PRISONS AND SENTENCING LEGISLATION AMENDMENT BILL 2006

Second Reading

Resumed from 24 October.

HON MURRAY CRIDDLE (Agricultural) [7.35 pm]: I was making some remarks yesterday on the Prisons and Sentencing Legislation Amendment Bill 2006. I was pointing out that the wellbeing of prisoners and their rehabilitation are essential. The bill allows for the chief executive officer to provide a broad range of services and programs. I outlined the essential needs of some of these people to enable them to get back into society, the knowledge and skills that could be gained and the ability of prisoners to integrate into the community on their release. That is one of the really serious issues that we have to grapple with. It would be interesting to know how some of these provisions will be put in place and how the programs will be implemented. Maintaining and strengthening the support of family is also a very important issue because children and extended family are involved. On quite a number of occasions the extended family is very important to those people who are put into prison.

There are opportunities for prisoners to participate in work, leisure and recreational activities. Recreational opportunities are very important to prisoners. There is an opportunity for them to become involved in some of these activities. It is also important to promote the health and wellbeing of prisoners. Certainly that is an issue in a lot of places. I am referring to the way prisoners look after themselves and how they should be prepared to return to society.

The other issue that is apparent in this bill is work camps. They have been operating successfully. As the Minister for Transport, I remember making some money available for a Special Air Service officer to take some young people into real-life situations so they could learn how to look after themselves, learn how to cook for themselves and be involved with work. To my way of thinking, that was an opportunity that should have been expanded and developed. The reports we got back from those people were that it had a very beneficial effect on their lives into the future. They were only young people. I have to admit that the person doing the job was a Spartan-type person. The prisoners reacted to that person. In many cases, if people are set a very good example and they have discipline to abide by, they react very positively. The feedback from these camps was certainly very positive. I notice that this bill establishes a role in the overall delivery of custodial services in the state. There will be a real opportunity to develop these work camps. The teaching needs to be of a practical nature. A lot of these people are pretty basic in this area but it helps them to develop as people.

As I said earlier, my comments arose from the development of a remand centre in Geraldton. A lot of money could have been expended on those buildings. My vision for that development was to have some transportable buildings brought up and put in place to give the whole centre an opportunity to develop. We could have had the opportunity to develop the skills of the prisoners so that they could go back into the community and the work force and have meaningful lives. That is the factor underlying all these issues. I look forward to the progression of the bill.

HON JON FORD (Mining and Pastoral - Minister for Local Government and Regional Development) [7.40 pm]: I thank members for their comments on the Prisons and Sentencing Legislation Amendment Bill. In short, this bill attempts to put management procedures in place to deal with prisoners through what is described as a more contemporary method of rehabilitation. It also makes some consequential amendments. I will try to deal with the issues that members have raised in the second reading debate. Anything that I do not deal with in detail will be dealt with during the committee stage. Hon Simon O'Brien asked about the prison officers' oath to engagement. This amendment was introduced in the consideration in detail stage in the other place to ensure consistency with similar oaths of office made by members of the judiciary and members of the local government under the changes introduced under the Oaths, Affidavits and Statutory Declarations (Consequential Provisions) Act 2005. Members asked whether prisons in Western Australia were ever known as His or Her Majesty's prisons. I am advised that that has never been the case. In the original Prisons Act 1903, prisons were referred to as jails, as they were in the 1809 ordinance that was repealed by the 1903 Prisons Act. The things members learn in this place.

Hon Simon O'Brien: I add that I sort of knew that. It was an unruly interjection that raised the matter of the HM.

Hon JON FORD: If it had not been raised, I would never have known it. Questions were asked about the reasons for prisoners' temporary absences from prisons. Hon Simon O'Brien noted that there are legitimate reasons for prisoners to leave prisons but that there must be a mechanism to regularise their absence. The bill provides for the reasons for a prisoner's absence and for the authority to either approve or revoke approval for an absence, and it outlines the matters that must be considered before granting an absence. When granting an absence, consideration must be given to the specific reasons for a prisoner applying for a leave of absence, the

level of supervision of the prisoner and how often a leave of absence may be granted. Other conditions involving the categories of prisoners who would have access to absences will be provided for by regulation. Some of the specific reasons for granting a prisoner a leave of absence include the rehabilitation of a prisoner and the prisoner's reintegration into the community. A prisoner might be granted a leave of absence to engage in community work or for home leave or educational training. Leave could be granted also for reasons of compassionate and humane treatment of prisoners and their families so that a prisoner can attend a funeral, visit sick relatives or a partner who has given birth, and for medical or other health treatment. Leave could be granted also to further the interests of justice so that a prisoner can attend a court or other judicial bodies and to assist the police. The conditions placed on absences will be very similar to the conditions that are currently followed. The main changes introduced by the bill will be the ability to grant leave for education and training, and to allow mothers with children to accompany a child to hospital. Provision has been granted for interstate absences and the ability to withhold money from a prisoner who is in paid employment to cover board, debts, family support and savings.

Hon Simon O'Brien and Hon Giz Watson asked questions about the reason for the staged introduction of this legislation. The government wants to act quickly to introduce the Mahoney reforms. It was decided that the provisions in this bill and the parole changes could be developed sooner than the others; therefore, this bill was introduced on that basis. A staged introduction will also help the Department of Corrective Services to implement the reform. The department will have time to come to grips with the reforms.

Hon Giz Watson raised concerns about the community engagement powers. She is concerned about the promotion of the privatisation of corrective services. The government does not believe that that is so. The provisions are intended to provide a clear basis for the extensive involvement of the community in the provision of corrective services, which already occurs. That includes consultation with stakeholders about proposed developments; the use of volunteers in the provision of support and rehabilitation for offenders; the use of Aboriginal community members in the system to supervise offenders on community orders under community supervision agreements; and arrangements with government and non-government agencies for the support and supervision of offenders. Hon Giz Watson also raised concerns about the bill not providing clear guidelines for the engagement of private contractors. These guidelines are already legislated for in the Prisons Act and in the public sector policy that the department currently follows. For example, contractual arrangements for prisons services provided by Acacia Prison are governed by part IIIA of the Prisons Act and, apart from minor amendments introduced by this bill, they remain unchanged. That part of the act gives detailed guidelines for the reporting on contractors and section 15G provides for the report to be tabled in Parliament. The legislative provisions are supported by an extensive policy governing the contracting of the public sector services. Hon Giz Watson also raised concerns about the exchange of information between agencies for the purpose of offender management and research, particularly regarding the breadth of its definition. The definition refers only to contractors under the Court Security and Custodial Services Act 1999.

