PRISONS AND SENTENCING LEGISLATION AMENDMENT BILL 2006

Introduction and First Reading

Bill introduced, on motion by **Mr J.B. D'Orazio (Minister for Justice)**, and read a first time.

Explanatory memorandum presented by the minister.

Second Reading

MR J.B. D'ORAZIO (Ballajura - Minister for Justice) [10.29 am]: I move -

> That the bill be now read a second time.

This bill is a reflection of the government's commitment to reforming the corrections system in Western Australian. It is the first legislative step in response to the recommendations of the 2005 Mahoney Inquiry into the Management of Offenders in Custody, which was tabled in Parliament by the Premier on 23 November 2005. This bill is the first of two stages in developing a new corrective services act, which will enable the newly formed Department of Corrective Services to better manage offenders in this state.

In line with the Mahoney inquiry recommendations, this bill amends the Prisons Act 1981, the Sentence Administration Act 2003 and various other acts. It provides for victims and others to request that mail from prisoners not be sent to them; the use of video-link facilities to determine disciplinary charges against prisoners; the exchange of information to facilitate offender management, research and victim support; enhanced rehabilitation for prisoners; formalised provisions for the operation of work camps; approved temporary absences from prison; powers and functions of key positions within the Department of Corrective Services; and consequential amendments to acts required as a result of the separation of the Department of Justice into the Department of Corrective Services and the Department of the Attorney General.

The bill also includes relevant amendments contained in the Acts Amendment (Sentencing) Bill 2004.

A bill to create a corrective services act will be introduced into this house later this year. That bill will amalgamate the Prisons Act 1981 and the Sentence Administration Act 2003. It will specify principles to guide the management of the act and introduce changes to the process of prisoner discipline. To expand on that, the bill will provide a simpler and more flexible framework for granting temporary absences from prison for suitably assessed individuals.

In recommendation 36 of his report, Justice Mahoney said -

> The Department should continue to use absences from the prison for the purpose of re-socialising offenders, including life and indeterminate sentenced prisoners, such as work and home leave and other opportunities outside the prison.

In recommendation 37, he added that -

> The *Corrections Act* should state in general terms the purpose for granting absences from the prison. Superintendents should have more authority and flexibility to grant absences from prison, with the authority for certain absences resting with the Commissioner rather than the Minister or Governor.

The particular purposes of an absence are no longer contained in the act, but will be included in regulations, providing that the temporary absence achieves one or more of the following objectives: the rehabilitation of prisoners and the successful reintegration of prisoners into the community - for example, attendance at education or training programs; the compassionate or humane treatment of prisoners and their families - for example, funeral attendance; the facilitation of the provision of medical or health services to prisoners; and furthering the interests of justice - for example, attendance at court.

In keeping with Justice Mahoney's recommendation to provide decision making at the level with most knowledge of the offender, the chief executive officer is able to approve temporary absences, and there is the capacity to delegate this power. The lowest level of delegation will be to superintendents of prisons. However, when considering temporary absences, the chief executive officer must take into account the safety and interests of the public.

The types of conditions on temporary absences that the chief executive officer may impose, such as the duration, level of supervision, the class of prisoner who may be granted an absence and place of residence while absent, will be included in regulations that will reflect current requirements. Placing this detail in regulations will, as recommended, simplify the act while retaining parliamentary oversight to safeguard the interests of the community.

The role of the minister and, for some prisoners, the Governor, in approving temporary absences for compassionate, rehabilitative or re-socialisation reasons has been removed. Currently the minister must approve

all compassionate absences other than those for prisoners serving strict security life, strict custody, safe custody, life or terms of more than 15 years, which must be approved by the Governor.

Compassionate absences include visiting a dangerously ill near relative or attending the funeral of a near relative and are for a maximum of 72 hours. In practice, these visits are generally only for a few hours for prisoners requiring the Governor's approval, or who are otherwise high risk and have strict conditions placed upon them. In comparison, the minister is required to approve only home or work leave absences, which may be for longer periods in total, if the prisoner has demonstrated unreliability by breaching conditions of previous leaves or parole.

