PRISONS AMENDMENT BILL 2020

Time Limits — Statement by Leader of the House

HON SUE ELLERY (South Metropolitan — Leader of the House) [2.24 pm]: I wish to advise the house that the Prisons Amendment Bill 2020 will be dealt with as a bill in response to the COVID-19 crisis. Today I consulted with all party leaders and, following those discussions, pursuant to the temporary order agreed by the house on 31 March 2020, I advise the following maximum time limits for each stage of the bill. The second reading stage will have 165 minutes; the Committee of the Whole stage, 180 minutes; adoption of report, five minutes; and the third reading stage, five minutes.

Second Reading

Resumed from 18 March.

HON MICHAEL MISCHIN (North Metropolitan — Deputy Leader of the Opposition) [2.25 pm]: I rise as the lead speaker on behalf of the Liberal opposition to indicate our support for the bill, which has been described in the second reading speech, by both the minister responsible for the bill in this place and the minister who sponsored the bill in the Legislative Assembly, as introducing "two long overdue reforms" to the Western Australian prison system. I will come to that in due course. It has also been said that it is a COVID-19-natured bill; that is not necessarily the case, and it would not have been the case had it not been for the proposed amendment that introduces an expansion of what is proposed in one of the elements of the bill. The bill was introduced in the other place back on 18 February without any such introduction about being COVID-19 related. It passed through the other place on 17 March and was introduced in this house on 18 March, where it has remained, undebated, until now. Although we accept that it is a COVID-19-related bill and we are prepared to deal with it as such, it was not strictly introduced on that basis, and only the amendment would lend itself to such an interpretation.

Be that as it may, the bill focuses on two themes. Firstly, it introduces what is described as mandatory testing of prisoners for infectious diseases that may be transferred by way of bodily fluids to prison officers. The second theme is an increase in a variety of penalties under the Prisons Act 1981. A comprehensive second reading contribution was made in the other place by our shadow Minister for Corrective Services, Mr Sean L'Estrange. I will try not to repeat much of what was said there, but it must be said that the proposals in the bill have some merit, so we will support them, but that does not mean that there are not questions that could usefully be asked about the manner in which the bill is intended to operate in both areas.

The subject of public officers encountering people in the course of their duties and potentially contracting infectious diseases from those people as a result of an exchange of bodily fluids, whether by way of the aerosol effects of coughing or via blood or some other bodily fluid, was addressed by the previous government with the passing of the Mandatory Testing (Infectious Diseases) Bill 2014. But that focused on police officers acting in the course of their duties, in situations in which they may come across people in the community with a variety of backgrounds and circumstances and in which there is an increased risk that they may encounter someone who, deliberately or otherwise, attaches or conveys to them some disease. We heard a great deal at the time about the potential for HIV, hepatitis and the like to be transmitted from a carrier of those diseases to a police officer by way of being spat on, bled on or otherwise.

In order to ease the stress upon the officers because they are not able to be aware of what, if anything, they have contracted, the last government moved to pass that bill. This legislation will extend the operation of that regime to prison officers, and that is said to be a long overdue reform. I question that aspect because, after all, that other legislation was introduced in respect of police officers only in 2014. It was a significant departure from the accepted means of taking samples from people. On the authority of a more senior officer, it compels the taking of a sample of blood from a person to have it tested. The government therefore proceeded cautiously in that regard. However, if it is said that this is a long overdue reform, I remind the minister that I understand the Western Australian Prison Officers' Union was agitating some five years ago for this change to be made to the law, but the minister has managed to take three years to get around to doing it. Complaining that after 2014 it became long overdue is a little bit precious.

Be that as it may, we are told that the purpose of the legislation is to alleviate the stress experienced by a prison officer who may have been exposed to a prisoner's bodily fluids. What is not mentioned is the ability to provide treatment to that prison officer. I would have thought that rather than simply worrying about it, the priority would be to find out whether the officer has been infected so that they can get urgent medical treatment and address the substantive issue, which is the contraction of a disease. But, again, the government has thought that the stress matter is far more important.

We are told that there are similar testing regimes in other jurisdictions. As I have mentioned, in Western Australia there is the Mandatory Testing (Infectious Diseases) Act 2014, which deals with police officers. We are told that in division 4, part 9 of the Public Health Act 2016, a person who receives a transfer of biological material from

another person that may result in the transmission of infectious diseases may be tested. Whether that simply relates to the potential for harm to health workers or to the community generally might be clarified. Nonetheless, that element is available under the Public Health Act. In Victoria, the Public Health and Wellbeing Act 2008 can cover caregivers and custodians, police officers, healthcare workers and paramedics. Queensland has the Police Powers and Responsibilities Act 2000, which deals with victims of sexual offences and serious assaults and captures police officers and prison officers. South Australia, we are told, has the Criminal Law (Forensic Procedures) Act 2007, which covers police officers, healthcare workers and prison officers. The Northern Territory, we are told, has the Police Administration Act 1978, which protects police officers.

The question of course is: why is this testing regime being grafted onto the Prisons Act rather than expanding an act that was passed to deal specifically with the mandatory testing of infectious diseases? I am grateful for a briefing I received yesterday from departmental and ministerial officers at the instigation, I believe, of Hon Stephen Dawson, who is representing the Minister for Corrective Services in this house. I appreciate the information they conveyed. I am told—I will no doubt be corrected by the minister in due course—that this has been done under the Prisons Act because, rather than crafting a whole regime under the mandatory testing legislation, a testing regime is already available for prisoners who enter the prison system and this simply builds on that. That is all very well and I can understand that. However, it raises the further question of why the protection afforded by this proposed amendment to the Prisons Act is being confined in such a narrow way to prison officers who deal with prisoners who may transmit a disease to them.

I understand from the terms of the legislation that it does not cover, for example, court custodial officers or officers who provide court security. Those, other than police officers and prison officers, who convey prisoners to and from a court cannot avail themselves of the comfort being offered to prison officers. Vocational officers working in prisons, teachers who may be conducting classes in prisons and dealing with prisoners every day who may suffer mood swings and decide to attack one of them by transmitting a disease are not protected by this legislation. Healthcare workers within the prison system at the first aid post and the like are not covered by this, as I understand it. A whole group of people who work within prisons and who may have exposure to diseases that worry prison officers, will not be able to avail themselves of the comfort that is thought so important to be provided to prison officers. Indeed, it is thought so important to be provided to prison officers that we are now expanding the operation of this legislation to ensure that they are given comfort about the possibility of contracting COVID-19. What will happen to the others? What will happen if a prison officer is coughed over deliberately, spat at or otherwise by an angry visitor to a prisoner in prison? Apparently, the powers do not extend to that visitor being examined in any way. Why is that not the case?

It seems to me, with respect, that to say that this is a massive, long-overdue reform is rather overstating the case. Sure, it is an extension of a regime that has been established for police officers. If anything, that was a reform because it was a step well out of what was usually the case and involved an infringement of people's civil liberties for a greater good. This one is simply extending it to prison officers. I am interested to know just how many cases have been reported of prison officers being infected or potentially infected by any of the diseases contemplated to fall within the scope of this legislation, particularly COVID.

My understanding from the briefing I had is that there have been no cases of COVID in the prison system. In any event, prisoners entering the prison system routinely undergo medical assessments and medical checks to see whether they have an infectious disease so they can get the appropriate medical attention within the prison system, yet this has become particularly urgent because there may be a prisoner somewhere in the prison system who somehow contracts COVID-19 and exposes a prison officer to it—forget about anyone else.

Does the government plan to extend this regime, understanding that this is to cater to the demands of the prison officers' union? That is all very well but to limit it to the prison officers' union, unless a practical purpose can be shown will be effected and a mischief cured by this legislation, seems to be taking up a bit of the time of the house when, with a bit more consideration, it could have been a more embracing regime to deal with all sorts of cases in which the public's health is at risk.

I will give another example. Let us say I am in a shopping centre and I encounter a prisoner who is on release on parole or the like, still subject to the regime of Corrective Services, and that prisoner coughs on me. Will I be able to get the protection of this legislation when I find out that they had been recently released from prison? No, and yet a police officer can. I understand that there are complications with all this stuff, but it seems to me that for what is being trumpeted as one great, long overdue reform it is actually pretty sorry stuff. It is certainly an improvement. It is a change. It extends the protection and I understand all that, but to trumpet it as a reform, as if there is a radical change that is dealing with something that is a major mischief in the community that needs to be addressed, is rather overcooking it.

Be that as it may, we are told in the second reading speech that the purpose of taking the blood sample is to promptly identify whether any infectious disease is present in the individual, and inform the affected officer of the test result

as soon as possible, thereby reducing the period of anxiety experienced by the officer. What is not mentioned, as I have already alluded to, is the treatment of that officer, but let us say that that is implicit in it. A parallel is drawn between prison officers and police officers and their exposure to assaults when they may have transmitted to them, or conveyed onto them, bodily fluids of one form or another and that the government was committed to the position that prison officers should be afforded the same safeguard as police officers. My concern is that it does not extend beyond that narrow group that may be working in a prison and be subject to these diseases that are said to be so important and that may cause someone working within the prison system such anxiety and potential conveyance of that disease to members of their family.

