

PRISONS AMENDMENT BILL 2002

Consideration in Detail

Resumed from 10 April.

Clause 4: Section 31 amended -

Debate was adjourned after the clause had been partly considered.

Clause put and passed.

Clause 5: Section 60 amended -

Ms SUE WALKER: The Opposition does not have a lot to say about this clause. It mirrors regulations that have already gone through. The Opposition is happy with this clause.

Clause put and passed.

Clause 6: Section 60A inserted -

Ms SUE WALKER: This is the most contentious clause in the Prisons Amendment Bill 2002. In the second reading speech, the minister said that the purpose of the new identification was “to achieve more accurate identification of visitors” and that it was information “to be used only by a prison officer for checking the identity of a visitor to a prison”. He also said -

Importantly, safeguards are proposed in the Bill to prevent any unlawful disclosure of such personal information.

The problem with this legislation is that it requires such personal information. I am not sure whether the minister is aware of an article in the 1998 *Alternative Law Journal* by James Godfrey -

Mr McGinty: I am more mainstream.

Ms SUE WALKER: Good. In that article, James Godfrey talks about the three conventional forms of identification. He says that it is something people have, like a card; secondly, it is something they know, like a password or personal identification number; and, finally, it is something they are, like their fingerprints, voice, image or any other identity trait. There is no definition of “biometric identification” in subclause (1). What is the minister’s definition of “biometric identification”? In his second reading speech, he referred to biometric identification. Subclause (1) refers to proof of identity. How does the minister perceive biometric identification?

Mr McGINTY: I am told that biometric identification is a very broad category for various identification purposes, which in its natural meaning would include, for instance, DNA samples. In discussions with parliamentary counsel when this legislation was being drafted, we sought to confine its meaning to those issues that are referred to in the definition of “proof of identity” on page 2 of the Bill. It means a fingerprint, palm print, eye print, voiceprint or other physical or personal characteristic provided or used to prove the identity of a visitor to a prison. The member may recall that a month ago, when we introduced this legislation, a description was provided on television of one of the possible means of using biometric identification; it was basically a face print. A person would simply sit for a camera, which would take a number of measurements of the person’s face. Those measurements are somewhat akin to a fingerprint. Everyone has his or her own identification from those measurements. The measure of certainty is extremely high; that is, only the person sitting in front of the camera can trigger a positive response from the camera once his or her face print has been factored in.

That sort of technology is being increasingly used post-11 September in the United States, in airports and generally throughout the commercial world as a means of identification of people. It is the use of the most up-to-date technology. I saw the technology in operation in Hakea Prison. I thought it had tremendous potential not only for visitors but also for the staff in prisons. We raised it in the context of the frequency with which people with false identities gained access to prisons. It is normally visitors. It is perhaps understandable, although it cannot in any sense be condoned. There is an unacceptably high incidence of people using false identities to gain access to prisons. It might be that they are wanted on charges as part of the criminal class, so they use false identities. It might be that they are up to no good in visiting the prison and therefore use false identities. However, the incidence is unacceptably high. These measures, particularly when two identifying factors are taken together, such as a face print and some other form of identification, mean that we can stamp out the use of false identities when people visit prisons. It will prevent not only drugs and other contraband coming into prisons, but also the use of false identities when people visit prisons. In other words, it will keep prisoners away from people who are trying to evade the law and are using a false identity for that purpose. Those are the sorts of biometric identification tools that we have in mind, and they are being trialled in prisons in Western Australia.

Ms SUE WALKER: Has a survey of the number of visitors to each prison each year been done for the purposes of this legislation? If so, what are the findings?

Mr McGINTY: If we had known that the member wanted information like that, we could have extracted it from prison records. Mr Jim Shilo, one of my advisers at the Table, worked for some time as the superintendent of Casuarina Prison. He informs me that Casuarina received 1 800 visitors a week. Admittedly, that was when the muster was higher. As I have mentioned, the muster is lower for two reasons: first, the shift of almost 700 prisoners to Acacia Prison; and, second, the general reduction in prisoner numbers. The prison population in the government system has fallen by over one-third in the past nine months. Obviously, the reduction in the number of prisoners means that the number of visitors is proportionally lower. However, at its peak - when the muster was around 650 - Casuarina received 1 800 visitors a week. The current muster at Casuarina is about 400.

Mrs Edwardes: We could say that the number of visitors is almost three times the muster.

Mr McGINTY: Yes, in that case. The member for Kingsley would be aware that that will vary depending on the prison. Many prisoners sent to Albany Regional Prison are foreign nationals who do not have family and friends here. Visiting is not an issue in that instance, although a number of local people are also housed at the Albany prison.