Hon Giz Watson raised concerns also about the repeal of section 53 of the Prisons Act, "Practice of religion by prisoners", and the wording of its replacement. Hon Giz Watson seemed to be concerned that there was a belief that the requirement that the practice of religion was subject to the security, good order and management of prisons was a new feature. This requirement has always been part of the provisions and is necessary for prison management. Within these limitations, prisons accommodate the religious and spiritual needs of prisoners as fully as practicable. The new wording omits to specify that religious rights and services that a prisoner may wish to observe can occur within a prison. However, this was seen to be evident, and so the Prisons Act is to be amended. Reference to a prisoner being able to state a religion on admission and to have this recorded has also been omitted. Current standard admission processes include the opportunity for offenders to nominate a religion, which is then maintained on a prisoner database.

Clause 40 concerns information exchange and amends the Sentence Administration Act. It is at the chief executive officer's discretion to disclose information to the public if necessary for the safety of the public. This provision mirrors a similar amendment to the Prisons Act under clause 35 and covers a circumstance whereby a dangerous offender who is on parole has breached the conditions of parole and is at large and poses a risk to the community generally or to individuals. It is not thought that this provision will be used often. The CEO would need to consider the imminent risk based on all the circumstances at the time and weigh up the benefit of disclosure. This would take into account the privacy of the offender.

Information exchange for research allows the CEO to ask others for information. Hon Giz Watson indicated that she wanted to know the type of research that includes and whether additional staff will be required. She is concerned that if a CEO asks for the information, it must be provided. That is not the case. The clause gives protection for agencies that provide information for research, but does not oblige the agencies to participate. This provision will allow for a wide range of research, ranging from qualitative interviews to large-scale linked database research. At times research will be conducted by departmental staff, but mostly research will be

undertaken by external researchers. Regulation will provide for safeguards for the keeping and use of that information.

Hon Giz Watson also raised concerns about changes to the Criminal Law (Mentally Impaired Defendants) Act 1996 and changes consequential to the rearrangement of provisions within the Prisons Act dealing with temporary absences from prison. An absence that furthers the interests of justice would be to attend court or another judicial body. This reason now falls within that part of the Prisons Act that deals with temporary absences. Mentally impaired accused are excluded by the Criminal Law (Mentally Impaired Defendants) Act from access to these provisions. The amendment maintains a capacity for mentally impaired accused held in prisons to leave prison to attend court.

With regard to the changes to section 72 of the Victims of Crime Act, these changes are consequential to the creation of two departments from the Department of Justice. They will ensure that the Department of Corrective Services and the Department of the Attorney General can continue to receive information about victims of crime. This will ensure that victims of crime can continue to receive information and support services.

With regard to the transfer of responsibilities for prison health to the Department of Health, the Minister for Health is considering this recommendation of the Inspector of Custodial Services. Any legislative change that is required will be made when that decision is made.

With regard to prisoner wellbeing and rehabilitation, new section 95 of the act makes specific mention of the need to ensure that programs and services meet the needs of Aboriginal and women prisoners. That is because these groups of prisoners form a significant subpopulation of prisoners, and there is a need to ensure that programs and services are relevant, as mainstream services have not done this adequately in the past. This section is broad and covers the wellbeing and rehabilitation of all prisoners. Mention of women and Aboriginal prisoners should not be interpreted as excluding the particular needs of other subgroups of prisoners.

I refer to the concerns raised about health inspection reports on prisoners. Reports on health inspections of prisoners cover the health, hygiene and sanitary conditions of facilities in prisons. Reports are given to the prison superintendents, who are expected to make any recommended changes. These reports are available to the Inspector of Custodial Services, and they will be available under freedom of information legislation.

I have attempted to cover many of the issues that were raised. Some of the questions that were asked last night in particular were quite comprehensive. Luckily, because there was a break in the debate, I was able to get some definitive answers. We are about to go into committee. That will provide the opportunity to deal with the issues in more detail.

I thank the members for their comments on the bill. I commend the bill to the house.

Question put and passed.

Bill read a second time.

Committee

The Deputy Chairman of Committees (Hon Louise Pratt) in the chair; Hon Jon Ford (Minister for Local Government and Regional Development) in charge of the bill.

Clause 1 put and passed.

Clause 2: Commencement -

Hon MURRAY CRIDDLE: Subclause (2) states -

> Different days may be fixed under subsection (1) for different provisions.

What are those different provisions?

Hon JON FORD: Although we will seek to proclaim all the provisions of the bill at the time of proclamation, we may need to bring into operation some of the provisions in the bill, such as the temporary absence provisions, at the same time as the parole provisions are brought into operation.

Hon Murray Criddle: When is that likely to occur?

Hon JON FORD: I am advised that the parole provisions are expected in early 2007.

Clause put and passed.

Clause 3 put and passed.

Clause 4: Section 3 amended -

Hon GIZ WATSON: According to the explanatory memorandum, this clause deletes references to words or expressions that have become redundant as a result of the provisions of the bill, and introduces new definitions where required. It is proposed that the reference to "Executive Director (Corrective Services)" be removed from the act, as this provision is now archaic in light of current public sector management principles and is also inconsistent with the machinery of government reforms and the Mahoney recommendations. To which of the Mahoney recommendations does this refer? If the term "Executive Director (Corrective Services)" is to be removed, what will that position now be called, and where will that term be defined?

Hon JON FORD: This change does not come under the Mahoney recommendations. The executive director will be called the "Commissioner for Corrective Services" and that position is established under the Public Sector Management Act.

Hon GIZ WATSON: To that extent, the explanatory memorandum is perhaps incorrect, because it says that the removal of the term "Executive Director (Corrective Services)" is consistent with the Mahoney recommendations. It does not really matter, but I could not find that recommendation in the Mahoney report, so I am checking to see whether it is accurate.

