PRISONS AMENDMENT BILL 2020

Committee

Resumed from an earlier stage of the sitting. The Deputy Chair of Committees (Hon Dr Steve Thomas) in the chair; Hon Stephen Dawson, (Minister for Environment) in charge of the bill.

Clause 12: Section 46A inserted —

Committee was interrupted after the clause had been amended.

Hon ALISON XAMON: I will move to my amendment shortly, but before I do, I want to get some further clarification about clause 12(3), specifically the way that "use of such force as is reasonably necessary" is likely to be interpreted. I listened to the minister's answer to questions about this matter in his response to the second reading debate, but I want some additional information. The minister talked about scenarios in which "reasonable force" would be defined during the taking of blood, but I want some clarification about what would be considered a reasonably necessary use of force in the taking of other samples. We have passed amendments that enable a series of bodily samples to be taken, including for COVID-19 testing, which I understand requires a swab taken right up the nose. I know from people who have had it that it is very painful. I also know that if there was to be resistance by someone to having the swab taken at the very top of their nasal passage, it could potentially be quite dangerous and harmful. We have spoken about the inherent dangers in potential needlestick injuries if someone is fighting and does not want to have a blood sample taken, but I would also like to get an idea of what is likely to be envisaged to be reasonable force when taking a nasal swab, particularly when it needs to be taken very far up the nasal passage. If I was to transpose the minister's response about the use of force for the taking of blood to the taking of these types of substances, I would envisage that reasonable force would be holding onto the prisoner to keep them stable, but not holding them down to forcibly take that sample from the top of their nasal passages. I would like to know whether my understanding is correct or if it is envisaged that considerably more force is likely to be utilised under the provision of this bill?

Hon STEPHEN DAWSON: I indicate that the member's understanding is correct.

Hon Alison Xamon: Good.

Hon STEPHEN DAWSON: Is the member happy with that?

Hon Alison Xamon: Absolutely.

Hon STEPHEN DAWSON: Excellent.

Hon RICK MAZZA: My question is also about the taking of a sample—now we have had the amendment we are actually referring to a sample. The explanatory memorandum refers to reasonable force and further down in reference to proposed subsection (3), it states that the superintendent may charge the prisoner with an aggravated prison offence under section 70(i) of the Prisons Act if the prisoner refuses to have that sample taken. My understanding is that if the medical practitioner feels threatened or there is some risk to them, they would cease to try to obtain that sample. My concern is if the prisoner absolutely and flatly refuses and becomes aggressive; they might be a hardened long-term prisoner who does not care about whatever charges they may incur by not having that sample taken. What other measures are available to the superintendent to obtain that sample?

Hon STEPHEN DAWSON: The answer is none. If the prisoner refuses, the procedure will not go ahead.

Hon RICK MAZZA: Where does that leave the prison officer? If the prison officer has been spat on or may have had bodily fluids put on them in some other way, on broken skin or whatever the case may be, and the prisoner refuses a sample, what happens to the prison officer? They are left in limbo not knowing whether they have contracted an infectious disease or not. Is there absolutely no recourse for the prison officer to establish whether they may have been exposed to an infectious disease?

Hon STEPHEN DAWSON: Essentially, the status quo remains; it is as exists currently. I gave quite a lengthy answer to this very question earlier in the debate. I will try to find the answer again, but I do not particularly want to give it again, given it was so lengthy. Essentially the status quo that currently exists in the legislation remains. We do not force a person to have to give consent. We can check their medical records. The superintendent can check their medical records, at the very least, to see what we knew of the prisoner when they entered the prison, because obviously they get medical checks when they enter the prison, and if they have had medical treatment during the term in prison, that will be in the medical records too. There is a standard operating procedure currently in place for assault, and it is called policy directive 41. It is a long list of things that take place currently. I will not read the whole thing out again, but in the case of exposure to blood and bodily substances by staff, the following additional procedures will be observed. The prison officer receives first aid immediately. The prison officer is assessed by a nurse or doctor at the site in conjunction with advice from hospital immunology experts, via telephone if appropriate. The prison officer is then directed either to their own GP or to the emergency department of the

nearest hospital for potential post-exposure prophylaxis—that is the PEP that Hon Alison Xamon mentioned in her contribution—depending on the outcome of the assessment; that is injuries, extent of exposure, amount and type of fluid et cetera. The prison officer is offered trauma counselling through the department's employee welfare branch, and then further support, information and counselling may be arranged by the department with non-government agencies such as HepatitisWA or the Western Australian AIDS Council.

