

Custodial Legislation (Officers Discipline) Amendment Bill 2013

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Western Australia

LEGISLATIVE ASSEMBLY

**Custodial Legislation (Officers Discipline)
Amendment Bill 2013**

A Bill for

An Act to amend —

- **the *Prisons Act 1981*; and**
- **the *Young Offenders Act 1994*,**

to make provision for various matters relating to the discipline of officers, and for related purposes.

The Parliament of Western Australia enacts as follows:

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Part 1 — Preliminary

1. Short title

This is the *Custodial Legislation (Officers Discipline) Amendment Act 2013*.

2. Commencement

This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

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Part 2 — Prisons Act 1981 amended

3. Act amended

This Part amends the *Prisons Act 1981*.

4. Section 3 amended

(1) In section 3(1) delete the definition of *Appeal Tribunal*.

(2) In section 3(1) insert in alphabetical order:

remove, in relation to a prison officer, means terminate the employment of the prison officer;

5. Section 8 amended

In section 8(1) delete “section 9, 35, 104, 105 or 106.” and insert:

section 9 or 35.

6. Section 13 amended

(1) Delete section 13(3) and insert:

(3) The Minister may, on the recommendation of the chief executive officer under section 101(1)(b), remove a prison officer engaged under subsection (1).

(2) In section 13(4) delete “consenting to a dismissal” and insert:

removal

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1 **7. Part X replaced**

2 Delete Part X and insert:

3

4 **Part X — Discipline of prison officers**

5 **Division 1 — Preliminary**

6 **96. Term used: prison officer**

7 In this Part —

8 *prison officer* means a person engaged to be a prison
9 officer under section 13(1).

10 **Division 2 — General discipline**

11 **97. Regulations, rules to be strictly observed**

12 A prison officer must use his or her best endeavours to
13 ensure that this Act, regulations made under this Act,
14 rules and standing orders are strictly observed.

15 **98. Application of *Public Sector Management Act 1994***
16 **Part 5**

17 Prison officers are prescribed for the purposes of the
18 *Public Sector Management Act 1994* section 76(1)(b).

19 **Division 3 — Removal of prison officers due to loss**
20 **of confidence**

21 **Subdivision 1 — Preliminary**

22 **99. Terms used**

23 In this Division, unless the contrary intention
24 appears —

25 *appeal* means an appeal under section 106;

26 *appellant* means a person who institutes an appeal;

1 **Chief Commissioner** has the same meaning as in the
2 *Industrial Relations Act 1979*;
3 **decision notice** has the meaning given in
4 section 102(3)(b);
5 **industrial commissioner** means a commissioner as
6 defined in the *Industrial Relations Act 1979*
7 section 7(1);
8 **maintenance payment** has the meaning given in
9 section 103(1);
10 **maintenance period** has the meaning given in
11 section 103(1);
12 **new evidence**, on an appeal against the removal of a
13 prison officer, means evidence other than evidence of
14 any of the following —
15 (a) a document or other material that was examined
16 and taken into account by the chief executive
17 officer in making the removal decision;
18 (b) the notice given under section 102(1);
19 (c) a written submission made to the chief
20 executive officer by the prison officer under
21 section 102(2);
22 (d) a decision notice;
23 (e) a notification of the removal;
24 **prison officer** includes a superintendent, or other
25 officer with custodial functions, appointed under
26 section 6(3);
27 **removal action** has the meaning given in section 101;
28 **removal decision** means a decision of the chief
29 executive officer to take removal action;
30 **suitability to continue as a prison officer** means
31 suitability to continue as a prison officer having regard
32 to the officer's integrity, honesty, competence,
33 performance or conduct;

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1 **WAIRC** means The Western Australian Industrial
2 Relations Commission continued and constituted under
3 the *Industrial Relations Act 1979*.

4 **Subdivision 2 — Removal of prison officers**

5 **100. Application of Subdivision**

- 6 (1) This Subdivision applies if —
- 7 (a) the chief executive officer does not have
8 confidence in a prison officer's suitability to
9 continue as a prison officer; and
- 10 (b) the chief executive officer —
- 11 (i) decides not to take, or continue to take,
12 disciplinary proceedings under the
13 *Public Sector Management Act 1994*
14 Part 5 against a prison officer; and
- 15 (ii) decides instead to take removal action in
16 relation to the prison officer;
- 17 and
- 18 (c) in the case of a prison officer engaged under
19 section 13(1), the Minister consents to the
20 taking of removal action in relation to the
21 prison officer.