Mr Watson: We are multilingual.

Mr McGINTY: That is true. They would need to be. Indonesian fishermen - those not involved in illegal immigration - make up a significant proportion of the prison population. Their work ethic in some of the work parties operating out of the prison often leaves that of some Australian prisoners for dead. However, that is a digression.

The number of prisoners will vary from prison to prison.

Mrs Edwardes: Wooroloo Prison Farm, Pardelup Prison Farm and other lower security prisons are likely to have more visitors than Casuarina.

Mr McGINTY: Yes.

Mrs Edwardes: Is there a limit on the number of visitors a prisoner can have at any one time?

Mr McGINTY: There are limits on the frequency of visits, and disciplinary procedures can lead to the removal of visiting rights. Each prisoner in a secured prison is allowed a maximum of three adults, plus children, visiting at any one time.

Ms SUE WALKER: I would like to get an overview of the prisons in Western Australia. Acacia Prison is the only private prison. The minister described it as a medium-security prison.

Mr McGinty: Yes.

Ms SUE WALKER: Are Bandyup Women's Prison and Casuarina Prison strict-security prisons?

Mr McGinty: Yes.

Ms SUE WALKER: Is Hakea Prison a medium-security prison?

Mr McGinty: Hakea is a maximum-security prison.

Ms SUE WALKER: What about Karnet Prison Farm?

Mr McGinty: It is minimum security.

Ms SUE WALKER: What is Nyandi Prison?

Mr McGinty: Minimum.

Ms SUE WALKER: What is Wooroloo Prison Farm?

Mr McGinty: Minimum.

Ms SUE WALKER: Have I neglected to mention any other metropolitan prisons?

Mr McGinty: No; they are all the metropolitan prisons.

Ms SUE WALKER: What classification is Albany Regional Prison?

Mr McGinty: It is maximum security.

Ms SUE WALKER: What about Broome Regional Prison?

Mr McGinty: That is basically minimum, but there is also what is affectionately known as the bullpen, which looks like the cages in which the lions at the Perth Zoo used to be held. I think we have done away with that.

Mrs Edwardes: They had that in Wyndham Regional Prison. It was appalling.

Mr McGinty: It was absolutely appalling. Broome Regional Prison contains a secure facility, but it is generally used as a holding facility for court appearances and things of that nature rather than as a long-term holding facility.

Ms SUE WALKER: What about Bunbury Regional Prison?

Mr McGinty: It is medium security.

Ms SUE WALKER: What about Eastern Goldfields Regional Prison?

Mr McGinty: It is the same as Broome Regional Prison.

Ms SUE WALKER: What about Greenough Regional Prison?

Mr McGinty: It is medium security.

Ms SUE WALKER: What about Roebourne Regional Prison?

Mr McGinty: It is medium.

Ms SUE WALKER: That is 13 prisons. The minister mentioned 14. Have I missed one?

Mr McGinty: There was Pardelup Prison Farm.

Ms SUE WALKER: That was converted to a work camp this year. Does that mean that there are 13 prisons?

Mr McGinty: Yes.

Mrs Edwardes: Does Pardelup no longer operate as a prison?

Mr McGinty: No; not since January. It was a matter of controversy, which the member for Kingsley would appreciate from her time in dealing with this matter.

Ms SUE WALKER: Were surveys of the number of visitors to all 13 prisons done during the preparation of this Bill?

Mr McGinty: No, not for the purposes of this Bill.

Ms SUE WALKER: Does the minister not know how many visitors attend during the week? Are any records kept?

Mr McGinty: That information would be on the record, but studies were not done specifically for this legislation.

Ms SUE WALKER: How many visitors were identified as having tried to change their identities to get into prison?

Mr McGinty: I cannot give a precise figure other than to say that I have been advised that it is significant.

Ms SUE WALKER: What is that? Is that two per cent, 10 per cent, 20 per cent or 40 per cent?

Mr McGinty: When I said I could not give a figure, I meant it literally.

Ms SUE WALKER: I am asking because -

Mr McGinty: The member can ask all she likes. I told her I was not able to give her a figure.

Ms SUE WALKER: The number of visitors who change their identity is significant. What sort of biometric identification system will be used in each prison?

Mr McGINTY: No decision has been made about which system will be used. As I have indicated, we are trialling the facial identification system at Hakea Prison. The fingerprint identification system has been in place in New South Wales prisons for a number of years. Over the past six months, there has been a general upsurge in personal identification procedures throughout the world, for fairly obvious reasons. We are monitoring that. This is simply enabling legislation that will allow the system that is most appropriately adapted to our circumstances to be used. No decision has yet been made.