Hon RICK MAZZA: I thank the minister. I apologise for missing his answer earlier. I was away on urgent parliamentary business, so I missed it. The other part of my question is: what is deemed to be reasonable force? We are talking about a prisoner who refuses to provide sample, so what the minister just explained to me would be applied, but what is the definition of "reasonable force"? What are we talking about if we say we have to force somebody to provide a sample? Is it putting someone's arm up their back or strapping them down? What is reasonable force to obtain a sample and at what point does using reasonable force to restrain a prisoner cease because the prisoner refuses and becomes aggressive?

Hon STEPHEN DAWSON: The prisoner has to consent to the procedure being undertaken. Reasonable force relates to the purposes of extracting the sample. There could well be a requirement for the prison officer to hold a prisoner's arm if it is shaking and a level of vigorousness could be needed, but if the prisoner does not consent, the procedure will not continue. The provision refers to reasonable force in relation to the extraction of a sample but the procedure is not carried out against the will of the prisoner.

Hon RICK MAZZA: I thank the minister for the answer. Can I take it from the minister's answer that the term "reasonable force" is inaccurate because if the prisoner refuses to supply a sample, they refuse and there is no scope to use reasonable force? We are not talking about reasonable force; we are talking about assisting the prisoner to take a sample. Can I take it that no reasonable force will be applied because if the prisoner does not consent, no sample will be taken?

Hon STEPHEN DAWSON: I am told that it would be regarded as force because an officer's hands are laid on the prisoner. Again, I stand on what I said previously. It is an issue of consent. If the prisoner does not consent to it, the procedure does not happen. However, if the prisoner has the shakes, for example, and the prison officer or whoever has to hold the prisoner, there is a level of reasonable force.

Hon ALISON XAMON: If a prisoner does not give consent, is there any scenario whereby they are able to give a reasonable excuse? I cannot see anything in this bill, but is any scenario envisaged in which a prisoner may be able to utilise a reasonable excuse?

Hon STEPHEN DAWSON: It is up to the superintendent whether a charge is laid. The reasonableness of the decision to take the sample in the first place would be dealt with in a court proceeding. The court could take into account, for example, if the prisoner was just nervous. If the prisoner was able to make the case that he or she was nervous and therefore did not consent to the sample being taken at the time, the matter could be considered by the court.

Hon MICHAEL MISCHIN: I confess to some confusion as to the limits that the minister implies regarding proposed section 46A(3). Subsection (1) states that should the chief executive officer "suspect on reasonable grounds that there has been a transfer of bodily fluid from a prisoner to a prison officer", and as a result of that suspicion on reasonable grounds, the chief executive officer can inspect the medical records for a particular purpose. Presumably, as an addition but not necessarily all the time, they can also "require the prisoner to submit themselves". If the prisoner refuses to submit himself or herself for the purposes of having a bodily sample taken, subsection (3) states —

> The chief executive officer can authorise the use of such force as is reasonably necessary in the circumstances to take the blood sample.

The minister is telling us that if the prisoner says "I don't consent", the chief executive officer cannot authorise a number of prison officers to restrain the prisoner in such a fashion that would enable a sample to be taken. Where is that limit in proposed section 46A?

Hon STEPHEN DAWSON: The honourable member will have to excuse me because I do not have the correct terminology, but, essentially, the sample is always taken by medical staff. Medical staff have a code of ethics that dictates that they will not forcibly take a sample from a prisoner. The legislation and the code of ethics have to be read together. Essentially, force will not be used to compel a prisoner to provide a blood sample because medical practitioners will not carry out that action. I am trying to find the exact words in the medical code of ethics. I am happy to provide it a little bit later, but my advice is that the two need to be read together.

