PRISONS AMENDMENT BILL 2002

Consideration in Detail

Resumed from an earlier stage of the sitting.

Clause 6: Section 60A inserted -

Debate was adjourned after the clause had been partly considered.

Ms SUE WALKER: Before we adjourned debate on this Bill, we were discussing section 65 of the Prisons Act. Has the Minister for Justice and Legal Affairs had a chance to consider that provision and does he agree that sections 54, 56 and 57 of the Act are excluded by section 65; that is, visitors affected by the mandatory provision under section 60, or those who can be excluded by the chief executive officer, are prison visitors appointed by the Governor, visiting justices and judges of the Supreme District Court. I would like to deal with that position; otherwise we will be at odds with the number of categories of visitors.

Mr McGINTY: No, the member is wrong. I will provide an example by way of section 57 of the Prisons Act that states a judge has the right to -

> enter and examine a prison at any time he thinks fit.

That is not as a matter of current practice and it is not intended that that be changed, and as a matter of law, I do not think the member's proposition is correct.

Ms SUE WALKER: It actually fits in with section 65 of the Act; that is, the three categories of visitors are excluded, which is my point. Out of the eight categories there, who will come under the mandatory provision of section 60 of the Act?

Mr McGINTY: I will repeat myself. Section 60 requires a visitor, under sections 59 or 65, to provide identification. Section 59 deals with friends and relatives while section 65 deals with other visitors to prisoners. Other visitors does not include people of the sort to which the member just referred. It might include someone from the Salvation Army, or of that nature, but it does not include those people who were expressly mentioned earlier on.

Ms SUE WALKER: My point is that the Minister for Justice and Legal Affairs originally said that the people who could be excluded were those in the categories under sections 59, 61, 62, 63 and 64 of the Act; to which I say no. The excluded persons are those other than in those categories, which are the persons mentioned under sections 54, 56 and 57. I can see that the minister does not quite get my point. There are eight categories of visitors, which is frankly everyone in Western Australia except the prisoners themselves. Who will then be excluded under the mandatory provision? Perhaps the minister can narrow it down and just tell us who will be taking part in this mandatory identification in the policy document that he intends to eventually produce?

Mr McGINTY: Clause 8 of the Bill that amends section 110 of the Act contains the regulation making power that is given to the Governor. We are proposing to insert proposed paragraph (rb) that may require a visitor to a prison to prove his identity. The point is that the prescription of who will be required to prove his identity is something that will be provided for by the regulations. However, I can assure the member that it will be based upon the current practice and the current statutory provision that gives prison visitors, visiting justices and judges a right of entry into the prison. That right of entry is not proposed to be affected in any way. The other categories of visitors to prisoners are contained in sections 59 and 65 of the Act, which are the visits by friends and relations or, as contained in section 65, other visitors to prisoners.

Ms Sue Walker: That is not what it says.

Mr McGINTY: I am sorry if the member cannot read an Act of Parliament. That is not my problem.

Ms Sue Walker: I used to draft them so I know what I am talking about.

Mr McGINTY: Perhaps the member drafted this Act. Anyway, that is what is intended by this legislation.

Ms SUE WALKER: On the minister's analysis of this Bill, only friends and relatives are affected. He will have to stand by that.

Mr McGinty: The member can say what she likes.

Ms SUE WALKER: No, whatever I say is recorded, as is that which is said by the minister. The purpose of the consideration in detail stage of the Bill is so that we can understand this flimsy Bill that the minister is putting before Parliament. I will now refer to that flimsiness and ask the minister why he has not included all the safeguards in this Bill that were included in the Criminal Investigation (Identifying People) Bill. When the Minister for Police made her second reading speech on the Bill she said -

> This Bill provides procedures for obtaining, using and destroying identifying particulars . . . profiles of volunteers, protected people, deceased people, police officers, involved people . . .

And the list went on. She further stated that -

> DNA profiling is one of the most important weapons available in the fight against crime . . . Participation in a proper and legitimate DNA database will also have the capacity to protect and assist the innocent.

In relation to that she mentions further on in her speech -

> Identifying particulars such as DNA are extremely powerful tools that, along with other modern investigative methods, will greatly enhance the deterrence . . .

Therefore, why has the minister not put in safeguards in this legislation. He has talked of safeguards and in his second reading speech he mentioned penalties. Why is there nothing in this Bill about destruction of identifying particulars and has the minister given any thought to applications for destruction of the identifying particulars?

Mr McGINTY: I indicated earlier on that the issues related to the storage, destruction and method of implementing the biometric ways of identifying people will be contained in the regulations. In the Prisons Act, the Prisons Regulations and the Bill, there are provisions that create a significant number of offences that are punishable for people who deal with this information improperly, as happens when other information in the prison system is dealt with improperly. This Bill contains a penalty that includes imprisonment for people who use the proof of identity material other than in the following two ways. The first is for a prison officer to identify a visitor to a prison and the second is by means of an order from the court. The member for Nedlands referred to the provisions of the Criminal Investigation (Identifying People) Bill 2001, which provides in clause 73(1)(a) to (n) an exhaustive list of when people are allowed to deal in that information. The legislation before the member makes provision for only two situations. In other words, it cannot, other than by order of the court, be used for any purpose other than for the purpose of identifying a visitor to a prison. That is contrasted with clause 73 of the DNA legislation, which lists a large number of uses to which that information can be put. This Bill does not contain a comparable provision, because it is in the legislation for one purpose only.