Ms SUE WALKER: The minister cannot tell me the impetus behind the legislation because he cannot give any figures, and he cannot tell me the type of system that will be used. What was the cost of installing the system at Hakea Prison?

Mr McGINTY: I will have to rely on my memory and provide a general figure. I was pleasantly surprised at the cheapness of the system being trialled at Hakea Prison. It was provided by a Western Australian firm using German technology. I am reluctant to mention a figure because it may not be accurate. On the day I visited I asked the engineer conducting the demonstration what was the cost of the system. My recollection was that it

was incredibly inexpensive. We have not gone to tender and, although I think I remember what was the figure, it would be misleading to mention it now because I am not certain.

Ms SUE WALKER: Is it similar to the system used in New South Wales?

Mr McGinty: No.

Ms SUE WALKER: How does it differ?

Mr McGinty: I said that to the best of my knowledge New South Wales was using fingerprint technology. We are using camera identification of facial features; it is quite different.

Ms SUE WALKER: The minister said it was German technology. Which company is that?

Mr McGinty: I cannot remember the name.

Ms SUE WALKER: The minister said it was relatively inexpensive. What does he mean by that? Is it more than \$1 million?

Mr McGinty: It is well below \$1 million.

Ms SUE WALKER: Have costings being done on how much it would cost to store?

Mr McGinty: No; we have trialled it to determine its usefulness. There has not been a full analysis of those sorts of things.

Ms SUE WALKER: In the end, the technology may not be purchased?

The minister is reading something. Does it relate to the technology used at the prison?

Mr McGinty: This is an internal prison publication that does not have the information the member is asking about.

Ms SUE WALKER: The minister cannot tell me how much it will cost to implement a system in a prison or anywhere else.

Mr McGinty: It depends on which system is used.

Ms SUE WALKER: The minister cannot tell me or provide me with any figures?

Mr McGinty: As I have said, I was given a figure of what the equipment would cost.

Ms SUE WALKER: The minister cannot remember what it was.

Mr McGinty: I am not prepared to say what it was because I might be incorrect.

Ms SUE WALKER: The minister cannot say the basis on which the identification procedure will be changed.

Mr McGinty: I can and I have.

Ms SUE WALKER: The minister cannot give me the figures. How many visitors to Casuarina Prison in the past year have been prosecuted for providing a false identity?

Mr McGINTY: I need to make one point: there is no point in the member asking for obscure information of that nature. If the member really wanted that information she should have indicated earlier.

Ms Sue Walker: I am asking for information that is basic to the Bill.

Mr McGINTY: I am sorry, but the member is wrong.

Mr MARSHALL: During the second reading debate I expressed my concerns about biometric identification. Since then I have done some research. I have a copy of an article written by James Godfrey published in the *Alternative Law Journal*. In part, he states -

... the application of biometric identification to visitors to New South Wales prisons raises issues of cost, effectiveness and privacy.

It is a long article and in part it talks about consent. In New South Wales, rather than sacrifice the chance to visit someone, most people will submit to an identifying process. In a section titled "Physical problems" he states -

There are problems which will arise with people who have fine-skinned fingers. . .

Another section of the article deals with security of information. It reads -

Due to genuinely held fears that the BIS may be interfaced to police, social security or immigration computers many visitors may avoid prisons.

The article mentions delays. It continues -

Since the introduction of the BIS, there have been many reported incidents of extensive delays in the processing of visitors.

It mentions alternatives to biometric identification of visitors, and reads -

The system DCS introduced into the prisons serves no purpose other than to further criminalise and harass friends and families of inmates.

I want the minister to note the conclusion, which reads -

Clearly the imposition of the biometrics identification system currently in use throughout the maximum security prisons of New South Wales cannot be justified. It is intrusive, expensive and ineffective. It serves no purpose other than to further intimidate visitors and ultimately may damage the essential links that prisoners have with the outside world. It must go and the multitude of problems that similar systems may cause to individuals in our society must be examined in detail.

That is the final point. I ask the minister to examine these points in detail. I expressed my concerns about this during the second reading debate. Was a detailed examination of this system undertaken? Is the minister 100 per cent confident that what he is doing is correct?