The second reading speech says —

> In practice, when a prison officer is exposed to bodily fluids from a prisoner through either an assault or an unintentional transfer, the superintendent of the prison will direct the prisoner to undergo testing for infectious diseases.

What is not clear from the second reading speech is whether that is currently the case or something that is posited under the legislation. I would like to have a little bit of information on how these sorts of circumstances have been dealt with in the past without the benefit of this legislation and how it will change.

We are told that a prison officer, under the legislation, may use reasonable force to assist with the taking of a blood sample—that is understandable. Reasonable force is also permitted under the Mandatory Testing (Infectious Diseases) Act. Of course, what is proposed by the amendment before the house in issue 1 of the supplementary notice paper is that all the operation of that section will be extended to bodily samples generally, rather than blood samples, and that will embrace the risk of someone having COVID-19 transmitted to them.

We are told that the bill authorises the making of regulations for the chief executive officer to disclose a prisoner's medical record to a prison officer. I would like to find out a little bit more information about that, bearing in mind that police officers do not know as a rule who they are dealing with. Police may encounter the same suspect—the usual suspect perhaps—in the course of their duties, but being told about a particular person who may otherwise be anonymous to them is one thing; it is quite another thing in a prison environment where a prison officer may find out about the medical history of a prisoner, and it would be most unfortunate if they were to then gossip about it to their colleagues. That raises the question of the stigmatising of prisoners. I hold no candle for prisoners, who are criminals and have done the wrong thing, but unless we are going to start posting people's medical histories generally and they lose all entitlement to privacy in the confines of a prison, we also need to be satisfied that the prison officers will not spread the news of what is in someone's personal file. I am particularly concerned about what sort of means are going to be set up to ensure that that does not happen, and if there is that disclosure, the prison officer concerned is properly disciplined. Bearing in mind that there is a medical examination on admission to prison, if any infectious diseases are found in their records, is there also the plan to medically test them—take a sample—against their will and consent if necessary to ascertain whether they still have that infectious disease? In addition, if they happen to have an infectious disease upon entry to prison, it does not mean they still have one down the track, which highlights the need for some confidentiality and some confidence on the prisoner's part that simply because of a potential misunderstanding on the part of a prison officer, their medical history is not going to become public knowledge amongst their peers and amongst prison officers. There needs to be safeguards as to unauthorised use.

What surprises me about the making of the regulations is that there is no requirement for the bill to come into operation immediately on its passage. Clause 2(b) of the bill allows for parts of it to be commenced on —

> … a day fixed by proclamation, and different days may be fixed for different provisions.

Plainly, that is to accommodate the making of regulations. I accept entirely that as a matter of practice it is not a wise move to start drafting regulations and using the Parliamentary Counsel's Office's time for that purpose until closer to the passage of the bill or when the government knows that the bill has been passed and any change in circumstances can be accommodated. This bill has been sitting around since February. We are now told that it is an urgent COVID-related bill, so it needs to be expedited and passed at the earliest opportunity. An amendment is posited to ensure that it covers the COVID situation, and that it will go to the other place once it passes through this house. Where are the regulations? Have they been prepared? Has thought been given to the structure of those regulations and what they will provide for? When can we expect that the bill and the regulations will become operative in order to address this concern on the part of prison officers that has made this so urgent? Has the time been used effectively, at least since the recognition that the COVID problem is not addressed in the terms of the bill, to ensure that this regime can come into operation tomorrow if necessary? Some indication of when it will come into operation would be appreciated. Ordinarily, I might, like the Hon Nick Goiran, move an amendment to clause 2 to require the bill to come into operation upon assent. I do not propose to do that; I will leave it to the government to

deal with that issue, in the confidence that everything is ready to go and can be done at 24 hours' notice, given how urgent this bill is and that it has been brought on today.

A couple of other matters that arise out of the bill concern the other "long overdue reform" suggesting a radical change in the law, and that is the increase in a variety of penalties under the act. I understand that some ministers need to make it sound as though every change to the law that they propose is some great reform, but it seems to be a habit with this government that every bill that is introduced is a "long overdue reform", something that has been so long neglected, some radical change or some important advance that the minister under the current government has seized control of and has ensured it is going to be enacted after a long period of neglect. If it is a long overdue reform to change the penalties in the act or indeed to introduce this mandatory testing for infectious diseases regime, one wonders when it was actually due. It is true that the penalties under the act are pathetically small, after the passage of some 40-odd years. The act was passed in 1981. Some of the penalties are around the $300, $1 000 or $3 000 mark or whatever. Just to give members some idea of it, shortly after the election of the Burke government, there was a freeze on the salaries of top-tier public servants. As I recall, that covered salaries of $35 000 and upwards, which goes to show how much inflation has taken a toll on the value of the dollar. That dealt with such senior officers in the then Crown Law Department as the chief crown prosecutor for the state, the Crown Solicitor, the Crown Counsel and the like, so, yes, the penalties are well out of step. The important point, we are told, is that this is long overdue.

I will not waste much time on this, but I will make a point. At the time of dealing with this bill in the other place, the minister saw fit to complain that members of that house and those who had left it had done nothing about this area. Let me remind him that the blame cannot be fixed on just the previous government. From 1983 until 1990, the minister wholly responsible for this legislation was Hon Joe Berinson. That almost 10-year period was a highly inflationary period. Between 1993 and 2008, there was a combined ministry for justice. Hon Cheryl Edwardes and Hon Peter Foss occupied the position of responsible minister for something like eight years. Sure, penalties were not increased then, but then we had Jim McGinty under the Gallop and Carpenter governments, who occupied that position for something like eight years. Then we had Margaret Quirk under the Carpenter government for two and a bit years, Hon Christian Porter, Hon Terry Redman, Mr Murray Cowper and Hon Joe Francis. Now we have Hon Fran Logan, who has occupied that position for three years. If there is some talk about these reforms being overdue, I would love to know when they became overdue, given that inflation has been pretty low for the last 10 years.

Hon Stephen Dawson: Honourable member, no-one is having a go at anybody. The change has not happened for a long time.

Hon MICHAEL MISCHIN: I appreciate that. It is true that they have not, but that is why I found the minister's comment in the other place to be regrettable. If he had focused simply on the merits of the bill rather than on trying to pump up his own tyres in that fashion and at everyone else's expense, it would have been far better.

I have a couple of questions about the penalties that are being increased. Why is it thought that these increases will enhance the security of the prison system? I will give one example. There is a proposed increase to the penalty under section 10 of the act, which relates to when an officer of the prison system who is required to give information regarding a matter to a reporting officer—it is an internal accountability thing—fails to give that information or answer questions, or gives false answers. The penalty is being boosted from $300, which I am all for. However, it is being increased to only $3 000. If a prison officer is prepared to pay the price, it seems to be a rather small penalty.

We are told that the deterrent effect of these penalties needs to be improved. Let us deal, for example, with the penalty under section 49(2), which outlines that the superintendent may require a person, when visiting a prison, to permit a search to be made of himself—I use "himself" because the subsection is framed with the words "permit a search to be made of his person and that of any child accompanying him". I am not sure why gender-neutral language was not adopted while we had this opportunity to reform the bill. In any event, if a person refuses to do that, the current penalty he faces is $1 000. That penalty will be increased to a fine of $6 000. If someone is prepared to stand up to a prison superintendent and say that they are not going to let them search them for one reason or another and are not deterred by the fact that they will be fined up to $1 000, why would it make any difference to them to be fined up to $6 000? Why is a penalty of imprisonment not attached to that provision when one is attached to an offence under section 49(6), under which the superintendent of a prison may require a person who seeks to enter a prison or who has been permitted to enter or has just left the prison to state their business and the like? If there is a refusal to comply or if they give a false purpose or provide false information, the penalty is a $1 000 fine or 12 months' imprisonment or both. That is being increased to 12 months' imprisonment and a fine of $6 000.

Once again, if the potential for imprisonment has not been a deterrent against committing that offence, how will increasing the fine from $1 000 to $6 000 do it? Have there been any cases? What penalties have been handed down in these circumstances? A number of similar changes are being made to the penalties in section 50 for

smuggling items into prison and so forth, which are being increased from the order of $1 000 or $2 000 and the potential for 12 or 18 months' imprisonment, to fines of $6 000 or $12 000 and the same periods of imprisonment. Again, how will increasing the height of the fine make a difference when imprisonment has not been a deterrent? We need to keep in mind that a bill already scheduled for debate in this place—the Fines, Penalties and Infringement Notices Enforcement Amendment Bill—posits trying to relieve people with hardship from any consequences of failing or refusing to pay a fine, so these changes are hardly going to be a deterrent at all. Perhaps we can hear some information on the number of these sorts of offences and why it is thought that increasing a fine from, for example, $1 000 to $6 000 will increase the deterrent effect for these provisions. I would suggest that it will not at all.

