CUSTODIAL LEGISLATION (OFFICERS DISCIPLINE) AMENDMENT BILL 2013

Consideration in Detail

Resumed from 12 March.

Clause 7: Part X replaced —

Debate was adjourned on the following amendment moved by Mr P. Papalia —

Page 10, lines 7 to 10 — To delete the lines and substitute —

(2) Where a prison officer has commenced an appeal under section 106, the Minister shall direct that a maintenance payment must be paid to the prison officer for a specified period after the maintenance period unless there are exceptional circumstances justifying that the prison officer should not be paid a maintenance payment.

Mr P. PAPALIA: Multiple amendments have been moved to clause 7. Is this the amendment that starts with "Page 10, lines 7 to 10 — To delete the lines and substitute" at proposed section 103(2)?

The SPEAKER: Yes; it is indicated at page 11 of the notice paper.

Mr P. PAPALIA: Thank you, Mr Speaker. I appreciate your assistance. I do not intend to continue debating this amendment much further. I was making the point that we believe there is a need to change the terminology from "may"—giving the minister latitude to decide whether maintenance payments are directed in exceptional circumstances—to "shall". I understand it is the government's intention to oppose this amendment. I will not pursue it much further because we debated it for some considerable time during the previous session. If the minister wants to respond, that is fine. Otherwise we will vote on the amendment and see what happens.

Mr J.M. FRANCIS: Advice from legal counsel is that the word "shall" is not used in modern drafting; it is ambiguous inasmuch as it can mean "must" or "may", depending on the context and the intention. It is not always clear.

Mr W.J. Johnston interjected.

Mr P. PAPALIA: No, he is not; he is saying that he opposes "shall" for a different reason from what he gave yesterday. That is interesting, minister. When did the policy around the use of the word "shall" change?

Mr J.M. Francis: I will have to ask a lawyer.

Mr P. PAPALIA: Perhaps the minister can seek advice from his advisers.

Mr F.M. Logan: And is it widespread across the legal profession?

Mr P. PAPALIA: That is right; is it widespread across the drafting of legislation for this place? Clearly that is something I am not familiar with, but I have heard about that subject in recent times about other legislation.

Mr J.M. FRANCIS: I am advised that "shall" normally means it is mandatory.

Mr P. PAPALIA: That is right, and that is why we were proposing "shall" to compel the minister to do something. We felt it was unfair. Ultimately, that is our fundamental objection to this legislation. The legislation is unfair right throughout, but particularly on matters of maintenance payments, the length of opportunity for people to seek maintenance payments and the length of appeals. All those matters are unfair, and we felt it was unfair that the minister should be given the opportunity to deny someone, on a whim, the opportunity for a maintenance payment. That is why we wanted to make it "shall", so that it was mandatory. That is exactly why we wanted to do it.

Mr D.J. KELLY: Yesterday, the minister said that he did not want people to be guaranteed a maintenance payment because he believed it was possibly an incentive for people to lodge appeals that had no foundation or that it would be an incentive for people to prolong the process to continue to receive the maintenance payment. I know the minister might find this all a bit tedious, but I wonder whether he could point to me anything in the legislation that prevents the employer from deliberately dragging out the proceedings, knowing that the maintenance payments to the employee are of a finite nature. From personal experience of litigation, it is possible for either side to drag their feet. I know from personal experience that the government can often be accused of dragging its feet. Even when the Western Australian Industrial Relations Commission set hearing dates, I was constantly amazed that the government would say it was unavailable to appear in the commission on a whole range of dates because a particular solicitor was not available to deal with the matter. The State Solicitor's Office has a battery of legal staff and represents the government when dealing with government. One

of the things it used to do—I suspect it was done to prolong the proceedings—was say that individuals from the office were unavailable for the hearing, rather than say that they were available and that it would find someone from the office to provide the representation. My principal question is: what is in the legislation to prevent the employer from dragging out the proceedings, and therefore, in effect, starving out the employee? Also, in answer to a question the other day, I thought I heard the minister say that the drafting of the legislation was of a high quality because the State Solicitor previously had been an industrial relations commissioner. I understand that the current State Solicitor is Paul Evans. If he was an industrial relations commissioner, can the minister tell us in what jurisdiction he acted in that capacity, because I cannot find any evidence that he was? If the minister could give us some more information on that, I would appreciate it.

Mr J.M. FRANCIS: Certainly. This bill is before the house because the department does not want to take an extended time to deal with officers in whom the commissioner has lost confidence, and those who are not suitable to continue in their roles. It is not acceptable to argue that a clause is needed that puts a limit of time on the Department of Corrective Services. The Department of Corrective Services will expedite the process as quickly as possible, but also keep in mind that it has to be done fairly, because if we were to rush it —

Mr P. Papalia: It is a legitimate question.

Mr J.M. FRANCIS: I know —

Mr P. Papalia: What is to stop the department intentionally extending the process beyond six months, in which time the person's economic life falls apart?

Mr J.M. FRANCIS: It is because the cut-off date for them receiving an income does not apply until after the notice of loss of confidence has been issued. If it takes six months to get to the point when that is done, they will still be paid until that happens.

Mr P. Papalia: What will happen after that if they dispute the notice of loss of confidence?

Mr J.M. FRANCIS: It will be dealt with expeditiously by the Industrial Relations Commission.

Mr P. Papalia: Why? It does not say that in the legislation.

Mr J.M. FRANCIS: It will be dealt with.

Mr P. Papalia: It does not compel the department to act within six months.

Mr J.M. FRANCIS: No, it does not.

Mr P. Papalia: No, so it can delay the notice of loss of confidence process itself, knowing that after six months the person will no longer have the financial means to continue to appeal.

Mr J.M. FRANCIS: Let us say there is an investigation; if the investigation takes one month or 12 months until such a point that the loss-of-confidence notice is issued, the person will still get paid.

Mr P. Papalia: That is right. And then the appeal process against the loss-of-confidence notice starts but their maintenance payments will terminate after six months.

Mr J.M. FRANCIS: I accept what the member for Warnbro is saying, but the problem I have with it is that if we left it open-ended, there would be an incentive for people to put in frivolous appeals when they have absolutely no chance whatsoever. They may be as guilty as sin of a particular type of misconduct and there is no way whatsoever that the Industrial Relations Commission—on any reasonable person's assessment—would overturn that decision. If it is made open-ended without discretion, as the member is arguing for, there would be an awful lot —

Mr P. Papalia: No, we are arguing for the amendments I am moving; they are not open-ended. Read the amendments.

Mr J.M. FRANCIS: I have read every single one of the member for Warnbro's amendments; I have spent weeks reading them. We do not accept that, because we do not want these things to drag on beyond a reasonable time, which is why it is set out in the bill. As to the second part of the question about the State Solicitor, the advice I had yesterday is that the person from the State Solicitor's Office who drafted this is not "the" State Solicitor. I think I chose my words very carefully and said that the State Solicitor who drafted this held that position.

Mr D.J. Kelly: Who was that?

Mr J.M. FRANCIS: I can provide that name, can I not? It was Mr—no, that is the advice from the officers from the State Solicitor's Office. I will come back to that. I will get the member the name of the officer from the State Solicitor's Office who drafted it.

Mr F.M. LOGAN: The minister has claimed on numerous occasions in the house that the reason many of these provisions are being put into the Prisons Act by way of this bill is to speed up the process for the right of the chief executive officer to suspend or dismiss an officer when there is loss of confidence, and to speed up the process of the appeal, should an appeal arise from that. The minister gave a very small number of examples—I cannot remember how many. The member for Warnbro was in this place at the time.

Mr P. Papalia: Ultimately, a list was provided of three over the last two years.

Mr F.M. LOGAN: Three over the last two years have lasted longer than six months. Given that this whole position is based on the Police Act and the manner in which the police commissioner deals with similar incidents of loss of confidence, I would like the minister to tell us how many of those appeals in the police force have gone beyond six months, and why the minister thinks he can speed up the process by way of introducing these provisions. Also, does the minister accept that in due process the officer has the right to appeal? The minister made some comments a little earlier in his answer to the member for Warnbro that if the officer is so guilty and the issue is so black and white and that it is profound that the officer is guilty, it is just frivolous that the person may appeal. Is the minister suggesting that that person does not have the right to appeal?

Mr J.M. Francis: No, not at all.

Mr F.M. LOGAN: If due process, regardless of the incident, allows a person the right of appeal and allows him to have his matter tested in the Western Australian Industrial Relations Commission, the opposition suggests that during that due process, that person should be paid—that is, "should" be paid, not "may" be paid. The word in the clause that we are seeking to replace is "may".

Mr J.M. FRANCIS: It is very clear that this provides for an exceptional circumstance. The minister at the time may determine otherwise, but it is perfectly reasonable to have a cut-off date from when a particular person continues to be paid.

I do not have the details of how many police officers who were issued loss-of-confidence provisions had their matter delayed earlier than or beyond six months. I do not have that information.

Mr W.J. JOHNSTON: Does the minister think that there would be a circumstance in which the commissioner issues a loss-of-confidence notice and starts the process to have somebody terminated and the loss-of-confidence procedure results in the person retaining his job?

Mr J.M. FRANCIS: I do not want to go around in circles, but we dealt with this at length yesterday; perhaps it was when the member was not in the chamber. I referred to the advice I received about the police and I went into some detail about two cases that were overturned by the Western Australian Industrial Relations Commission. One officer received financial compensation and the other officer was reinstated. Once the legislation is passed and the regulations are in place, there may well be an instance in which the Industrial Relations Commission orders reinstatement.