Hon JON FORD: The member is correct; it does not refer to a specific recommendation of the Mahoney report, although I am advised that the establishment of the position of Commissioner for Corrective Services was a recommendation. As I said before, that was established under the Public Sector Management Act. It was thought that the title would apply to situations in which an "executive director" seemed an appropriate position as head of a sub-agency of a larger group. It is no longer relevant and needs to be a much stronger senior position.

Hon GIZ WATSON: I note that there are some new definitions at subclause (1)(c), including a definition of "judicial body", which in part states -

> **"judicial body"** means a court, tribunal or other body or person that has judicial or quasi judicial functions . . .

The explanatory memorandum does not seem to make reference to this part of the clause. It does not add a lot. It states -

> It is proposed through clauses 27 to 29 of the Bill, to amend the provisions in the *Prisons Act 1981* relating to the authorised absence of a prisoner from prison. Accordingly, it is proposed to insert definitions of an "absence permit" . . .

I can understand that, but I do not quite understand why there needs to be what I assume to be a new definition of "judicial body". Perhaps the minister might explain what that definition relates to and whether it is a new definition within the act.

Hon JON FORD: As the honourable member suggested, it updates the definition of "judicial body" to include bodies that did not previously exist, such as the Corruption and Crime Commission.

Hon GIZ WATSON: I understand that it is unrelated to authorising the absence of prisoners. That is a separate issue. The relevant paragraph in the explanatory memorandum implies that it is related to the matter of assessing the absence of prisoners, but it is simply a timely way to amend the definition. Is that a more reasonable explanation for its inclusion?

Hon JON FORD: Yes, it is simply an administrative amendment.

Clause put and passed.

Clause 5: Section 5 amended -

Hon MURRAY CRIDDLE: This clause provides an opportunity for the minister to declare a place to be a prison. However, I notice in the second paragraph of the explanatory memorandum entry for clause 5 that there is an opportunity, as I understand it, for the minister to reverse the situation and revoke the proclamation of a prison. I ask the minister whether a prison is likely to be created in the near future, or whether the proclamation of a current prison is to be revoked.

Hon JON FORD: I am advised that the answer is no to both questions.

Hon GIZ WATSON: The explanatory memorandum indicates that this clause is consistent with one of the Mahoney recommendations. Which recommendation is referred to?

Hon JON FORD: It does not refer to a specific Mahoney recommendation. The clause is about consistency with a recommendation concerning section 13 of the Young Offenders Act 1994. Under those provisions, the minister can declare a detention centre. This clause makes the provision consistent with that.

Hon SIMON O'BRIEN: Clause 5(1) states -

Section 5(1) is amended as follows:

(a) by deleting "The Governor may by proclamation -"

Declare a prison -

and inserting instead -

" The Minister may, -

Declare a place to be a prison -

by order - ".

He may also revoke such a declaration. I am wondering what the point is of this provision. Can the minister outline for members the dot point sequence of events when a government has determined that a place should be proclaimed a prison, and sets about doing it? What are the steps from the time the decision has been made, after all other considerations, to the proclamation of a prison?

Hon Jon Ford: For a Governor?

Hon SIMON O'BRIEN: Yes.

Hon JON FORD: I am advised that in general terms the first step is to define the geographic boundaries of a prison. Once those boundaries have been established - that can take a few weeks because of the administrative paperwork - the minister makes a recommendation to the Governor, who then decides with the Executive Council whether the area will be declared a prison. The whole process takes several weeks.

Hon SIMON O'BRIEN: If a minister were to issue an order, there would be one less link in the chain. At the moment the responsible minister would have to determine that a prison was required in a certain place. Would that decision go to cabinet?

Hon JON FORD: If there was a requirement to build a prison, cabinet would be aware of it from a budgetary perspective. Cabinet is not required to approve the building of a prison. The Governor is required to approve the building of a prison.

Hon SIMON O'BRIEN: The Minister for Corrective Services - we had a Minister for Corrective Services in 1982 - may determine that a certain place be declared a prison or that the boundaries of a prison be altered. He or she will then publish that order. The minister does not need to approach his colleagues, cabinet or anyone else about the matter. If the same minister wanted to do that under the existing provisions, the proposal would have to go before the Governor. Even if the proposal does not go via cabinet and involve other government members, it would still have to be communicated to the Governor, in which case it would go through another pair of hands. I am not sure about the way in which proposals reach the Executive Council. Presumably a proposal would go before the Executive Council, the Governor would sign a proclamation and then it would be proclaimed. That removes a step from the process. It removes a level of scrutiny from the process, specifically the level of scrutiny that occurs when the instrument goes beyond the minister's office, but before it reaches gazettal and has to go the Governor in Executive Council. That is the effect of this amendment, as I understand it. I am sure the minister will correct me if I am wrong. Regardless of what Mahoney apparently said about some other recommendation that related to the Young Offenders Act 1994, which may well have been viewed in a different context because it relates to young offenders and how they are detained, why is it forward moving to delete a step in the chain that, presumably, has been around since the year dot?

Hon JON FORD: Currently an issue that is not required to go to cabinet may need the Governor's signature. For example, the reappointment of a director general would go to Mal Wauchope, the Director General of the Department of the Premier and Cabinet, who is the Clerk of the Executive Council. He would prepare the papers in the way that is required by the Department of the Premier and Cabinet and they would be sent to the Governor. The member is right; in this case the process would be similar. For instance, if a ward of a hospital were declared a prison, there would be a budgetary requirement. The government believes that this is a forward step because it will remove a considerable amount of administration from the process. I suppose one could say that the Governor in Executive Council is a check or balance. However, it could also be perceived as a cultural and historical step. Given that the Governor chooses mostly to take the advice of the Executive Council, which is his cabinet, a real review is not carried out. This provision is consistent with acts such as the Young Offenders Act 1994, for which the minister also has responsibility

Hon SIMON O'BRIEN: That is interesting. This clause has been included to remove an inconvenient administrative step. It is convenient to do lots of administrative things. I will now do an administrative thing. I move -

Page 4, lines 8 to 14 **-** To delete the lines.