Mr BRADSHAW: I also have some problems with this legislation and heading down the path of biometric identification. I am concerned about the cost, who will be involved, and how it will be implemented. Will everybody who attempts to enter a prison have to be identified? Every time a problem exists in our society we seem to have a royal commission that comes up with recommendations that create another layer of bureaucracy and impose further costs on the people of Western Australia. It is done to address minor problems that may arise. Such problems have arisen in the past and may arise in the future. I wonder whether we need to utilise new technology just because it is there. It will cost millions of dollars to implement and will probably not work on occasions. People will be required to fix it. The costs will go on and on. If people want to fool the system and get into prisons with false identification they will work out how to get around this system. How do we confirm that people are who they say they are? People may provide biometric identification through fingerprints or eye scans, but we need to know who they are in the first place. We are heading in the wrong direction with this system because it is using a sledgehammer to crack a nut. The system should be able to identify people who attempt a number of times to get into a prison and who are undesirable or use false identities. Those people should be excluded in any case. For the sake of a few people, millions of dollars will be spent on new technology and more people will be employed to run it. It is heading in the wrong direction. I want to know who will be identified when they attend a prison and how we can be sure that people are who they say they are.

Mr McGINTY: Recently, in prisons in Western Australia, we had the very unseemly spectacle of a prison officer being charged and sentenced to a long term of imprisonment for taking drugs into a prison. One Sunday afternoon about six months ago I participated in a check on visitors attending Hakea Prison. I note that the member for Dawesville spoke of his visit to Casuarina Prison. I was told to expect a significant haul of drugs and drug paraphernalia from the friends, families and partners of the prisoners. That is exactly what we got that afternoon. That was notwithstanding the fact that the first person who visited the prison would get on his mobile phone and tell people not to come because a major operation was under way using sniffer dogs to check the visitors. A significant amount of drugs was found that prison officers had taken in. That is the problem we face.

Mr Marshall: When I visited a prison, I had to take off my watch and leave my wallet and identification in a locker. It was an eerie, emotional feeling to be segregated and to leave all my valuables in a locker. I kept tapping my left pocket wondering where my wallet was. Everyone went through the section. No searches were conducted as such, but I felt it was very thorough. Members are aware that contraband is smuggled into prisons. Surely a mobile phone would be left in the locker room when someone visited a jail. I would have thought that a visitor would not be able to hide something as large as a mobile phone.

Mr McGINTY: In recent times, security problems have occurred in prisons. This year in the Supreme Court a drug trafficker was found guilty and sentenced. He managed to have a mobile phone smuggled into the prison from which it is alleged he made threatening contacts to people on the outside by using the mobile phone to send e-mails. We should never underestimate the ingenuity of the prisoners and their capacity to do these things. One of the greatest security problems in a prison occurs when prisoners have access to a mobile phone that enables them to deal with people in the outside world without supervision. All calls made from the prison system are monitored and can be checked for any unlawful activity that is undertaken by the prisoners. A number of mobile phones have been found in prisons and they represent a significant security threat to the prisons.

I refer to the biometric identification issue. Members might have seen me on television using the biometric identification system at Hakea Prison. Some people have said that the red dots in my eyes resulted in my bearing a strange resemblance to the devil. I am sure that was not right; it was just an unfortunate appearance. That type of identification is done. My recollection is that the cost of the camera and the computer equipment was under

\$100 000. Obviously, there are ongoing issues associated with that. That is what I meant when I said that I recalled that the equipment was relatively inexpensive. The cost includes the hardware that would enable biometric identification checking to be done. Although it is hi-tech, it is not necessarily expensive hi-tech. Ultimately, prisoners could use this type of technology inside the prison to justify their movements within different sections of the prison. Prisoners at Acacia Prison have their own identification cards that they can use to gain access to different parts of the prison. This is a step forward from that.

Mr MARSHALL: I reiterate the last issue I raised about biometric identification, which I do not think the minister answered. I referred to a law journal that indicates the system used in New South Wales is not working and must be examined in detail. My last question to the minister was whether this system has been examined. What kind of detailed examination has been conducted?

Mr McGINTY: This clause is an enabling provision. It will enable the Department of Justice, if and when it considers it to be advantageous, to move to more sophisticated forms of identification. Currently, the Prisons Act does not allow this type of technology to be used even if it were thought desirable. This provision does not say that the Government will install biometric identification systems at one or all prisons tomorrow. At this stage, the details of how it might be used are variable. We know of the practice in New South Wales. There are certain exceptions to the way it is used there. This legislation would enable the system to be used if it were properly evaluated and considered to be of great benefit. At the moment, we are trialling it and it seems to be a very good idea. It seems to be inexpensive and uses available technology. The best identification systems in the world have been used in American airports over the past six months. This is the type of system that they are moving towards; it has good potential. Although I doubt it, we might not make any changes in this area.