Mr W.J. JOHNSTON: I am sorry; I did not ask my question properly. I will now ask it in a better way. Does the minister foresee any circumstance in which the commissioner would start a loss-of-confidence process by issuing a notice to show cause why a person should not lose his job and the commissioner withdraws that notice on the basis of evidence that is produced during the procedure?

Mr J.M. FRANCIS: It is a real possibility. The process might be started. Part of this is the ability to have the commissioner compel an officer to answer questions when he cannot provide information from an alternate source. That information might well be provided by the officer and the commissioner might say that he has absolutely done the right thing—end of process. That is very reasonable. In fact, it is my understanding from my conversations with the Commissioner of Police that that happens on a regular basis in the police force. Can I foresee it? Absolutely. Indeed, it might happen on a regular basis.

Mr W.J. JOHNSTON: What sort of information would come to the commissioner's attention during the hearing process that is set out in the legislation that would not be known to the commissioner before he issued the notice? The example the minister gave was information that the member might provide when he is compelled to answer a question, which might be information that is not known to the commissioner before he issues the notice. Can the minister provide an example of other issues that he thinks might come to his attention during the process?

Mr J.M. FRANCIS: I will not get bogged down with a range of hypotheticals, but there could be any number of varying sources of different information that might be drawn to the commissioner's attention during the course of an investigation.

Mr P. PAPALIA: I will revert to a couple of the minister's statements that he made a "couple of times ago" when he indicated that he wants to avoid providing an incentive to individuals to unnecessarily extend the process beyond six months, which is why maintenance payments will be constrained and terminated at six months. Conversely—let us flip this on its head—is the minister not providing an incentive to the department to extend the process beyond six months so that maintenance payments will be terminated, thereby constraining the ability of the individual to dispute the entire process and appeal against it because his pay ends after six months and he will not be able to fund a fight against the charge? Is the minister not, in exactly the same fashion, creating an incentive for the department, the employer, to extend the process intentionally beyond six months? I know that the minister is not stating that that is his intention, but has he not created an incentive for the department, if it is in dispute with an individual and it knows full well that that individual's means of funding his lifestyle and sustaining himself ends after six months, to extend the process beyond six months?

Mr J.M. FRANCIS: No, because I have confidence in the professionalism and standards of those in charge of the Department of Corrective Services to ensure that these issues are dealt with appropriately and in a timely manner. If I as the minister—hopefully this applies to future ministers—was made aware that the department had acted in such a way as to provide a financial disincentive and punish, if you will, an officer facing this process, I would consider that to fall under the exceptional circumstances clause. I would be absolutely furious with the Department of Corrective Services if it did what the member for Warnbro has suggested it could do, which is to deliberately drag out a matter. It is not my expectation that anyone in the public service, the Department of Corrective Services or any other department would deliberately drag out a matter out to cause financial hardship.

Mr P. Papalia: Would that be your view in every instance if you heard of something of that nature?

Mr J.M. FRANCIS: If it was deliberately done for that reason, I would consider that that is a reasonable situation for a minister to use the exceptional circumstances clause.

Mr P. Papalia: Why then is the minister opposing the use of the word "shall" in place of the word "may"?

Mr J.M. FRANCIS: What happens if it takes six months to get to an appeal and the case is reviewed and it is decided that the circumstances are not exceptional and that the department did not deliberately slow down the process? I oppose it because I would not consider those circumstances exceptional.

Mr P. PAPALIA: Has the minister read the wording of our amendment? If the minister had read the entire amendment, he would understand that we still want to give the Minister for Corrective Services the opportunity to say that he has to consider it, but because there are exceptional circumstances—that is, in a particular instance he feels that the individual concerned has unnecessarily extended the process—he would deem that the exceptional circumstance lies in that individual not behaving in a legitimate fashion; therefore, he would not extend the maintenance period. This provision will not make the minister extend the maintenance period; rather, it makes the minister consider it. In the event that there is an exceptional circumstance, he does not have to. The minister has said that he will not give the option of considering extending the maintenance period because he does not want to. This legislation is not about the minister. It has not been written for the minister nor has it been written for Commissioner McMahon. Rather, it has been written for the future and for any individual, no matter his personality. For that reason, the minister should err on the side of fairness to ensure that, regardless of the personality in the seat, the minister is compelled to consider extending the payment unless there is an exceptional circumstance, such as the person who has been charged has played the system.

Mr F.M. LOGAN: It is a pity that the member for Butler is not here, because he would be able to go through this example far better than I will be able to. He advised me of a situation in the Department of Corrective Services that arose at the end of the Court government in the 1990s. Six superintendents were stood aside, not by the minister, but as a result of charges brought by the Director of Public Prosecutions. They were stood aside for 18 months, and then reinstated. The minister says that there are only exceptional circumstances, but it has been proven in his own department when senior management officers were stood aside for 18 months. It had nothing to do with, or was outside the control of, the Minister for Corrective Services. Under this clause, they would not get paid after six months. Does the minister agree with that?

Mr J.M. FRANCIS: I have absolutely no knowledge of what happened in the Department of Corrective Services back in 1998.

Mr F.M. Logan: It doesn't matter; it happened.

Mr J.M. FRANCIS: The member said so. I do not know about it, so I will not comment.

Mr W.J. JOHNSTON: When the minister says that someone might have a frivolous appeal that would delay matters—a frivolous appeal to the Industrial Relations Commission—why would a frivolous appeal not be

dismissed by the Industrial Relations Commission? What is the benefit of taking a frivolous appeal to the Industrial Relations Commission?

Mr J.M. FRANCIS: If we want to ensure that people are continually paid during that process beyond what I would call a reasonable period, then we are not providing a financial incentive for people to appeal just to keep getting paid for that time.

Mr W.J. JOHNSTON: That was not the question I asked. Why would the Industrial Relations Commission not deal with the matter and dismiss it if it is a frivolous appeal? It is not as though the Industrial Relations Commission does not have powers.

Mr J.M. Francis: It would eventually.

Mr W.J. JOHNSTON: The minister says "eventually", but how long does the minister think that will take? Why does he think this will unnecessarily delay matters? The minister has not explained in any way why the Industrial Relations Commission would be expected by him to allow a frivolous appeal to delay procedures. That appears to me to be the minister's argument. I am just trying to understand the basis of that argument because it seems a bit wrongheaded. Anybody who has knowledge of these matters knows that the Industrial Relations Commission will not entertain a frivolous appeal.

Mr J.M. FRANCIS: I am advised that for that to happen, the Commissioner for Corrective Services, the CEO, will have to make an application to the Industrial Relations Commission to have it dismissed. I appreciate that the member for Cannington and I do not agree on this, but if it was open ended, every single person, regardless of the merits of the matter presented before the Industrial Relations Commission, would have a financial incentive to appeal even if they knew they had absolutely no chance of succeeding. I do not accept the merit of that argument.

Mr W.J. JOHNSTON: The minister still has not answered the real question: why would the commission entertain a frivolous appeal? I do not understand that. Why would the commission not simply dismiss an appeal without merit? The IRC does not comprise a bunch of numbskulls. The commissioners understand the law probably significantly better than most people I have ever met. One of their strengths is their commonsense. That is why union officials love appearing before them because they get stuff. Why does the minister think that the Industrial Relations Commission would entertain a frivolous appeal? He still has not answered that question. It is pretty damn fundamental because the basis of the minister's argument is that everybody will do a frivolous appeal because they will get extra money, but that is only in the case of the commission entertaining the appeal. The commission holds wide powers to deal with matters in any way it sees fit. Indeed, the Commissioner for Corrective Services could make any application he or she saw fit, all of which would mean that a frivolous appeal will be quickly dealt with. Why does the minister not have confidence in the Industrial Relations Commission to deal with matters appropriately? If that is the problem, would it not be faster to have this done by application to the Industrial Relations Commission so that the minister could have it as the decision-making body? Therefore, the Commissioner for Corrective Services would make an application to the commission and present his evidence, and the other side would try to rebut. That would solve everybody's problem because there would not be an appeal from that process—or there would be, but it would be beyond the employment relationship. That would be a nice and simple system with people knowing what they are doing making the decisions, instead of the employer. Without having spoken to the unions, I imagine the unions would probably be relaxed about that process.

If the minister wants to cut that frivolous opportunity, which does not exist, but even if it did exist, put the powers over to the Industrial Relations Commission—and Bob's your uncle! The problem the minister is predicting would then be solved, and we could all move on and not worry about stuff. However, the minister is creating this complex system that is trying to impose a new rule on employees to make them as though they were having this special relationship with the Crown that does not exist today. The minister's decision to do this will probably lead to higher pay for the people working in this sector. If he wants to keep away from frivolous appeals, why not have a better system? I still get back to my question: can the minister tell me why the Industrial Relations Commission will accept a frivolous appeal?

Mr J.M. FRANCIS: I refer the member back to 2002. The then Minister for Police, Hon Michelle Roberts, amended legislation to apply to police. I am advised that prior to 2002, the—that is, appeals that were frivolous for the dismissal of police officers before the loss-of-confidence provision was introduced. We know it happens. Also, I refer the member back to the Police Amendment Bill 2002—that is, the loss-of-confidence provision. The explanatory memorandum, relating to section 33M, under the heading "Maintenance payment", which is essentially what we are dealing with here, states —

> Significantly modifies the practice under previous administrative arrangements whereby members could appeal to the WAIRC after the Commissioner recommended their removal, but before being removed. Members also continued to receive pay and could generally resign prior to the appeal being determined. This acted as an incentive for members to appeal, even where the appeal had no merit.

It is exactly the same argument —

Mrs M.H. Roberts: That is because, under Premier Richard Court's regime, police officers who had been paid for two years or more were still on the books doing nothing.

Mr J.M. FRANCIS: I like the member for Midland's standards. I am applying exactly the same standards here today that she applied back in 2002.