There is no requirement for this provision. I do not believe that deleting that link to remove an administrative burden in the process is a step forward. This provision has been around for a long time and has served as a check and balance. If we want to get rid of administrative burdens, I could provide the minister with a huge list of administrative burdens. Madam Deputy Chairman would be awfully cross with me if I digressed and listed the administrative steps that could be removed when it comes to obtaining a heavy vehicle permit from the Department for Planning and Infrastructure; therefore, I would not dream of doing that. Suffice to say, I am sure the honourable minister would have a hit list of administrative inconveniences. Some members might argue, and do argue, that some of those things are needed. That is the nature of the debate about red tape as a negative versus regulations as a positive. In effect, I have moved to delete clause 5(1) because I do not believe any case has been made for the government's proposal. The amendment seeks to take out a link in a chain, which is not of consultation; it is a check and balance. The process confirmed by the minister is that once the minister at departmental or administrative level has decided a change is required, the extra check and balance requires the matter to go outside the department through the Exco process and receive some other scrutiny, even in passing, from at least one other minister and others. There may be all sorts of reasons that it might be highly useful to have that process in place. The state of Western Australia has found that to be the case since the year dot. That is why this provision remains in the legislation.

The other aspect I will address in relation to this subclause will not hold favour with the majority in this chamber - just; that is, the old O'Brien conspiracy theory with which the minister is familiar. That theory relates to his government's predilection to get rid of any reference to the vice-regal office. That might have something to do with it, and I am tempted to think that it has. In Western Australia the legislature basically consists of three parts: the Legislative Assembly, the Legislative Council and the Governor in Executive Council. I feel loath to remove a part of that and not replace it with something else. For the purpose of debate, it is reasonable to delete these provisions; they do not advance things at all. I appreciate that if we do that we may have to recommit clause 4(1)(b). That is a small price to pay for getting things right. Unless the minister has some better reason than administrative convenience for amending this provision, which has been in place for more than 100 years, I propose to persist with my amendment to delete the line.

Hon JON FORD: The government does not support the proposed amendment. The legislation is older than the Young Offenders Act 1994. Under that act the minister can declare a place to be a detention centre without reference to the executive. This provision will maintain consistency in the way the minister administers the portfolio.

I am shocked at Hon Simon O'Brien's suggestion that we would go to this length to remove reference to the Crown from the legislation!

Hon Simon O'Brien: Don't you think there is a difference between declaring a place to be a juvenile facility and a prison?

Hon JON FORD: As I said before, if it were to be a major prison, cabinet would be well aware of it, if not for any other reason than prisons cost money. As the member will be aware, cabinet is a hotbed of advocates looking for funds. There is always debate about where funds should be directed to, given the consequential jobs and the like. The only example I can think of is that, if for some reason there was some sickness or something and we wanted to use a wing of a hospital as a prison, we could declare it a prison and bring it under the control of the minister and the Commissioner for Corrective Services. There is no conspiracy. The government opposes the amendment. With this clause the government is seeking consistency with the provisions of another act.

Hon GIZ WATSON: It seems to me that the issue of siting prisons, whether it be a new prison or declaring an existing building as a prison, is of considerable community interest, if not a contentious issue. I am seeking some assurance that there will be a process. Will this amendment reduce the process of community involvement in any proposed sitings? I am slightly concerned that the minister will be able to declare places to be prisons. It sounds a bit like a John Howard idea: it is useful to have prisons dotted all over the place. I acknowledge that one of the other members asked a similar question. Is it the intention to establish more, smaller prison facilities in Western Australia? I appreciate the argument about the consistency with the provisions in the Young Offenders Act. That is a fair argument. Apart from the consistency argument, what does government envisage will happen once this legislation has been proclaimed? Will the minister declare more places as prisons; and, if so, where, and what sort of community involvement will there be in those decisions? I am considering the amendment. I am also trying to work out whether that will make any difference to the process and whether there will be sufficient debate about the location of these facilities if there is to be more of them. I thought we were trying to get rid of them.

Hon JON FORD: The government has no plans for there to be a plethora of prisons all over the place.

Hon Simon O'Brien: Is this the plan for Royal Perth Hospital? You mentioned hospitals.

Hon JON FORD: Now the member is being paranoid - but since he has mentioned it! Of course major prisons are a very contentious issue. It would be a very foolish government that did not consult widely on prison sitings. We tend to consult so widely on siting prisons that we are criticised for delaying them. The Broome prison is one to which that criticism applies. Is there a particular process that demands consultation? No; that requirement does not exist now. I argue that reference to the executive will not guarantee that. There is an argument that it is there for a reason. All I can say is that it is not the government's intention to establish prisons all over the place without consulting the community.

Hon SIMON O'BRIEN: The idea that hospital wings or major hospitals could be converted into prisons was entertained purely in a tongue-in-cheek way, as sometimes happens when we are at the committee table. I just wanted to clarify that because I am not sure what was picked up for the record. I am not suggesting that the government would do that. Similarly, I am not getting hung up on the anti-monarchist, republican thing. However, I am genuine in making the observation about a step in the chain. A very experienced former minister who sits not far from where I sit tells a story that I will not repeat in detail in this chamber; that is his prerogative if he chooses to do so. It is possible sometimes for the minister responsible to go to Executive Council, on behalf of the government, and to get a bit of a surprise at a proposal by a ministerial colleague. As I said, a former minister, who is still a member of Parliament, has a graphic example of another minister who decided that he or she would introduce a regulation or something similar. It impacted across the whole of government, and matters involving prisons can also impact incredibly on various other ministries. In that case it was good that Exco was involved because it gave the minister, who is still a member, the opportunity on that occasion - when his heart had stopped palpitating - to say that he would withdraw that one and come back to it at the next Exco meeting. I am sure the current government has no maverick or lunatic ministers, but this illustrates the need for checks and balances; it is because of the human element. It is probably convenient for governments of both persuasions to make this amendment. It is an extra check and balance; no more, no less. There is no need to remove established checks and balances simply for administrative convenience and because the department cannot be bothered to go through the process. It is not an everyday affair when a proclamation about a prison or some such matter goes to the Governor. I think the provision is worth preserving, so I will persist with the amendment.

Amendment put and negatived.

Clause put and passed.

Clause 6 put and passed.