Additionally, compassionate absences often have to be arranged at short notice, and prisoners and their families requiring the Governor's approval may be denied the benefit because there is simply insufficient time to obtain an approval.

Conditions to be included in regulations will largely reflect current arrangements for prisoners in the categories mentioned and conditions placed on the absence will continue to be strict and have due regard for community safety. In these circumstances, it is considered sensible to adopt the Mahoney inquiry recommendation to remove the requirement for the minister or Governor to approve compassionate absences.

Under the new arrangements for parole, which were introduced into this house by the Attorney General on 30 March 2006, temporary absences for re-socialisation reasons for all types of life and indefinitely sentenced prisoners will occur only if they are approved for a re-socialisation program. Such approval will be given only on the recommendation of the new Prisoner Review Board and will require the endorsement of the Attorney General and the Governor. In these circumstances, it is no longer necessary to retain a requirement in the Prisons Act for the Governor or the Minister for Justice to approve each occasion of an absence to participate in an approved program.

The bill allows the chief executive officer to involve people other than prison officers in the supervision of prisoners on temporary absences. This supports the current practice of involving family, community members and other agencies in supervising prisoners on approved absences, such as home leave, or prisoners who are engaged in community work or training. Responsibility for the prisoner is retained by the Department of Corrective Services.

If a prisoner is absent because he or she is engaged in paid employment, the bill retains the requirement for the chief executive officer to ensure that the work is suitable and the remuneration appropriate. In addition, the bill provides for the development of regulations that will allow the chief executive officer to impose conditions requiring a prisoner in paid employment to contribute towards board, incidental expenses associated with employment, payment of outstanding fines or debts, support of dependants or saving for their release.

The other new provision the bill makes is for temporary absences to occur interstate with those states and territories that have reciprocal legislation. This is likely to have the greatest impact on Aboriginal prisoners from the western desert and east Kimberley who have, for example, significant family members who often live just across the state border or in Alice Springs.

The bill will also provide for the exchange of information to facilitate offender management, research and victim support.

The purpose of the Mahoney inquiry was to improve the quality of offender management and, in so doing, improve community and staff safety. Access to relevant information to support decision making is fundamental to achieving this purpose and this bill makes several amendments to both the Prisons Act 1981 and the Sentence Administration Act 2003 that will improve the capacity for the chief executive officer to release and exchange information, with necessary privacy issues taken into consideration.

In recommendation 52, Justice Mahoney specifically commented on the need for intensive case management of high-risk and high-need offenders in collaboration with other agencies. Management of such offenders requires close coordination involving multiple government and at times non-government agencies. Current secrecy provisions in various acts can impede this work and the proposed provisions provide a clear legislative basis for the chief executive officer to exchange information essential for the management of offenders in prison and in the community. For example, high-risk offenders on parole or other community orders require coordination of services and case management with a range of agencies, including the Department of Health, the WA Police, the Department for Community Development and the Disability Services Commission. In addition, high-need offenders, such as those with mental health problems, also require interagency case management.

Clear information exchange will also support improved decision making about the risk that offenders pose to the community and influence decisions about prisoner classification and their placement within the prison system.

Provisions enabling information exchange about offenders will also apply to information exchange for research that promotes the development of criminology and corrective services. This is consistent with recommendations in chapter 8 of the Mahoney inquiry report to use research findings to improve the policy and strategic functioning of the new Department of Corrective Services. The Young Offenders Act 1994 is also amended to enable information exchange for research that will promote juvenile justice.

The chief executive officer is constrained by legislation from providing information to the public about offenders and this, at times, has resulted in criticism. While there is good reason for maintaining secrecy in many circumstances, this bill reduces constraints and provides for the chief executive officer to release information about offenders to the public if it is in the interests of community safety.

The bill also provides for the chief executive officer to give prescribed information to victims of crime. This will provide clear legislative support for the work currently being done by the Victim Notification Register and other units within the Department of Corrective Services working with victims of crime.

The bill provides protection to individuals and agencies that release information under the proposed arrangements.