Ms SUE WALKER: It is all very well to flag that point, but there are no safeguards, which is what I am talking about. The Minister for Justice and Legal Affairs is referring only to what is done with the information at the end of the process. As the member for Kingsley said, we are talking about the middle. The minister has not brought in any information. We are supposed to be debating this Bill. This legislation is supposed to be important to the community. People want to know what will happen if they visit someone in prison. The minister cannot provide any information on that. The minister has twice raised a point in relation to regulation 22 of the Prisons Regulations, which is titled "Restrictions on conduct of prison officers". The minister raised that point this morning and again this afternoon. What is the penalty for that?

Mr McGINTY: The penalties for breach of discipline by a prison officer of the sort contained in regulation 22 are to be found in part X of the Prisons Act. In particular, sections 98 onwards spell out how a breach of prison discipline is to be dealt with by the superintendent; that is, by way of a caution, reprimand or fine. The superintendent can refer more serious matters to the chief executive officer under sections 105 and 106 of the Act. The penalties that can be imposed in those matters range from a caution to a reprimand, fine, suspension from duty without pay or other entitlements, reduction to a lower rank, requirement to resign under threat of dismissal, or dismissal. More serious charges can be referred to the police to be dealt with under the provisions of other statutes, such as the Criminal Code. The penalties under the code are well known.

Ms SUE WALKER: Does the minister agree that if someone took biometric identification information, it could be classed as stealing under the Criminal Code?

Mr McGinty: If you are asking for an off the cuff legal opinion, I suppose it could, depending on the circumstances.

Ms SUE WALKER: I will answer the question: it would be. That offence attracts a penalty of seven years under the Criminal Code. The minister nodded his head in agreement. If that attracts a penalty of seven years under the code, why is such a penalty not included in this Bill? The minister says it will safeguard the whole Western Australian community or anyone else who enters our prisons. Why is the penalty only 12 months imprisonment?

Mr McGINTY: More serious matters can be referred on. They could be dealt with under the existing provisions of the Prisons Act or under the new provisions that the Government is seeking to insert. In order to achieve justice, I am sure that the appropriate charges would be laid and dealt with in the appropriate forum.

Ms SUE WALKER: I will come back to the issue of penalties.

I refer the Minister for Justice to the reference to "proof of identity". I also refer him to the New South Wales experience. During the drafting of this Bill, was any consideration given to the incidents of extensive delays that have been reported in the processing of visitors to the prison at Long Bay? For instance, on 19 July 1997, all visitors to Long Bay were turned away because of problems with the biometric identification equipment. Other instances were acknowledged. One officer of the newly opened facility revealed that visitors had, on occasion, waited up to 3.5 hours to get into the centre and up to two hours to get out. What did the prison authorities do? All visits had to be booked in advance and were limited to a two-hour period. Did the minister take that sort of delay into consideration when considering the installation of the biometric system?

Mr McGINTY: This is enabling legislation. It does nothing more than that.

Ms SUE WALKER: In bringing forward this policy, did the minister consider those experiences?

Mrs EDWARDES: The member for Nedlands asked whether the minister had thoroughly considered the problems that have been experienced elsewhere with the taking of biometric information. Problems have been identified. To ensure that Western Australians will not experience the delays that were experienced when the system was first introduced to New South Wales, has the minister provided that the same restrictions on visits will not occur if it is not the fault of the prison or a visitor? How does the minister see that happening in Western Australia?

Mr McGINTY: Mr Schilo, who is an experienced prison superintendent, is aware that these problems have occurred. I have been to Hakea Prison, where significant delays were imposed on visitors to the prison when testing was carried out to check for the presence of drugs. That delayed people's entry to the prison by some time. That will happen from time to time. Mr Schilo has advised that if a machine broke down or something of that nature occurred, the legislation would give the superintendent of the prison the discretion to revert to some other form of identification. He has indicated that the drafting of the procedures was intended to provide that in those circumstances, the superintendent would be given maximum flexibility to ensure that there were no undue problems.

These are futuristic issues. This is enabling legislation. It simply says that it is permissible to use this form of identification. How it will be done - if and when it is done - will need to be sorted out at that time and will be made public by the Department of Justice through regulations, administrative instructions and the like. While the Government is aware of those issues, it has not turned its mind to them at this stage, because this amendment has not yet passed through the Parliament.

Mrs EDWARDES: I revert to a couple of comments I made earlier. This is enabling legislation. The operation of what will be provided through this legislation will go into delegated legislation. My view, which is also firmly held by many members of this Parliament, is that the substance of what will be put into the delegated legislation should be in this legislation. The operation of the legislation, the forms required and all the ancillary and consequential matters in the enabling legislation, should be in the regulations. The substantive issues must be within the legislation for them to be enabled. That level of consent, protection and destruction is missing. Those issues cannot be put into regulations. It is not delegated legislation. Those matters should be in the substantive part of the Bill.

Mr McGINTY: In principle, I probably would not argue with the member about what should go into the substantive or parent legislation and what should go into the regulations. In this legislation, we have followed the existing format, whereby the evidence of identity to be provided is contained in the regulations. Regulation 53A specifies a list of things. The form that accompanies the declaration is form 2 to the regulations. On that form would be set out the drivers licence number, the Medicare number, the passport number, citizenship certificate number and any other form of identification. The approach adopted in the past has been to place in the regulations the details of matters relating to identification, and to simply put into the parent legislation, or into the legislation itself, the broad provision relating to the identification of prisoners. That is exactly what we propose to continue on this occasion. Quite apart from the in-principle argument, on which I may not differ from the member, the member's argument would have more weight if we were taking things of a general nature out of the legislation and seeking to prescribe them by regulation. I must say that I would object to that.