Clause 7: Section 7 amended -

Hon GIZ WATSON: Clause 7 deals with the involvement of individuals or organisations in providing services within the prison. I thank the minister for his response in his second reading summing up to the questions I raised. His answers have allayed my concerns somewhat about the intention of this amendment. Of course, the Greens (WA) would support the involvement of community organisations. I am particularly looking at the explanatory memorandum in which it is suggested that it is intended to facilitate consultation in collaboration with and use of community groups, Aboriginal elders, specific interest groups, private commercial organisations etc. That is fine, but I still have a residual concern as this amendment is so broad. Clause 7 states -

> any individual or organisation in any way that the chief executive officer considers expedient for the purpose of the performance of functions under this Act.

Obviously that would encompass community organisations, service organisations and Aboriginal elders etc, but it could involve private companies. My concern remains, because the amendment is so broad, about the relationship between corrective services, which is a public service, and private organisations and private individuals in the provision of that service. I move -

> Page 5, after line 18 - To insert -
>
> > (2b) The Department's Annual Report must contain a list of individuals and corporate bodies who assisted the CEO in the performance of his or her functions under the Act.

This is a fairly inoffensive addition. It simply requires that the annual report of the department sets out very clearly which individuals and organisations have been involved in providing assistance to the CEO. It is an accountability measure. It would assist to resolve my concerns about the organisations that would be approved by the chief executive officer to assist in carrying out the performance of functions under the act. I hope that other members in the chamber will support this amendment. I do not think it detracts from the intention of the clause as it stands, but it would mean that the process was transparent and it would give an account of those who had been involved in any given year.

Hon JON FORD: The government opposes this amendment. We understand the intention but if this were to be incorporated in the bill, there could be a couple of unintended results. One could be that it would be an

extremely onerous task. We would be encouraging the chief executive officer to have quite a broad consultation. Given that, it would be quite an onerous task to include all those possible organisations and individuals involved. We believe that certainly from a ministry perspective it would be onerous, and, with a mind to that, the CEOs would limit their consultation. The other side of it is the privacy issue, particularly from an individual perspective. Volunteers, for instance, who did not want to be identified, would be exposed to public scrutiny. It is on that basis that the government opposes the amendment.

Hon GIZ WATSON: I hear the concerns about privacy. It seems to me that we are still dealing with a public function, which is the provision of corrective services. Can the minister give me an example of where another department engages the assistance, collaboration and consultation of private organisations or individuals without the public knowing who they are? If this amendment was not successful, I assume that, for example, the CEO would have to keep records of who he or she was consulting with, collaborating with or being assisted by. Would those records be obtainable under freedom of information? It is just a simple accountability measure.

Hon JON FORD: The Department for Community Development, for instance, consults broadly on a range of community development issues and is not required to report annually in all those contexts. From a fisheries perspective, which I am familiar with, literally hundreds of individuals and organisations are consulted. Some of that information is specifically excluded from being reported on as the commercial sector is simply engaged without the fear of commercially confidential information getting out and about. They are two examples I can think of. I understand that the Department of Environment and Conservation consults very broadly both with individuals and organisations and also is not required to report on all those consultations.

Hon GIZ WATSON: I suggest that that information would be obtainable under FOI unless departments were consulting verbally and not making records of it, which would be rather odd behaviour for a department.

Hon JON FORD: My understanding of FOI is that one has to know what information one is seeking. With regard to the fishing information, I understand that it is excluded from that particular section of the act.

Hon Giz Watson: That is commercial confidentiality. There is a slight difference.

Hon JON FORD: We are talking about a particularly sensitive area, such as areas in DCD. We are trying to encourage broader consultation, not limit it. I am just putting my argument. I understand what the member is saying. We just see some risks with that.

Hon GIZ WATSON: I have a couple of further questions on this issue. I reiterate that I do not have a problem with the intention. The explanatory memorandum states that consultation would include but is not limited to the provision of programs and events, work and skills development opportunities, tuition, seminars and the like. All those things are fine and laudable. I have a couple of questions. Firstly, do similar acts in other states around Australia have provisions such as this to specifically enable the involvement of individual organisations? Secondly, by opening it up in this way, is there any provision for any of those individual organisations to be paid for their services?

Hon JON FORD: We do not know what goes on in other acts in other jurisdictions. If indigenous organisations supplied services for supervision programs, that would be done on a contractual basis, as it is now. Those people would be paid. There are also volunteers, who are not paid. There is a range of non-government organisations, for instance, that provide services for which some people get fees and other people do not. The main objection to this is the onerous nature of the administration and the consequence that CEOs would add a considerable cost to the administration of the service. There is also a chance of a reasonable risk of unintended circumstances if that information is published.

Hon GIZ WATSON: I assume that this amendment is considered necessary because the existing provisions are inadequate to ensure that the chief executive officer may do all these things. There must be some provision under the act for services to be provided by counsellors and by those providing tuition at TAFE and a range of things. Why is this different from what is already there? Secondly, I note that the clause is very broadly couched. It says -

> in any way that the chief executive officer considers expedient for the purpose of the performance of functions under this Act.

Does this mean any functions under this act? It is exceedingly broad. It is one thing to talk about skills, training, programs and events, but surely the functions under this act also include security and other functions. Would it cover that? I am worried about that because I do not think it works that broadly. The intention is to try to make it broad so that discretion exists. Does it mean “any functions under the Act”? Surely that would mean that a CEO could make use of the assistance of an individual organisation to provide security functions, for example. I would be concerned about the ability to delegate in that way.

Hon JON FORD: The reason this provision is in the bill is that it clarifies the engagement of other parties by the chief executive officer, otherwise the act is silent on the matter. It outlines that the CEO can carry out these

functions. In that way, it seems to be necessary. It would never be the case that any organisation or volunteers would be involved in prison guard duties. There are specific provisions for people involved in that work. There are duty-of-care provisions and a range of things covered under different acts. Whilst it is broad, it just clarifies what already occurs.

Hon GIZ WATSON: My final question is whether there is an issue for the engagement of individuals or organisations regarding liability and insurance if they are working within the prison premises? Is that covered; and, if so, in what way?

Hon JON FORD: They are protected from liability under section 111 of the general provisions part of the Prisons Act 1981, which states -

> No action or claim for damages shall lie against any person for or on account of anything done, or ordered or authorised to be done, by him which purports to be done for the purpose of carrying out the provisions of this Act, unless it is proved that the act was done, or ordered or authorised to be done, maliciously and without reasonable and probable cause.