- 22 (2) This Subdivision applies despite the *Public Sector*
23 *Management Act 1994* section 76(2).

24 **101. Removal action**

- 25 (1) If the chief executive officer does not have confidence
26 in a prison officer's suitability to continue as a prison
27 officer, the chief executive officer may take the
28 following action (***removal action***) —
- 29 (a) in the case of a prison officer appointed under
30 section 6(3) — remove the prison officer;

- 1 (b) in the case of a prison officer engaged under
2 section 13(1) — recommend to the Minister
3 that the prison officer be removed under
4 section 13(3).
- 5 (2) Subsection (1)(a) applies in addition to, and does not
6 limit the operation of, the *Public Sector Management*
7 *Act 1994*.
- 8 (3) The chief executive officer may conduct any necessary
9 investigation to determine a prison officer's suitability
10 to continue as a prison officer.
- 11 (4) For the purpose of the investigation the chief executive
12 officer may require the prison officer to do all or any of
13 the following —
- 14 (a) provide the chief executive officer with any
15 information or answer any question that the
16 chief executive officer requires;
- 17 (b) produce to the chief executive officer any
18 document in the custody or under the control of
19 the prison officer.
- 20 (5) The prison officer is not excused from giving
21 information, answering any question or producing a
22 document when required to do so under subsection (4)
23 on the ground that the information, answer or
24 document might —
- 25 (a) incriminate the prison officer; or
26 (b) render the prison officer liable to a disciplinary
27 measure under Division 2 or removal under this
28 Division.
- 29 (6) The information, answer or document is not admissible
30 in evidence against the prison officer in any criminal
31 proceedings except in proceedings for an offence under
32 subsection (7).

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- 1 (7) A prison officer must not, in response to a requirement
2 under subsection (4) —
- 3 (a) fail or refuse to provide the required
4 information or answer or produce the required
5 document; or
- 6 (b) give information or an answer that is false or
7 misleading in a material particular; or
- 8 (c) produce a document that the prison officer
9 knows is false or misleading in a material
10 particular —
- 11 (i) without indicating that the document is
12 false or misleading and, to the extent the
13 prison officer can, how the document is
14 false or misleading; and
- 15 (ii) if the prison officer has, or can
16 reasonably obtain, the correct
17 information — without providing the
18 correct information.
- 19 Penalty: a fine of \$4 000 or 12 months' imprisonment,
20 or both.

21 **102. Notice of loss of confidence**

- 22 (1) The chief executive officer may give a prison officer a
23 written notice setting out the grounds on which the
24 chief executive officer does not have confidence in the
25 prison officer's suitability to continue as a prison
26 officer.
- 27 (2) The prison officer may make written submissions to
28 the chief executive officer in relation to the notice
29 within the following period (the *submission period*) —
- 30 (a) 21 days after the day on which the notice is
31 given; or
- 32 (b) any longer period after that day allowed by the
33 chief executive officer.

- 1 (3) After the submission period, the chief executive officer
2 must —
- 3 (a) decide whether or not to take removal action
4 against the prison officer; and
- 5 (b) give the prison officer written notice of the
6 decision (the *decision notice*).
- 7 (4) The chief executive officer must not decide to take
8 removal action against the prison officer unless the
9 chief executive officer —
- 10 (a) has taken into account any written submissions
11 received from the prison officer during the
12 submission period; and
- 13 (b) still does not have confidence in a prison
14 officer's suitability to continue as a prison
15 officer.
- 16 (5) If the chief executive officer decides to take removal
17 action against the prison officer, the decision notice
18 must contain the reasons for the decision.
- 19 (6) Except as provided in the regulations, the chief
20 executive officer must, within 7 days after giving the
21 decision notice —
- 22 (a) give to the prison officer a copy of any
23 documents that were considered by the chief
24 executive officer in making the decision; and
- 25 (b) make available to the prison officer for
26 inspection any other materials that were
27 considered by the chief executive officer in
28 making the decision.
- 29 (7) The removal action may be carried out when the notice
30 is given or at any time after that.