If we were really going to reform the system, we perhaps needed to mandate some minimum terms of imprisonment, with relief in cases of exceptional circumstances. There needs to be some certainty that if someone tries to smuggle something into jail, they will join, in prison, the person to whom they were trying to smuggle stuff. I could accept some tempering of that, but simply increasing the monetary penalties does not cut it as far as I am concerned.

Having said that and having raised various questions for consideration, on which I would like some advice, I indicate that we support the bill. We do not think it goes far enough in terms of the great reform that was posited regarding penalties and we do not consider that sufficient thought and attention has been given to having a principled and comprehensive regime for the compulsory testing of people to reveal whether they have infected others who are acting in the course of their duties, either within prison or outside it. We would like to hear about that proposed regime. Prisoners are already denied a level of autonomy and privacy, so we need to ensure that that is not aggravated by the improper use of their personal records or by making them the currency of gossip and conversation in prison, simply because of curiosity on the part of a prison officer about whether the person who coughed near them has conveyed COVID-19 to them. I do not underestimate, and I do not want it distorted that I do not appreciate, the stress that people can come under for that, but our function is also to ensure that the legislation being brought into this place is of such a nature that it is not going to have unintended and undesirable consequences. If, of course, it is one of the expected consequences and it is the price the government wishes to pay, so be it. Perhaps the minister can clarify whether that is the case. On that note, I indicate our support for the bill and I will wait to see how the minister answers in reply; otherwise, we are going to have to go into the Committee of the Whole House in any case to deal with the amendment on the supplementary notice paper, so there may be little bit of questioning on these subjects then if that is more convenient to him.

HON COLIN de GRUSSA (Agricultural) [3.01 pm]: I rise as lead speaker for the Nationals WA on the Prisons Amendment Bill 2020, which, as we heard earlier, has been declared an urgent COVID-19-related bill by the government, so we are now operating under the temporary order. I indicate from the outset that the Nationals will support the measures that this bill introduces. I will also keep my remarks brief due to the urgent nature of the bill, but I will pose a few questions. Some have already been posed by Hon Michael Mischin in his contribution, so I will not range over those again, but I will touch on a few issues that we would like to have some clarity on.

We support the measures in this bill because they seek to provide support for our hardworking prison officers. They do a job that many in our community would not want to do, so I take this opportunity to acknowledge and thank all of the prison officers in Western Australia for the work they do in caring for and working with members of our community who find themselves on the wrong side of the law for a variety of reasons, many of which are complex and challenging. I think it is important to acknowledge the hard work that they do in often very difficult circumstances.

The bill amends the Prisons Act 1981 in a number of ways. It seeks to allow for mandatory testing of prisoners for infectious diseases in circumstances in which there may be a transfer of bodily fluids from a prisoner to a prison officer. It also authorises the making of regulations in relation to medical records and disclosure of those records to prison officers. It also addresses a few other typographical issues that were discovered in the course of the amendment and the indexing, if you like, of the monetary penalties imposed in the legislation, which have not been amended since they were introduced.

I thank the minister's office for the briefing on the new amendments, which was provided to me and my colleague in the other place, Hon Terry Redman, at 11.00 am last Friday pretty soon after we learnt of those amendments coming into place. I thank the office for fitting us in relatively early in the piece. However, I note that those amendments were not available to us until the middle of this morning during our party room meeting—I am sure many other parties were in the middle of theirs as well—which made it a little difficult to scrutinise them in a reasonable time given that this bill was moved up the list for today's sitting.

As I said before, the government has decided that this is an urgent COVID-19-related bill. We are obviously prepared to deal with the bill under those temporary standing orders, but I would like to understand where specifically in the bill COVID-19 is mentioned. Obviously, I cannot find it in there, so perhaps the minister can enlighten us on what aspects of the bill make it COVID-19 related. The amendments on supplementary notice paper 163, issue 1,

do not mention COVID, and when the bill was introduced in February this year, there was no mention of COVID either. Indeed, it would appear that the proposal is that the regulations, which the bill allows the making of, will have some mention of COVID in them or allow for testing related to COVID, inasmuch as the tests prescribed in the bill now do not seem to accommodate diseases such as COVID, which require testing other than blood testing. In the briefing, the team advised that there were draft regulations, and I wonder whether the minister would be able to table them in the course of his reply to the second reading debate so that we may at least have some idea of what the regulations will look like. Similar to Hon Michael Mischin, I would like to know how the government intends to expedite those regulations once the bill is passed, so we can have some idea of how quickly they will be implemented to provide this protection given that this is an urgent COVID-19-related bill.

As I said before, I will not range over some of the issues already raised, but I want to talk about a media release from this morning from the WA Police Union that is related to similar legislation proposed for police officers. I quote the end of the media release —

> "We have experienced cases where the orders have been made to draw the bodily fluids and the doctor refuses to do the test, leaving our people in the lurch.

I would like to know how or if any similar circumstance can or has arisen in the case of prison officers and how the government proposes to deal with those sorts of issues. Are they a concern in this bill or not? Perhaps the minister can respond to that in his reply to the second reading debate. I reiterate that we will support the bill.

Tabling of Paper

Hon STEPHEN DAWSON: Can I ask you to table that media statement just to help me get answers to specific points the member has asked about.

Hon COLIN de GRUSSA: I certainly can.

Leave granted. [See paper 3849.]

Debate Resumed

Hon COLIN de GRUSSA: I reiterate that the Nationals support the bill. We think it is important, and we thank our prison officers for the work that they do.

HON ALISON XAMON (North Metropolitan) [3.07 pm]: I rise as lead speaker for the Greens on the Prisons Amendment Bill 2020. I state from the outset that the Greens have significant reservations about this bill being dealt with under the COVID-19 temporary order, but recognise that accommodation has been made to enable us to give our full contribution, and that is certainly what I intend to do. I note that the bill has been around since before the extent of COVID-19 crisis became apparent, and I understand that this bill originated as an election promise made by the now Premier when he was opposition leader, at a WA Prison Officers' Union conference. I understand that that was effectively the motivation for this legislation and it was not to try to address the immediacy of the COVID-19 crisis.

As has been outlined, this bill will do a number of things. Most controversially, it provides for the mandatory testing of prisoners for infectious diseases when there are reasonable grounds to suspect a transfer of bodily fluids from a prisoner to a prison officer. It also will do a range of other things that I understand are considered to be long overdue. One is increasing monetary penalties for a range of offences under the act. This opportunity is being used to do a little bit of a tidy up of the act. The bill also expands regulation-making powers.

I want to say a fair bit about the mandatory testing of prisoners for infectious diseases, because, as I have just said, I believe that is the most controversial element of this bill. The current act contains provisions regarding medical examination of prisoners. Section 46 permits medical examination of prisoners if there are reasonable grounds for believing it will afford evidence of an offence. I note in that instance that reasonably necessary force is already permitted to be used. Section 110 permits regulations to be made for the taking of blood and other body samples from a prisoner by a prison officer when there is a reasonable suspicion that the prisoner may have committed a prison offence. That section also regulates the treatment of the samples. Section 110 also goes on to permit regulations to be made for the superintendent to direct an officer to take blood or other body samples from prisoners at random to detect whether an aggravated prison offence under section 70—for example, random drug and alcohol testing—has been committed by a prisoner, and also regulates the taking and the treatment of the samples.

To these already existing provisions, the bill proposes adding new section 46A, which is under clause 12 of the bill. New section 46A provides for the inspection of medical records and the mandatory taking of blood samples when a prison officer may have been exposed to infectious disease, although I note that new section 46A is proposed to be amended. Under proposed section 46A, if the chief executive officer suspects on reasonable grounds that there has been a transfer of bodily fluid from a prisoner to a prison officer, the CEO may check the prisoner's medical

records to find whether the prisoner has an infectious disease, and also require the prisoner to submit to a blood test for an infectious disease. "Bodily fluid" has been defined to include semen, blood and saliva. The transfer of bodily fluid is also defined. The way the transfer occurs is irrelevant. I note that it could be via an assault, cleaning up after a prisoner has committed self-harm, as a result of a fight amongst prisoners, a workshop accident, or a variety of ways. "Infectious disease" means HIV, hepatitis B, hepatitis C and any other prescribed disease capable of being transmitted by bodily fluid. That is how the bill reads currently. I note that the government will move amendments for the bill to authorise taking any sample from a prisoner for mandatory testing, not just blood. I understand that is because the government intends to prescribe COVID-19 as an infectious disease that prisoners can be mandatorily tested for. As members would be aware, the test for COVID-19 is not a blood test. Amending the bill to provide for the taking and testing of any sample from a prisoner opens the door to the government prescribing a much wider variety of infectious diseases in the future for mandatory testing, not only those that require a blood test and not only COVID-19. It is my understanding that the legislation is intended to be that way to futureproof for the possibility of other diseases being included.