Hon SIMON O'BRIEN: I will indicate the opposition's position. I nearly said the government's position - I am very forward looking! The opposition's position is that it notes and sympathises with what the mover of the amendment has said. However, we cannot ignore the government's response, particularly with regard to noting possible conditions of privacy and also the value of the proposal versus the administrative burden that would be required. That is the case particularly when one considers that around the state it could be considered that many officers who are collaborating and consulting do so on behalf of a chief executive officer or as officers acting under the CEO. The requirement certainly would be onerous and almost boundless. Regretfully, we cannot support the amendment.

Amendment put and negatived.

Clause put and passed.

Clauses 8 and 9 put and passed.

Clause 10: Section 13 amended -

Hon SIMON O'BRIEN: I move -

> Page 7, lines 2 to 5 - To delete the lines.

This government is at it again. Even after having introduced an amending bill into another place, if the government finds that it has forgotten to remove any references to the Queen of Australia, someone who is about the size of the Attorney General and who is burdened with the same level of fixation as the Attorney General jumps on it and tries to include such a clause. That leads me to direct the attention of the Committee of the Whole to clause 10(1), which seeks to amend section 13(2) of the principal act. Upon being engaged as a prison officer, under section 13(2) an officer must swear an oath of engagement that states -

> I will well and truly serve the Queen of Australia as a prison officer of Western Australia;

It is now proposed to say "engage and promise that I will well and truly serve the state as a prison officer of Western Australia". It does not have the same ring to it, does it? I will serve the state. Javul! I know nothing!

Hon Norman Moore: Sergeant Schultz.

Hon SIMON O'BRIEN: Do not mention the war! This provision is no ornament to this bill; it was rightfully left out by those who drafted the bill and it was a folly to seek to include it. I do not know what prison officers or would-be prison officers would think about being asked to well and truly serve the state. What does that mean? How does one serve the state? In what context is the word "state" used? We know what the Queen of Australia is. Case history that goes back for centuries educates us about who the Queen of Australia is and what it means to swear an oath to the Queen of Australia. To whom is one swearing an oath when one swears an oath to the state? Perhaps the minister can enlighten us about whom these prison officers will be engaging and promising themselves to.

Hon JON FORD: The "state" is the state of Western Australia.

Hon Simon O'Brien: What does that mean? Is it the body politic, the ground we walk on, the government or the party of the government?

Hon JON FORD: It is the state of Western Australia.

Hon Norman Moore: Is it the executive or the minister or the Attorney General?

Hon JON FORD: It is not the Attorney General.

Hon Norman Moore: Of course it's the Attorney General. He runs the place.

Hon JON FORD: The Attorney General is not the state. As I said in my response to the second reading debate, this amendment was introduced to ensure consistency with similar oaths of officers made by ministers of the judiciary and members of the local government following changes introduced by the Oaths, Affidavits and Statutory Declarations (Consequential Provisions) Act 2005.

Hon Norman Moore: Did that not provide an option?

Hon JON FORD: It certainly provided an option in this place. That is the reason for the amendment. I know that members opposite have a different position on that, and on that basis we will not agree. The government opposes the amendment.

Hon SIMON O'BRIEN: The minister is dead right. We will not be able to agree. I know the minister likes to hear me talk about this, because I have mentioned it previously. Once again, I note for the record that what the government is doing with its ideological, leftie, embittered and cultural-cringe zealotry, on every occasion that it gets the opportunity, is not supported by argument or reason. It is simply a blind bigotry against the monarch. I want to take it beyond that, so I will not use intemperate words but will limit myself to what I have said. Time and time again I have asked several government ministers at the table this same question: what does the state of Western Australia mean? Does it mean our level of excitement? What state is Western Australia in at the moment? Does it mean a political party? Does it mean the government of the day? Does it mean a geological bit of dirt? Does it mean a geographical area? Does it mean a body politic? We do not know.

Hon Ray Halligan: It is the Governor.

Hon SIMON O'BRIEN: The Governor is on the way out. If the member had been here for the debate on clause 5 - he was absent from the chamber on urgent parliamentary business - he would know that we have already established that the Governor and the vice-regal office are on the nose. It appears that the government, emboldened by that, now wants to get rid of the monarch as well. The opposition sees no merit in this. In fact, we see some danger. Over hundreds of years people have gone to a lot of trouble to arrive at the constitutional arrangements that exist in this jurisdiction. When those arrangements are undone just because of the whim of some powerbroker in another place - that is all it is - our constitutional position is weakened. That will not be proved the next time a group of prison officers swear the oath of engagement promising that they will well and truly serve the state. The world will not come to an end. However, this government is persisting in slowly chipping away at the constitutional arrangements that define the relationship that exists between individuals and the government. The more we take out the buffers - that is what the constitutional monarch is - that protect us from excess by governments, the more we weaken the position of every free man, woman and child in Western Australia. Therefore, it would be remiss of me to not oppose the deletion of these lines. Even though the coalition of republicans and anarchists will probably have their day, they will not do so without being opposed.

Hon JON FORD: The member has made some comments about the ideological or political position that is being taken by members on this side of the house with regard to the monarchy. Across the broad spectrum of politics in this country, there is a variety of views. The word "state" is used in international law and in discussions with regard to those entities that are defined by a governance, whether that be a governance that is constituted through a constitution, or some other mechanism. Indeed, Great Britain is referred to in general terms as a "state". The monarch, the governor, ministers and citizens are all entities and creations of the state. In that context, when we plead allegiance to the state, the state is that entity - Western Australia - to which we all choose to belong.

Amendment put and a division taken with the following result -

Ayes (12)

Hon George Cash	Hon Donna Faragher	Hon Ray Halligan	Hon Simon O'Brien
Hon Peter Collier	Hon Anthony Fels	Hon Barry House	Hon Barbara Scott
Hon Murray Criddle	Hon Nigel Hallett	Hon Norman Moore	Hon Ken Baston *(Teller)*

Noes (12)

Hon Shelley Archer	Hon Adele Farina	Hon Louise Pratt	Hon Ken Travers
Hon Vincent Catania	Hon Jon Ford	Hon Ljiljanna Ravlich	Hon Giz Watson
Hon Kate Doust	Hon Paul Llewellyn	Hon Sally Talbot	Hon Ed Dermer *(Teller)*

Pairs

Hon Margaret Rowe	Hon Matt Benson-Lidholm
Hon Robyn McSweeney	Hon Sheila Mills
Hon Helen Morton	Hon Graham Giffard
Hon Bruce Donaldson	Hon Sue Ellery

The CHAIRMAN: As the vote is tied, the amendment fails.