- 1 **103. Maintenance payment**
- 2 (1) If a prison officer is removed as a result of removal
3 action, the prison officer is entitled to receive a
4 payment (a *maintenance payment*) for the period of
5 28 days after the day on which the prison officer is
6 removed (the *maintenance period*).
- 7 (2) The Minister may, in exceptional circumstances, direct
8 that a maintenance payment must be paid to the prison
9 officer for a specified period after the maintenance
10 period.
- 11 (3) For the purpose of subsection (2), the specified period
12 is a period not exceeding 6 months specified by the
13 Minister but in any event ending on the day any appeal
14 is determined by the WAIRC.
- 15 (4) Any maintenance payment must be determined on the
16 basis of the salary of the prison officer at the time of
17 the removal.
- 18 **104. Withdrawal of removal action and revocation of
19 removal**
- 20 (1) If removal action does not result in the removal of a
21 prison officer, the chief executive officer may, by
22 notice in writing to the prison officer, withdraw the
23 removal action.
- 24 (2) If a prison officer is removed as a result of removal
25 action, the chief executive officer may, by notice in
26 writing to the prison officer, revoke the removal.
- 27 (3) Subsection (2) applies even if an appeal has been
28 instituted against the removal.
- 29 (4) Despite any other enactment, if the removal is revoked
30 under subsection (2), the removal is to be taken to be of
31 no effect and to have never had any effect.

- 1 (5) If the chief executive officer revokes the removal of a
2 prison officer under subsection (2), the prison officer is
3 not entitled to be paid his or her salary for any period
4 the prison officer received a maintenance payment.

5 **105. Resignation of prison officer who has been removed**

- 6 (1) Even if a prison officer is removed as a result of
7 removal action, the prison officer may resign at any
8 time before the end of the maintenance period.
- 9 (2) Subsection (1) does not apply if an appeal has been
10 instituted against the removal.
- 11 (3) A resignation under subsection (1) takes effect at the
12 end of the maintenance period.
- 13 (4) Despite any other enactment, if a prison officer resigns
14 under subsection (1), the removal of the prison officer
15 is to be taken to be of no effect and to have never had
16 any effect.

17 **Subdivision 3 — Appeal against removal of prison officer**

18 **106. Appeal right**

- 19 (1) If a prison officer is removed as a result of removal
20 action, the prison officer may appeal to the WAIRC
21 against the removal decision on the ground that it was
22 harsh, oppressive or unfair.
- 23 (2) The prison officer may institute the appeal by a notice
24 to the chief executive officer stating —
- 25 (a) the reasons for the removal decision being
26 harsh, oppressive or unfair; and
- 27 (b) the nature of the relief sought.
- 28 (3) The appeal cannot be instituted —
29 (a) after the maintenance period; or

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- 1 (b) if the prison officer has resigned under
2 section 105(1).
- 3 (4) For the purposes of proceedings relating to the appeal,
4 the WAIRC is to be constituted by not less than
5 3 industrial Commissioners, at least one of whom must
6 be —
- 7 (a) the Chief Commissioner; or
8 (b) the Senior Commissioner within the meaning of
9 that term in the *Industrial Relations Act 1979*.
- 10 (5) The only parties to the appeal are the prison officer and
11 the chief executive officer.
- 12 (6) The prison officer does not have any right of appeal
13 against the removal decision other than under this
14 section.

15 **107. Proceedings on appeal**

- 16 (1) On the hearing of an appeal, the WAIRC must proceed
17 in the following manner —
- 18 (a) first, it must consider the chief executive
19 officer's reasons for the removal decision;
- 20 (b) second, it must consider the case presented by
21 the appellant as to why the removal decision
22 was harsh, oppressive or unfair;
- 23 (c) third, it must consider the case presented by the
24 chief executive officer in answer to the
25 appellant's case.
- 26 (2) The appellant has at all times the burden of establishing
27 that the removal decision was harsh, oppressive or
28 unfair.
- 29 (3) Subsection (2) has effect despite any law or practice to
30 the contrary.

