of an officer's duties to assist the Inspector in carrying out his functions, any assistance, information or answers given to questions asked by the Inspector does not breach the confidentiality provisions in Prisons Regulation 22(1).

Sections 49 and 50 of the *Inspector of Custodial Services Act 2003* contain severe penalties for any person who hinders the Inspector in carrying out his functions or who threatens or intimidates another person who has or may in the future assist the Inspector.

All staff need to be aware of these provisions and that they are required as a part of the normal discharge of their duties to cooperate with the Inspector. It also needs to be noted that the same level of cooperation must be given to a person authorised by the Inspector to carry out his/her functions under the *Inspector of Custodial Services Act 2003* and that any such authorisation will be in writing.

## **9. Inspector's Equipment Entering a Prison**

Section 28 of the *Inspector of Custodial Services Act 2003* allows the Inspector to bring into a prison any assistants or equipment that is considered necessary to perform his/her functions under that Act. The amount of equipment the Inspector can bring into a prison is not restricted and is to be recorded on entry and exit. The Superintendent will ensure that a Local Order is issued to provide for the recording of such equipment at its entry into and exit from the prison, in an efficient and effective manner. The internal content of the equipment is not to be examined by prison staff. Any staff concerns regarding the good order and security of the prison are to be addressed to the Superintendent.

The Inspector may bring in items including computers, video cameras, still cameras, mobile telephones, recording equipment and any other electrical or mechanical appliance that are connected to his/her functions under the *Inspector of Custodial Services Act 2003*. [Operational Instruction 18](#) dated 28 February 2003, provides that the Inspector and his staff are exempt from the search and property restrictions applicable under that Instruction.

The above also applies to any person authorised in writing by the Inspector.

## **10. Code of Conduct Relating to the Inspector, Inspections Officers and Other Authorized Personnel**

The Office of the Inspector has adopted an internal code of conduct that requires authorised personnel to conduct themselves politely and with decorum in relation to all prison staff, all other persons working within a prison and all prisoners. Any complaint as to the conduct of any such person should be notified in the first instance to the superintendent.