Too many people with false identifications gain access to our prisons. Although I cannot give members a precise figure, I am told it is high. Too many drugs are getting into our prison system. Drug tests in the prisons show that significant proportions of prisoners are testing positive to having used illicit drugs. Either the staff or visitors bring in many of the drugs. Checking the identification of visitors is one way of clamping down on that.

This is an enabling provision. I assure members that before implementation, the trialling of facial identification biometric devices at Hakea Prison would be subject to a full evaluation to make sure we got value for money. It must achieve a good result in the prison system. Although we have not yet done that, the trends throughout the rest of the world and in some of the eastern States prison systems suggest this is the way to go. We do not yet have a particular model that we want to pursue.

Ms SUE WALKER: This seems to be a political window-dressing stunt. The Minister for Justice has spoken about the New South Wales prisons, so he must have read what has happened with the system in prisons there. The minister is trialling this system amid great fanfare and talks about whether or not it works. I remind the minister that the New South Wales Government also introduced enabling provisions. This Government wants to introduce enabling provisions and, at a later stage, draft regulations. All sorts of problems have emerged with this type of system. The member for Kingsley wants to speak about the impact this type of system will have on the privacy laws. Why was a provision to safeguard privacy not included in this Bill?

Mr McGINTY: I refer to the issue I raised with the member for Dawesville. I have an article from the *Hi-technology Careers Magazine*.

Mrs Edwardes: It is probably a promotional magazine.

Mr McGINTY: It might well be. Douglas Page wrote an article in the magazine on August 2001 titled "Biometrics: Facing Down the Identity Crisis". The article refers specifically to prisons in the United States. It reports that 40 per cent of escapees from prisons walk out the front door assuming the identity of someone else. We want not only visitors to prisons but also prisoners to record their identification on this system so that they will not be able to pose as someone else. A biometric security system would identify who they are. The system has the potential to reduce the number of escapes from prisons in that way.

Mrs EDWARDES: I will raise issues that I referred to in the second reading debate about the protection of privacy. Before I get into that, I will pick up on the minister's previous comment and tell a story about prisoners walking out of prison. At one time Hon Bill Hassell, as Minister for Police and Prisons, made one of his official visits to Wyndham Regional Prison. Unfortunately, it was on the day on which the town held its football grand final. People in the prison system were concerned because several of the prisoners played in one of the teams. If they took part in the game, the muster would be too low during the visit by Hon Bill Hassell. The prison people thought that they would get some of the prisoners' family members to stand in for the prisoners while they played the game. I have it on good authority that that is true.

Mr McRae: What did Colonel Klink say about it?

Mrs EDWARDES: The story came from him, but I do not think it was told to him until many years later. At local prisons, such as Kalgoorlie Regional Prison, family and friends, particularly those of Aboriginal descent,

quite often camped outside. The same applied at Wyndham Regional Prison, where family members often camped on the lawn. The prisoners were allowed a fairly free rein.

On the issue of privacy, although the minister has not spelt it out, I suspect it is his intention to put this system in place for all prisons and for all visitors. One of the concerns I raised during the second reading debate was the lack of protection for friends and families of prisoners. There is no guarantee that the information about them will be safeguarded. There is a provision for misuse of the information, but the Bill contains no provision for the destruction of identifying information. The minister might say that all those matters can be dealt with by way of regulation. However, I do not believe it is appropriate to deal with that level of substantive information by way of delegated legislation. Those provisions should be contained in this legislation.

If identifying information is to be collected from innocent families and friends who are visiting a prisoner, this legislation is deficient in protecting their privacy. The minister has said that checking the identification of visitors will restrict the movement of drugs. He said a few minutes ago that a test showed that families and friends were bringing in drugs, contraband and the like. How can identification of the visitors restrict that movement? I can understand the provisions being used to ensure that there is no swapping of identities, but how will the use of this provision restrict the movement of drugs? What indication will there be on people's faces that they are bringing drugs into a prison? That does not seem to link up.

Will the collection of identifying information apply only to adults and not minors? What about persons with disabilities? Would identifying information need to be handed over merely because people wish to visit a family member or friend who is in prison? It is a great intrusion into the privacy of those people and their lives. This legislation is totally deficient in protecting their identifying information.

Mr McGINTY: The current provisions of the Prisons Act deal with information required to be supplied by a person visiting a prison. Section 60, under the heading "Declaration of visitors", provides -

On the occasion of the first visit under section 59 or 65 of a person to a prisoner who is confined in a prison prescribed by regulations for the purpose of this section, the person shall, before being permitted to make the visit to that prisoner . . .

Mrs Edwardes: It is a declaration of who they are and their relationship.