Hon MICHAEL MISCHIN: Okay. So that is a restraint on the part of the person that the chief executive officer authorises to use any reasonable force. But let us say we have a prison staff member who is not a medical practitioner. A number of people can be authorised. I think all sorts of possibilities have been foreshadowed about

who might be able to take samples; that is the term used in the bill. A change has been foreshadowed, but I will leave that aside. A medical practitioner could be found who is prepared to use the force authorised and the CEO could say, "Prison officer X is really worried because this guy spat in his face. The prisoner has refused to submit to a medical examination and to submit a sample, and we know from his medical record that he once had disease A, B, C, D, E and COVID. Take a sample. I don't care what it takes. Use such force as is necessary to get that sample." Where is it written that unless there is consent, it will not happen? Is it somehow implicit in the drafting? Is there something I am missing, or is there no prohibition?

Hon STEPHEN DAWSON: As I said earlier, the legislation and the code of ethics have to be read together. A doctor or nurse cannot take a sample without consent because of their code of ethics, and they do not. That is standard practice. Samples are taken in prisons, probably on a daily basis, but if a prisoner does not consent, the doctor or nurse, because of their code of ethics, will not take a sample without consent. Therefore, there is no point using force to compel the taking of a sample. As I have indicated previously, the reasonable force relates to, in essence, helping someone or aiding someone who has consented to get a sample taken from them.

Hon ALISON XAMON: I thank the minister for that response. Can I also confirm that apart from being unethical, it would also be highly dangerous to try to forcibly take a sample whether it be through a needle or a nasal swab very high up the nasal cavity?

Hon STEPHEN DAWSON: The member is correct. It would be very dangerous in those circumstances for that to take place.

Hon MICHAEL MISCHIN: All right. Let us say that the prisoner was unconscious. Could a sample then be taken?

Hon STEPHEN DAWSON: I am advised, no. Because the prisoner is unconscious, he cannot give consent.

Hon MICHAEL MISCHIN: There cannot be anything implicit in the section that limits the use of force because the same formula for the use of reasonable force appears in a variety of other sections in that part of the Prisons Act. For example, under section 46 of the Prisons Act for medical procedures generally, it states —

> Where there are reasonable grounds for believing that a medical examination of a prisoner will afford evidence as to the commission of an offence, a medical officer or a person who is registered under the *Health Practitioner Regulation National Law (Western Australia)* in the medical profession acting at the request of the chief executive officer or the superintendent, and any person acting in good faith under the direction of such officer or practitioner, may make such medical examination of the prisoner as is reasonably necessary to ascertain the facts which may afford such evidence and use such force as is reasonably necessary for the purpose.

Presumably, that might involve the gathering of evidence about injuries that a prisoner may have suffered in the course of committing some offence. Is the minister saying that in the case of checking whether a prisoner has fresh needle marks from injecting drugs in prison, which would make it an aggravated prison offence, the prisoner can say, "No, go away. You can't look at my arms", and the medical practitioner will say that because of the ethical code, they cannot force anyone to do anything so they will not do it?

Hon STEPHEN DAWSON: I am advised that the World Health Organization's principles of medical ethics relate to the role of health personnel. Basically, all healthcare staff working in prisons must always remember that the first duty to any prisoner who is their patient is the prisoner's clinical care. In relation to the example given by Hon Michael Mischin, it is quite possible that there could be a situation in which a person is being medically examined—for example, checks could be taken to see whether they are taking drugs; are there needle marks in their arm? Reasonable force would be used. That is very different from taking bodily fluid or extracting blood from a patient. They are two very different things. Reasonable force in one case may well involve people holding down someone's arm to see whether there are track marks on the arm. In relation to reasonable force around the taking of samples, the WHO code of ethics kicks in and those samples would not be taken without the consent of the prisoner.

Hon MICHAEL MISCHIN: Even with respect to existing section 46, there is a limitation on being able to take samples that might afford evidence of an offence. What about taking scrapings from underneath someone's fingernails? That is invasive and may involve some harm. Can a prisoner be restrained with such force as may be necessary to enable a medical practitioner to take those scrapings?