I note that the CEO's powers are delegable and can be delegated, for example, to the superintendent and the medical officer. The Greens, the minister and at least the Liberal and National Parties have been contacted by the Western Australian AIDS Council with the support of Hepatitis WA, the National Association for People with HIV Australia, the Australasian Federation of AIDS Organisations and the Australasian Society for HIV, Viral Hepatitis and Sexual Health Medicine. I note that all those organisations have asked for this bill to legislate for a medical practitioner to inform the decision about whether or not to undertake a mandatory test, because they are concerned to ensure that there are reasonable grounds for testing. They point out, for example, that if a prisoner spits at a prison officer, it does not pose a risk of HIV transmission and therefore testing the prisoner for HIV would be unmerited. As I have said in previous debates in this place only a matter of weeks ago, spitting, of course, is absolutely abhorrent and is an assault, and a response would be absolutely appropriate. However, that does not mean there is necessarily merit in mandatorily testing for a disease that is not transmissible by spitting. To address the stakeholders' concern, I asked at the briefing whether the government would be willing to undertake to put protocols in place so that every decision to mandatorily test a prisoner pursuant to this bill would be clinically informed. Unfortunately, I was not able to get such an undertaking from the government. I am very concerned about this. In my view, it points to a substantial weakness in the bill.

Given the government's amendment, I also asked at the briefing when a prisoner would be mandatorily tested for COVID-19 and I have received substantial feedback that prisoners and their families are strongly supportive of increased voluntary COVID-19 testing. It would be no surprise to members to hear that, on an ongoing basis, long before this legislation was proposed under COVID-19 provisions, I was liaising with prisoner advocacy groups and I have heard extensively from families of prisoners about their concerns involving what is going on in the prisons and about how COVID-19 risks are being managed within our prisons. I can assure members that the feedback I am getting from prisoners and their families is that their concern is not about being subject to compulsory testing; they desperately want to get tested but are finding that they are not able to access the testing regime in the way that they believe it is needed. I can assure members that if a prisoner is concerned they may have COVID-19, the one thing they want is to be tested urgently and, ideally, to be sent to hospital. They do not want to be left in prison unaware that they have COVID-19 and potentially at risk of getting seriously unwell or even losing their life. I have stood in this place and pointed out previously that, unfortunately, a disproportionate number of our prisoners are at a higher risk of contracting complications arising from COVID-19 than other members of the population because of the disproportionate number of prisoners who live with comorbidities. As such, people are acutely aware of how vulnerable prisoners are to COVID-19. It is problematic to suggest that legislation like this needs to be passed urgently on the basis that prisoners are refusing to be tested when the exact opposite is true. We are finding that, en masse, prisoners want to access far more extensive testing regimes for COVID-19 but feel they have not had that opportunity. They very much want the opportunity to be tested to see whether they have this terrible illness. Nevertheless, I understand from the briefing that prisoners are separated from other prisoners when they are tested for COVID-19 only if it is medically indicated—that is, if the prisoner has flu-like symptoms. Also, on admission to prison, prisoners are routinely asked about their recent travel history and whether they have had contact with a person who has COVID-19. To date, 141 COVID tests have been performed on prisoners, all of which have been done voluntarily and none of which have tested positive for COVID-19. I am relieved that it appears that the disease is not in any Western Australian prison. My goodness, I hope that continues to be the case. It takes about 24 hours to get the test results when the test has been done in Perth. Obviously, it takes longer for prisoners held in regional prisons. Meanwhile, as a precaution, prisoners who are tested are isolated from other prisoners and are issued with a face mask to wear and the prison officers who have direct dealings with them are also provided with personal protective equipment, which is an appropriate response.

It is a little difficult to see how this bill could reasonably mandate COVID-19 testing. If COVID-19 got into our prisons, it would probably spread very, very quickly and surely the officers would be keen to get themselves tested

anyway. If our prisoners continue to be COVID-19-free, for the testing to be reasonable, people being admitted to prison would have to be showing flu-like symptoms and refuse to be tested voluntarily. As I said, that is highly unlikely, given prisoners are clamouring for more voluntary testing. Even then, they would have to be interacting with a prison officer in such a way that the officer's PPE had been rendered ineffective.

Under this bill, the CEO or their delegate can authorise reasonably necessary force for taking the sample. The explanatory memorandum states that as a safety precaution, it is intended that a prison officer will hold the prisoner while a medical officer or nurse takes the sample. I want to be crystal clear about what this means: we are talking about only a situation in which the prisoner is cooperative. I understand that if the prisoner is uncooperative, the testing will not proceed and the prisoner will instead be charged with noncompliance. I ask the minister to please confirm for the record whether that is the case. I understand that if the prisoner is noncompliant, it would be really unsafe to proceed with testing. If a prisoner has COVID-19, the concern is that their resistance and exertion would increase the risk of infection to everyone nearby. Of course, if testing for HIV, hepatitis B or hepatitis C, there is the risk of needlestick injury if the prisoner is uncooperative, even if it turns out that they do not have any bloodborne disease. The bill proposes that noncompliance with blood testing becomes an aggravated prison offence. This is the same as noncompliance with having other samples taken when required under the act. The bill also proposes increasing the maximum fine for an aggravated prison offence from $300 to $3 000.

The bill is proposing that regulations deal with the taking of blood samples and treatment of the samples taken, disclosure to the prison officer of the prisoner's medical records and blood test results, and further disclosure and use of that information. The explanatory memorandum is suggesting that this would include disclosure to the prison officer's doctor and family and other recording disclosure and use of the blood test results. The EM also suggests that this would include disclosure to the prisoner's treating doctor.

In the interests of transparency, a disclosure that I would like to see, which has been called for by the stakeholders I mentioned earlier, is de-identified data showing the number of tests performed and whether the result was positive or negative. I ask the minister whether the government is willing to undertake to do that.

Hon Stephen Dawson interjected.

Hon ALISON XAMON: One of the things that I am hoping is that de-identified data showing the number of tests performed and whether the result was positive or negative can be provided and made available.

Hon Stephen Dawson: To the house or to —

Hon ALISON XAMON: No, just generally as part of the provisions within this bill, so that it is recorded and is generally able to be collected, so, effectively, it has been collected.

The Greens are gravely concerned that the bill in front of us lacks the safeguards that are contained in equivalent legislation. Specifically, I am referring to the Mandatory Testing (Infectious Diseases) Act 2014 and the Public Health Act 2016. Back in 2014, the Greens supported the Mandatory Testing (Infectious Diseases) Bill 2014, which dealt with a very similar subject matter for police officers. Our support was primarily for reasons of occupational health and safety, primarily psychological health and safety. Indeed, the Greens made a pre–2013 election commitment to such legislation in response to a survey from the Western Australian Police Union. My former colleague Hon Lynn MacLaren had carriage of the legislation at that time. She made clear during the debate that to be exposed to diseases such as HIV, hepatitis B and hepatitis C in the line of duty and to then have to wait out an incubation period—which is usually one to three months for HIV; 45 to 180 days for hep B, for which I know immunisation is available; and two weeks to six months for hep C, for which no immunisation is available—and possibly have to undergo repeated testing for a variety of diseases, is extraordinarily stressful for workers and their families. I recognise that those occupational safety and health reasons absolutely apply to prison officers.

Regarding what OSH arrangements are in place to protect prison officers from the sort of diseases we are talking about, I asked at the briefing whether prison officers are required to maintain a current vaccination for hep B. The question was not able to be answered at the time. Can the minister please answer that question now, as it is highly relevant to the prison officers' safety at work? Are prison officers required to have a hepatitis B vaccination in order to undertake their duties? I also asked whether prison officers who may have been exposed to HIV at work are provided with post-exposure prophylaxis, if that is medically indicated. It concerns me that it was not clear that their workplace would pay for it if the officer needed it. I ask for the minister's reassurance on that point, please.

I return to the Mandatory Testing (Infectious Diseases) Act. I note that that act has substantially more safeguards than this bill. Hon Lynn MacLaren explicitly referred to those safeguards in her speech. Those safeguards made the act what the Greens called at the time a good and useful piece of legislation. First, that act applies to police who are acting in the course of their duty for the purpose of ensuring that the officer receives appropriate treatment. That is really important. This bill should not be able to be used by prison officers who are not acting in the course

of their duty. There would be concern at the possibility of individual prisoners perhaps being able to be punished or singled out. I think that would be an utter abuse of this provision.

Second, there are special provisions under part 3 for the testing of protected persons—that is, children and incapable persons. In those instances, an application has to be made to a court and if the order is made, the person and a third party responsible have to be served and given certain other information, including about the right of appeal. I understand that this bill will not apply to children, but I ask the minister to confirm that it will apply to mentally impaired accused people in our prisons. That is certainly my understanding. I am disappointed that the safeguard that is currently present within the Mandatory Testing (Infectious Diseases) Act is not also available in this bill.

