

CUSTODIAL LEGISLATION (OFFICERS DISCIPLINE) AMENDMENT BILL 2013

Receipt and First Reading

Bill received from the Assembly; and, on motion by **Hon Michael Mischin (Attorney General)**, read a first time.

Second Reading

HON MICHAEL MISCHIN (North Metropolitan — Attorney General) [9.39 pm]: I move —

That the bill be now read a second time.

Members will be aware of the cultural challenges facing the Department of Corrective Services. The legislative changes now introduced to the house in the shape of the Custodial Legislation (Officers Discipline) Amendment Bill 2013 form part of a package of reform initiatives that reflect the government's firm commitment to addressing these challenges. Public accountability rests on both giving an account and being held to account. Accountability prevents the abuse of power and ensures that power is instead directed towards the achievement of efficiency, effectiveness, responsiveness and transparency. Public sector agencies, such as Western Australia Police and the Department of Corrective Services in particular, are continually subjected to public scrutiny due to the nature of the services they provide to the public. This scrutiny is due to the powers these officers have over members of the public that they serve. One of these powers is the power to use lawful force. The potential for abuse of this power, in itself, demands high standards of accountability.

The Commissioner of Corrective Services contributes to maintaining public confidence in the corrections system and has a responsibility to remove those officers in whom he loses confidence in regard to integrity, performance, competence and conduct. The commissioner is obliged to address behaviours and practices that may erode public confidence in the security and effectiveness of the corrections system. The vast majority of corrective services officers uphold the highest standards of ethical behaviour. However, the Minister for Corrective Services became concerned to learn that in the 24 months from July 2011 to June 2013, 59 custodial officers were charged under the Prisons Act 1981. Of these officers, only three were dismissed, while a further 10 resigned during the course of the investigation and/or as a result of disciplinary action. One officer known to have undeclared links and associations with organised crime groups over the course of a number of years was able to evade internal prosecution by the department due to the inherent difficulties associated with part X of the Prisons Act 1981.

The department's review into the above circumstances identified that the current disciplinary process for prison officers is outdated, is focused on an adversarial hearing-based process, and does little to improve employee performance and behaviour. The government proposes to reform these disciplinary processes by way of legislative amendments to the Prisons Act 1981 and the Young Offenders Act 1994. This reform will ensure that both acts contain contemporary discipline processes consistent with processes implemented across the WA public sector and satisfy the community's expectation that all public officers act with integrity in the performance of their public duties. The proposed legislative amendments are intended to engender internal and external trust in the corrections system, reduce difficulties and technical delays currently encountered in removing corrupt or seriously disruptive officers and diminish the risk of prison officers and youth custodial officers misusing their special powers.

Three significant changes are proposed in the bill. The first is with regard to loss of confidence. The loss-of-confidence provisions in the bill mirror section 8 and part IIB of the Western Australian Police Act 1892. The introduction of these provisions will enable the Department of Corrective Services to assure the public that although its prison and custodial officers hold very special powers, these powers are matched by very special standards of integrity and accountability and the requirement to act in a way that is above reasonable suspicion and reproach. The introduction of loss-of-confidence powers will enable the Commissioner of Corrective Services to use a fair and straightforward process to promptly remove those very few officers whose incompetence, criminality, corruption or lack of integrity is such that he has lost confidence in their suitability to remain in office.

The existing disciplinary processes are hampered by workplace relationships such as can be experienced by prison officers. Instances of improper and inappropriate relationships include links between a prison officer and organised criminals; prison officers supplying drugs, and other contraband, to prisoners associated with outlaw motorcycle gangs; and sexual relationships between prison officers and prisoners where cells within a maximum security prison may be left unsecured, thereby compromising the security and good order of the prison. In these instances, and not unexpectedly, witnesses are unwilling to give evidence against a prison officer who has such connections for fear of retribution, and prima facie evidence of organised criminal activity is difficult to establish within a prison environment.

In circumstances in which an officer is found to be corrupt or disruptive, the new provisions will allow the Commissioner of the Department for Corrective Services to dismiss the officer with 21 days' notice. The commissioner will dismiss an officer only when the commissioner has lost confidence in the officer's suitability to remain in office having regard to the officer's integrity, honesty, competence or performance. The bill will insert appeal rights for any prison officer who faces removal action by the chief executive officer. The prison officer may appeal against the removal to the Western Australian Industrial Relations Commission on the ground that the removal was harsh, oppressive or unfair. The appeal must be heard by not less than three industrial relations commissioners.

The second significant change proposed in the bill is streamlining the disciplinary process. The bill seeks to amend the existing adversarial hearing-based process outlined in the Prisons Act 1981 by adopting the less adversarial and more constructive processes outlined in part 5 of the Public Sector Management Act 1994. The proposed amendments will enhance consistency on performance improvement and performance management within the department and align it with the rest of the public sector. The current adversarial discipline system depends on a prison officer acquiring a criminal conviction or establishment of serious charges by the department. It is difficult to use for performance management issues.

There are a number of benefits of the proposed disciplinary regime. The first is that the department will no longer need to hold costly and time-consuming oral hearings that can take up to two years. Under the proposed regime investigation can commence immediately on suspicion of a breach of discipline. The second is that the bill will apply the same disciplinary process to both the custodial workforce and public servants. The third is that it removes potential difficulties that may arise when prison officers or youth custodial officers act in public sector positions within a custodial environment. The fourth is that a more extensive range of disciplinary actions, such as counselling, training and development, or the issue of warnings, is available under the Public Sector Management Act 1994 for the purpose of improving performance or conduct. Under the current regime only punitive sanctions are available. The Department of Corrective Services will determine the procedures for disciplinary proceedings subject to the guidelines set by the Public Sector Commissioner. The Western Australian Prison Officers' Union will be consulted prior to the implementation of these new disciplinary provisions.

The third significant change proposed in the bill is the abrogation of the privilege against self-incrimination. The proposed amendments mean that a prison officer or youth custodial officer could be compelled to provide information to the commissioner that might incriminate them when the commissioner conducts an investigation to determine the suitability of that officer. This provision is included on the grounds of public interest. The commissioner must be able to obtain any information that may be of concern. However, this would apply only if the required information was not obtainable from an alternative source and the privilege would prejudice the investigation. A penalty will be imposed for not producing the required information. Safeguards do apply. Importantly, the compelled information will not be used in any other proceedings, and the officer must be advised of the implications of the abrogation, and the relevancy of the required information.

Through this bill, the government is continuing to build on its ongoing reform to strengthen accountability, integrity and transparency within the state public sector. As members in the house would be aware, this government has been systematically reforming the state's public service, from the establishment of the Public Sector Commission to the introduction of the voluntary redundancy scheme. These measures have been designed to foster public confidence in the public sector, streamline processes and enhance accountability.

Pursuant to standing order 126(1), I advise that this bill is not a uniform legislation bill. It does not ratify or give effect to any intergovernmental or multilateral agreement to which the government of the state is a party, nor does this bill, by reason of its subject matter, introduce a uniform scheme or uniform laws throughout the commonwealth.

I commend the bill to the house and table the explanatory memorandum.

[See paper 1358.]

Debate adjourned, pursuant to standing orders.