Hon STEPHEN DAWSON: That is not in the bill before us. I have advisers on the bill before me now. I do not have advisers on the substantive act and what may or may not occur in that regard. I am sorry; I cannot give the member an answer to that question.

Hon MICHAEL MISCHIN: It is relevant. We are talking about two types of medical examination. We are talking about a provision that allows the authorisation of such force as is reasonably necessary in the circumstances to take samples that will solve the problem of a prison officer being anxious about whether the prisoner is a carrier

of an infectious disease. The minister is saying that unless the prisoner consents to the taking of samples, this power has its limits. Is that correct?

Hon Stephen Dawson: Yes.

Hon MICHAEL MISCHIN: So what is the point of proposed subsection (3)? If the prisoner is going to consent to the taking of samples, they will presumably consent to having their hand or arm held steady in order to be able to have a sample of blood taken or to have a swab taken. What is the point of proposed subsection (3)?

Hon STEPHEN DAWSON: It clarifies the fact that a prison officer cannot lay their hands on a prisoner. It says that if a sample needs to be taken and, for some reason, a level of reasonable force has to occur, and hands need to be laid on the prisoner by a prison officer, this allows that to happen.

Hon MICHAEL MISCHIN: It seems to me that the prisoner is consenting to the taking of a sample; they are consenting to being restrained as necessary if they are nervous or otherwise have an inability to control themselves in the circumstances. We do not need that proposed subsection if that is the case because what is contemplated by other sections in the Prisons Act that permit the use of force is to extract things from prisoners as necessary. I will give an example. Section 49, "Power to search and question persons entering prison", has the power to have someone searched. Subsection (8) states —

> For the purpose of exercising a power conferred by this section, a person carrying out a search or examination may use such force as is reasonably necessary for the purpose.

That presumably means restraining someone and, if necessary, searching their clothing or underneath their clothing. There is force involved. The minister is telling us, however, that the medical practitioners and nursing practitioners have a code of ethics that does not permit them from doing this, and that is the safeguard.

Hon STEPHEN DAWSON: I am going to put a line under this now. The member was talking about parts of the act that are not being amended by the bill before us. We are on clause 12 of the bill. The member could have had a far-ranging debate during clause 1. That was his decision. This is clause 12. We have amendments before us in the name of Hon Alison Xamon.

I say for the last time that doctors and nurses will not take a blood sample from a patient or prisoner who refuses to provide one. It is a breach of medical ethics to do otherwise. Therefore, a prisoner who refuses to provide a blood sample will not be taken to a doctor or a nurse for the procedure. Instead, the superintendent may charge the prisoner with refusing to provide a blood sample and prosecute the offender in the Magistrates Court. Pursuant to section 71 of the Prisons Act 1981, refusing to provide a blood sample is an aggravated prison offence that will attract a penalty of a $3 000 fine, separate confinement of 28 days or a cumulative term of imprisonment of six months.

Hon MICHAEL MISCHIN: I am not digressing from clause 12. The powers in that clause that I am concerned about are exactly the same form of words that are used in other sections of the act. I want to understand that there is consistency in the way they are applied. I accept that the minister will not go any further with this.

Hon Stephen Dawson: I have answered it numerous times for you; that is all I have.

Hon MICHAEL MISCHIN: Not particularly satisfactorily, I have to say.

Hon Stephen Dawson: You may not be satisfied, but that is the information I have got.

Hon MICHAEL MISCHIN: I accept all that, too.

What if a prisoner says, "Okay, since you are going to force me into having this swab, I don't want it because I don't like the idea of you fiddling around in my nasal cavity, and so I do not consent to this but I will submit to it." Is that sufficient for the purposes of the act?

The DEPUTY CHAIR (Hon Dr Steve Thomas): Can I just clarify something from the member asking the question. I refer to the difference between giving consent and not giving consent. If he says "go ahead", does he not then indicate that he is giving consent? Hon Michael Mischin might want to rephrase that question because it would appear to me that he can either give consent or not give consent but cannot do both. Perhaps he could rephrase that in a different way so I can understand it.

Hon MICHAEL MISCHIN: I take your point, Mr Deputy Chair. The prisoner says, "I don't consent and I'm not going to submit to it" but does not resist. Is that sufficient as a submission for the purposes of proposed section 46A(3)?