- 1 (4) Without limiting the matters to which the WAIRC is
2 otherwise required or permitted to have regard in
3 determining the appeal, it must have regard to —
4 (a) the interests of the appellant; and
5 (b) the public interest, which is to be taken to
6 include —
7 (i) the importance of maintaining public
8 confidence in the integrity, honesty,
9 conduct and standard of performance of
10 prison officers; and
11 (ii) the special nature of the relationship
12 between the chief executive officer and
13 prison officers.

14 **108. Leave to tender new evidence on appeal**

- 15 (1) New evidence cannot be tendered to the WAIRC
16 during a hearing of an appeal unless the WAIRC grants
17 leave under subsection (2) or (3).
18 (2) The WAIRC may grant the chief executive officer
19 leave to tender new evidence if —
20 (a) the appellant consents; or
21 (b) it is satisfied that it is in the interests of justice
22 to do so.
23 (3) The WAIRC may grant the appellant leave to tender
24 new evidence if —
25 (a) the chief executive officer consents; or
26 (b) the WAIRC is satisfied that —
27 (i) the appellant is likely to be able to use
28 the new evidence to show that the chief
29 executive officer has acted upon wrong
30 or mistaken information; or

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- 1 (ii) the new evidence might materially have
2 affected the chief executive officer's
3 removal decision; or
4 (iii) it is in the interests of justice to do so.
- 5 (4) In the exercise of its discretion under subsection (3),
6 the WAIRC must have regard to —
- 7 (a) whether or not the appellant was aware of the
8 substance of the new evidence before the
9 appellant's removal; and
10 (b) whether or not the substance of the new
11 evidence was contained in a document to which
12 the appellant had reasonable access before the
13 appellant's removal.

14 **109. Opportunity to consider new evidence**

- 15 (1) If the chief executive officer is given leave to tender
16 new evidence under section 108(2) —
- 17 (a) the WAIRC must give the appellant a
18 reasonable opportunity to consider the new
19 evidence; and
20 (b) the appellant may, without the leave of the
21 WAIRC, tender new evidence under this
22 section in response to the new evidence
23 tendered by the chief executive officer.
- 24 (2) If the appellant is given leave to tender new evidence
25 under section 108(3), the WAIRC must give the chief
26 executive officer a reasonable opportunity to consider
27 the new evidence.

- 1 **110A. Revocation of removal after consideration of new**
2 **evidence**
- 3 (1) If, having considered any new evidence, the chief
4 executive officer revokes the removal under
5 section 104(2) —
- 6 (a) the chief executive officer must give the
7 WAIRC notice of the revocation; and
- 8 (b) the hearing of the appeal is discontinued when
9 the WAIRC receives the notice.
- 10 (2) If the chief executive officer does not give notice under
11 subsection (1), the hearing of the appeal must continue
12 but the chief executive officer may —
- 13 (a) reformulate his or her reasons for not having
14 confidence in the appellant’s suitability to
15 continue as a prison officer; and
- 16 (b) without the leave of the WAIRC, tender new
17 evidence under this section in response to the
18 new evidence tendered by the appellant.
- 19 (3) Reasons reformulated under subsection (2)(a) may
20 differ from, or be additional to, the reasons given to the
21 appellant in the decision notice.
- 22 (4) If the chief executive officer reformulates reasons
23 under subsection (2)(a) —
- 24 (a) the chief executive officer must give the
25 WAIRC and the appellant notice in writing of
26 the reasons before the resumption of the
27 hearing of the appeal; and
- 28 (b) the WAIRC must consider the reasons as if
29 they had been reasons given to the appellant in
30 the decision notice.

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110B. Application of *Industrial Relations Act 1979* to appeals

The provisions of the *Industrial Relations Act 1979* listed in the Table apply to, and in relation to, an appeal and its determination, subject to —

- (a) any specific modifications set out in the Table; and
- (b) all other necessary modifications.