Mrs EDWARDES: I probably would not argue with the minister either if the identifying information that is referred to in the Bill was of a nature similar to that which is referred to in the Act and in the regulation. However, it is not; it is different. The definition of "proof of identity" in clause 6 provides for a fingerprint, a palm print, an eye print, a voiceprint or some other physical or personal characteristic that would help to prove identification. Therefore, it has gone over the line of just handing over a Medicare card number or a drivers licence number. It has gone further than that. This is personal identifying information. There is a difference between the piece of paper, and putting that in the regulation, and dealing with personal information about a body. That is why the protection, safe custody, including destruction, consent and the like should be in the substantive part of the Bill. The minister is saying that because a process is already in place, it will be more

appropriate to incorporate it in the regulations. I would not argue with the minister if the information was of a like nature; but it is not. It is different; it is personal. It is not a piece of paper.

Mr McGINTY: I do not think I agree with that. I do agree about things such as DNA, which are derived from an invasive procedure, whether it be a buccal swab, a hair sample or a blood sample that is taken from the body. When I was at Hakea Prison -

Mrs Edwardes: A fingerprint is very important.

Mr McGINTY: A fingerprint would not worry me.

Mrs Edwardes: No, but it would worry most people.

Mr McGINTY: Would it?

Mrs Edwardes: Most people in the community would not want their fingerprints kept and stored, with the potential for misuse.

Mr McGINTY: When I was at Hakea Prison, I sat in front of a camera. I have a bit of a boofhead, and the camera took an image of that. That is me, for better or worse. My eyes are so far apart and my bone structure is of such and such a dimension. Frankly, it would not faze me if everyone in the world had that image of me - they most probably would not want it.

Mrs Edwardes: You are the Minister for Justice and Legal Affairs, and you are in charge of the Department of Justice and of prisons. The little person in the street may already have a partner or a son in the prison system. That person does not understand bureaucracy and all that is contained within it. Therefore, that person is fearful of Governments, let alone the additional controls that will be put in place throughout the prison system. When that person is asked for his or her fingerprint, it is totally different from the minister being asked for his fingerprint.

Mr McGINTY: I suggest that it is also a part of society moving on with technology. I remember some of my colleagues in this place objecting vehemently to the prospect of people not getting their pay in cash each week but being paid electronically. We could not have that; the world as we knew it would come to an end! That goes back a few years now. The same type of issue arose with electronic transfer of funds. In the next few years, I believe that biometric identification of people, and its use via electronic media, will become the norm everywhere to gain access to banks and buildings, as a general security measure, and to get onto an aircraft. We will need to be able to do all these things.

Mrs Edwardes: Yes, but that is with people's consent. This is a different issue. If people want to see their partner, their family member or friend, they will have only one choice. They must hand over the identifying information, or let it be taken, otherwise they will not get in.

Mr McGINTY: People stand in front of a camera and it takes a picture.

Mrs Edwardes: Yes, but that is different from a person wanting to access a bank to withdraw funds.

Mr McGINTY: I do not see much difference, frankly, between fronting up to have a photo taken and having an electronic image taken. They are manifestations of the same thing.

Ms Sue Walker interjected.

Mr McGINTY: The important thing, member for Nedlands, is that the electronic imagery will make sure that it does not change. Therefore, although a person might grow a beard, shave his head or grow a moustache, this means of recording will still identify that person.

Mrs Edwardes: It is amazing, isn't it?

Mr McGINTY: It is amazing. I do not take the view that people should be upset about it. I just believe that it is where we are heading, and it is part of the evolution in society. I do not see a problem with any of it.

Ms SUE WALKER: Several points have come up. I agree with the member for Kingsley. In fact, one reason that the Opposition opposes the Bill is that there are no safeguards. In the article to which I referred, James Godfrey stated -

> One of the problems of taking fingerprints and photographs is that these acts are associated with criminality - indeed any intrusive identification system will be seen as such.

That is the point the member for Kingsley made. People do not like having their fingerprints and identification taken. This might come back to bite the minister.

I refer to comments that society is moving on with technology. I have looked at the transcript of an interview by Dr Ted Dunstone, who is director of Biometix, and I know that means nothing. However, he interviewed Roger

Clarke, who is a consultant in strategic and policy aspects of e-commerce, information infrastructure, and dataveillance and privacy. Roger Clarke spoke about this very issue that we are discussing and stated -

> So far, biometrics have had a dream run, because the public is basically bemused by them, employees have been given no choice, and the early applications have been in circumstances in which authority or market power dominate (such as prisons, and aggressive employers' secure premises).

That is what we are saying here. He said that we will create an enormous problem by doing this. That problem has been identified in the New South Wales prison experience.

The minister spoke about having his photo taken and, as Minister for Justice and Legal Affairs, not having a problem with that. When the minister had his photograph taken at Hakea Prison, he was also promoting himself and his Government's policy. I suggest that under those circumstances the minister would not mind having his photo taken. However, the minister is imposing on relatives of prisoners who want to see their loved ones a requirement to give, as he states in his second reading speech, personal information; and it will be mandatory. Godfrey suggests that that is very different from a password or a personal identification number.

There are many indigenous people in prisons. Godfrey speaks about the problems they have experienced in New South Wales prisons. He suggested, as the minister suggests, that the impetus for the introduction of the biometric identification system was to improve prison security. However, he states -

> The Aboriginal Legal Services have reported some Indigenous women are making the difficult choice not to visit family members rather than allow themselves to be scanned for fear of having this information shared with other government departments.

I wonder whether the member for Kimberley has anything to say on this issue, which is important in the light of the welfare of our prisoners. Under the Prisons Act, part of the management of the prison, with which the minister is concerned and in charge of, is the welfare of prisoners. Godfrey continues -

> More importantly, their traditional beliefs necessitate they leave no image or record behind when they die and they are unwilling to take the chance they have involuntarily done so when scanned. Statements are currently being obtained from various Indigenous peoples to enable their beliefs to be respected and taken into account.

Given that the minister has said that a large proportion of prisoners will reap the benefits of his early release provisions, has he given any thought in this policy decision to indigenous people and the taking of their personal images?