Hon STEPHEN DAWSON: If the prisoner does not consent, he does not consent. The doctor and nurse would not take the sample. There needs to be consent. In that regard, the prisoner clearly said, "I do not consent", and that would be the end of it.

Hon MICHAEL MISCHIN: I move on to another aspect. The minister outlined the heads of regulation-making power and proposed subsection (4) says some of the same thing. The second reading speech said that under the regulations, the chief executive officer may disclose the prisoner's medical record to a prison officer. Why is that necessary? Is it not sufficient for the chief executive officer to peruse the record and say, "Look, there's nothing in there" or "Yes, we found something and we suggest you get a test from your GP"? Why does it have to be disclosed and shown to a prison officer?

The DEPUTY CHAIR: Minister, I might give you some time to reflect with your advisers during the break.

Sitting suspended from 6.00 to 7.30 pm

The DEPUTY CHAIR (Hon Robin Chapple): You will have to excuse me if occasionally I am coughing a bit. The smoke is getting to me.

Hon Stephen Dawson: I hope it's not coronavirus!

The DEPUTY CHAIR: No, it is not coronavirus. A few of you know that I have asbestosis; it does not really help when there is smoke around. We are dealing with clause 12 as amended.

Hon STEPHEN DAWSON: Thank you very much. Before the dinner break, Hon Michael Mischin asked a question on proposed section 46A. Proposed section 46A(4)(b) states that regulations may —

> authorise and regulate the disclosure to the prison officer of the prisoner's medical records and the results of any test or analysis done on the blood sample …

That must be read in conjunction with proposed section 46A, which states —

> (2) The chief executive officer may —
>
> (a) inspect the prisoner's medical records to find out whether the prisoner has an infectious disease …

The disclosure of records can only relate to the inspection of the medical records for the purposes of finding out whether the prisoner has an infectious disease. The explanatory memorandum clarifies that the chief executive officer may disclose to the prison officer any infectious diseases found on the medical record.

Hon MICHAEL MISCHIN: That is what troubles me—whether it needs to go that far. If the prisoner has no record of a contagious or infectious disease, why can the chief executive officer not simply communicate that fact to the prison officer, rather than have the prison officer look at the records, which might reveal other maladies that the prisoner would prefer to keep private?

Hon STEPHEN DAWSON: The reference to disclosure does not mean giving the document; it means giving the information. If there is no information to give then it would not be disclosed, essentially.

Hon MICHAEL MISCHIN: It does not say that; it is framed in a much broader way. But if the government is undertaking that it will limit that by way of the regulations that are presented, I am prepared to take that assurance.

Hon STEPHEN DAWSON: I thank the member. That is definitely the intention.

The DEPUTY CHAIR: Members, we are dealing with clause 12 as amended, and I note we have another amendment on the supplementary notice paper. Hon Alison Xamon.

Hon ALISON XAMON: Thank you, Mr Deputy Chair. I move —

> Page 5, after line 24 — To insert —
>
> (5) Nothing in this section authorises the taking of a sample before the chief executive officer has obtained a statement in writing from a medical practitioner that in the medical practitioner's professional opinion the transfer of bodily fluid from the prisoner to the prison officer has exposed the prison officer to the risk of transmission of an infectious disease.

By way of explanation to the chamber, this amendment has been proposed by people who have raised concerns about this legislation as a whole; I note in particular the Western Australian AIDS Council. The current provision, which proposes that a risk of transmission is to be decided by the chief executive officer, who may not be a medical practitioner, is of particular concern. The view is that a medical practitioner would be better qualified to determine whether there has been a transfer of bodily fluid, hence the amendment I have proposed. This is closer to other similar legislation and I think is a marked improvement.