Third, under that act, there is a formal process for testing to occur, including a written application, approval and service on the suspected transferor. This promotes accountability and protects against abuse.

Fourth, that act includes a defence for reasonable excuse for noncompliance.

Fifth, that act carefully regulates the handling and analysis of the sample. The sample must immediately be sent to a pathology laboratory with appropriate testing facilities. Also, it can then be destroyed by the lab after testing. This is one of the safeguards that Hon Lynn MacLaren relied on explicitly in her support of that 2014 bill. Payment cannot be demanded of the suspected transferor for the cost of taking the sample or for testing it. Importantly, the sample cannot be used for any other purpose than analysis under the act, on penalty of a fine up to $9 000 and imprisonment for nine months. This is another safeguard that the Greens referred to explicitly and relied on in support for that bill.

The act also regulates disclosure of the test results. Essentially, disclosure is limited to the officer, the commissioner, the suspected transferor and the health professionals treating either the officer or the suspected transferor; otherwise, disclosure is admitted only under a written law to a prescribed person, again, on penalty of a fine up to $9 000 and imprisonment for nine months. Those restrictions do not apply to the officer or the suspected transferor unless one of them goes to the media and identifies the other. This allows them to freely disclose to their family and friends as needed; that is happening on their terms. The application approval and test results are not admissible in any proceedings except under the act.

Last, and always of great importance to the Greens, the act contains a review provision. That provision requires a review to occur after five years and the report of the review to be tabled. Again, this is a feature of the legislation that was explicitly referred to at the time and mentioned and relied on in support of the bill. The act came into operation on 1 January 2015, and the review has now tentatively begun, although I understand from a briefing that I received today in relation to a similar bill that because of COVID-19, that has all been pushed out and is not expected to be available for some time. We are being asked to debate this bill without the benefit of considering what has been learnt from what would otherwise have been a most timely review of the preceding legislation. I note that not a single one of the safeguards I have just articulated are present in the bill before us today.

The Greens supported the Public Health Bill 2014 at the time. It contains provisions for compulsory testing, called test orders, in certain circumstances. But again, that legislation contains more safeguards than this bill does. There is a formal process for testing to occur and it must be in writing from the CEO. I note again that this is exactly what stakeholders are seeking in respect of this bill. It must be served on the person to be tested and explained to them and, if necessary, to enforce the order, an application can be made to a magistrate for a warrant. Again, there is the defence of a reasonable excuse for failing to comply with a test order, and the person named in the test order can apply to the State Administrative Tribunal for review.

The Greens have a history of being prepared to support these sorts of measures, subject to appropriate safeguards and making sure that the context is very carefully safeguarded and that it cannot be used in a discriminatory way. I am disappointed that this bill does not contain similar provisions. But as I also said, this bill contains a number of other provisions that are not related to the mandatory testing regime. Aside from introducing that, the bill increases the maximum fine penalties for certain offences. The explanatory memorandum explains that this is aligned to consumer price index changes, although no changes are made to current penalties of imprisonment. There are increasing fines relating to the failure of an officer to supply information or the provision of false information to an inquiry by an officer without reasonable excuse. There is an increase in the penalties for hindering or resisting the minister, the CEO or a person authorised by the CEO from accessing a prison, a contractor vehicle, or contractor or subcontractor documents, for compliance monitoring under the legislation. There is an increase in penalties for hindering or resisting an administrator or appointed reporting officer from accessing the same, for the purposes of exercising their functions under the legislation. There are changes to address noncompliance by a contractor, subcontractor or person appointed by a contractor or subcontractor with administrator's directions in relation to performance of contract. There is an increase in penalties for visitors to prisons who refuse a search of themselves, children or an article in their possession, and who refuse to state in writing, or falsely state, their full name and address or that of an accompanying child for that purpose. There is also an increase in penalties for bringing or

attempting to bring an article into prison with the intent to breach the good order, security or good governance of the prison; for bringing or removing an article in or out of prison without permission; and for false information to get permission to bring or remove an article in or out of prison. If an officer is complicit in the first two offences, they are also subject to an increased penalty. There is a range of other provisions that have been subject to increases in penalties without changing the nature of the offences.

The legislation also takes the opportunity to tidy up other areas of the act, including various typographical errors, removal of obsolete provisions and corrections. It also expands the regulation-making powers. As I understand it, there are currently two sets of regulations: the Prisons (Prison Officers Drug and Alcohol Testing) Regulations 2016 and the Prisons Regulations 1982. I understand that the intention behind a provision in this bill was to use the regulation-making powers to increase the current $1 000 penalty under prisons regulation 87 and to impose a $6 000 fine for unlawful disclosure of a prisoner's medical information. I would like to point out that disclosure is a very substantive matter that I think should be contained within the bill itself, not the regulations. As I indicated earlier, the Greens and the stakeholders would like to see a particular form of disclosure included in order to ensure that there is transparency. In any case, the bill does not limit the regulation-making power to those matters. It is an extremely broad power, without any reasonable justification.

I want to talk a little further about the concerns that have been raised specifically by the Western Australian AIDS Council. It has written to me and others extensively to raise its concerns about this bill. I know it is intensely disappointed that the bill has been brought in under COVID-19 provisions, because it feels it needed more time to draw its concerns to the attention of members. I advise members that it is my intention to refer this bill to the Standing Committee on Legislation. I am not sure that I necessarily have the support of the house, but I will test that because I believe the bill requires considerably more scrutiny, particularly given the lack of safeguards I have already articulated. It is also extremely disappointing that this legislation is proceeding without the benefit of a five-year statutory review.

I note a press release by the AIDS Council that went out yesterday and articulates some of its concerns. I will read out parts of it, and I am quite happy, if members wish, to table it, but I would like at least to get it into *Hansard*. It states —

> **Proposed laws to forcibly test prisoners for HIV have no basis in science, perpetuate stigma, and should be referred to a parliamentary committee, according to the WA AIDS Council and National Association for People with HIV Australia.**
>
> Under laws set to be introduced to the WA Parliament on Tuesday, a prisoner who assaults a prison officer will be immediately tested for HIV. The laws overlook the following critical facts:
>
> - HIV is not transmitted through saliva, a key myth perpetuated to justify this and similar legislation.
> - In the unlikely event a prison officer was exposed to HIV, they should take post-exposure prophylaxis, a medicine which can prevent transmission within 72 hours of exposure.
> - The Government's press release falsely claims prison officers who have been assaulted have to wait three months before they themselves can be tested for HIV. This is false. Modern HIV tests detect exposure within six days.
> - Falsely equating HIV with criminality inflames stigma and discourages people from seeking tests for HIV.
> - A vaccine exists for Hepatitis B and there is a cure for Hepatitis C.
>
> WAAC President, Asanka Gunasekera said:
>
> "HIV thrives on stigma and misinformation. These laws inflame that problem and hinder our prevention efforts. Marginalised communities such as gay and bisexual men, people who inject drugs, and sex workers will be less likely to seek a test for HIV when they see it associated with criminality.
>
> "Part of the case for these laws rests on the discomfort prison officers face when they are spat upon. However, HIV is not transmitted through saliva, destroying one of the key arguments for introducing this legislation.
>
> "The Government has also argued a prison officer may face an anxious three month wait to know if they have contracted HIV. The truth is that modern tests pick up the presence of HIV within six days of exposure. Rapid tests provide highly accurate results within fifteen minutes.
>
> NAPWHA President Scott Harlum said:
>
> "Frontline workers including prison officers need to know they're being sold a lie and offered nothing but dangerous false reassurance by these proposed laws and any government promoting them.

> "There is no mystery in how best to respond to a genuine potential exposure to HIV, such as a needlestick injury, and that does not include any time wasted or misdirected attention on anybody but the person potentially exposed.
>
> "In cases where someone faces genuine potential exposure to HIV, such as a needlestick injury, post-exposure prophylaxis medicine is highly effective at preventing HIV transmission if taken as soon as possible and within 72 hours. Additionally, all frontline workers should be protected against hepatitis B through vaccination.
>
> "These laws fail to solve any problem, and only hinder the HIV prevention effort. Likewise, there is no evidence mandatory testing of prisoners will do anything other than further marginalise those living with HIV and other blood borne viruses. Amplifying anxiety and misplaced fear around HIV is simply the wrong thing to do."

As I mentioned, concerns articulated in this press release have also been articulated by a number of other organisations that have written to me and to many other people here. I have some amendments on the supplementary notice paper that we will get to when we go into Committee of the Whole House, which I hope will help mitigate at least some of the more immediate concerns that have been raised. I am aware that there is a majority support within the chamber for this legislation. I am happy to say more during the committee stage, and will make no further comment as part of my second reading contribution.