Mr McGINTY: The matter had been raised in discussion, and has been factored in. I refer again to the article I spoke about before, by Douglas Page, entitled "Biometrics: Facing Down the Identity Crisis". In the article, reference is made to hand geometry. It reads -

> Hand geometry is the granddaddy of biometrics . . .
>
> The system looks at both the top and sides of the hand using a video camera and compression algorithms. Dirt and cuts do not interfere with performance. Over 8,000 systems are in use, including installations at San Francisco International Airport, the Columbian legislature, day care centers, a Los Angeles sperm bank, hospitals, and immigration facilities.
>
> The U.S. Justice Department is installing hand-geometry identification equipment in all federal prisons--the same equipment used by Olympic Village officials in Atlanta in 1996 to track athletes and staff.

The article goes on to refer to airports, and says -

> Airport agencies favor facial recognition systems because of the potential they offer in identifying known terrorists. Visionic Corp., Minneapolis, a face-recognition system producer, has licensed its FaceIt technology to a Malaysian airport security firm to develop the world's first biometrics-based airline passenger and baggage security system. The system will use face recognition technology and other biometric measurements to ensure only "true" passengers are allowed to enter departure lounges and to board aircraft.
>
> The system will also ensure that only passenger luggage is loaded in cargo holds. During the boarding process, the system will automatically and instantly match a passenger's live face from a video camera to one encoded on a smart chip embedded on a boarding pass issued at check-in. According to Visionic chief executive officer Joseph Atick, the system is intended to make international travel safer without burdening travelers with long lines.

Mrs Edwardes: I feel so much better now, when I travel by air, but what has that to do with Aboriginal people? Did the Government consult with the advisory councils?

Mr McGINTY: I do not know if there has been consultation as such, but the matter has certainly been raised in general discussions with which I have been associated.

Ms SUE WALKER: I thank the minister for that information. James Godfrey refers to those systems. He says -

> It has been used at such diverse places as a Los Angeles sperm bank, San Francisco International Airport and a childcare centre at the Lotus Corporation in the USA.

He still goes on to outline the same problems. This article was written before the World Trade Center was hit, and before all the terrorism and uncertainty that is around now. I suggest to the minister that the points I am making are still valid. What Godfrey does raise, and what I now ask the minister, is whether the Western Australian prisons are subject to any privacy laws, such as the commonwealth Privacy Act 1988.

Mr McGINTY: The commonwealth Privacy Act does not apply to state instrumentalities. There are provisions in the Criminal Code, the Public Sector Management Act, and the policy directives, which are in the nature of subordinate legislation issued by the department.

Ms SUE WALKER: I will raise one final point, before I leave proposed section 60A(1). Dunstone asks of Clarke in his article -

> *Dunstone Q3:* What are the most important questions the general public should be asking about biometrics and privacy?
>
> *Clarke*: The first is 'why??'. Justifications for the use of biometrics have been singularly lacking.
>
> The next is 'how?'. Schemes to date have been driven by unimaginative engineers, with no interest in or grasp of public policy issues. The result has been systems that are far more privacy-invasive than is actually needed to achieve sponsors' objectives.

I am wondering whether the minister gave any thought to other ways of identifying people that had been suggested by Godfrey. He suggests that security can still be achieved. I am wondering whether the minister has given any thought to his suggestion that a visitor might be stamped with some kind of unique ultraviolet stamp that could be changed each day. Has the minister given any thought to any other cheaper security provision, such as an ultraviolet stamp?

Mr McGINTY: These are already used in the prison system, both at Casuarina and Hakea.

Ms SUE WALKER: What is the problem with that system?

Mr McGinty: It does not identify the individual. It only deals with somebody who is already in the system. I do not know whether the member for Nedlands goes to nightclubs much, but my kids tell me when they come home -

Mrs Edwardes: The minister is standing, even though he looks as though he is sitting down.

Mr McGinty: It is too late in the day.

The ACTING SPEAKER (Mr McRae): I am not sure if all the members are standing or sitting, or who has the call.

Mr Pendal: The minister perhaps should stand while he tells the House about the nightclubs.

Mr McGINTY: The last time I went to a nightclub was most probably about the last time the member for South Perth went to one. I will tell a story that the member for South Perth tells, to my embarrassment, from time to time. It has nothing to do with nightclubs, but it does have to do with the member for South Perth. He and I went to the same school - Marist Brothers College in Bunbury. I was playing cricket with the big boys one day, and they sent down a bouncer that hit me on the leg. I sat there and cried, because I was only young, and the member for South Perth came up and rubbed my leg for me and made me feel a lot better.

Several members interjected.

Mr McGINTY: What was the question of the member for Nedlands?

Ms SUE WALKER: This has prompted me to get the minister to expand on what he was going to say, because he said the stamp does not identify anyone. Is not the reason for identifying people to prevent drugs being taken into prisons? Surely the identification of a person will not stop that, as the member for Kingsley said. When I was in court, people used to say about drugs that they would use the scales to suggest not the quantity but the type of drug. They used the wrong conceptual analysis. The minister is saying that he wants this for security. Identification of a person will not prevent drugs being brought into prisons. I am not sure whether the minister is suggesting that if a prisoner is caught with drugs after certain people have visited him, the prison authorities will

backtrack. I am not sure whether the aim is to catch and prosecute the visitor who gives a false identity. I am not sure what the purpose is. Can the minister explain that to me?

Mr McGINTY: People use false identities for a variety of reasons when they come to the prison system. They might be fugitives from the law and would be arrested if they gave their true identities.

Ms Sue Walker: Does the minister want to arrest them?