Mr P. PAPALIA: I might just point out something at this stage, because I think I might have introduced a false perception onto the record. I referred to a six-month period being the maximum period under this new regime the minister is introducing. The normal routine would be to get 28 days. The minister states that there would be individuals extending the period unnecessarily to rake in the dollars. As I said before, the minister has created an incentive for the system to extend the period of the application beyond 28 days, at which time their maintenance payments, as well as their ability to sustain themselves, will stop. They will be vulnerable to the department—that is, their employer—manipulating the process. The minister has created exactly the opposite incentive. He is claiming his motivation is to avoid placing incentives in the system for people to appeal, and to extend their appeal process unnecessarily, but the minister has done exactly the same for the department. People from the department will be motivated at every opportunity to extend beyond a month, at which time the person's pay ends, and they will not be able to appeal in a fair fashion.

Mr J.M. FRANCIS: If what the member is saying were to happen, I would consider it highly unethical behaviour by a public servant in the state of Western Australia. It would not be acceptable. I would expect them to be dealt with accordingly under the Public Sector Management Act.

Mr P. PAPALIA: The legislation would not compel the minister to even consider it. It only states —

> The Minister may, in exceptional circumstances, direct that a maintenance payment must be paid to the prison officer for a specified period after the maintenance period.

In the normal course of events the minister would just be trundling along and the department would tell him, "This person has extended it themselves; we haven't concluded it. It has gone beyond 28 days; it's time for the maintenance period to end", and the minister would just tick it off. In this legislation, there is no compulsion on the minister to consider it. The minister says that he would, but no-one else necessarily would—and the minister might not. He may not even be aware of the situation other than the fact that it has gone beyond 28 days. That is the point.

Mr J.M. FRANCIS: I have absolutely no doubt whatsoever that if that was the case, the Western Australian Prison Officers' Union would make me fully aware of it.

Division

Amendment put and a division taken, the Acting Speaker (Mr I.M. Britza) casting his vote with the noes, with the following result —

Ayes (18)

Ms L.L. Baker	Mr F.M. Logan	Ms M.M. Quirk	Mr P.B. Watson
Dr A.D. Buti	Mr M. McGowan	Mrs M.H. Roberts	Mr B.S. Wyatt
Mr R.H. Cook	Ms S.F. McGurk	Ms R. Saffioti	Mr D.A. Templeman *(Teller)*
Mr W.J. Johnston	Mr P. Papalia	Mr C.J. Tallentire	
Mr D.J. Kelly	Mr J.R. Quigley	Mr P.C. Tinley	

Noes (32)

Mr P. Abetz	Ms E. Evangel	Mr R.F. Johnson	Dr M.D. Nahan
Mr F.A. Alban	Mr J.M. Francis	Mr S.K. L'Estrange	Mr D.C. Nalder
Mr C.J. Barnett	Mrs G.J. Godfrey	Mr R.S. Love	Mr J. Norberger
Mr I.C. Blayney	Dr K.D. Hames	Mr W.R. Marmion	Mr D.T. Redman
Mr I.M. Britza	Mrs L.M. Harvey	Mr J.E. McGrath	Mr A.J. Simpson
Mr M.J. Cowper	Mr C.D. Hatton	Mr P.T. Miles	Mr M.H. Taylor
Ms M.J. Davies	Mr A.P. Jacob	Ms A.R. Mitchell	Mr T.K. Waldron
Mr J.H.D. Day	Dr G.G. Jacobs	Mr N.W. Morton	Mr A. Krsticevic *(Teller)*

Pairs

Mr M.P. Murray	Mr T.R. Buswell
Ms J.M. Freeman	Ms W.M. Duncan
Ms J. Farrer	Mr G.M. Castrilli

Amendment thus negatived.

Mr P. PAPALIA: I move —

Page 10, after line 14 — To insert —

(4A) At the end of the specified period, the Minister shall review the progress of the appeal and renew the maintenance period for a further specified period not exceeding 6 months unless:

(a) the appeal has been determined by the WAIRC; or

(b) there are exceptional circumstances justifying why the prison officer should not be paid a maintenance payment.

In a way we are revisiting what we just debated. We are trying to throw in an additional clause. As we have indicated throughout this debate, we are trying to help the minister make this legislation fairer. Our initial position was that it is not necessary; nevertheless, throughout this debate we have offered options to make the legislation fairer than it might otherwise be. This is a key initiative. If a minister is not compelled to review the progress of an appeal and extend it for a period not exceeding six months—still providing an out; the ability not to do it if it has been determined by the WA Industrial Relations Commission, or not do it if there are exceptional circumstances justifying why the prison officer should not be paid a maintenance payment—both options are still there. We say the minister should be compelled to review the progress of the appeal; otherwise, it is unfair.

I will sit down in a moment and ask the member for Butler to recount a real situation in which this sort of consideration would have been necessary. In that case, the circumstance of not compelling a minister to consider extending a maintenance period would have been completely unjust. It is a real possibility. This is something that can happen and has happened. The minister keeps making the same response; that is, he would find that outrageous and he would be deeply offended, and he would see that the department changed its position. That is inadequate because this legislation applies to anybody. The minister is writing the legislation for any future minister and any future public servant engaged in this process. Because we are talking about people's integrity and people being publicly impugned and the consequences of that—entire livelihoods are at stake here in what we do—I think the minister needs to err on the side of caution. He also needs to err on the side of fairness. I ask the member for Butler to make a contribution.

Mr J.R. QUIGLEY: Part of my curriculum vitae included for many years general counsel to the Western Australian Prison Officers' Union. I represented many, many officers—probably 60 or 70 of them during the black deaths in custody inquiry—but a lot of them in criminal proceedings. There was a view within governments of the day that there existed within the prison service a "purple circle" of untouchable officers;—a group that the government and the minister of the day would clear out. This Minister for Corrective Services has already indicated that he is going to change the culture and that there are some people who should not be in the service. Prison officers work under incredible working conditions. They are charged with guarding and incarcerating some of the worst pathological liars in the state of Western Australia. I can recall a case. One of them was David Hyde and another was Dean McClure. Five superintendents were made the subject of what was then called a section 9 inquiry into happenings within what is known as the SHU, or the special handling unit.

We must bear in mind that the minister is presenting this legislation before Parliament not for himself, but for the ages; Parliament will not revisit these provisions likely for decades. I will tell the house what happened in this particular case. A psychopathic criminal by the name of Chapman escaped from the yard of the special handling unit onto the roof. The prison authorities called in what was then called the special operations group. I do not know what it is called now but it was the special extraction group. It attended the SHU and, at the request of the superintendent, went up onto the roof, which was no easy feat because, as the minister knows, it has a great big bullnose edge to it with a little yard. I do not know how the devil Chapman got up there, but he did. When he was brought down, he was struggling and was restrained on the ground. He wrote to the Ombudsman complaining of assault. The Ombudsman investigated this assault and concluded that there was nothing in the prisoner's complaint. The prisoner kept persevering. Bearing in mind that the closest prisoners to him in the unit were also psychopaths, one of them, who is now deceased, was a dreadful man called Everett, who was in prison for a very long period. He was a diagnosed psychopathic criminal. Chapman persuaded Everett to back up his story. The minister of the day commissioned the Director of Public Prosecutions to hold a section 9 investigation. At the end of the section 9 investigation, and after being entirely sucked in by these two psychopathic criminals, the DPP, Mr McKechnie, QC, as he then was, recommended that charges be brought against these officers, all of whom were superintendents by that stage.

Mr F.M. LOGAN: I am fascinated by the presentation of the member for Butler and I ask that he be given an extension.

Mr J.R. QUIGLEY: They were the superintendent of Casuarina Prison, the superintendent of Hakea Prison, the superintendent of Wooroloo Prison Farm, the superintendent of Pardelup Prison Farm and the superintendent in charge of the special operations group. Upon recommendation of the section 9 inquiry, the minister caused them all to be suspended and the director did his bit by charging them all with conspiracy to pervert the course of justice. These people were then stood down from duty for, I think, over two years. Fortunately, the provisions in this bill did not apply at that time and they were fully paid. I will tell members what happened at the trial, if I may, because it will bring it to a swift end. At the trial, when cross-examining Chapman on the story he had told the jury about how he had been assaulted and flogged by these people in the yard, I put to him an entirely different account and said, "What do you say to this account?" He said, "What you're now saying is a pack of lies, Mr Quigley. It's a pack of lies that you're making up." I said, "Now I want you to read the document I am reading", which was the statutory declaration that he had given to the Ombudsman five years before, and he had to read that to the jury. I said to him, "Which offence did you commit—perjury today or making a false declaration back then? Do you want the five or the two years?" He went white and the jury burst out laughing. Everett, the pathological liar, had been sitting outside, so we had to go through the whole charade again. I put the story to him and he said, "That's all lies; that's not how it happened" and I revealed that that was exactly what Derek John Chapman had said in a statutory declaration some years before.

I bring this case before Parliament to say that prison officers have to work with the worst of the worst in Western Australia—the scum of Western Australia—who are pathological liars, cheats and criminals and will do anything to implicate officers in wrongdoing. People get sucked in by them. People should not be without their pay until an offence has been proven against them. If someone in this Parliament—there is an elephant in the room whom I will not speak of—does the wrong thing, they still get their pay —

Mr D.J. Kelly: Until they are well.

Mr J.R. QUIGLEY: — until they are well or until they are cleared or convicted, because people make allegations. It is easy to make an allegation. In this particular case, if these amendments had been in situation at the time of the prison officers' trial, it would have visited the greatest injustice on the prison service. The minister commissioned the inquiry and the director presented the indictment, but neither of them bothered to read the documents that the pathological liar Chapman had signed five years previously. There is a very troubling view about this government that says that if there is the occasional injustice, it does not matter if it is for the greater good.