Table

s. 26(1)(a) and (b)	
s. 26(3)	
s. 27(1)(b), (c), (d), (e), (f), (h), (ha), (hb), (l), (m), (n), (o) and (v)	
s. 27(1a)	
s. 28	The section applies only in relation to powers conferred by section 27 listed in this Table.
s. 31(1)	Paragraphs (b) and (c) do not apply but the subsection is to be read as if it contained the following paragraphs — “ (b) with the leave of the Commission, by an agent; or (c) by a legal practitioner. ”.
s. 31(3)	
s. 31(5)	

s. 32	<p>Section 32(1) is to be read as if a reference to “Where an industrial matter has been referred to the Commission the Commission shall, unless it” were a reference to “Where the Commission is dealing with an appeal instituted under the <i>Prisons Act 1981</i> section 106, a member of the Commission may recommend that the parties to the appeal, unless he or she”.</p> <p>References to “the matter” and “an industrial matter” are to be read as if they were references to “the appeal”.</p> <p>For the purposes of subsections (2) and (3), Commission does not include an industrial commissioner constituting the WAIRC to hear the appeal.</p> <p>Subsections (4), (6), (7) and (8) do not apply.</p>
s. 33	<p>A summons must not be issued under section 33(1)(a) to the Governor.</p> <p>A summons may be issued to the chief executive officer or the Minister but only at the direction of a commissioner appointed under the <i>Industrial Relations Act 1979</i> if that commissioner is satisfied that there are extraordinary grounds for doing so.</p> <p>A summons may not be issued to any other person except at the direction of a commissioner.</p>

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s. 34	<p>A reference in subsection (1) to “an award, order, or declaration” is to be read as if it were a reference to “an order”.</p> <p>A reference in subsection (3) to “the President, the Full Bench, or the Commission” is to be read as if it were a reference to “the Commission”.</p> <p>A reference in subsection (4) to “no award, order, declaration, finding, or proceeding of the President, the Full Bench, or the Commission” is to be read as if it were a reference to “no decision, order, finding or proceeding of the Commission”.</p>
s. 35	
s. 36	
s. 86	<p>The section does not apply in relation to costs and expenses, other than expenses of witnesses.</p>
s. 90	<p>A reference in subsection (1) to “any decision of the President, the Full Bench, or the Commission in Court Session” is to be read as if it were a reference to “a decision of the Commission under the <i>Prisons Act 1981</i> section 110E”.</p>

- 1 **110C. Adjournment of appeal if appellant charged with**
2 **offence**
- 3 (1) The chief executive officer or an appellant may apply
4 to the WAIRC for an adjournment of the hearing of an
5 appeal if the appellant has been —
- 6 (a) charged with an offence relating to any matter,
7 act or omission that was taken into account by

- 1 the chief executive officer in deciding that he or
2 she did not have confidence in the appellant's
3 suitability to continue as a prison officer; and
4 (b) the charge has not been finally determined by a
5 court or otherwise disposed of.
- 6 (2) If an adjournment application is made by the chief
7 executive officer, the WAIRC may adjourn the hearing
8 of the appeal if it considers that it is in the interests of
9 justice to do so.
- 10 (3) If an adjournment application is made by the appellant,
11 the WAIRC must adjourn the hearing of the appeal for
12 the period (not exceeding 12 months) requested by the
13 appellant.
- 14 (4) Before the end of the period of an adjournment under
15 this section, the chief executive officer or the appellant
16 may apply to the WAIRC for a further adjournment
17 and, if it is in the interests of justice to do so, the
18 WAIRC may grant a further adjournment for the period
19 specified by it.
- 20 (5) Subsections (2) and (4) do not affect any other power
21 of the WAIRC to grant an adjournment.

22 **110D. Resumption of appeal before end of adjournment**

23 If the charge is finally determined by a court or
24 otherwise disposed of before the end of an adjournment
25 under section 110C, the chief executive officer or the
26 appellant may apply to the WAIRC for the hearing of
27 the appeal to be resumed on a date specified by the
28 WAIRC.

29 **110E. Decision by WAIRC**

- 30 (1) This section applies if the WAIRC decides on an
31 appeal that the decision to take removal action relating
32 to the appellant was harsh, oppressive or unfair.