Mr McGINTY: Obviously we want to arrest them if police time and energy is being put into trying to find them. That is one reason people use false identities. There is another reason: often, if there is known to be a drug connection between a prisoner and a range of people on the outside and someone who does not appear to be any one of those fronts up, it would not immediately spark a security issue for that person. When I was at Hakea Prison the day when the sniffer dogs were being used, a significant haul of drugs and drug paraphernalia was discovered. A number of the people visiting the prison were known to the prison staff, and they said, "This woman will have a significant amount of drug paraphernalia on her." Sure enough, she did. Some people are well known because of their connections. If people know that they cannot come into the prison under a false name, which is happening all too often, that will stop the importation of drugs, drug paraphernalia and other contraband into the prisons, because it will stop people visiting those prisons who are likely to be taking them in. That is the best advice I have. We have been through this before and it is becoming repetitive.

Ms SUE WALKER: This is important, because that only works if the person who takes the drugs in is caught. The police could then get that person's true identity. I do not see the justification on that basis.

Mrs Edwardes: The person I feel sorry for is the elderly mum or dad.

Mr McGinty: Visiting a wayward son or grandson.

Ms SUE WALKER: That is right. I now turn to the penalty aspect, because that is the crux of the problem. Proposed subsection (2) states -

> A person must not give any proof of identity to any other person unless -
>
> (a) the proof of identity is given to a prison officer for the purpose of checking the identity of a visitor to a prison; or
>
> (b) the person is required to do so by an order of a court.
>
> Penalty: $2 000 or imprisonment for 12 months.

I made the point before that, under section 378 of the Criminal Code, technically that would be stealing, which carries a seven-year penalty. The minister has provided for a one-year term of imprisonment only for the theft of a person's identity.

Section 15Q(2) of the Prisons Act refers to a contract worker who applies for a permit to a prison and gives false information as follows -

> A person must not give information or a photograph that is false or misleading in a material particular in response to a requirement under subsection (1).
>
> Penalty: Imprisonment for three years.

Subsection (1) states -

> The chief executive officer may, in writing, require a contract worker who applies for a permit or the relevant contractor to provide -
>
> (a) information about any offence for which the contract worker is convicted;

That subsection goes on to refer to other information. The contractor is asked to give certain information and if he provides false information, he gets three years, but if a prison officer gives personal and unique identifying characteristics - maybe to a bikie gang - about a judge, a magistrate or an ordinary member of the public, he gets only 12 months. Pursuant to section 15O, a contract worker is subject to a penalty of imprisonment for three years if he or she undertakes high-level security work without a current permit. That is a 300 per cent increase. That section states -

> **Contract workers require permits to do high-level security work**
>
> A contract worker must not do, or purport to do, any high-level security work unless he or she has a current permit to do the work and does the work in accordance with the permit.
>
> Penalty: Imprisonment for three years.

With that in mind, I move -

Page 3, line 10 - To delete "$2 000 or imprisonment for 12 months" and substitute the following -

$25 000 or imprisonment for 10 years

With all the current concerns about security, not only in Australia but also around the world, the penalty for visitors and other people who go to the prison and provide false or misleading information, with its inherent consequences and dangers - which are plain for all to see and which have been written about by academics and other people - is insufficient. It is too serious a matter to limit the penalty to 12 months, which in fact is less than the penalty provided for misleading information provided by a contract worker at the site.

Mr McGINTY: The Government does not agree to the amendment. It is over the top compared with provisions contained in other legislation. I refer first to the DNA legislation, the Criminal Investigation (Identifying People) Bill, which passed through the Legislative Council only this week, the penalties for which offence are contained in clause 73. Subclause (3) states -

> A person who has access, or has had access, to identifying information, whether or not in a forensic database, must not disclose the information except as provided by this section.

Everyone would agree that is a comparable provision in the most recent legislation passed by this Parliament. The penalty is imprisonment for two years. In the Criminal Code, the provision that relates to the disclosure of official secrets is something of a comparable analogy.

Mrs Edwardes: Maybe that should be corrected.

Mr McGINTY: Two years is the penalty in that section. The member for Nedlands is trying to impose a term of imprisonment of 10 years in circumstances in which it is clear that that which is contained in other legislation provides for substantially less imprisonment and something more in line with what we are proposing in this legislation. The Sentence Administration Act 1995 is immediately comparable legislation. Section 118 contains the secrecy provision and provides that -

> (1) A person who is or has been in a position to which this section applies must not, whether directly or indirectly, record, disclose or make use of any information obtained because of being in that position, except -
>
> (a) for the purposes of . . . this Act;
>
> (b) when ordered by court or a judge to do so; or
>
> (c) in circumstances approved from time to time by the Minister.
>
> Penalty: $2 500.

It has no imprisonment for people who disclose details of sentences and the like.

We have proposed a penalty of $2 000 or imprisonment for 12 months, which is a measure of discretion to the sentencing officers. The amendment moved by the member for Nedlands to provide a fine of $25 000 or imprisonment for 10 years is out of kilter with comparable provisions.

Mrs EDWARDES: I am already on the record as saying that the penalties in the DNA legislation are far too low.

Mr McGinty: Indeed you are.

Mrs EDWARDES: Those penalties have no prohibitive value whatsoever. If a person has to provide proof of identity, be it DNA or, as in this instance, biometric information, it is more than likely that that person is up to no good and some criminal element is involved. If we are dealing with a person who is likely to be involved in criminal activity in and around the prison system, a penalty of $2 000 or imprisonment for up to 12 months will have no prohibitive value at all. Therefore, I support the amendment, because the proposed penalty is far too low. One of the reasons for considering a matrix is that it involves looking at all the penalties. However, if the minister is not prepared to go down that path, he should at least look at what is happening elsewhere in the world; namely, they deal with units. The ability to increase penalties or have a greater level of review of penalties is far more effective if it is done in units, because the dollar value of the penalty or the number of years of imprisonment can be increased without needing to change the substantive legislation.