Hon STEPHEN DAWSON: I indicate that the government does not support this amendment. I am advised that, generally, when an incident occurs, there is always a prison medical officer available to be consulted, either immediately with those onsite, such as prison medical staff, or on-call prison medical officers. This is part of the standard operating procedures. A superintendent is the ultimate authority for the prison under the Prisons Act. The superintendent has the ultimate responsibility for the care and management of the prisoner. The act also provides

the superintendent with the power to order testing of prisoners for drugs and alcohol. The bill builds on these existing procedures. Although the Western Australian Public Health Act 2016 requires a decision to order mandatory testing for infectious diseases be made by the Chief Health Officer, there is other legislation for mandatory testing such as the Mandatory Testing (Infectious Diseases) Act in Western Australia and interstate legislation that does not require the decision-maker to be the Chief Health Officer or a medical practitioner. The common requirement for all mandatory testing legislation is that the decision-maker must have a suspicion or belief on reasonable grounds that there has been a transfer of bodily fluid from the source individual. The safeguard is the test of reasonableness. We will not support this amendment.

Amendment put and negatived.

Clause, as amended, put and passed.

Clause 13: Section 49 amended —

Hon MICHAEL MISCHIN: Clause 13 will amend section 49 of the act by increasing the penalty. We have dealt with a number of penalty provisions and the upgrading of those. This one deals with the power to search a person who has been permitted to enter a prison or has just left it. I have already raised the question about the gender specific language in that clause and queried whether that ought to be amended at some point. Leaving that aside, the penalty is proposed to be increased from $1 000 to $6 000. Back in 1981, $1 000 was a very substantial penalty. As I have indicated, some in the higher tiers of the public service were getting around $35 000-odd a year, so this would have been about one-tenth of that amount. We are not increasing it commensurately with the increase in other prices and costs and the consumer price index over that period. A penalty of $6 000 does not seem to be much to someone who, having just left a prison and having in their possession some contraband or the like, refuses to permit a search to be made of them or to someone who, having just been permitted to enter a prison, refuses to permit a search. I wonder why $6 000 was picked rather than a much more substantial penalty, given that the government's argument is that the current penalties have lost their deterrent effect. If someone has a lot to lose, $6 000 might also be considered not to be a deterrent to that sort of behaviour. Was thought given to increasing it to a much more substantial and realistic amount in the order of, say, $30 000 or $50 000 and, indeed, introducing an alternative of a term of imprisonment for a failure to comply with the direction?

Hon STEPHEN DAWSON: It is always going to be a subjective issue—some may think it is too much; some may think it is too little. I am advised that the calculation was based on a comparison with other jurisdictions, but also took into account CPI increases. It also aligns with the other penalties in the bill. It flows in relation to the severity of an issue. The penalties in this bill go upwards depending on the severity of an issue. Certainly, it is a subjective issue and this penalty is one that, upon reflection, was landed on by government.

Hon RICK MAZZA: I would like the minister to clarify something for me. The current penalty is $1 000 or 12 months' imprisonment or both, which I imagine would give a magistrate some flexibility when someone fails to give their name, address and details; they could impose a fine or, if need be, a jail term or a combination of both. However, in the amendment in this bill, the penalty is imprisonment for 12 months and a fine of $6 000. Does that mean that anybody who is convicted of this offence will have to have a combination of both?

Hon STEPHEN DAWSON: I am advised that it has been suggested by parliamentary counsel that in the way it has been drafted, it would, in fact, be the fine or 12 months, so it would not be both.

Hon MICHAEL MISCHIN: I think the answer is somewhere in the Interpretation Act, but I do not recall it now. My understanding is that if the penalty is imprisonment for 12 months and a fine of $6 000, it is either one or the other or both, but perhaps that could be checked. I regret I do not have a copy of the act with me. Perhaps one of the staff might be able to help.

Several members interjected.

The DEPUTY CHAIR: Honourable members, I am not sure that this conversation should be going on because I do not think Hansard is recording it.

Hon STEPHEN DAWSON: For the purposes of the debate, my advisers are just checking the Interpretation Act. Certainly, my advice is that it is not both, but we will check and clarify that.

Hon MICHAEL MISCHIN: While we are at it, can the minister also give us some indication of the frequency with which these offences are charged? Have there been any prosecutions under either section 49(2) or section 49(6) that can give us some indication of the sorts of penalties that have been imposed by the courts?

Hon STEPHEN DAWSON: I cannot give the member that information. The department does not collect it. It would be imposed by a court and we are not ever told what penalty is given to somebody. An individual in the department may well know what a penalty is from time to time, but it is not tracked.