Mr McGINTY: Regulation 53A of the Prisons Regulations states that a visitor may be required to produce evidence of his or her identity. The evidence of his or her identity includes a passport, an Australian citizenship certificate, a drivers licence, a Medicare card or any other form of identification that the superintendent or officer considers satisfactory. That means in practice that a visitor provides his or her name, address, drivers licence, age and the nature of the relationship to the prisoner. That information is currently provided and recorded on the occasion of the first visit.

Mrs Edwardes: The clause requires the provision of more personal information, which takes it over the line.

Mr McGINTY: I am told that professional couriers are operating and bringing drugs into prisons in a systematic way in Western Australia by using false identities. They might front up to a prison and give a false name, and they might have visited another prisoner the previous day for the same purpose. This identification system will make it impossible for people to use a false identity. It is rather like a fingerprint: they cannot leave a fingerprint and say that it is somebody else's.

Mrs Edwardes: The identification system might stop those people, but it will intrude into the privacy of the majority of visitors.

Mr McGINTY: The simple answer is that it is a prison and there is a problem.

Mrs Edwardes: The system is dealing with innocent people.

Mr McGINTY: It is dealing with innocent people who want access to the prison.

Mrs Edwardes: They want that, because a member of their family or a friend is in prison.

Mr McGINTY: The laxity in collecting information on the identification of people accessing prisoners causes problems. It enables people to use false identifying information to avoid being charged by the police, or to enter the prison under a false identity for illicit purposes.

Mrs Edwardes: If you want to do this, is it not necessary to put in safeguards? The legislation has no provision for getting people's consent. What if the consent is refused? Is there an appeal process? What about the destruction of the information? The legislation has no provisions for protecting an individual's privacy.

Mr McGINTY: The clause we are debating provides for a penalty for persons who divulge the information that is provided for the purpose of gaining access to a prison.

Mrs Edwardes: That is linked to section 60 as it stands and, therefore, the provisions must be read together.

Mr McGINTY: Yes. An offence, punishable by a fine or imprisonment, is created when a person gives any proof of identity to any other person, unless the proof of identity is given to a prison officer for the purpose of checking the identity of a visitor to a prison or a person is required to do so by an order of the court. That information can be used on only two bases: one is for the purpose of identification for the prison and the other is under a court order. Apart from that, the Prisons Act creates an offence for wrongly dealing in that information.

Mrs EDWARDES: The information must be given and to misuse it is an offence. Therefore, there is provision for the two ends of the equation but not for the middle. The minister is not giving members of this Parliament any level of comfort. One of my family members might unfortunately find himself in the prison system, for any number of reasons, such as crimes relating to misuse of drugs, stealing or fraud. I might be totally innocent of anything to do with the crime for which that person is in prison. However, what comfort or confidence can I have in the system that it will protect my personal identifying information when visiting my family member?

Mr McGINTY: Regulation 22(1)(b) of the Prisons Regulations places restrictions on the conduct of prison officers. It states that it is an offence to -

use for any purpose information gained by or conveyed to him through his service in the prison service . . .

Improper use of information gained by a prison officer regarding the identity of visitors to prisons would be an offence under the Prisons Regulations.

I will now address the substantive issue that the member for Kingsley raised about the systems in place to regulate this matter. It is proposed that they be covered by regulations when this Act comes into operation. This will enable biometric information to be used as part of the prison security regime. Issues such as storage, destruction of the information and the method of use will be detailed in the regulations. As the member knows, the prison system has many regulations governing its operation. The details of the operation will be contained in the regulations when we have obtained the enabling legislation for the use of the technology.

Mrs EDWARDES: In my second reading remarks I referred to the exhaustive approach that was taken in dealing with the DNA legislation. I regard that approach as crucial and important. Although the Minister for Justice and Legal Affairs said that this is not DNA information, it is identifying information and is just one step away from handing over my Medicare card as identification. The consent to obtain the information, the approval for its destruction and the storage of it should not be contained in the delegated legislation. It should not be in the regulations but in this legislation to give some comfort to people. The regulations will still be required, as will the draft form for consent and all of those other things to support the legislation. This is substantive information; it is not something for regulations and it should be contained in this legislation.

Unfortunately, we will not support the legislation if the minister is unable to bring back into the House amendments that incorporate that provision. The minister has thought about it and knows exactly where he is going on this matter. The Ministry of Justice is an organisation that would have gone through this issue in some detail - I have no doubt about how the process works. However, this change must be made. A prisoner has more rights under this DNA legislation than his visitor has when it comes to protecting identifying information. That is wrong.