Ms SUE WALKER: If I can expand on the punishment for stealing in special cases, section 378 of the Criminal Code states with regard to stealing by persons in the public service -

> If the offender is a person employed in the Public Service, and the thing stolen is the property of Her Majesty, or came into the possession of the offender by virtue of his employment, he is liable to imprisonment for 10 years.

It states with regard to stealing goods in transit that if the offender, in order to commit the offence, opens any locked room, box or other receptacle by means of a key or other instrument - we could perhaps refer also to computers or databases - he is liable to imprisonment for 14 years. A term of imprisonment for 10 years is reasonable. The minister is way behind the eight ball with this penalty.

Amendment put and a division taken with the following result -

Ayes (18)

Mr Barnett	Mrs Edwardes	Mr Masters	Ms Sue Walker
Mr Birney	Mr Edwards	Mr Pendal	Dr Woollard
Mr Board	Ms Hodson-Thomas	Mr Barron-Sullivan	Mr Bradshaw *(Teller)*
Dr Constable	Mr Johnson	Mr Sweetman	
Mr Day	Mr Marshall	Mr Trenorden	

Noes (24)

Mr Andrews	Mr Kobelke	Mr Marlborough	Mr Ripper
Mr D'Orazio	Mr Kucera	Mrs Martin	Mrs Roberts
Dr Edwards	Mr Logan	Mr Murray	Mr Templeman
Dr Gallop	Ms MacTiernan	Mr O'Gorman	Mr Watson
Ms Guise	Mr McGinty	Mr Quigley	Mr Whitely
Mr Hyde	Mr McGowan	Ms Radisich	Ms Quirk *(Teller)*

Pairs

Mr House	Mr Brown
Mr Grylls	Mr Dean
Mr Waldron	Ms McHale
Mr Ainsworth	Mr Carpenter
Mr McNee	Mr Hill

Amendment thus negatived.

Clause put and passed.

Clause 7: Section 66 amended -

Ms SUE WALKER: Why is the minister proposing to abolish the rules of natural justice? Will that provision not give the chief executive officer enormous power to ban a person from visiting a prison? I am particularly concerned about the welfare of prisoners. There is no cap on the length of time for which a person can be banned from visiting a prison. Can the minister give an assurance that a cap will be imposed? Is there a cap in the New South Wales legislation with regard to the length of time for which a person can be banned from visiting his or her loved one in prison? This matter is very important given the high levels of depression and anxiety suffered by people in prison, the fact that people in prison may be undergoing detoxification, and the high number of young people, particularly Indigenous people, who commit suicide while in prison.

Mr McGINTY: We need to remember that we are talking about admission into prisons. If there is a concern and a justification for banning someone from visiting a prison, in our view that action must be taken first. If the rules of natural justice were to be applied fully, however, before that action could be taken against a person, the person would have to be advised of the details of the matters about which the prison system has a concern and would have to be given the right to be represented and put his side of the story. That is inappropriate in an institution such as a prison. It might well be that information has been provided to prison authorities that, for instance, a person is transporting drugs or explosives into a prison. Should we give them that information and the right to answer the charges against them before taking action and refusing to admit that person into a prison? In my view the answer to that is no.

We have set up a scheme that will give a person who is banned from a prison or from prisons generally the right to appeal. We have set up an administrative structure in which a ban relating to a particular prison will be imposed by the superintendent of that prison and a ban across the prison system, involving more than one prison,

will be imposed by the general manager of public prisons. That official title has changed from the director of prison services.

Mrs Edwardes: If only they would stay still.

Mr McGINTY: Yes. An appeal on a ban will be lodged with the director general so that we do not have a Caesar to Caesar situation. Often there will be a need, for security reasons, to act but then people will have the right to have a decision reviewed. That is not unlike another area that applies in the prison context to the Parole Board.

Ms Sue Walker: Are these natural justice procedures set out in the Bill?

Mr McGINTY: No, natural justice does not apply to parole.

Ms Sue Walker: I am talking about procedures.

Mr McGINTY: Hang on. It does not apply when prisoners are seeking to have reconsidered their rejected application for parole. A prisoner in that situation must appeal to the same body that rejected the application for review. We were concerned in drafting this legislation that the appeal would not be heard by the same person who imposed the ban, as that would involve a consideration of the justness of that person's own actions. That is why we have set up the structure involving the superintendent, the general manager of public prisons and the director general in the appeal hierarchy.

We have sought in the natural justice issue to give people the right to have their case heard and answer the criticisms made after the event rather than before the event. The problem with natural justice, as the member would know, is that it is required before the event and not after the event. We have therefore sought to cover it in that way.

Mrs EDWARDES: Proposed section 66(3) refers to banning a person from visiting a specified prison for a specified period. Proposed subsection (5) states that the maximum period a person may be banned is to be prescribed, and different maximum periods may be prescribed in relation to different prescribed circumstances. What is intended in that proposed subsection? Does that mean that there is no indefinite ban to be imposed; that it must be for a particular period; and that the period must be of at least the time left to run of the prisoner in prison being visited? Could it be an indefinite ban for the balance of the prisoner's term or could it be a much lesser period than can be interpreted from those proposed subsections?