Mr D.J. KELLY: I would like to hear the member for Butler continue.

Mr J.R. QUIGLEY: I am referring to the Attorney General's statement in response to Chief Judge Martino's article in the newspaper in which he said that he was disturbed that a mandatory sentencing provision of 15 years may lead to some injustices. The Attorney General conceded the point that it may lead to some injustices, but the government wants heavier sentencing. The government is concerned not with justice for an individual, but with a more blanket approach.

We need to remember what the cessation of a person's income involves—a person losing their home and their children being ripped out of school. I have seen it all before in my legal practice. Children have been ripped out of school because people have had to sell the house and move elsewhere, without concrete proof of corruption.

These are not tender nurses in some clinic for the temporarily unwell; these are people whom society asks on a daily basis to look after the worst of the worst who will make up any lie about them. I remember the black death royal commission. I remember the tragic death of Robert Joseph Walker, an Indigenous person within the prison. Plays have been written about it. It was tragic. He was extracted from G and H landing at Fremantle Prison because he was slashing his wrists. He was restrained and, as a result of so many people restraining him, none of them realised that he had died of asphyxiation because he was not able to breathe properly. That was all a tragedy. However, each prisoner in blocks A, B, C, D, E, F, G and H on the west side of the new division who could look out of the windows gave evidence of this severe beating that he suffered. All they wanted was to destroy the officers. All this Chapman and the late criminal Everett wanted was to destroy the officers. Some of these people are very, very conniving. These officers are at risk and not just physically; they are at risk from false allegation and conspiracies on a daily basis. I support a strong disciplinary regime. I ultimately support loss-of-confidence provisions whereby the minister should be able to dismiss someone for loss of confidence, but it should be only after conviction; otherwise, they are operating on allegations brought by the worst of the worst.

If these provisions were in place at the time of the superintendents' trial, Dean McClure and David Hyde and the whole lot of them would have lost their homes. These are not wealthy people; these are public servants. Although on the one hand I support a very rigorous disciplinary proceeding because things will happen at times which we all wish did not happen and which will require a robust disciplinary proceeding, on the other side of the penny is fairness for the officers so that they and their families are not destroyed on the back of false allegations and are not destroyed by being stood down for two years like these officers were. I guarantee the minister that if he had been sitting in that chair at the time those prison officers were presented on an indictment for conspiracy to pervert the course of justice, he probably would have dismissed them for loss of confidence, but they certainly would not have been paid. I am very opposed to this clause and I support the member for Warnbro's amendment.

Mr J.M. FRANCIS: I thank the member for Butler. Honestly, as the member knows, I sit and listen to many of the words the member says in this place and take them all on board. I make two points. The member for Butler was in this place in 2002 when the same provisions were brought in for dealing with the police. I will not go back and check *Hansard*, but I do not remember the member for Butler crossing the floor and voting against his government's legislation when the same principles applied to the Western Australia Police. I agree that this is about the greater good. There are 5 050-odd adult prisoners in Western Australia right now and I cannot put my hand on my heart, as nobody can, and tell the house that every single one of those 5 050 is guilty; one or two may well be innocent. However, this is about the greater good. If the member wants to take a different philosophical position from that, that is fine. We believe in the greater good. We believe that this is an effective tool that the commissioner will use fairly to help reform the Department of Corrective Services and, quite frankly, my personal view is that it is long overdue.

Mr J.R. QUIGLEY: I want to respond to the comment made by the minister that he did not recall me voting against the provisions brought in for the police, but the minister overlooks—he was not in the chamber and he did not have the history of all this as he was 10 000 feet undersea—that the Commissioner of Police under section 8 always had a loss-of-confidence provision and there was no appeal against it, so we brought in an appeal against the loss of confidence. Why would I vote against that? Section 8 was very unfair because a commissioner could turn around and say, "I don't like you; get on your horse; go" because of loss of confidence, and the officer had no right of recourse. The only thing that was required was the minister's signature, and the minister always gave the commissioner his signature. The Labor Party resolved to provide an avenue of appeal to give equity, which was opposed by the Liberal Party. Those police always get paid. In the case of Mallard, those two crooks Shervill and Caporn were before the Corruption and Crime Commission for a couple of years and they got paid the whole time, with no questions asked. Not only did they get paid the whole time, but also at the government's expense, they were given a private office in Belmont to prepare their case against the CCC. That is unbelievable. By then they were commissioned rank, so that is how the system looks after the hierarchy, but it is not how it looks after the workers. It is all very well for the minister to say that he is concerned with the greater good and not as concerned with the individual case until the individual case is one of the government's own. The government has this great big pledge for Nate Dunbar, the poor child who was killed by a drink-driver, but when it is one of their own under the scope for jumping in a car and driving home after drinking, in the same manner as the person who killed Nate Dunbar—she had been drinking for some hours, as had the member for Vasse—they get all antsy.

Point of Order

Mr J.M. FRANCIS: I ask you to consider the point of relevance on this matter and ask you to bring the member for Butler back to the clause that we are considering.

The ACTING SPEAKER (Mr I.M. Britza): I take the point.

Debate Resumed

Mr J.R. QUIGLEY: I am addressing the point that the minister said that he is concerned with the greater good, not the individual. I was just pointing out that when the individual is one of the government's own or it is close to the individual, it is all about the individual and it is un-Australian to ask a question. I do not buy this "greater good" thing. It is a question of proximity to power, and that is the very point I was making about —

Ms M.M. Quirk: It is also an assessment of who is fit and proper.

Mr J.R. QUIGLEY: That is the very point I was making about Caporn and Shervill, because they were at the top of the tree, so when they got suspended, they could get paid for as long as they liked. Did they get dismissed for lack of confidence? No; they were parachuted into a cushy job in the minister's department. It is sickening. The thought that prison officers could be suspended like this without this safety provision that the member for Warnbro is valiantly and thoughtfully trying to put into the legislation means that these officers would suffer great injustice.

Mr P. PAPALIA: The member for Butler has been very erudite in outlining the real reasons for the need for some thought here, not just mindlessly parroting this line that this is what happened for the police. The police were coming from a different situation. They are not the same as prison officers and youth custodial officers. The bill in 2002 was changing different legislation from the legislation that now oversees the discipline of prison officers and youth custodial officers, so it is ridiculous to continue to refer to that. I want to bring it closer to home to someone whom the minister knows. Is the minister aware that one of the individuals to whom the member for Butler referred, one of the individuals integrally involved in the incident to which the member for Butler referred, was Superintendent Castle, who was formerly Acting Assistant Commissioner Craig Castle? He was in the emergency support group unit that contained one of the individuals who was charged in that incident to which the member referred. Had the situation played out under the legislation that the minister is introducing, he would not be here. I assume the minister considers him to be a good man. I assume the minister considers him to be a suitable person to be a superintendent. I assume that the minister would feel that his departure under an unjust system would have been unfair. The minister is introducing legislation that would enable someone of his ilk to be removed purely through economic deprivation. They would arrive at a point in time, through a delay in the process beyond 28 days, at which they would be confronted with the decision to either cease or concede their appeal, based on the need to have an income. Their income would end, their mortgages would be under threat, and if their children were in school, they would possibly not be able to continue to pay for that, and any other payments that they had to make for the necessities of life would be under threat because the minister's legislation does not compel fairness. It allows flaws and failures, and it allows people to be deprived of natural justice through the manipulation of their economic wellbeing, and all just because the minister wants to replicate the legislation that applies to the police.

There is no justification for that; the minister needs to think about it and consider some of these amendments. In particular, if he is going to consider any amendments, he should consider the ones that relate to providing fairness for individuals who are caught up in this process and who may be compelled to not pursue an appeal simply because they cannot afford it.

Mr J.M. FRANCIS: The member for Butler has left; otherwise, I would have explained to him that if he had moved on to proposed section 106, "Appeal right", under subdivision 3, "Appeal against removal of prison officer", he would have realised that there is actually a right of appeal in this process. Essentially, the member for Warnbro is trying to compare a section 9 hearing with loss-of-confidence provisions, and they are two separate and very different processes.

Mr P. PAPALIA: We are not comparing them; we are saying that the same individuals who were subject to this section 9 process would, under this legislation, be subject to this process. This process would not have entitled them to continue to receive their pay, as they did in that situation, in which they went on for two years, caught in a situation that was not of their own making. Under this legislation, it would have terminated after 28 days or, at the most, six months, and those gentlemen caught in that situation would not be here. They would not have continued; they would not have been successful because they would have been compelled to give up because they had no money; they had no pay. Under the section 9 provisions and the incident to which the minister referred, they would have continued to receive their pay—fortunately; otherwise, Superintendent Castle would not be here today. He would have had to go off and find another job because he would not have been able to afford to keep paying his mortgage. That is the point. We are not saying that that process is the one that the minister is introducing; we are saying that the process he is introducing stands to be less fair because it does not have the provisions for fairness. It does not compel the minister or the system to provide for maintenance payments beyond these limited opportunities that have been drafted in legislation. That is the point.