Appropriate safeguards will be developed in regulations and policy to protect privacy and the security of confidential information. For example, sharing of information for research purposes would require a number of safeguards, including the appropriate storage and destruction of data on completion of research, and other existing protections, such as the requirement that the research have the approval of an appropriate ethics committee.

While not specifically addressed by Justice Mahoney, there are two further amendments contained in this bill that will improve the capacity for information sharing where it will assist in the management of offenders.

Section 119 of the Sentence Administration Act 2003 prohibits department staff and members and the secretary of the Parole Board from disclosing information obtained through their positions - unless it is when exercising functions under the act, when ordered by a court or judge or in circumstances approved from time to time by the minister. The provision enabling the minister to approve special circumstances in which it is appropriate to release information is sensible. However, legal opinion has consistently maintained that the minister cannot approve a set of circumstances in which departmental staff may release information provided a particular case meets those circumstances. This means that on every occasion approval must be sought, which is unnecessarily time consuming for both the department and the minister. This bill proposes to amend section 119 to clarify that the minister may approve circumstances in which the release of information is approved. The Acts Amendment (Sentencing) Bill 2005 was introduced to this house in 2005, but did not proceed due to Parliament being prorogued for the last election. It contained a provision that has been included in this bill to allow the Department of Corrective Services to use information contained in pre-sentence reports to a court to assist in the management of subsequently sentenced offenders. This will prevent the unnecessary duplication of assessments, many of which have in any case been prepared or commissioned by the department.

This bill strengthens part IX of the Prisons Act 1981 by including a focus on rehabilitation as well as prisoner wellbeing. This reflects the contemporary approach to offender management and is consistent with Justice Mahoney's focus on providing programs for prisoners that will reduce the likelihood of reoffending and promote their reintegration back into the community.

The bill enables the chief executive officer to provide a broad range of services and programs, both inside and outside a prison, that will assist prisoners acquire knowledge and skills that will help them adopt law-abiding lifestyles on release; assist prisoners to integrate within the community on release; maintain and strengthen supportive family, community and cultural relationships; provide assistance to prisoners and their families to deal with personal and social matters; provide opportunities for work and recreation; promote health and wellbeing; and assist prisoners make reparation for their offending.

Without limiting the generality of the provisions, the bill also requires that programs be developed that meet the needs of Aboriginal and women prisoners to achieve equitable service outcomes for all prisoners. These provisions, in part, support the implementation of recommendations 85, 107 and 110 of the Mahoney inquiry. The existing provision that participation in programs is voluntary, apart from the requirement for a prisoner to work unless medically unfit, has been preserved in line with recommendation 16 of the Mahoney inquiry. Provisions supporting the practice of religion by prisoners have been amended to include a broader understanding of religion that is inclusive of Aboriginal or other cultural spirituality, and have been relocated to this section. Other relevant sections of the Prisons Act 1981, such as medical care of prisoners, duties of medical officers, health inspections of prisons and the power of medical examination and treatment, have also been relocated to part IX.

Work camps have been operating successfully for over eight years and have an important and established role in the overall delivery of custodial services in this state. Justice Mahoney has acknowledged the importance of work camps as a form of custody, particularly for Aboriginal prisoners, and in recommendation 94 urged the department to increase their use. The Inspector of Custodial Services in his directed review of the management of offenders in custody recommended that a separate legislative provision be made for work camps. This bill provides for the establishment of work camps under the Prisons Act 1981 to support their important role in the overall delivery of custodial services.

This bill seeks to amend the Prisons Act 1981 and Sentence Administration Act 2003 in relation to certain powers and functions of key roles, as recommended by the Mahoney inquiry, and to support the new Department of Corrective Services in the interest of efficient administration. Consistent with Mahoney recommendations to simplify procedural frameworks in the interest of efficient administration, it is proposed to amend the Prisons Act 1981 to reduce the number of administrative matters requiring the approval of the Governor in Executive Council and transfer this responsibility to the minister. The provisions relate to the declaration of prisons and the appointment of the chairperson of the Prison Officers Appeal Tribunal. These are administrative matters that do not require the attention of the Governor. The amendments were part of the Acts Amendment (Prisons Administration) Bill 2006, which has been amalgamated with this bill.