Mr McGINTY: These provisions will be contained in the regulations. It is not intended that any ban be longer than 12 months, and that would be the most extreme of circumstances. The member should bear in mind that there is power currently to refuse access. There is a power to say, "No, go away" to anyone who fronts up at a prison. However, that very much depends on who is on duty on the day and that is subject to human failing. There may be only one prisoner that a visitor may relate to because of the nature of the inmates in a prison. If there are sufficient grounds to ban someone from either a prison or the prison system generally, in normal circumstances, depending on what it is that person is alleged to have done, the ban would be for only three or six months. The circumstances that give rise to a ban are spelt out in draft notes that have been prepared. One circumstance is when a person presents as a security risk to a prison or the prison system in general; secondly, when a person attempts to bring into the prison unauthorised items; and, thirdly, when a person has been charged with or convicted of any of a list of offences under the Court Security and Custodial Services Act, the Prisons Act, the Criminal Code and the Young Offenders Act.

Mrs Edwardes: Does that mean anybody who has a criminal record?

Mr McGINTY: No, only people who are charged with or convicted of certain offences. Many people visiting prisons have a criminal record. That in itself would not count. It would need to be someone who had recently been charged with or convicted of an offence and who posed a security problem to the prison rather than someone who had a prior unrelated conviction. For instance, someone on parole from prison who is not a direct family member would not be allowed into the prison.

There are a number of cases - this might answer the point raised by the member for Nedlands - in which there may be a need to withhold the reasons for a ban. These circumstances are largely borrowed from section 5 of schedule 1 of the Freedom of Information Act relating to exempt material for law enforcement, public safety and property security purposes. There are a number of generic areas and that gives an idea of what is intended.

Ms SUE WALKER: The Opposition understands entirely what the minister has said about the need to ban people who bring drugs into prisons. The Opposition is concerned that the chief executive officer can issue and revoke a ban.

Mrs Edwardes: No, the superintendent.

Ms SUE WALKER: Where does it say that?

Mr McGinty: The CEO will delegate those powers according to the framework I have just described.

Ms SUE WALKER: That is the point, it is not in the Bill. The Bill states that the CEO can ban a person, revoke the ban and must give a person written notice of the ban. Proposed subsection (8) states that the only avenue a person has to have the ban revoked is to write to the CEO. One can see how a person could be caught in a cleft stick with the provisions in the Bill. Once again, the minister has said he will draft regulations in the future. I find that a little disconcerting, because the minister has taken away the rules of natural justice and given enormous power to ban a person from a prison in prescribed circumstances. He has not detailed the prescribed circumstances. I appreciate the ban could relate to drugs or explosives; equally, it could be at whim.

Mr Bradshaw interjected.

Ms SUE WALKER: That is right, and that is what is of concern to the Opposition. There is no cap on the length of the ban. It is too autocratic given that nothing else is spelt out in the Bill. I want some comfort from the minister that he will draft regulations providing that a person who has been banned can appeal to someone other than the CEO and present his own case.

Mr McGINTY: The Prisons Act gives only three people status: the director general - referred to as the CEO; the prison superintendent; and a prison officer. It is possible, but not within the existing framework, to describe, for instance, the role of the general manager of public prisons in this hierarchy of decision making. The administrative arrangements that will be reflected in the regulations will provide for an appropriate level of decision making. For example, it will not be appropriate for the superintendent at Casuarina Prison to impose a ban on a person visiting Hakea Prison. We must continually monitor the responsibility level. We chose this terminology to reflect the positions recognised in the legislation, but with the clear understanding that policy directives from the director general will spell out the hierarchy of the appeal process. This will be much better than the Parole Board scenario. In that case, not only do the rules of natural justice not apply, but also the appeal is to Caesar from Caesar.

Clause put and passed.

Clause 8 put and passed.

Title put and passed.

Third Reading

MR McGINTY (Fremantle - Minister for Justice and Legal Affairs) [5.13 pm]: I move -

> That the Bill be now read a third time.

I take this opportunity to deal with a matter that arose yesterday about the number of prisoners who might be eligible for early release under the 10-day and 30-day propositions. As of today, the Western Australian prison system has 336 prisoners serving finite sentences; in other words, people who are not eligible for parole. Overwhelmingly, they are serving sentences of between three and six months, but they also include people who are serving sentences of more than 12 months. Jack van Tongeren comes to mind. He is not eligible for parole, but he is eligible for release. The figure is significantly less than the 1 300 revealed in the survey conducted 12 months ago because we are referring to the number of prisoners incarcerated on a specific day. During the year, a significantly greater number of people will move in and out of the prison system, but on any one day the figure is obviously less.

Mrs Edwardes: How many are on remand?

Mr McGINTY: Those prisoners have a finite sentence, so that excludes the remand prisoners.

Mrs Edwardes: How many are on remand at the moment?

Mr McGINTY: That number has risen significantly in recent times. Although the prison population has reduced, the number of remand prisoners has increased. That has offset the reduction in the overall prison population. As of 4 April, 545 people were on remand. That is a high proportion of the total prison population of 2 842.

A number of the 336 prisoners who are serving a finite sentence might be due for release within 10 years; they are not all eligible for release immediately. However, some of the offenders who go to prison tomorrow will also be eligible for release during the year. Of course, that figure is less when we subtract the prisoners who have committed offences that render them ineligible for early release; that is, those who have committed violent offences. Prisoners found guilty of prison charges and prisoners whose behaviour in prison has been unsatisfactory are also ineligible. That could be because of a lack of work ethic or unsatisfactory behaviour on a

work program that did not result in a prison charge. Prisoners who are eligible for home detention or who have breached a home detention order are not eligible for early release. The total number of people moving in and out of the prison system inflates the figure, but it is obviously significantly less than the 1 300 figure referred to earlier. I thank members for their contributions to this debate.

MS SUE WALKER (Nedlands) [5.15 pm]: The Opposition does not support this Bill. I said in my second reading contribution that the Opposition would not support the Bill unless safeguards were put in place for biometric identification and stiffer penalties were imposed for the release of that information. Neither of those conditions has been met to the Opposition's satisfaction.