Mr D. KELLY: The minister seems to be proceeding on the basis that he can be confident that the employer will never play out the process with the idea that playing out the process will impact upon the employee because of the financial constraints that come from the clock ticking. I just do not think the minister can be confident that that will not take place. These sorts of proceedings are always subject to time constraints. In every step of the process in these sorts of proceedings, there are time limits. Information has to be exchanged, people have to be given time to respond to allegations, and the lawyers have to be given time to consider what has been given and then respond. Throughout that whole process, when we are talking about a monetary time period of only a few months, I am not saying that it is going to be at the front of the mind of those representing the employer that they would deliberately not answer their phone, deliberately miss deadlines, or deliberately do things that drag out the process; but the incentive is always there in the process for the employer to take that bit of extra time: "Do we need 48 hours to respond to this, or do we need seven days? Do we need seven days, or maybe 14?" That is the way the legal process works; it is almost part of the tools or the armoury when one is dealing with legal proceedings. I am not saying that that is corrupt, and I am not even saying that that is at the front of lawyers' minds when they deal with these issues, but it is built into the legal process. When one asks, "Can you respond to this in 14 days?", the answer is invariably, "No; I'll probably need 72." It is part of the process, and I am speaking not from some sort of academic view of how this might happen, but from dealing with matters for 20 years and seeing how this plays out.

Mr J.M. Francis: You're not that old!

Mr D.J. KELLY: Maybe I do not look that old, but, yes, 20 years!

If at the back of an employee's mind is, "Well, if I can't get this resolved by X, the employer's going to be able to effectively starve me out and I'm going to lose my pay", that will bear heavily on the employee's mind. On the other side of the table, if the employer can say, "Well, we know that once this person hits the period where they stop getting paid, it's going to put immense pressure on them", it will have an impact upon how matters are played out. Do not say that it will not, because it will. That is not to say that the people involved have a corrupt way of dealing with things, and it is not to say that there is some grand conspiracy; I am just saying that this is how legal processes travel. If one can use the timetabling of a matter to deliver the outcome one wants, lawyers are almost of the view that one would be negligent not to. The minister has put in place time frames that are really quite short—six months for an appeal to the Industrial Relations Commission. Appeals, for example, have to be dealt with under this legislation by three commissioners, one of whom has to be a chief commissioner or a senior commissioner. To just get three of them to sit on the same day, one could be waiting eight weeks. The time frames in the legislation are way too short to really provide fairness to employees.

Amendment put and negatived.

Mr P. PAPALIA: I did not divide on that amendment, but I give the minister notice that I will on the next one. This is the minister's last chance in this particular area to apply some degree of fairness to the scenario that individuals can get caught in the process and it can extend beyond the standard period, which is 28 days, not six months, subject to the minister deciding to consider it, because that is all "may" compels him to do. It does not compel him; it is only if he feels like it.

I move —

> Page 10, after line 17 — To insert —
>
> (5) A prison officer who has commenced an appeal under section 106 and is aggrieved by:
>
> (a) a period of suspension; or
>
> (b) the exercise of the Minister's discretion to not make a maintenance payment that results in undue hardship to the prison officer,
>
> may apply to a commissioner in the WAIRC who may either substitute or vary or affirm the decision of the chief executive officer, or the Minister, as the case may be.

That is a reasonable contribution. We are proposing that the minister add a last chance for these individuals who might otherwise be deeply affected economically by something that is completely out of their control, such as an unforeseen extension of the period if, for whatever reason—oversight by the minister or failure in the administrative process—the minister fails to make the decision to extend their maintenance payment period and they are then compelled to consider what they do because of financial constraints. It is not a question of whether it is fair, whether they concede the charge or whether they agree with the commissioner; it is about whether they can afford to continue with their normal life. They will be compelled to make that decision and to forfeit their chance at justice—the justice that was given to the nine or so defendants to whom the member for Butler referred

earlier, one of whom is now a superintendent but at that time was just a prison officer in the emergency support group. Had that officer been compelled to consider, as he would under this legislation if the circumstances come together, whether to continue his appeal, he would have had to leave the Department of Corrective Services and get another job. That is because he could not have afforded to keep his life together, because the maintenance payments would not have come to him automatically and the minister would not be compelled to consider them and to make a decision as to whether or not they should be extended. All those individuals were innocent, which is no small matter. We are not talking about one person, although in my view it would be egregious if even one person were affected by this; it would be wrong. The minister and I have different philosophical views about justice, because I think that everyone deserves justice, whereas the minister thinks it is okay to condemn a few people in the course of the greater good—except, of course, when it is someone in the cabinet who has done wrong, then that is okay and that person deserves every bit of justice.

Mr J.R. Quigley: Do not be un-Australian, member!

Mr P. PAPALIA: I am sorry; I am being un-Australian.

The ACTING SPEAKER (Mr N.W. Morton): Keep to the amendment, thank you, members.

Mr P. PAPALIA: I will stop being un-Australian and return to the amendment. It is not as though there has been a lack of justice in Western Australia in the last couple of weeks. The extraordinary juxtaposition of one drunk driver compared with another is just amazing!

Mr D.J. Kelly: Don't worry; the suburb is still intact!

Mr P. PAPALIA: That is right. We are told, by the backbench of the Liberal Party —

The ACTING SPEAKER: Members, I remind you to bring your conversations back to the amendment we are discussing, thank you.

Mr P. PAPALIA: I will, Mr Acting Speaker. The observation by the backbench of the Liberal Party is that it is okay because the suburb is still intact is reasonable to reflect upon, but we will not and we will go on with this matter.

The minister has the opportunity to insert just a tiny safety net for the people who will be caught up in this future system, a system that the minister will impose on prison officers, many of whom may be completely innocent of the accusations laid against them that result in the loss-of-confidence motion. Nevertheless, they may be compelled to give up on their appeal because of economic circumstances resulting from the legislation the minister has written, which does not provide them with any safety measures.

Mr J.R. QUIGLEY: I will respond on behalf of the minister: "No, I will not accept this amendment because it puts in the hands of an independent body the power to override me!" No conservative minister ever goes along with that. The Liberal Party came along to this Parliament to oppose the police getting a right of appeal for being suspended without pay. Why would members opposite come along here and extend to hardworking prison officers and youth custodial officers that which would cause them to be transparently reviewed? No Liberal minister has ever agreed to a proposition such as that, and we can go back 40 years! The reason why I go back in history is that it was a Belgian-born American philosopher—whose name I just cannot pronounce at the moment and who I think died in Germany—who said that those who forget history are doomed to repeat it. I do not forget the history of my life at least, and I recall that when a Labor government came along to this very chamber and proposed that there be an ombudsman in Western Australia, the Liberals fought it tooth and nail. They were not going to have an independent authority review the actions of their agencies. That is going right back to the 1970s in the government of "Honest John" Tonkin. We can go back as far as we like and at every turn, whenever there has been a proposal to put into legislation a right of review of a minister's actions or decisions, conservatives have always opposed that. I do not know why it is. I do not know whether it is in the DNA of the born-to-rule. I do not know whether it is genetically inherited: we are always right and we are not subject to review! It is inconceivable that a person whose whole life and his family's life could be thrown on the scrapheap by a wrong ministerial call could not have a right to independent review. This is not seeking anything more than an independent umpire, the Western Australian Industrial Relations Commission, to review whether he should continue to be paid. I can understand the minister wanting to hold the axe and not wanting anyone to review the basis of his decision, because if the Industrial Relations Commission says, "Pay this man", the minister would consider it a personal slight—unnecessarily, but that is how the minister would view it. In this very modestly framed amendment, what is there to object to? Nothing! It proposed that an independent person, removed from the cut and thrust of politics, gets to review the decision made by a minister, which decision could impact upon the whole life of an officer and the lives of others—namely, his wife and children.

Even though I rose to ironically or with some sarcasm respond on behalf of the minister saying, "No, member, you're not going to get your amendment", that was only me forecasting what was going to happen. I strongly recommend and commend the amendment. It does not take away the minister's power or his right to make a decision, but it grants to the innocent a right of appeal, and who in a western democracy would want to deny that?

Mr D.J. KELLY: I paused for a minute because I hoped the minister would get on his feet and justify voting against this amendment.

Mr J.R. Quigley: I thought he might say that it was reasonable and go along with it.

Mr D.J. KELLY: That would be very pleasant. In all seriousness, I can understand why the minister does not want a system whereby the employee can drag the process out for such a long time that we never get to the end of the process and the government ends up paying someone, against whom the minister believes he has a strong case, for years and years. We have to have a system that has the proper checks and balances in it. At the moment, under this legislation, the minister is just loading up measure after measure that gives the minister absolute comfort that no employee will string it out, but the minister has gone to the point at which he is now stacking the cards heavily in his favour. The minister is going beyond what I and members on this side of the house consider reasonable, with checks and balances to ensure that people do not string it out. The minister has gone way beyond that and is stacking the cards in such a way that it will plainly play out so that the employee will be placed under financial stress very quickly in the process, rather than it being an even process that gives everybody an opportunity to have matters dealt with fairly.

The amendment we have moved that seeks a last right of appeal from the Western Australian Industrial Relations Commission on the issue of the employee continuing to be paid is a very modest option for the employee. Industrial relations commissioners are not stupid. If an employee makes what the minister calls a frivolous claim and seeks from the commission continuation of their payment and the claim has no merit, they will not get anywhere with the commission. In fact, if an employee is going to play the system, they will know that going to the commission and pleading their case will be fruitless. Only employees in financial hardship who have a genuine case to argue would even contemplate wasting their time going to the Industrial Relations Commission to get a maintenance period extended. When governments appoint industrial relations commissioners, they do not appoint people who willy-nilly go around overriding decisions of government employers or ministers. They just do not do it. Getting an industrial relations commissioner to give a government a kick up the backside is like pushing the proverbial uphill with our nose. This amendment is a modest measure to put some degree of fairness back into the system so that employees can go through this process without being starved out of it. It is such a modest measure that the minister should consider it.

I hope that the minister is not the type of person who thinks, "No matter what the opposition argues, I will not accept any amendments because it's a badge of honour. I'm a government minister; I just have to say no, no, no. If I don't, my colleagues in cabinet will think I'm a hopeless minister if I listen to an argument put up by the opposition." The minister could agree with this very modest measure and it would give some degree of comfort to employees that they will not be starved out of the system when they have a legitimate case to argue.