Referral to Standing Committee on Legislation — Motion

HON ALISON XAMON (North Metropolitan) [3.41 pm] — without notice: I move —

(1) That the Prisons Amendment Bill 2020 be discharged and referred to the Standing Committee on Legislation for consideration and report by no later than 12 July 2020; and

(2) the committee has the power to inquire into and report on the policy of the bill.

HON STEPHEN DAWSON (Mining and Pastoral — Minister for Environment) [3.42 pm]: I was not aware that Hon Alison Xamon was going to move this motion now. I thought she was going to move it later, during the committee stage, so she has blindsided me.

The government will not support the referral to the Standing Committee on Legislation. This is a very important issue and I hope to hear from other honourable members who have not had the opportunity to make a contribution to this debate this afternoon. Honourable members have indicated previously that this is an important bill and they wish to make a contribution this afternoon. Therefore, the government and I will vote against this amendment. We will listen to the contributions from other members on this important legislation. We will then move into the committee stage to deal with the amendments in my name on the supplementary notice paper relating to COVID-19. I indicate again that we will not support a referral to the Standing Committee on Legislation.

HON MICHAEL MISCHIN (North Metropolitan — Deputy Leader of the Opposition) [3.43 pm]: I have an enormous amount of sympathy for Hon Alison Xamon's position. It seems to us that the bill has not been as fully considered as it could or should have been; it has picked an unnecessarily very narrow focus. We have concerns about the safeguards hedged around what is proposed. Having said that, I note that Hon Alison Xamon has proposed a safeguard as one of her proposed amendments on issue 2 of the supplementary notice paper, and that she proposes a potential review of the operation of the legislation and I would like to hear more about them. However, we think that because, according to the government, this bill deals with a particular health crisis and the government has assured us that it has given some thought to this—it is not simply a case of a change being made to please a union, but will achieve some good for the prison officers concerned—we are not inclined to delay its progress due to it being referred to a committee. Having said that, I entirely agree that not only the scope of the bill but also its operation need some greater examination. Hopefully, if deficiencies are exposed by it, they will be revealed by any proposed review. I note that there is no review clause in the bill, so I encourage the minister to take some advice on the practicality of including one because if it turns out that this bill has undesirable and unintended consequences, they will need to be addressed more than in another 10, 20 or 30 years' time. If it does not achieve its purposes, that also will need to be addressed. One feature about this that springs to mind is whether any breaches, failures or shortcomings in the bill's operation will be subject to the scrutiny of the Inspector of Custodial Services and be revealed at an early stage and reported so that remedial action can be taken. Perhaps the minister can assist us with that.

On balance, as presently advised, the Liberal Party will not support a referral to the Standing Committee on Legislation, although we see enormous merit in this issue being looked at in a less frenetic and overheated atmosphere.

Question put and negatived.

Second Reading Resumed

HON COLIN TINCKNELL (South West) [3.47 pm]: I must say it is very nice to be back here; I missed a bit of Parliament. I thank my colleague Hon Robin Scott for ably looking after things while I was away. I appreciate it

a great deal. I want to say from the outset that One Nation will support the Prisons Amendment Bill 2020 because it relates to COVID-19. However, our party has some reservations with it. A major reservation is that we understand that prison officers deserve protection; however, many others come into contact with prisons and both prisoners and visitors should also be protected. The bill has some shortcomings, but with that in mind I ask the government to please consider this. I understand that we have limited time; however, the bill has been on the books for a while and I would like to think that if the bill were not COVID related, we could debate it in full with more time allowed. Many other people are not protected by this bill and that is a real shame. I ask the minister to talk to his colleagues and please consider this. If something can be discussed behind the Chair, that would be great because I think the bill could be improved.

This bill clears up some previous mistakes in the Prisons Act 1981. Obviously, some changes needed to be made, such as increasing fines. One Nation will seriously consider the amendments. I have only recently been made aware of some of them. We will consider them seriously and look at whether they merit our support. In saying that, One Nation will support this bill because we have limited time and it has been placed under those bills related to COVID-19.

HON STEPHEN DAWSON (Mining and Pastoral — Minister for Environment) [3.50 pm] — in reply: I thank honourable members for their contributions to the debate this afternoon. I thank Hon Michael Mischin for his indication that the opposition will support the Prisons Amendment Bill 2020, and I thank him for the opposition's support of the bill being declared a COVID-19-response bill as a result of the amendments that stand in my name on the supplementary notice paper. I also thank Hon Colin Tincknell, Hon Colin de Grussa and Hon Alison Xamon for their contributions.

A range of questions were asked, so it is my intention to try to answer as many of those as possible now, noting, of course, that we will need to move into Committee of the Whole as there are a number of amendments standing on the supplementary notice paper, including a number in my name.

Hon Michael Mischin questioned why the messaging does not refer to the treatment of an infected prisoner. The Department of Justice's health services directorate has a long history of providing bloodborne virus and infection control education to prison officers. During their entry-level training program at the department's academy, new prison officers receive the three-hour training that covers prevalence of BBV infections in the custodial environment, the various transmission methods of BBVs and the transmission risks within the custodial environment, impact of infection within the custodial and community environment, harm-minimisation strategies and bodily fluid transmission prevention. The academy and the health services directorate also conduct an online training course for BBV that officers should complete yearly, and this online training is currently being reviewed and updated. In the event that a prison officer believes that he or she is exposed to HIV, the prison officer may seek medical advice from his or her own medical practitioner regarding any care or treatment. Prison officers also receive support from the department's employee welfare branch.

In relation to Hon Michael Mischin's question about why this regime is being tagged onto the Prisons Act and not any other pieces of legislation—for example, the current mandatory testing for police—I advise that police officers and prison officers work in different environments. Police officers work with people off the streets; prison officers deal with people whom they know—that is, the prisoners. Under the Mandatory Testing (Infectious Diseases) Act 2014, a police officer has to make an application to a senior police officer to test a person who may have transferred bodily fluids to him or her. The Western Australia Police Force considers that the conduct of mandatory testing for other agencies such as the prisons would fall outside its business responsibilities and core duties. Secondly, the police are not familiar with the workings of the prison system.

The Department of Justice already has a procedure in place for prison staff to take body samples from prisoners. This procedure is enacted in the Prisons Regulations 1982 and is used for testing for drugs and alcohol. This procedure is operated by staff who are familiar with the prison system and it can be easily modified to include testing of prisoners for infectious diseases. The Prisons Regulations 1982 will be amended to provide a head of power and processes to test prisoners for infectious diseases. In addition, the prison has a ready source of medical information on prisoners, whereas police officers would rarely have access to the full health records of persons who assault them. Prisoners are medically examined upon their admission into a prison. A prisoner's medical record will reveal whether a prisoner has an infectious disease. This medical information may be disclosed to an affected prison officer, and the bill seeks to provide the chief executive officer with the authority to do so, notwithstanding that the prisoner will still need to be tested for infectious diseases in order to update his or her medical conditions.

There was a question about why the legislation covers only prison officers rather than other categories of people who provide services to prisoners. A commitment was made by the government to bring forward a bill that would allow the testing of prisoners who assault prison officers. The underlying policy for this bill was intended to be narrow so as to apply mandatory testing only to cases of transfer of bodily fluid from a prisoner to a prison officer. The functions of the court security and custodial services contractors are regulated by the Court Security and Custodial

Services Act 1999, which provides for court security and management of the holding cells. The Prisons Act 1981 has no jurisdiction over court security or the holding cells. CS and CS contractors are not part of the prison custodial staff, nor can they be deemed as such via a prison rule.

I was asked a question about how many prison officers have been infected by diseases. The Department of Justice does not have that information; however, the department does have statistical information about assaults in general. There were 228 incidents of assault on prison officers recorded between 1 January 2019 and 31 December 2019. There were 18 serious assaults and 210 assaults. A serious assault is when the victim receives physical injuries that require overnight hospitalisation or ongoing medical treatment as a result of an assault. An assault is when the victim receives physical injuries that may have required medical treatment, but the victim did not require overnight hospitalisation as a result of the assault.

As a number of honourable members have pointed out, there are zero COVID-19 cases in our prisons.

On the question about whether the government intends to expand the regime, I indicate that it is not our current intention to do so. People other than prison officers may access the Public Health Act 2016 to have mandatory testing of the assailant, and I am advised that the Chief Health Officer can order that testing.