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- 1 (2) The WAIRC may —
- 2 (a) order that the appellant's removal is, and is to
- 3 be taken to have always been, of no effect; or
- 4 (b) if it is impracticable to make an order under
- 5 paragraph (a), order the chief executive officer
- 6 to pay the appellant an amount of compensation
- 7 for loss or injury caused by the removal.
- 8 (3) In considering whether or not it is impracticable to
- 9 make an order under subsection (2)(a), it is relevant to
- 10 consider —
- 11 (a) whether, at the time of the appellant's removal,
- 12 the position occupied by the appellant is vacant;
- 13 and
- 14 (b) whether there is another suitable vacant
- 15 position in the Department.
- 16 (4) If the WAIRC makes an order under subsection (2)(a),
- 17 the appellant is not entitled to be paid his or her
- 18 remuneration as a prison officer for any period the
- 19 appellant received a maintenance payment.
- 20 (5) An order under this section may require that it be
- 21 complied with within a specified time.

22 **110F. Determining amount of compensation**

- 23 (1) An amount of compensation ordered under
- 24 section 110E(2)(b) must be determined in accordance
- 25 with this section.
- 26 (2) In determining the amount, the WAIRC must have
- 27 regard to all of the following —
- 28 (a) the efforts, if any, of the chief executive officer
- 29 and the appellant to mitigate the loss suffered
- 30 by the appellant as a result of the removal;
- 31 (b) any maintenance payment received by the
- 32 appellant;

- 1 (c) any redress the appellant has obtained under
2 another enactment where the evidence
3 necessary to establish that redress is also the
4 evidence necessary to establish on the appeal
5 that the removal was harsh, oppressive or
6 unfair;
7 (d) any other matter that the WAIRC considers
8 relevant.

9 (3) In determining the amount, the WAIRC may have
10 regard to the average rate of remuneration as a prison
11 officer received by the appellant during any relevant
12 period of service.

13 (4) The amount must not exceed 12 months' remuneration
14 as a prison officer.

15 **110G. Restriction on publication**

- 16 (1) If the WAIRC is satisfied that it is in the public
17 interest, it may direct that any evidence given before it,
18 or the contents of any document produced to it, on an
19 appeal —
20 (a) must not be published; or
21 (b) must not be published except in a manner, and
22 to persons, specified by the WAIRC.

23 (2) A person must not contravene a direction given under
24 this section.

25 Penalty: a fine of \$4 000 or 12 months' imprisonment,
26 or both.

27 **Subdivision 4 — General**

28 **110H. Effect of charge for, or conviction or acquittal of,**
29 **offence**

30 The chief executive officer can take removal action in
31 relation to a prison officer for a particular matter, act or

s. 7

- 1 omission even if the matter, act or omission is an
2 element of an offence —
- 3 (a) with which the prison officer has been charged;
4 or
5 (b) of which the prison officer has been convicted
6 or acquitted.

7 **110I. Failure to comply with procedure**

- 8 An act or omission of the chief executive officer is not
9 invalid, and cannot be called in question, if —
- 10 (a) the act or omission comprises a failure to
11 comply with procedure prescribed for the
12 purposes of this Division; and
13 (b) the failure is not substantive.

14 **110J. Transfer, standing down and leave of prison officer**

- 15 (1) This Division does not derogate from the chief
16 executive officer's power to —
- 17 (a) transfer a prison officer; or
18 (b) stand a prison officer down from performing
19 that prison officer's usual duties, with or
20 without pay, until the prison officer is directed
21 by the chief executive officer to return to those
22 duties; or
23 (c) allocate duties to a prison officer other than the
24 prison officer's usual duties.
- 25 (2) If the chief executive officer stands down a prison
26 officer in relation to whom removal action is being
27 taken, the chief executive officer must review the
28 decision to stand the prison officer down every 60 days
29 and advise the prison officer in writing of the result of
30 the review.

- 1 (3) The chief executive officer must not direct a prison
2 officer in relation to whom removal action is being
3 taken to take leave during the removal action unless the
4 leave accrues during any period that the prison officer
5 is stood down from performing the prison officer's
6 usual duties.