Mr F.M. LOGAN: I understand that the minister will stand in a minute and dismiss this amendment because he does not agree with it. He will come back to his argument that this provision to be included in the Prisons Act will speed up the disciplinary process of dealing with what he believes are errant prison officers or possibly dealing with criminal action by a prison officer who should not be working in the prison system. Unfortunately, he has not backed up his claims with a huge number of examples to justify these provisions. It was worse the other night because the minister could not define the difference between a performance-related issue under the disciplinary process and the Public Sector Management Act and the same issue under the CEO's lack-of-confidence provisions in this bill. Bear in mind, member for Warnbro, that his amendment will include some fairness for people who have been stood down by the CEO under the lack-of-confidence provisions in this bill due to their lack of performance. That is in the definition; it is not because they are criminals, have been associated with bikie gang members or have been smuggling drugs into the prison. It could come down to the issue of their work-related performance. The other day when I tried to get the minister to define the difference between which provision would apply—was it the disciplinary process under the Public Sector Management Act or the disciplinary process under these lack-of-confidence provisions—he could not do it. We can only assume that both will apply and it will be at the CEO's discretion which one he will use to get rid of someone. The quickest way to get rid of someone is to invoke the lack-of-confidence provisions.

Once the bill comes into force, this issue of fairness around the payment of wages will come into play as well. We are talking about the one or two really bad officers the minister keeps pointing to. This could also apply to someone who has been stood down on the basis of lack of confidence by the commissioner in their work-related

performance. This provision could play out that way because this bill will amend the act to allow that. The definitions clearly state that the commissioner can apply his lack-of-confidence provisions on the basis of performance, and that is just not the right thing to do. It will not resolve the issues the minister has referred to regarding bad apples within the system. There is no evidence to show that it will change the culture within the prison system one iota, but it will shift the balance of industrial power more firmly in favour of the CEO to the point at which the CEO can terminate someone's employment and demand they answer questions. The prison officer will have no right to be properly represented in an interview; they will be required to answer questions and they can be stood down ultimately without pay. This is bad, unfair law. The bill should be rejected but if it is not going to be rejected, this amendment should be agreed to.

Mr J.M. FRANCIS: I am not going to accept the amendment, obviously, thank you very much, member for Mindarie, for speaking on my behalf.

Mr J.R. Quigley: Butler.

Mr J.M. FRANCIS: The member for Cockburn's comments were not particularly relevant to the amendment that the member for Warnbro moved, but I will address them now rather muck around after we divide. I will genuinely try to put some flesh on the bones for the member for Cockburn.

Point of Order

Mr J.R. QUIGLEY: The minister inadvertently called me the member for Mindarie, and I did not hear him correct it. It is the member for Butler. I want to make sure Hansard got the correction.

The ACTING SPEAKER (Mr N.W. Morton): He is the member for Butler. Continue, minister.

Mr J.M. FRANCIS: I do apologise.

Debate Resumed

Mr J.M. FRANCIS: To put flesh on the bones, in all seriousness, I refer the member to the thrust of this from the police. I will put on the record examples of conditions under which the commissioner's confidence can be called into question. I expect that when the Commissioner for Corrective Services proclaims similar provisions for prison officers, it will be pretty much comparable, so that should give the member for Cockburn some guidance. The conditions state —

> Without limiting the matters to which the Commissioner of Police may have regard, confidence may be lost in an officer where on information or material is considered that the officer —

It can be either one of the following —

- Lacks integrity or honesty;
- Has been untruthful, including at an internal interview, before a selection panel, a tribunal, or a Court;
- Has shown a lack of ethical judgment;
- Has, or had, an improper association;
- Has demonstrated a failure to carry out the duties of office;
- Has demonstrated an inability, or an unwillingness, to comply with standard operating procedures;
- Has displayed an attitude that demonstrates inability, or unwillingness, to accept responsibility for their actions, or accept, instruction, education or training with respect to duties as a police officer;
- Having engaged in conduct that is suspicious, fails to provide a satisfactory explanation for the conduct;
- Due to their conduct, gives rise to a reasonable doubt that the officer will be able, or willing, to carry out duties with sufficient integrity or competence;
- Has failed to give a satisfactory explanation for conduct, or other matters, of which the officer has knowledge;
- Has failed to comply with a lawful order;
- Has refused to submit to an interview without a satisfactory excuse;
- Has engaged in serious misconduct;

- Has used unnecessary or excessive force against another; or

That could well happen in the prison system. The list continues —

- Has committed or has been charged or convicted of a criminal offence.

It is the expectation of the government and the Department of Corrective Services that the use-of-force provisions will not override procedures within the Public Sector Management Act. They will not be used on regular occasions; they will be the exception rather than the norm. I have complete faith that these provisions, once enacted, will be used in a responsible and reasonable manner.

Mr P. PAPALIA: I want to quickly refer to the list the minister just read out and ask: which one of those items on that list would now not normally result—had an officer committed one of those offences or one of those failures—in disciplinary processes, referral to the Corruption and Crime Commission and/or an investigation and prosecution by Western Australia Police? Which one of those items on that list does the minister believe is not adequately covered by the current measures—by current legislation and the current disciplinary process? I do not condone any of those things the minister has listed; not one of those things would the opposition object to an individual being disciplined for. The whole question we are left with is: why is this legislation needed? Is the minister saying that those things are now okay? Is the minister telling us that in the Department of Corrective Services right now every one of those things on that list is quite acceptable and is not subject to any action by the department, and that management in the department is allowing that sort of activity to go on without any action? Or is the minister suggesting that those sorts of things cannot be dealt with through the provisions of the CCC act or normal criminal law legislation in Western Australia and be investigated by Western Australia Police, or, alternatively, through the Public Sector Management Act, particularly for youth custodial officers because they are subject to it already? What is the minister's claim? Do not read out a list that we already know is wrong and should be dealt with. Is the minister saying that his department is failing to deal with those matters right now? Is that what he is claiming?

Mr J.M. FRANCIS: As I have said numerous times—I think we have been on this clause now for almost four or five hours—loss-of-confidence provisions will allow the Commissioner of Corrective Services to deal with these matters in a much more expedited manner. Of course, not all the things on that list are subject to either referral to the CCC or prosecution under the Criminal Code. As I have said many times, this is an issue of giving the commissioner an ability to expedite the process. The claim that police officers should have the right to remain in office unless found guilty of a criminal disciplinary charge is outweighed by the community's right to have a mechanism that will ensure that only those of the highest integrity remain in the force, and I expect exactly the same standard to apply to the Department of Corrective Services and its officers.

Mr F.M. LOGAN: I thank the minister for providing that further information as to how the process works in terms of the police department, because it was not dealt with the other night. But I do ask, following on from the member for Warnbro, of that list of provisions that applies for disciplinary process for lack of confidence in the police force, which, if any, of those provisions the minister read out are unable to be dealt with —

Mr J.M. Francis: By the CCC?

Mr F.M. LOGAN: No, under the current legislation that applies to prison officers working in the prison system, including the Public Sector Management Act, and the normal award processes—employment provision processes—that are in place? Which of those cannot be dealt with, and therefore justify this legislation?

Mr J.M. FRANCIS: The disciplinary process is a different process—again, we went through this at length the other night. Loss of confidence is not linked to guilt or innocence or any standard of proof as in a criminal trial, although it may be relevant that the officer has been found guilty of a criminal or disciplinary offence. Public confidence cannot be maintained if the officer can only be removed following a formal hearing. Member for Cockburn, without going back through the list, there are a number of things here—going back to the first question—that would not be referred to the CCC and would not be subject to prosecution under the Criminal Code, such as showing a lack of ethical judgement, lacking integrity or honesty or being untruthful before a selection panel or court. Obviously, lying to a court would be subject to a different procedure. The list continues —

> Has displayed an attitude that demonstrates inability, or unwillingness, to accept responsibility for their actions, or accept, instruction, education or training with respect to duties as a … officer.

There is a number of different things there that would be referred to the CCC that would not be subject to the Criminal Code, but that any fair and reasonable person would think would mean someone would not be suitable to continue in the job. The key point here is that prison officers are not subject to the Public Sector Management Act at this point in time.

Mr F.M. LOGAN: The only ones the minister has drawn my attention to are those not subject to existing legislation, but are dealt with by an act of Parliament; if the minister is saying it is not the Public Sector Management Act, it will be the Industrial Relations Act.

Mr P. Papalia: Or the Prisons Act.

Mr F.M. LOGAN: Or the Prisons Act.

All those provisions the minister just read out that he said therefore justify this legislation are already dealt with by a number of acts of Parliament, and, more particularly, all the policy guidelines in the minister's department, including his existing power to suspend. All those other issues that the minister says justify the existence of this legislation are already dealt with by existing pieces of legislation. If it is not the Public Sector Management Act, it would be the Prisons Act, the Industrial Relations Act or the normal policy procedures for the department that are simply management policies.

Mr J.M. FRANCIS: I have referred to the case of Carlyon in previous consideration of this clause. In that case the Industrial Relations Commission endorsed the approach that had been taken by the commissioner under the previous administrative procedure that provided for the removal of police officers. In relation to what the commissioner needed to be satisfied of, according to my notes, the commission stated —

> …it is not necessary that the Commissioner establish that the police officer concerned is guilty of misconduct, but simply that there be a proper basis upon which the Commissioner of Police could conclude that the conduct of the police officer in question was of such a nature as to put the public confidence in the Police Force in jeopardy.

I think it is perfectly appropriate to apply exactly the same standards to prison officers within the Department of Corrective Services.