Amendment thus negatived.

Clause put and passed.

Clause 11 put and passed.

Clause 12: Section 15DA inserted -

Hon MURRAY CRIDDLE: Proposed section 15DA(2) states -

> The contract may provide for an increase in the amount of the penalty because of each day or part of a day during which a breach continues.

Can the minister give me an indication of what the increase might be? This is very open ended, from my point of view anyway. I believe that there is a need for us to understand that the penalty may not be one that is doubled every day, for instance.

Hon JON FORD: This penalty provision facilitates the negotiation of a range of penalties up front in the contract negotiation and for them to be agreed to. It does not allow for a willy-nilly addition of penalties. It will allow a range of penalties to be agreed to in the contractual negotiation.

Hon MURRAY CRIDDLE: Proposed section 15DA(3) states -

> A penalty provided for in accordance with this section is recoverable even though no damage may have been suffered or the penalty may be unrelated to the extent of any damage suffered.

I want to understand how a breach is determined if no damage has been suffered. Maybe the minister can also explain where the recoverable amount of money will go.

Hon JON FORD: An example that has been given to me regarding proposed section 15DA(3) is that a prisoner or a number of prisoners may escape and be recaptured. As a result of that, there may have been no physical damage or no damage that needed to be fixed; therefore, no money was required to fix it. However, there may have been a risk to the public during that time. That is an example of when a penalty is recoverable, even though no damage may have been suffered. Prisoners may have escaped and been recaptured, so there would be a penalty for allowing that to occur. I am advised that in fact the amount of money - this is a guess, so we cannot say with certainty - would go into consolidated revenue, as do other penalties. However, we need to check that and get back to the member.

Hon SIMON O'BRIEN: I note some other information that has been made available to the chamber in connection with this clause. However, I will ask something else. Was there a particular incident or series of incidents that gave rise to this provision? I note that advice from the State Solicitor is given as the reason we now have this clause before us. However, was there some other incident or series of incidents before then that gave rise to the decision to put this provision in the bill?

Hon JON FORD: No, not to my knowledge. The State Solicitor's advice was a recommendation that this provision be drafted because it was difficult, at the time of drafting, to imagine all the things to which penalties may be applied when a contract was being negotiated.

Hon SIMON O'BRIEN: I fully appreciate that a provision providing for a party to the contract to be liable to pay an amount as a penalty for nonperformance must be of a general rather than a specific nature in most cases, because it is impossible to hypothesise in a contract for every possible eventuality. I note that the minister tells us that no specific incident has happened. However, I would have thought that all the time contracts with governments have penalty provisions for lack of performance. I am just curious about why we need these

provisions enshrined in law and why a similar provision cannot be just put in the contract and be valid. I do not understand why we need it in the principal act.

Hon JON FORD: The State Solicitor's advice dealt with the type of incidents that could occur but do not normally occur when dealing with normal contractual arrangements. For example, one can envisage in this instance that it may not be about performance. There may be a prison riot, and state services such as the police service may have to be sent in to restore order, and there may be property damage. This provision is needed to ensure that the penalty is enforced under contractual law.

Hon MURRAY CRIDDLE: I am still a little unclear about the words "the penalty may be unrelated to the extent of any damage suffered". Will the minister explain those words? How is the penalty determined?

Hon JON FORD: I will use the example of a prisoner's escape from prison. The amount of damage suffered may be small, but the state considers that the escape poses a high risk to the community. This provision allows the government to negotiate a higher penalty for that particular incident as a measure as opposed to any physical damage that could result from that escape. Although the physical damage suffered is small, the risk to the community may be regarded as high and, on that basis, the government can negotiate a much higher penalty than it could in normal damages negotiations.

Hon MURRAY CRIDDLE: I presume that the opportunity to negotiate the penalty is in the contract, otherwise the contract would not happen. Who decides whether the penalty will be extreme or small?

Hon JON FORD: It is negotiated and agreed to by the parties and included in the contract.

Hon MURRAY CRIDDLE: That sounds very easy to arrange. However, there will be disagreement. Take for example the government's rail contract. The differential between the contractor's view and the minister's view is $200 million. How will the government resolve the difference in what people perceive to be a fair penalty?

Hon JON FORD: It is negotiated up-front between the two parties; that is, the department and the contractor. If there is a dispute about the penalty, it is sorted out during the negotiations; otherwise there would be no contract. This provision **-** in part I am responding to Hon Simon O'Brien's questions about why the provision has been included in the bill **-** specifically allows that sort of negotiation to occur. The State Solicitor advised of the need for this provision to allow that contractual discussion to occur, because in normal contracts it relates directly to damages. In the example I used I referred to a subjective risk to the public. A dangerous prisoner who escapes from prison may not commit an offence before he is recaptured. In those circumstances there would be no real physical damage, but his escape would have posed a high risk to the community. We must negotiate a penalty that encourages the contractor to ensure that an escape does not happen and recognises the priority that the government places on the contractor.

Hon MURRAY CRIDDLE: I will not go on. I make the point that there seems to be no means of settling a disagreement between the contractor and the Department of Corrective Services, if that is the department that is negotiating the contract. There is no final mechanism for settlement. The next step would be a legal argument.

Clause put and passed.

Clause 13 put and passed.

Clause 14: Sections 23, 24 and 25 replaced -

Hon JON FORD: I move **-**

> Page 9, lines 4 to 6 - To delete the lines.