On the question about what the current procedure is should there be a risk of transmission of a disease, I am advised that the standard operating procedure currently in place for assault in general is policy directive 41, which may be summarised as follows. The injured prison officer may be given leave to seek medical attention from a private medical practitioner or a hospital. If the prison officer's injuries are sustained when using force on a prisoner, the prison officer may receive treatment from the prison's medical staff. Security staff take measures to preserve the scene and any evidence. All assaults are reported to the Western Australia Police Force by the Department of Justice on the day of the incident. An incident report must be entered into the department's offender database, Total Offender Management System, by every staff member involved in an incident of assault, including, for example, the injured officer, witnesses to the incident and medical staff attending to the injured officer. The WA police reference number is recorded in TOMS. The incident report captures vital information relating to the incident, which entails the facts in sequence, including full details of the nature of the assault, all persons involved, the trigger for the incident and the manner in which the incident was resolved. The employee welfare branch is notified by a senior officer for welfare support to support the injured officer. All staff involved receive a post-incident debriefing and the Minister for Police is briefed on the incident.

In relation to staff being exposed to blood and body substances, the following additional procedures will be observed. The prison officer receives first aid immediately. The prison officer is assessed by a nurse or doctor at the site, in conjunction with advice from hospital immunology experts via telephone if appropriate. The prison officer is then directed to either their own GP or the emergency department of the nearest hospital for a potential post-exposure prophylaxis. Depending on the outcome of the assessment, injuries, the extent of exposure, the amount and type of fluid et cetera, the prison officer is offered trauma counselling through the department's employee welfare branch. Further support information and counselling may be arranged by the department with non-government agencies, such as HepatitisWA and the WA AIDS Council.

There was a question about whether a prisoner who had a disease indicated on their record would have to undergo another test. I am advised that, yes, prisoners are medically examined on admission to a prison and the diagnosis of any disease is entered into their medical record. If a prisoner's medical record already indicates that the prisoner is positive for any or all of HIV, hepatitis B and hepatitis C, a blood test will still need to be taken from the prisoner to ascertain whether the prisoner still has any of the diseases. The purpose of disclosing a prisoner's medical record is to provide the affected prison officer with a preliminary indication of the prisoner's infection status, which will require confirmation by testing the prisoner. There was a question about safeguards against unauthorised use. I am told that prison officers cannot disclose a prisoner's test result. The penalty is a $6 000 fine and it is likely that they would also be disciplined for misconduct.

A number of honourable members asked whether the regulations had been prepared. I am advised that they have not yet been prepared. In relation to when it will all become operative, it is intended that it will commence within three to six months.

Hon Michael Mischin: Three to six months? Oh, come on!

Hon STEPHEN DAWSON: The work has to be done, as the honourable member would be aware. Regulations are obviously drafted upon passage of legislation; that is standard practice.

The honourable member referred to a $3 000 penalty for prisoners and asked whether that was sufficient. I am advised that the courts will have a number of penalties to consider for aggravated prison offences. Refusal to submit oneself for the purpose of having a blood sample taken will be an aggravated prison offence under section 70 of the Prisons Act 1981, with the proposed penalties being six months' imprisonment to be served cumulatively with any

other sentences, a $3 000 fine or separate confinement in a punishment cell not exceeding 28 days. I am advised that these penalties are based on penalties prescribed for an aggravated prison offence under section 79(1) of the Prisons Act 1981. The fine under section 79(1)(a)(ii) currently stands at $300 but obviously will be adjusted to $3 000 by the bill. When considering the increases of the penalty amounts, the department considered the consumer price index as well as the ratio at which a fine could be expiated in prison, if permitted. I am advised that this latter calculation was based on the expiation rate of $25 a day in 1981 versus the current rate of $250 a day.

Hon Colin de Grussa asked why COVID-19 is not mentioned in the bill. I am advised that this disease will be included in the regulations that will be empowered under the act. The honourable member asked whether members can have a copy of the draft regulations. I am not in a position to provide them at this time. As I have indicated, they will take approximately three months or a little longer to complete and gazette.

A question was raised about why the bill does not compel doctors and nurses to complete the tests. I am advised that if prison nurses and doctors refuse, they will be in breach of their contract with the prison, so such an amendment is therefore not required.

Hon Alison Xamon asked a number of questions. She raised the suggestion that testing should be voluntary on the part of prisoners and that this mandatory legislation is not required. I will have to come back to that point as I cannot read the writing of the adviser. I think he might be a doctor! I will come back to that in a second. Perhaps I might get some assistance to get the answer while we continue.

The honourable member asked the government to confirm that force will not be used to compel a sample. I can confirm that that is correct. I went through those points earlier in response to Hon Michael Mischin. If the honourable member wants to go into it again, we can discuss it in committee; however, the member is correct.

The honourable member requested a government undertaking regarding de-identified data. I will have to deal with that in committee as well because that is not in the notes in front of me.

The honourable member asked whether hepatitis B vaccination is a requirement for prison officers. I am told that the Department of Justice intends to record information regarding the number of tests and the test results. Medical statistics recorded by the department may be available through the freedom of information process; however, the statistics must not reveal the identity of individual prisoners. In relation to whether prison officers are vaccinated against hepatitis B, yes, prison officers receive vaccination against hepatitis B as a requirement of their employment.

In relation to the use of force, I indicate that a prison officer escorting a prisoner to a nurse will use force only to assist with the taking of a blood sample. For example, the nurse may ask the prison officer to hold onto the prisoner's arm to steady the prisoner. This would amount to the use of reasonable force. If it appears that a prisoner is likely to cause harm to a nurse during the course of taking a blood sample, the prisoner will not be taken to the nurse for the procedure. Force will not be used to compel a prisoner to provide a blood sample. I indicated earlier that there is a penalty for refusal to submit oneself for the purpose of having a blood sample taken. That will be an aggravated prison offence under section 70 of the Prisons Act 1981. The proposed penalties are six months' imprisonment to be served cumulatively with any other sentences, a fine of $3 000 or separate confinement in a punishment cell not exceeding 28 days. Thank you—you have obviously read Don's writing before. I am not used to the adviser's notes; the honourable Leader of the House has dealt with him before.

Hon Michael Mischin: I thought you were doing this from memory!

Hon STEPHEN DAWSON: Thank you, Hon Michael Mischin, but no.

Hon Alison Xamon questioned the safeguards under the bill and asked whether the bill would apply to mentally impaired accused persons in prisons. I am advised that mentally impaired accused persons are held in prison on a custody order. They are captured by the definition of "prisoner" under section 3(1) of the Prisons Act 1981; therefore, the mandatory testing regime will apply to mentally impaired accused persons. Testing of prisoners is conducted by the Department of Justice on a uniform basis. Currently, alcohol and drug testing is done on all prisoners without any differentiation being made about their mental capacity. However, when a prisoner is required to give a body sample, the prisoner must receive an explanation of the requirement of testing and the consequences of noncompliance. In the case of mentally impaired accused persons or prisoners with intellectual disabilities, the prison officer may obtain assistance from prison health services to ensure that they understand the requirement and consequences. The Department of Justice also has an ongoing arrangement with Disability Services, under the Department of Communities, to jointly manage prisoners with intellectual disabilities. A prisoner who refuses to comply with a direction to provide a body sample will be charged with an aggravated prison offence. Due process will apply, as it does with all prison offences. If, upon hearing the charge, a magistrate finds that the prisoner is unfit to plea or was of unsound mind when the aggravated prison offence was alleged to have occurred, the magistrate may find the prisoner unfit or may acquit the prisoner.

As to the issue of disclosure and safeguards relating to that, I am advised that following passage of the bill, regulations will be made to prescribe a penalty for unlawful disclosure of a prisoner's blood test result. It is intended that a fine of $6 000 will be prescribed as a penalty for the offence of unlawful disclosure. A conviction for the offence will also constitute professional misconduct, which will render the offender or prison officer liable to disciplinary action under the Prisons Act 1981 or the Public Sector Management Act 1994. The disciplinary measures will include suspension and dismissal.

I go back to the comment that Hon Alison Xamon made. She suggested that testing would be voluntary on the part of prisoners and that this meant that mandatory legislation would therefore not be required. I think I probably answered in a different way. The government view is that the bill provides a necessary safeguard for those cases in which a prisoner is not so forthcoming.

The question was raised about a medical practitioner being best qualified to determine whether there has been a transfer of bodily fluid and, as such, the order for testing should be made by the Chief Health Officer rather than the chief executive officer. Although the WA Public Health Act 2016 requires that a decision to order mandatory testing for infectious diseases be made by the Chief Health Officer, there are other pieces of legislation for mandatory testing, such as the Mandatory Testing (Infectious Diseases) Act 2014 in WA and interstate legislation, that do not require the decision-maker to be the Chief Health Officer or a medical practitioner. The common requirement for all mandatory testing legislation is that the decision-maker must have a suspicion or belief on reasonable grounds that there has been transfer of bodily fluids from the source individual. The safeguard is the test of reasonableness. The practice of mandatory testing is quite well established. Similar legislation has been operating in the state and other jurisdictions for some time. Mandatory testing provisions will form part of the Prisons Act 1981, which is reviewed from time to time to ensure currency of application. The Prisons Act 1981 was reviewed as a whole in 2012 and was reviewed in part in 2017. In view of the above, a reviewable period for the mandatory testing provisions has not been included in the bill.