Ms SUE WALKER: I will refer to what the member for Kingsley said about the identification procedures in the Criminal Investigation (Identifying People) Bill 2001, which was introduced by the Minister for Police and was a 91-page document prepared by the coalition Government. The problem that we have with the Prisons Amendment Bill is that it is a flimsy, three-page document that seeks to take from innocent people, on a weekly basis, personal identity traits. The Minister for Justice put forward an argument about drugs and the member for Kingsley demolished that argument. One cannot tell whether a person is bringing drugs into a prison by taking his personal identity trait. The minister also talked about terrorism, which is one of the problems with this legislation. Because of the nature of terrorism these days, we should be very careful in handing over information to prison officers or any person within the public service when no stringent regulations and safeguards are in place.

As I said in my second reading remarks, there are eight classes of visitors - an extensive range of people - that pass through prisons. Of the 13 prisons in the State, 1 800 visitors will pass through Casuarina Prison every week who will be asked to hand over their personal identity traits. I will provide another example at the other end of the scale. One class of visitor under the Prisons Act is a Supreme Court judge. If such a person were to visit a prison, he would have to provide his personal identification traits. The minister said that the technology used for this procedure is improving. What would happen if the same system used at the prison was also used at the Supreme Court, and that judge, when he entered the Supreme Court, used the same personal identity trait in that same system? An incident occurred not so long ago in which a bikie gang used someone to access confidential material stored on computers. The minister gave an example involving a prison officer who committed a criminal offence in a prison. With terrorism the way it is, the minister is using the current

insecurity and uncertainty in the world as an argument to support this legislation; the Opposition is using that same situation as an argument to not support this legislation. The problems with this system that are being experienced in New South Wales have not been considered by the Government. I cannot see the rationale behind introducing this legislation given the problems in New South Wales prisons and given this Government's access to the Labor Government in that State.

The Minister for Justice referred the member for Kingsley to the prison regulations and the Prisons Act and the type of identity that is now used when visitors enter a prison. Visitors can now provide their passport or their drivers licence. It is now compulsory to have a photo on a drivers licence, so why not use that as proof of identity? Why has the State been put to this extra expense and uncertainty?

I refer to the Criminal Investigation (Identifying People) Bill. It is a 91-page Bill that took time and effort to create to make sure that people's privacy, the procedures and the information that was being used were safeguarded. The part dealing with identifying particulars of victims and witnesses lists matters that an officer is required to carry out.

Mrs EDWARDES: I would like to hear more from the member for Nedlands.

Ms SUE WALKER: Clause 25(3) of the Criminal Investigation (Identifying People) Bill states -

An officer who requests an involved person to consent to an identifying procedure must at the time inform the person of these matters -

- (a) the offence that is suspected of having been committed and to which the procedure relates;

The matter we are discussing is not the same as an offence, but it relates to the range of matters on which the person providing the identifying feature is informed, before that information is given. The officer must state the purpose of the procedure and how it will be done. He must also advise the person of the circumstances in which destruction of the information may be requested. There is nothing about destruction or the procedure in this legislation. What will the 1 800 visitors who rock up to Casuarina Prison for the first time be told? Let us look at this situation practically. The visitors will have to be informed about the procedure. Will they have a choice about whether they provide their identifying particulars? There is nothing in the Bill to suggest that they will. The same problem exists with the New South Wales provisions. Again, I refer to the article by James Godfrey, which states that such legislation -

...places visitors to prisons in a position where they cannot give informed consent to having images of their fingerprints and their face taken, which might reduce the waiting time during visits. In NSW, rather than sacrifice their visit most people will submit to this non-consensual process.

The Minister for Justice and Legal Affairs will place these people between a rock and a hard place.

I refer to the second reading debate in which I mentioned the eight classes of visitors. If there is a trial at Hakea Prison, is it the Government's intention that every first-time visitor go through the identifying procedure? Will it be mandatory, and, if not, will anybody be excluded?

Mr McGINTY: Under the Prisons Act 1981, only certain classes of visitors to prisons are required to make the declaration relating to their identify. Section 60 of the Act expressly states -

On the occasion of the first visit under section 59 or 65 of a person to a prisoner . . .

Section 59 relates to visits by friends and relations, and section 65 relates to other visitors who have a bona fide reason to visit the prisoner, and who do not fit into the first category. The other classes of persons who are currently not required to make declarations when they first visit a prison are covered by sections 61 to 64 inclusive. Section 61 deals with visits by certain officials including parole officers and the Commonwealth Ombudsman. Sections 62, 63 and 64 deal with lawyers, police and other public officers respectively. None of these people is currently required to make a declaration of identity, and the Government does not intend to change that practice. I regularly go to prisons, but I am not subject to the requirement of proving my identify, because I am exempt.