Mr P. PAPALIA: Clearly, the minister is not countenancing any of our amendments, despite this one being quite reasonable. I think they are all reasonable, but if the minister was in any way interested in displaying the slightest amount of concern over fairness, this would be an acceptable amendment. But beyond that, I want to follow up on the member for Bassendean's commentary regarding ministers who accept amendments and those who do not, and also departments that accept amendments, having drafted legislation, or advisers who provide legislation and refuse to countenance change.

There was a predecessor in the minister's portfolio who actually listened to proposals during consideration in detail and was willing to accept an amendment from the other side of the house if he felt that that amendment made the legislation better and no doubt fairer. As well, and quite sadly, the former Treasurer, who is in a bad way, probably more than any other minister in the current government was willing to consider amendments from this side of the house. On many occasions I saw him listen to the argument, discuss the proposal and sometimes amend the amendment, but then adjust the legislation. Does the minister know what message that conveyed to the people that were going to be affected by that legislation? It conveyed the impression that he was willing to try to work towards getting the best possible outcome. He was not bull-headedly pushing ahead and refusing in an obstinate and arrogant fashion to consider the impact on the workforce. Ministers and departments that do not do that convey the impression that they do not care about their workforce.

This goes back to the initial contribution I made during the second reading debate about leadership. It is not good leadership to send a message to those whom you are trying to lead that you do not care about them. It is not good leadership to devolve all responsibility for any failures to somebody else and accept only praise and accolades for the things that turn out okay. That is a bad message. If the minister is going to be a leader, then he should lead. If the minister is going to take responsibility and claim that there is some major cultural challenge afflicting his department and he wants to pursue changing that culture, then he must know that the very basic first step in change management is to engage with the workforce. It has to take ownership of the change. People cannot be compelled to change through an edict from above. It is the most basic of management principles: the only way to effect widespread cultural change in any organisation is to have the members of that organisation believe in the objective and take ownership of the change. One does not do that by introducing a bit of legislation that conveys only one message and that is: "We do not trust you; we want to have the power to inflict pain on you and we want to be able to threaten you with dismissal without any recourse." That, essentially, is what it is. There is no fairness in a process that has a limited appeal, a limited maintenance payment period and a limited opportunity to extend that maintenance period for a workforce that is not wealthy. Those workers do not have a great opportunity to extend their revenue stream in the event that they are stood aside by the commissioner.

As has been indicated through the example given to us by the member for Butler, it may be for an unfair situation. It may be that the individuals caught up in this process are actually innocent. They may be like now Superintendent Castle, who happened to be a prison officer in the emergency support group unit. He just

happened to be on duty that day, was accused of something by a criminal, then lost his position for two years while he fought the appeals process. Under this government's legislation they would not get that process. It may be that those people would be treated in an unfair fashion and the minister is not accepting any amendments and sending a really negative message to the workforce. I cannot understand it; I cannot fathom why the minister is doing that.

Mr J.M. FRANCIS: I point out to the member for Warnbro that currently under the act if an officer is eventually removed with 28 days' notice and on day 27 they put in an appeal, they will only get one day's pay. They do not get it continued. In this bill, in exceptional circumstances, the minister may consider extending that for up to six months.

Mr P. Papalia: Are you suggesting that you do not need to introduce the legislation and you can kick them out after 28 days?

Mr J.M. FRANCIS: No, member; what I am saying is that the minister, in exceptional circumstances, may consider continuing to pay the officer for up to six months. If an officer is removed under the current process, which, as I have said, is prolonged in many cases, they only have 28 days' notice and even if they put in an appeal at any time, they will only get the balance of that 28 days' notice in pay. I put it to the member that this is a far fairer system when it comes to having checks and balances for someone who may wrongly—if that happens—be subject to loss-of-confidence provisions. It is up to six months at the discretion of the minister for exceptional circumstances compared with the current absolute limit of 28 days.

Mr P. PAPALIA: This is my last, quick contribution. Clearly, we are not going to agree on this but I do want to elicit a clarification from the minister for *Hansard* and guidance for anyone reading this in the future. Is the minister definitely saying that the circumstances he envisages these processes being employed in would only be in absolute exceptional circumstances?

Mr J.M. FRANCIS: Yes, absolutely. I make it crystal clear; there are varying circumstances but they are exceptional circumstances that give rise to the Commissioner of Corrective Services losing confidence in an officer's suitability for all the reasons stated in the bill.

Division

Amendment put and a division taken, the Acting Speaker (Mr N. Morton) casting his vote with the noes, with the following result —

Ayes (18)

Ms L.L. Baker	Mr D.J. Kelly	Ms M.M. Quirk	Mr P.B. Watson
Dr A.D. Buti	Mr F.M. Logan	Mrs M.H. Roberts	Mr B.S. Wyatt
Mr R.H. Cook	Mr M. McGowan	Ms R. Saffioti	Ms S.F. McGurk *(Teller)*
Ms J. Farrer	Mr P. Papalia	Mr C.J. Tallentire	
Mr W.J. Johnston	Mr J.R. Quigley	Mr P.C. Tinley	

Noes (31)

Mr P. Abetz	Ms E. Evangel	Mr S.K. L'Estrange	Mr D.C. Nalder
Mr F.A. Alban	Mr J.M. Francis	Mr R.S. Love	Mr J. Norberger
Mr C.J. Barnett	Mrs G.J. Godfrey	Mr W.R. Marmion	Mr D.T. Redman
Mr I.C. Blayney	Dr K.D. Hames	Mr J.E. McGrath	Mr A.J. Simpson
Mr I.M. Britza	Mrs L.M. Harvey	Mr P.T. Miles	Mr M.H. Taylor
Mr M.J. Cowper	Mr C.D. Hatton	Ms A.R. Mitchell	Mr T.K. Waldron
Ms M.J. Davies	Mr A.P. Jacob	Mr N.W. Morton	Mr A. Krsticevic *(Teller)*
Mr J.H.D. Day	Dr G.G. Jacobs	Dr M.D. Nahan	

Pairs

Mr M.P. Murray	Mr T.R. Buswell
Ms J.M. Freeman	Ms W.M. Duncan
Mr D.A. Templeman	Mr G.M. Castrilli

Amendment thus negatived.

Mr P. PAPALIA — by leave: I move —

Page 12, line 14 — To delete "section" and substitute —

subdivision

Page 12, after line 25 — To insert —

(d) fourth, it must consider the validity and cogency of the facts on which the chief executive officer has determined that the officer has engaged in corrupt conduct and is no longer a fit and proper person to hold a position as a prison officer.

Page 12, lines 26 to 30 — To delete the lines.

Page 13, after line 13 — To insert —

; and

(c) the validity and cogency of the facts on which the chief executive officer has determined that the officer has engaged in corrupt conduct (or any other conduct constituting an indictable offence), and is no longer a fit and proper person to hold a position as a prison officer.

Page 14, lines 5 to 13 — To delete the lines.

Page 15, after line 30 — To insert —

; and

(c) the WAIRC must allow the appellant to amend any reasons why the dismissal was harsh, oppressive or unfair.

Page 19, line 12 — To delete "(not exceeding 12 months)".

Page 21, lines 13 and 14 — To delete the lines.

Page 22, lines 2 to 6 — To delete the lines and substitute —

element of an offence of which the prison officer has been convicted.

Page 22, after line 30 — To insert —

(3A) A prison officer aggrieved by the period of suspension may appeal the chief executive officer's decision under section 103(5).

As discussed, and in the interests of moving along with the legislation, the remainder of the amendments are in identical fashion—namely, they are not only aimed at introducing fairness or what we believe to be the need for fairness in this legislation, but also aimed at removing some of the more onerous components. They reflect what we have said to date about this legislation: the bill is largely unnecessary, but if we must have it, the minister should try to constrain it to those people who are corrupt or have broken the law.

At the moment, the vast majority of prison officers who get caught up in their disciplinary process and certainly other youth custodial officers who get caught up in their disciplinary processes—I am talking about prison officers here—do not need any new legislation. They just need to be managed in an appropriate fashion. If there is an ongoing process—that is, taking a long time and it is minor in nature—that should be dealt with through the management process. It should be dealt with through proper leadership at all levels. Individuals should be dealt with in a fair and appropriate fashion; we would never dispute that. I have no doubt that amongst a prison officer workforce comprising a couple of thousand people there are corrupt individuals. I have no doubt that there are people who are breaking the law—we know that. It is just like any workforce; it is not extraordinary. I know the minister likes to huff and puff about how there is a corrupt culture; he likes to wave his arms about to suggest that he is the one who has come to solve the world's problems; that he has discovered corrupt matters that no other Barnett government corrective services ministers have been able to identify. The minister is the only one who has been able to find this failure that he has identified and now he will resolve it through this legislation. I know that. I know he would like everyone to believe that the Department of Corrective Services is incredibly corrupt, but I do not believe that. I think there are corrupt individuals—numbers of them. There are individuals out there breaking the law in their department—doubtless; undeniable, because it is about prisons! The former Minister for Corrective Services in the house knows it. Everyone knows it; that is true. However, I do not buy the suggestion that it is overwhelming. I do not buy the suggestion that we need this legislation to deal with corruption because we have got some quite powerful legislation in the form of the Corruption and Crime Commission Act 2003.

I know we have a good police service in Western Australia. I know we have people capable of investigating that type of matter and dealing with it. We just need appropriate leadership and management of individuals below those levels of indiscretion and failure. We do not need this legislation to deal with those people. For those levels, we need them to be referred to the proper agency or agencies for action. That is it. There is no evidence, nor has the minister produced any evidence, of this overwhelming challenge that he is confronting. Yes, we know juvenile detention is a mess, but the minister did that—not the minister personally, but his government did

it. It shut down one of only two juvenile detention facilities. What else did the government think was going to happen? It was bound to collapse.