Hon Colin Tincknell indicated some reservations about the bill, in particular that the protections do not go far enough. As I indicated in my response to Hon Michael Mischin, the policy of this bill is indeed confined to potential transfers between prisoners and prison officers, and it is not our intention to expand on this.

With those comments, I again thank honourable members for their contributions to the debate thus far. I want to echo the comments made by Hon Colin de Grussa earlier when he thanked the women and men who work as prison officers in Western Australia. They do a difficult and very challenging job, on a day-to-day basis, and with the COVID-19 pandemic before us at the moment, the risks are more substantial, so I want to acknowledge those women and men who work in our prison system and thank them for the job they do. With those comments, I commend the bill to the house.

Question put and passed.

Bill read a second time.

Committee

The Chair of Committees (Hon Simon O'Brien) in the chair; Hon Stephen Dawson (Minister for Environment) in charge of the bill.

Clause 1 put and passed.

Clause 2: Commencement —

Hon MICHAEL MISCHIN: I was surprised to learn that we are looking at anywhere between a quarter and a half of the year to pass before this very urgent COVID-19-related measure can come into operation in order to protect prison officers from the effects of COVID-19. I have to say that had I suspected that we were looking at something as vague as three to six months, I think I would have supported Hon Alison Xamon's move to refer this bill to a committee reporting in July. It could not have possibly have hurt the regime being proposed. We would probably have ended up with a better bill, and we would have explored the various problems that have been identified by the several speakers, including Hon Alison Xamon, Hon Colin Tincknell and Hon Colin de Grussa. Why is it going to take three to six months? As I recall, we had a bill during the last session that had not been passed, yet regulations had been prepared in order that it could come into operation almost immediately. But here is this measure, said to be for the protection and safety of prison officers to relieve them from trauma, particularly at a time when a virus plague is going on, which makes it so essential for the bill to be brought on, for standing orders to be suspended and for the bill to be dealt with under the temporary order and rushed through without full consideration in a limited time, and the government is saying that it will be three to six months before regulations can be prepared. Has any work been done on establishing the regulatory regime; and, if so, what, and why is the time as vague as three to six months? Is this such a low priority that we have to wait for up to half a year? The crisis is going to be over by

then. We are looking at lifting the state of emergency in November. I mean, seriously—three to six months? What made this so urgent?

Hon STEPHEN DAWSON: I indicate that perhaps I misspoke, but it would have taken three to six months to draft the legislation before COVID-19. I am advised that drafting instructions have been prepared and drafting by Parliamentary Counsel's Office has commenced, but we are really in the PCO's hands on that. I am aware that PCO is drafting a great deal of regulations for legislation related to COVID-19 that has passed this place in the last few weeks, but my advisers tell me that this will be prioritised and we hope to have regulations drafted as soon as possible. I am told that it will be three months in the worst case, but as a result of the bill, which will be amended, we hope to have them done a lot quicker.

Hon MICHAEL MISCHIN: Can the minister give us some comfort on when the instructions to draft the regulations were given and what stage the regulations have achieved?

Hon STEPHEN DAWSON: I am advised that the instructions have been drafted but have not been issued to the Parliamentary Counsel's Office because, obviously, honourable member, we are waiting for the passage of the bill through not only this place, but also the Assembly in, hopefully, the next few days. The instructions have been drafted and upon the passage of the bill, they can be issued to PCO once we know what the bill before us looks like upon its passage through Parliament.

Hon MICHAEL MISCHIN: Thank you. Instructions have been drafted but have not been issued because we are waiting for the passage of the bill and it is really urgent to pass it. Plainly, it will get priority in the other place when it is sent back, so it ought to be passed within the next 24 hours. Is any major change to the legislation expected? Have any of the matters on the supplementary notice paper so altered the regime that was contemplated that it has created a need to redraft the instructions?

Hon STEPHEN DAWSON: As the honourable member is aware, I will move the amendments in my name that are on the supplementary notice paper in relation to the COVID-19 nature of the bill, and that raises the bar, essentially. As honourable members in this place know, we have spent the last few weeks doing extraordinary things to ensure the passage of very important legislation to, essentially, keep Western Australians alive, in many regards, or to keep them in their livelihoods. That work continues. The bills that have passed this place in the past few weeks have taken priority here and have taken priority at PCO. The bill before us, upon its passage today, has a further level of importance. That means the bill will be further prioritised to get the regulations drafted as quickly as possible.

Hon MICHAEL MISCHIN: Perhaps this can wait until the regulation-making power comes up, otherwise it may save time now, while we are on the subject, for the minister to at least give us an idea of what the regulations are supposed to cover. Will they cover the manner of the taking of samples, the control of the samples, who is supposed to use them and who will have access to them and to the records? What, in broad terms, has Parliamentary Counsel been asked to draft?

The CHAIR: Of course, the member is relating this to clause 2—the commencement date.

Hon MICHAEL MISCHIN: I understand that, Mr Chair. As I said, it can wait until we get to the regulation-making power, but I thought it would save time to discuss it while we were on the subject. If the minister is not in a position to answer that at this stage, I will raise it later if we have the time. Perhaps his assistants can come up with the information in the meanwhile. I will drop that but foreshadow that down the track that is what I would like to know, if that helps the minister.

The CHAIR: Is the minister seeking the call?

Hon STEPHEN DAWSON: I am seeking the call, Mr Chair, and I appreciate your guidance. In the spirit of the collaborative nature that exists in this place at the moment, because it flows on from the last question, I am very happy to answer the member's question as much as I can. Following the passage of the bill, regulations will be made to provide for the following: the taking and treatment of blood and other bodily samples; the authorising and regulating of disclosure to the prison officer of the prisoner's medical records and test results; the authorising and regulating of further disclosure and use of information disclosed to the prison officer in the above; and, also, otherwise authorising and regulating the recording of the disclosure and use of the test results. Essentially, they are the four items.

Clause put and passed.

Clause 3 put and passed.

Clause 4: Section 3 amended —

Hon MICHAEL MISCHIN: To make it absolutely plain, given that an amendment has been sought to include bodily samples because the presence of COVID-19 would otherwise not be revealed, the government is satisfied that the proposed definition of "bodily fluid", which is an inclusive one, includes semen, blood and saliva. Will that

also include any carrying of infected fluid by aerosol means, and is the government satisfied that the "transfer of bodily fluid", which is a totally discrete, non-inclusive definition, means the transfer of bodily fluid from one person into the anus, vagina—hopefully none of those in the case of COVID—mucus membrane, I suppose, or broken skin of another person is broad enough to deal with the mischief that the government is proposing to address by including COVID within the scope of this legislation?

Hon STEPHEN DAWSON: We have been advised that the amendments are not needed to take note of a bodily sample.

Clause put and passed.

Clauses 5 to 11 put and passed.

Clause 12: Section 46A inserted —

The CHAIR: Minister, do you want to take the call for the purpose of moving the amendment?

Hon STEPHEN DAWSON: Yes, thank you. With your indulgence, Mr Chair, I will speak to the amendments generally, if that is okay, rather than make the same point at each amendment, as they all refer to the same issue.

The Prisons Amendment Bill 2020 proposes to test prisoners for certain infectious diseases when there has been a transfer of bodily fluid from a prisoner to a prison officer. The bill specifies HIV, hepatitis B and hepatitis C as the infectious diseases targeted for testing and that blood samples are used for testing. The purpose of the amendments to the bill is to permit other bodily samples to be used for testing. Due to the current health pandemic, the government proposes to include COVID-19 as an infectious disease for the purpose of mandatory testing, as it can be transmitted by bodily fluids. The bill allows for additional infectious diseases to be prescribed by regulations and so, following the passage of the bill, COVID-19 will be prescribed by regulations as an infectious disease. The Department of Health has advised that the appropriate method of testing for COVID-19 is to use medical swabs taken from the nose and throat. Therefore, the amendments to include "other bodily samples" is for the purpose of testing for infectious diseases.

The CHAIR: Minister, are you now moving several amendments?

Hon STEPHEN DAWSON: Mr Chair, can I seek your guidance? Would it be appropriate for me to move these amendments en bloc?

The CHAIR: I think we probably could accommodate that. It might be your wish to seek leave of the committee that amendments 1, 2, 3, 4, 5 and 6 standing in your name be moved as one question.

Hon STEPHEN DAWSON — by leave: I move —

Page 4, line 23 — To insert after "**blood**" —

or other body

Page 5, lines 6 and 7 — To delete the lines and substitute —

the purpose of having a blood or other body sample taken to test the sample for the presence of an infectious

Page 5, line 11 — To delete "blood".

Page 5, line 13 — To delete "blood".

Page 5, line 18 — To delete "blood sample; and" and substitute —

sample taken; and

Page 5, line 24 — To delete "blood sample." and substitute —

sample taken.

Amendments put and passed.

Committee interrupted, pursuant to standing orders.

[Continued on page 2451.]