The amendment to clause 14 and the amendments that I will move to clauses 29 and 32 are required to clarify two things. First, that authorised absences may be granted to a prisoner who is held in custody in a place other than a prison. Those absences must be approved according to part VIII of the Prisons Act 1981. The proposed sections in clause 14 deem prisoners to be in lawful custody when they are at an external facility, when they are authorised to be temporarily absent from prison and when they attend legal or investigative proceedings. The other amendments that I will move to clause 29 will clarify that prisoners held in custody in places other than a prison, such as work camps or the Franklin unit at Graylands Hospital, may be permitted an authorised absence from the place of custody. This amendment will allow an absence to occur directly from that place of custody without the prisoner having to be returned to a prison, which is what happens now. As a consequence of that amendment, consequential amendments are required to clause 14. The amendments to clause 14 will remove proposed section 23(2)(b) because it will become redundant. They will also add a reference to other facilities at which a prisoner may be held in custody under proposed section 24. These amendments clarify that a prisoner held in an external facility and a prisoner who is authorised to be absent from a prison or other facility where he or she is held in custody is deemed to be in lawful custody.

Amendment put and passed.

Hon JON FORD: I move -

Page 9, line 8 - To delete "prison" and insert instead -

a prison or other facility

Page 9, line 10 - To delete "from prison".

Hon GIZ WATSON: Proposed section 23, "Prisoner assigned to external facility in lawful custody" reads in part -

(1) In this section -

"external facility" means a facility outside a prison that is used to confine prisoners to facilitate their being provided with opportunities for work or participation in programmes or activities.

Given that there is a definition in this proposed section, why are the words "other facility" required? Does not "external facility" cover any other facility that is not a prison? Is there a facility other than an external facility?

Hon JON FORD: This will cover places such as the Franklin unit of Graylands Hospital, where mentally ill people reside, and will allow for authorised absences.

Hon GIZ WATSON: Is the minister suggesting that the definition of "external facility" does not cover a facility such as the Franklin unit at this stage?

Hon JON FORD: Yes.

Amendments put and passed.

Clause, as amended, put and passed.

Clauses 15 to 28 put and passed.

Clause 29: Section 83 replaced by sections 83, 83A and 83B -

Hon JON FORD: I move -

Page 14, lines 17 and 18 - To delete "the prison in which the prisoner is confined" and insert instead -

a prison or other facility.

Page 15, line 3 - To delete "from prison".

As I explained, the previous amendments were necessary as a consequence of this amendment. This clause deals with the purposes and conditions associated with an absence permit from a prison. Amendments to proposed section 83(2) and (4)(b) provide that prisoners held in custody and places other than a prison, such as the Franklin unit at Graylands Hospital, may be permitted an authorised absence from their place of custody. These amendments will allow an absence to occur directly from the place of custody without the prisoner having to be returned to a prison, as may occur now.

Hon SIMON O'BRIEN: The opposition supports this. This is the finetuning of a provision, and will reduce an inefficiency that occurs, I understand, quite regularly in the Department of Corrective Services. Even though this bill was passed by another place without this issue being picked up, the government still found time to remove reference to the Queen from the principal act. It just shows how misplaced the government's priorities are. The minister will thank me for pointing that out!

Amendments put and passed.

Clause, as amended, put and passed.

Clause 30 put and passed.

Clause 31: Sections 85 to 94 replaced by sections 85, 86, 87 and 88 -

Hon JON FORD: I move -

Page 16, after line 23 - To insert -

(4) In this section -

"proceedings" of a judicial body includes anything done in the performance of the functions of the judicial body.

The clause adds the definition of the term "proceedings of a judicial body", which clarifies that the term means anything done in the performance of the functions of the judicial body. The Corruption and Crime Commission was concerned that the term "proceedings" could be interpreted narrowly and could exclude some of the CCC's investigative functions that occur prior to formal proceedings. The proposed definition clarifies that any functions of a judicial body, where relevant, that issue a bring-up order are covered by the tome.

Hon SIMON O'BRIEN: This is what happens when lawyers are involved. Clearly, in this instance, "proceedings" is seen as proceedings with a capital "P"; that is, the formal proceedings of a judicial body rather than the common meaning of proceedings that I think many of us would presume. Perhaps this is somewhat necessary. It might be a belt-and-braces move and is perhaps more than is actually necessary. Nonetheless, it does not offend the opposition. If the government wants a belt-and-braces approach, the government can have a belt-and-braces approach. We find no reason to oppose the amendment.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 32: Part IX replaced -

Hon JON FORD: I move -

Page 20, after line 25 - To insert -

(7) A prisoner may be confined in a facility outside a prison to facilitate the prisoner being provided with opportunities for work or participation in services or programmes under this section.

(8) This section does not authorise a prisoner to be absent from a prison, or facility referred to in subsection (7), without an absence permit.

Clause 32 deals with the provision of services and programs for the wellbeing and rehabilitation of prisoners. Proposed section 95 allows that these services and programs may be provided inside or outside a prison. The amendments add two further subsections to proposed section 95 that clarify that a prisoner may be confined in a facility outside a prison to participate even in external programs and that absences from a prison or other place where a prisoner is held in custody must be by way of an absence permit.

Hon SIMON O'BRIEN: Mr Chairman, the -

The CHAIRMAN: I draw attention to the fact that members appear not to be observing the call. I thought that I could at least tell Hon Simon O'Brien and he would not be offended. If I told anyone else, they would think I was picking on them.

Hon SIMON O'BRIEN: Mr Chairman, I did not even understand! Before offence and indignation, comprehension would seem to be required. However, one way or another, I seem to have caught your eye, Mr Chairman!

I alluded to proposed new part IX of the Prisons Act during the second reading debate. I basically interpret this provision as relating to yet another circumstance in which a prisoner can be legitimately absent from prison. I know that Hon Murray Criddle took an interest during the second reading debate in the circumstances under which a prisoner may legitimately be absent from prison. There are quite a few examples, and this proposed part relates to another of them. Proposed clause 95(8) contained in the minister's amendment sits very comfortably with the opposition. Proposed clause 95(7) concerns a prisoner who is confined in a facility outside a prison being able to do various things. I have two questions. Firstly, what is the meaning of the term "confined" in the context of proposed subclause (7)? Is it purely a legal technicality that describes the person's status as confined, even though he or she may not be physically restrained in a locked room? Secondly, what is the meaning of the word "facility"? Is there a special meaning attached to the term in this sense, or could it be something such as a business premises or even a residence or hostel? I ask the minister to tease the definitions out for me.

Progress reported and leave granted to sit again, pursuant to sessional orders.