The Opposition is concerned that the identification provided for in this Bill is different from that normally required. As the Minister for Justice and Legal Affairs explained, it is very personal identification. It is unlike conventional identification such as a card, a password or a personal identification number. It is a unique identity trait. Concern has been heightened as a result of the worldwide increase in terrorism. Technology is advancing and security is a primary focus. Prison officers have been caught taking drugs into prisons and being dishonest. What will the people who are to be given authority over this information do with it? In which of the 13 prisons will it be used? The Opposition is concerned that the minister has provided no details.

It is also a worry that this Bill comprises only three pages. The coalition Government's legislation dealing with DNA identification comprised 91 pages. More thought should have been given to this legislation. It is simply not good enough for the minister to say that the Bill has been amended in the same way previously, so he will do the same. This legislation deals with very complex issues, but the minister has provided no detail that we can debate. The Opposition is not satisfied. The legislation should have been referred to a committee or been subjected to further research.

I have quoted at length from articles on the procedure that was put in place in New South Wales, without any regulations and without taking into account the privacy of visitors, friends, or any of the categories of visitors. We do not know to which visitors this will apply in a mandatory sense. There are problems with consent, with security of information, and with the delays about which I have spoken. There is no suggestion that there has been any consultation with the Aboriginal community about the problems that it has with its people inside the prisons. The visitors to prisons will be put between a rock and a hard place. I sincerely hope that this will not impact on the welfare of prisoners. The Opposition understands the thrust of this Bill and supports that. However, we want more detail of the safeguards. On the one hand, the Government is trying to make the prisons more secure, but, by doing that, ordinary citizens and people who run institutions in this State will be exposed to a lack of security.

The second issue was the penalty. We drew an analogy with the contract worker who gives a misleading statement under the Prisons Act. He is subject to a penalty of three years imprisonment. Under the Criminal Code, the penalty for stealing is seven years, and for similar cases of stealing, the penalty is 10 and 14 years. For those reasons, the Opposition will not support this Bill.

MR BRADSHAW (Murray-Wellington) [5.21 pm]: I also do not support this Bill, but my reasons for not supporting it are probably different from those of the member for Nedlands. The Government has said that this technology will make the prisons more secure. However, the facts are that where there is a will there is a way, and no matter what is done, I am sure that people will thwart the system. As was pointed out, one of the ways that drugs and other contraband have got into the prisons was with the prison officers. They will obviously get into the prisons because they go in there to work.

I am not too sure about this technology. As I pointed out earlier today, the costs involved will probably add up to a lot of money. At the time, the minister said that it would cost $100 000 or so to set up this technology. That is what it will cost to set it up, but there will be ongoing costs in getting people to comply; that is, by having their thumbprint taken or by having their image put into the machine. That will obviously take a lot of time and cost a lot of money, and backup people will be required to maintain the equipment.

When computers were introduced, people said that they would save a lot of time and effort. I believe that, because of computers, more people are employed now than ever before. Computers certainly have not cut down the workload; they seem to have increased the workload in offices. In this instance, the situation will be similar. As a result of the Government going down this path, the public of Western Australia will be faced with more costs.

Earlier today the minister said that there was a spot check of people who went into prisons and that a large amount of contraband was found. If the Government wants to prevent contraband being taken into prisons, perhaps those spot checks should be conducted more often, and prisoners should be checked for drugs in the prisons. If they have drugs in their body, they should be banned from having visitors. More ways should be

examined, rather than going down the expensive path that the Government proposes. I do not believe it will have a positive result but will lead to more costs for the public. The public is sick of rising taxes. The money should go into education and health rather than being spent on technology because it is the trendy thing to do.

Over the years, people have adopted these new trends. For years, the Department of Education followed the world trend on the way to educate our kids. However, five years later it found that it did not work, so it went to a new system. Similarly, this system will be introduced because it is trendy - as it is new technology, it must be good. That is rubbish. The Government should have a good look at it and ask whether it will cost the taxpayers of Western Australia more money. I certainly believe that it will and that we are going in the wrong direction. I do not support this legislation.

The Government is not bringing in this legislation to try to get prisoners to behave; it is purely to save money on the prison system. I would love money to be saved on the prison system. However, if people have broken the law, they should be in prison. They should behave themselves in prison. They should not get sweeteners. If they misbehave, they should get the reverse; that is, an extension of time. They should not get a reduction because their behaviour is good, because people must be pretty silly to misbehave in prison, although I know that some of them do. As I said, we are going in the wrong direction. This legislation is not necessary. I do not and will not support it. The Government should have another good look at it.

Question put and a division taken with the following result -

Ayes (23)

Mr Andrews	Mr Kucera	Mrs Martin	Mrs Roberts
Mr D'Orazio	Mr Logan	Mr Murray	Mr Templeman
Dr Edwards	Ms MacTiernan	Mr O'Gorman	Mr Watson
Dr Gallop	Mr McGinty	Mr Quigley	Mr Whitely
Ms Guise	Mr McGowan	Ms Radisich	Ms Quirk *(Teller)*
Mr Kobelke	Mr Marlborough	Mr Ripper	

Noes (18)

Mr Barnett	Mrs Edwardes	Mr Marshall	Mr Trenorden
Mr Birney	Mr Edwards	Mr Masters	Ms Sue Walker
Mr Board	Mr Grylls	Mr Pendal	Mr Bradshaw *(Teller)*
Dr Constable	Ms Hodson-Thomas	Mr Barron-Sullivan	
Mr Day	Mr Johnson	Mr Sweetman	

Pairs

Mr Brown	Mr House
Ms McHale	Mr Waldron
Mr Carpenter	Mr Ainsworth
Mr Hill	Mr McNee

Question thus passed.

Bill read a third time and transmitted to the Council.