Ms Sue Walker: Why not?

Mr McGINTY: Because it is not required.

Ms Sue Walker: You could be carrying drugs - not that I am suggesting you would do so.

Mr McGINTY: The issue is whether the Act requires that it be done, but it does not.

Mrs Edwardes: You may not be on an official visit, but visiting a friend or family member. What is the situation in that capacity?

Mr McGINTY: If I go in that capacity, I am then caught by section 59. Judges, lawyers and official visitors are exempt.

Mrs Edwardes: What if a judge goes to a prison to visit a family member?

Mr McGINTY: If he visits in a private capacity -

Mrs Edwardes: He will also be caught by that section. Therefore, the example used by the member for Nedlands could very well be a true example; that is, if biometric information is introduced for access to the Supreme Court, it could be picked up.

Mr McGINTY: That is the way the system currently operates. People can visit in a private capacity. I know that the former Attorney General's chief of staff was a regular visitor in a private capacity, and she would have been required to undergo the identity check on the occasion of her first visit. I presume that was done. Certainly, as I understand the Act, that was required to have been done. There is no intention to change the arrangement in which officials are not required to undergo an identifying procedure.

Mrs Edwardes: What about minors?

Mr McGINTY: There is no current exemption for children.

Mrs Edwardes: Will children be required to give this information?

Mr McGINTY: I refer to the giving of information by using the example of a face scan. It takes about one minute.

Mrs Edwardes: Yes, but it is a scan of my face that will be taken. The red eyes may still be there, but nowadays there are no horns!

Mr McGINTY: Yes, but quite often a tattoo or the growing of a beard can dramatically change a person's appearance, so that visually he would not be identifiable. We have all seen passport photos that do not look anything like the people photographed. However, the type of technology used at Hakea Prison will see right through superficial changes to things inside a person's head, if I can put it that way. Therefore, it is not defeatable by ordinary identification means, such as aliases, disguises and so on.

Mrs Edwardes: Who is responsible for consenting to the identifying procedure if a person has a disability? At the moment they just have to show their Medicare cards.

Mr McGINTY: I think it is more than that. That is something that will ultimately be covered by the regulations if it is determined to be necessary to have an exemption in that area for security reasons.

Ms SUE WALKER: The Minister for Justice has interpreted section 65 back to front. Section 65 states -

A person, other than a person who may be permitted to visit or interview a prisoner under section 59, 61, 62, 63 and 64 or otherwise under this Act, who desires to visit a prisoner for a bona fide purpose may be permitted to do so by the chief executive officer.

That refers to the people in sections 54, 56 and 57; that is, judges of the District and Supreme Courts, visiting justices and prison visitors who have been appointed by the Governor. Even those people must get permission from the CEO. Therefore, my previous question remains the same. The minister has misread the provision. There is a class of people who must provide identification. How will all this work? One prison receives 1 800 visitors, and they will all be asked to participate on a weekly basis. Have any costings been carried out for that prison?

Section 65 excludes only the three categories of visitors about whom I have spoken. Will the other people I mentioned during my contribution to the second reading debate - doctors, lawyers, psychiatrists, members of Parliament, councillors and magistrates, because they are not included in section 57 - be subject to mandatory identification? I can just imagine the chaos that will take place given the uncertainty that already exists as a result of terrorism. If the Chief Stipendiary Magistrate, or any magistrate, provides his or her personal identification to visit a prison, and the system is similar to that used in his or her chambers, somebody could break into the system. I again refer to the article by James Godfrey, which states -

Due to genuinely held fears that the BIS may be interfaced to police, social security or immigration computers many visitors may avoid prisons. Indeed, on 3 September at the MRRC, some visitors preferred to forfeit their visit and chat with the writer and others while other members of their family went inside.

The reason for that is, in some instances, a person's unique identifying information has been interfaced with other computer systems in the public service. There are no safeguards in the three-page Bill. In comparison, the coalition took the time and expended the energy and effort to draft its Criminal Investigation (Identifying People) Bill 2000. Madam Deputy Speaker, your safety and security could be compromised if you provide your identifying characteristics when you visit one of your constituents in prison, because we have a system in place at Parliament House that can be tapped into. In the current climate, it puts every institution under threat, particularly when there are no safeguards. Nothing in this Bill safeguards this information. In the light of section 65, I again ask whether the minister will make this mandatory for all prison visitors. I want an inkling of whether he has given any thought to that.

Debate interrupted, pursuant to standing orders.

[Continued on page 9489.]