Turning to adult custodial facilities, in the first 18 months of the minister's government, we saw the prison population increase by 27 per cent. What else did the government think was going happen? Did the minister think it was going to make it more efficient by adding an almost 30 per cent workload to a department? What other department in the Western Australian government could absorb a 30 per cent increase in its workload in 18 months and not collapse? I reckon the Department of Corrective Services has done pretty well in light of what the government has done to it. The government has increased the cost of running the department by 57 per cent! It is extraordinary that the minister should then turn around and try to blame the workforce by introducing legislation of such a nature that suggests the workforce is all at fault. That is what is extraordinary. It is not what the workforce is doing; it is the government that is extraordinary. That it would seek to blame the people suffering under the consequences of this government's action, its ineptitude, its mismanagement and its lack of resourcing, is the real story here. None of that has changed. This legislation is a sham. The government has made no pretence of introducing any statistics or data to support its argument. It has provided no real argument for changing the status quo other than —

Point of Order

Mr F.M. LOGAN: I seek that the member continues. I am asking for an extension. I am trying to get a point of order in order to stop him!

The ACTING SPEAKER (Mr N.W. Morton): You cannot do it by way of point of order. The member needs to sit down. There is no point of order. The member needs to wait until the member for Warnbro has sat down, and then you can stand up, take the call and give it to the member.

Debate Resumed

Ms S.F. McGURK: I would like to hear the member for Warnbro continue his point. Thank you.

Mr P. PAPALIA: Thank you. The extraordinary thing about that whole little interlude is that I was building to a crescendo with a view to sitting down!

Mr J.M. Francis: I would have given you the time!

Mr P. PAPALIA: I know!

Mr F.M. Logan: I was trying to help you!

Mr P. PAPALIA: I appreciate the sentiment from the member for Cockburn. I thank him very much.

If I am extremely generous I can suggest that the legislation is well meaning, but I do not think it is motivated by the right sentiment. I do not think it will send a good message to a workforce that deals with some serious issues. They are confronted, as are all departments, with individuals—a dozen, however many people who are out there—who do corrupt things. There are however many people out there breaking the law who should not be. I say deal with them to the full extent of the law. I say throw the book at them! Get rid of them from the department. Unburden the department of individuals who are doing the wrong thing. I do not defend them, but I think the minister has the powers to do that right now.

There is some pretty powerful legislation in this state that enables the minister to deal with that. I do not think this legislation is needed. Apart from depriving a workforce of some of its current rights, as has been very astutely pointed out by some pretty experienced industrial relations players, this legislation also sets up this workforce for a big pay rise in the event that the minister imposes the same responsibilities and onerous provisions that apply to a far higher paid workforce in the police. That is one of the things it does. The other thing it does is tell prison officers that they are not valued. It is perverse in a way. The minister will put all these responsibilities on them that may result in them having a good shot at a pay increase but he is also telling them he does not trust them! The minister wants greater powers to hit them with a big stick. He wants to threaten them. That does not bode well for a changed management process.

I concede that the minister is out there saying he wants to change the Corrections culture—that is good. Some of the things to which the minister aspires are on the record, such as changing the focus from locking people up to preventing the committing of crimes in the first place and reducing recidivism. Of course I support that because I told the minister about it four years ago. That aside, the minister will find it pretty difficult with the person who sits behind him to the left because she has said she will massively increase the workload of the prison system. The minister is saying to the people in this workforce that he does not trust them. That is really difficult. If the minister is in the process of trying to engage in mass cultural change, it is fundamental that he engages with the workforce and lets them take ownership of the change. It cannot be applied from the top; it cannot be imposed upon a workforce. That is basic management; it cannot happen. The minister faces the challenge of overcoming

that bad message as he pushes ahead with this legislation. No doubt in the course of selling this legislation out there as part of a package that he is solving the world's problems and that he is the knight in the white Charger, he will have a crack at the department's widespread corruption. He will further diminish morale and further undermine engagement of the workforce. He will further suggest to them that he does not trust them.

The minister gave lip-service to prison officers in his second reading speech, but they are the ones who hear the bad message in the media. When the minister attacks the Department of Corrective Services, prison officers feel that they are being attacked. It is just a natural human reaction. It is disappointing and sad. We have tried to make it fairer. We tried to soften the impact and ensure at least there is fairness in the outcome. The fact that the minister will not even contemplate any of our amendments is disappointing. I have already indicated to the minister that without any of our amendments going through there is not much chance the Labor Party will support this legislation. That is a pretty obvious outcome, I would have thought.

Mr F.M. LOGAN: I believe that the member for Warnbro's amendments were packaged up and moved in two —

Mr P. Papalia: This is in one block.

The ACTING SPEAKER: It was moved en bloc.

Mr F.M. LOGAN: We are not onto youth custodial officers? Sorry. Thanks, Mr Acting Speaker.

As the member for Warnbro just informed the house, the way in which the government has gone about this, as I said the other night, is basically using a bulldozer to crack a nut. It is not using a hammer to crack a nut; it is using a bulldozer to crack a nut. The minister has taken us to the number of incidents that have led to disciplinary matters including criminal matters, illegal matters and possible illegal matters involving prison officers, either with criminals within the prison system or criminals outside the prison system, or in fact in their own behaviour as prison officers. The number who have transgressed is a very small proportion of the entire prison officer employment numbers. For example, in 2012–13, 20 prison officers were found guilty of a breach or resigned while under investigation. Many of those were for minor breaches. That is 20 out of 2 000 prison officers. The number of prison officers charged with trafficking contraband into public prisons over the past three years is three out of 2 000. These issues have to be put in perspective. That is not to say the minister does not deal with those issues. Every government in power has to deal with those types of issues, whether they are the passing on of illegal contraband, disciplinary matters or criminal matters involving prison officers. Every government has to deal with it. This government and this minister are dealing with it in a heinous way as far as the opposition is concerned. There is no need to bring these provisions before the house. The minister has not justified why these provisions should be inserted into the Prisons Act.

There are very good reasons that the member for Warnbro's amendments should be adopted. They would make the bill before the house a little more sensible, practical and easier to use and, most importantly, a lot fairer when dealing with prison officers. The member for Warnbro highlighted the issue of cultural change and managerial leadership. That is the most critical point in bringing about change within any organisation, particularly in prisons. It is an issue that has not been dealt with properly by the current Minister for Corrective Services. He has decided to bring about cultural change by bringing this legislation into the house that changes the Prisons Act, that changes the nature of the relationship between the CEO of prisons and his employees, and basically gives the CEO far more extensive powers than he has had before—powers similar to that of the Commissioner of Police. We have been through the whole debate about the differences between police officers and prison officers. There is a world of difference between their job requirements, yet this minister continues down the path of wanting to smash a nut with a bulldozer rather than allowing his new CEO to get on with bringing about genuine managerial and cultural change within the prison system with existing legislation and existing policies. He has not allowed that to occur.

Mr J.M. FRANCIS: I will touch on a couple of those points very briefly. I am very aware, and I would like to think everyone is, that there is a need for structural and cultural change in a number of different areas within the Department of Corrective Services. That is happening. Some people like that; some people do not like that. It is happening at every level within the Department of Corrective Services. It started with a new Commissioner of Corrective Services. It will happen regardless of the fact some people may or may not like it. This is just another tool that the Commissioner of Corrective Services will use, on the rare occasions that it is required, to expedite processes when he has lost confidence in an officer. I will not go over it all again.

I also point out that while I accept that not all prison officers are in favour of this, some prison officers are. The public has an expectation that all prison officers maintain the highest levels of integrity. Prison officers are charged with certain powers with which no other public servants in Western Australia other than the police are charged. They have a number of significant powers that in many ways are similar to those given to police officers, such as the ability to restrain and the ability to deprive someone of their liberty to a greater extent than

being in an ordinary prison cell by putting them into the segregated housing unit or using different sections of the Prisons Act to effectively relocate prisoners to what are known as punishment cells. They have a number of different powers that demand that 100 per cent of them display the highest level of integrity 100 per cent of the time. Prison officers carry out a very difficult job and I know the member for Warnbro will agree with me on that. It is a noble profession and prison officers should be very proud that they meet a certain standard expected by the community. To raise the bar a bit higher with this bill will allow prison officers to stand taller and say that they meet this standard. There is no room in the Department of Corrective Services for officers who do not meet that standard. As we know, 98 per cent of them meet the standard and roughly two per cent do not. As I said, that should be 100 per cent of them, 100 per cent of the time. The day this bill becomes an act should be a proud day for prison officers because they will be able to say that they meet the standard and have nothing to worry about. The community can rightly accept that prison officers meet that standard because if they did not, they would not be here. I see it from a different point of view.

Mr P. Papalia: My view would be that the vast majority of the public already respect prison officers and it is a very small percentage of prison officers who do the wrong thing, just as a small percentage of police officers do the wrong thing. I do not think this legislation will contribute what you think it's going to contribute. I think you've done some damage through introducing this process.

Mr J.M. FRANCIS: Police officers meet the standard. There is no room for police officers who do not meet the standard. There is no question in the public's mind now that if a police officer does not meet the standard, they will not be in the job too much longer.

Mr P. Papalia: Why is there for prison officers?

Mr J.M. FRANCIS: We know that there are cases in which prison officers through various means have fought the inevitable for far too long and been paid by the taxpayers of Western Australia when they did not deserve to be. This will help deal with these situations in exceptional circumstances.

Amendments put and negatived.

Clause put and passed.

Debate adjourned, on motion by **Mr J.H.D. Day (Leader of the House)**.