The DEPUTY CHAIR: Members, the question is that clause 13 be agreed to.

Hon STEPHEN DAWSON: Mr Deputy Chair, I have indicated that I am seeking further advice, so I ask that you not seek any further questions until I have an answer.

I am sorry, honourable member. We were looking in the Interpretations Act. Although it is mentioned at section 72, that is not the right spot. I am advised that part 5 of the Western Australian Sentencing Act 1995 provides for the following penalties: a term of imprisonment or a fine only, either a term of imprisonment or a fine, or both a term of imprisonment and a fine. Section 42(1) of the Sentencing Act provides —

> This section applies if a court is sentencing an offender for an offence the statutory penalty for which is such that both imprisonment and a fine may be imposed.

The phrase "both imprisonment and a fine may be imposed" means the court may impose a fine, or imprisonment, or both.

Clause put and passed.

Clause 14: Section 50 amended —

Hon MICHAEL MISCHIN: I make the point, once again, that I query whether the penalties that are being proposed are really going to make that much of a difference to people who are prepared to defy the authorities.

Hon Stephen Dawson: I was seeking advice from my adviser. Are we still on clause 13?

Hon MICHAEL MISCHIN: Sorry. I thought we had moved on to clause 14.

The DEPUTY CHAIR (Hon Robin Chapple): We have moved on. We are on clause 14.

Hon MICHAEL MISCHIN: I think the minister had won clause 13.

Hon Stephen Dawson: I was just clarifying because I could not hear.

Hon MICHAEL MISCHIN: I will deal with clause 14, but I make a more general observation about whether the proposed penalties will really be that much more of a deterrent, given that we are, for example, in section 50(1) dealing with, essentially, smuggling things into prison with intent to breach the good order, security or good government of a prison, or the article is of a kind likely to jeopardise the good order, security or good government of the prison. The current penalty is a $2 000 fine or 18 months' imprisonment, or both. The government will increase it to a $12 000 fine or 18 months' imprisonment, or both. Given that the argument is that the deterrent effect of the current penalty is too low, it seems to me that simply increasing the penalty to $12 000 is not going to make a vast amount of difference. If the threat of 18 months' imprisonment has not deterred someone from tying this out, simply increasing the fine to $12 000 is not likely to make much of an influence on them.

Has any thought been given to mandating, albeit with the provision of exceptional circumstances to mitigate against injustices, some minimum mandatory term of imprisonment in order to deter people from smuggling contraband into prisons that might cause mischief and disrupt the good order of a prison? Again, it would be helpful to know the figures, whether people are caught with this sort of stuff and what penalties are being imposed. Again, I fail to understand how simply increasing the monetary penalty is going to deter people who have a lot to gain from trying this out and so far have not been deterred from doing it by a term of imprisonment.

Hon STEPHEN DAWSON: The mandating of the fine was not considered. The amount of $12 000 is a substantial amount for an ordinary person, if I can call them that. The average wage in Australia is about $84 000 a year, and $12 000 is around one-seventh of that. It is a significant amount and we believe that it will be a deterrent to the community. If it is not, I am sure that the government will consider that, and in due course or in the future, look at increasing that, but we certainly believe that it would be a deterrent.

Hon ALISON XAMON: By way of a comment in response to what the minister just said, I think that for a lot of people who potentially could be subject to these provisions, a $12 000 fine would be crippling. If anything, it is exorbitant, if we think of what could happen to some people. I am also very pleased that there are no mandatory sentencing or fine provisions in this legislation. That, of course, would be a travesty.

Clause put and passed.

Clauses 15 to 23 put and passed.

The DEPUTY CHAIR: We have a new clause in the name of Hon Alison Xamon—new clause 24.

Hon STEPHEN DAWSON: I indicate that after discussions with the Minister for Corrective Services, the government will consider Hon Alison Xamon's amendment, but may draft it in a different way. I indicate to the chamber that I would like to report progress and seek leave to sit again.

Progress reported and leave granted to sit again, on motion by Hon Stephen Dawson (Minister for Environment).