This bill introduces a broad provision into both the Prisons Act 1981 and the Sentence Administration Act 2003 to give the chief executive officer a secure legislative base to engage with the community in a range of ways that promote the delivery of corrective services. These include consultation, use of volunteers and community organisations, arrangements with Aboriginal communities for offender support and supervision and the like. These provisions may or may not involve contracts for services. References to the Executive Director (Corrective Services) are removed from the Prisons Act 1981, and consequential changes are made to the chief executive officer's powers of delegation. This role is abolished as a consequence of the creation of the new Department of Corrective Services. Another amendment to the Prisons Act 1981 requires the chief executive officer to be responsible for the safe custody of prisoners, in addition to their welfare.

Both the Prisons Act 1981 and the Sentence Administration Act 2003 are silent on the positions of prison officer and community corrections officer respectively being responsible to the chief executive officer for the exercise of their statutory powers. Specific to the Mahoney inquiry recommendation 78, and with reference to the Quinlan report recommendation 116, this bill provides that prison officers and community corrections officers are responsible to the chief executive officer for the exercise of their statutory powers.

While not specifically addressed by the Mahoney inquiry, several amendments to the Prisons Act 1981 are contained in this bill to improve the administration of prison services. Part IIIA of the Prisons Act 1981 deals with contracts for prison services. It is proposed to provide for penalties to be negotiated between the Department of Corrective Services and a contractor and included in the contract. Contract law does not allow for appropriate penalties when the damage or loss to the state is not readily quantifiable; for instance, if a prisoner escapes. The proposed amendment will allow for suitable recompense to the state.

This bill also provides for victims and others to request that mail from prisoners not be sent to them, and the use of video-link facilities to determine disciplinary charges against prisoners. The Prisons Act 1981 allows mail from prisoners to be held back only when it contains threats, is in breach of a court order or otherwise poses a risk to prison security or good order. However, for some people, especially a victim of an offender, the receipt of mail from a prisoner, no matter what the content, is unwanted and distressing. The proposed amendment will allow a person to request that mail from a prisoner not be sent to him or her. Provision is made to ensure that a request cannot be used to prevent legitimate communication; for example, settling custody or property disputes.

Video-link technology enables communication over distance, which can save considerable expense and inconvenience for those concerned. Technology is now sufficiently advanced that it can meet the interests of justice and be used in court proceedings. It is therefore proposed to allow the use of this technology for hearing prisoner disciplinary matters. This will save justices having to attend prisons to hear a matter if this is not convenient, and will save witnesses having to travel from one prison to another. The hearing officer, who will be a justice or a superintendent of a prison, will have the discretion to determine if use of the video-link facility is appropriate for the matter being dealt with, and a matter cannot proceed unless the video-link and the parties who propose to use it are available, or can reasonably be made available.

Amendments are also made to various acts due to the creation of the Department of Corrective Services and the Department of the Attorney General from the former Department of Justice. These mostly correct references to the chief executive officer or the relevant department. Rearranging provisions within the Prisons Act 1981 has also required some consequential amendments. The acts are the Sentence Administration Act 2003, the Sentencing Act 1995, the Bail Act 1982, the Children's Court of Western Australia Act 1988, the Criminal Law (Mentally Impaired Accused) Act 1996, the Fines, Penalties and Infringement Notices Enforcement Act 1994,

the Juries Act 1957, the Restraining Orders Act 1997, the Spent Convictions Act 1988, the Victims of Crime Act 1994 and the Young Offenders Act 1994.

I am sure that all members will agree that this is an important and timely bill. This year has already seen the establishment of a new Department of Corrective Services, with renewed direction. This bill is critical to enable the Department of Corrective Services to better undertake its work, to ensure the security of offenders and for the safety of the Western Australian community. I commend the bill to the house.

Debate adjourned, on motion by **Dr S.C. Thomas**.