7 **110K. Review of Division**

- 8 (1) In this section —
9 *commencement day* means the day on which the
10 *Custodial Legislation (Officers Discipline) Amendment*
11 *Act 2013* Part 2 comes into operation.
- 12 (2) The Minister must carry out a review of the operation
13 and effectiveness of this Division as soon as is
14 practicable after the expiry of 24 months after the
15 commencement day and in the course of that review
16 the Minister must consider and have regard to —
17 (a) the effectiveness of this Division; and
18 (b) the need for the retention of the Division; and
19 (c) any other matters that appear to the Minister to
20 be relevant to the operation and effectiveness of
21 this Division.
- 22 (3) Without limiting subsection (2), in carrying out the
23 review, the Minister must consult with and have regard
24 to the views of the Chief Commissioner of the
25 WAIRC, the chief executive officer and any union that
26 has prison officers as some or all of its members.
- 27 (4) The Minister must prepare a report based on the review
28 and, as soon as is practicable after the report is
29 prepared (and in any event not more than 30 months
30 after the commencement day), cause a copy of it to be
31 laid before each House of Parliament.
32

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1 **8. Section 110 amended**

2 In section 110(1):

3 (a) in paragraph (w) delete “termination arising from or
4 connected with disciplinary matters; and” and insert:

5

6 removal of prison officers under Part X.

7

8 (b) delete paragraph (x).

9 **9. Part XII inserted**

10 After section 117 insert:

11

12 **Part XII — Savings and transitional provisions**
13 **for *Custodial Legislation (Officers Discipline)***
14 ***Amendment Act 2013***

15 **118. Purpose**

16 The purpose of this Part is to enact savings and
17 transitional provisions in relation to the *Custodial*
18 *Legislation (Officers Discipline) Amendment Act 2013*
19 Part 2.

20 **119. Disciplinary offences before commencement day**

21 (1) In this section —

22 *commencement day* means the day on which the
23 *Custodial Legislation (Officers Discipline) Amendment*
24 *Act 2013* Part 2 comes into operation;

25 *former disciplinary provisions* means Part X as it was
26 in force immediately before the commencement day;

- 1 ***misconduct***, by a prison officer, means conduct by the
2 prison officer that is or is reasonably suspected to be —
- 3 (a) substandard performance or a breach of
4 discipline, as those terms are defined in the
5 *Public Sector Management Act 1994*; or
- 6 (b) conduct that may result in the chief executive
7 officer taking removal action, as defined in
8 section 99, in relation to the prison officer;
- 9 ***penalty***, under Part X, includes removal of a prison
10 officer.
- 11 (2) Proceedings for a disciplinary offence instituted under
12 the former disciplinary provisions that are pending
13 immediately before the commencement day are to be
14 dealt with and determined under those provisions as if
15 the *Custodial Legislation (Officers Discipline)*
16 *Amendment Act 2013* Part 2 had not come into
17 operation.
- 18 (3) Part X applies to misconduct committed, or suspected
19 of having been committed, by a prison officer before
20 the commencement day but in relation to which
21 proceedings for a disciplinary offence have not been
22 instituted under the former disciplinary provisions.
- 23 (4) However, if misconduct occurring before the
24 commencement day would have constituted a
25 disciplinary offence under the former disciplinary
26 provisions, a penalty cannot be imposed under Part X
27 in relation to the misconduct unless that penalty would
28 also have been able to be imposed for the disciplinary
29 offence under the former disciplinary provisions.
30

s. 10

1 **Part 3 — *Young Offenders Act 1994* amended**

2 **10. Act amended**

3 This Part amends the *Young Offenders Act 1994*.

4 **11. Section 3 amended**

5 In section 3 insert in alphabetical order:

6

7 ***custodial officer*** means —

8 (a) a superintendent, or other officer with custodial
9 functions, appointed under section 11(1); or

10 (b) a person who is appointed under
11 section 11(1a)(a) as a custodial officer;

12 ***remove***, in relation to an officer or other person
13 appointed under section 11(1), means terminate the
14 employment of the officer or person;

15

16 **12. Part 3 Division 1 heading replaced**

17 Delete the heading to Part 3 Division 1 and insert:

18

19 **Division 1 — Chief executive officer**

20

21 **13. Part 3 Division 2 heading inserted**

22 After section 10 insert:

23

24 **Division 2 — Other officers and employees**

25

1 **14. Section 11 amended**

2 (1) In section 11(1a):

3 (a) in paragraph (a) delete “functions (*group workers*); and”
4 and insert:

5
6 functions; and

7
8 (b) delete “terminate the appointment of” and insert:

9
10 remove

11
12 (2) Delete section 11(1b)(b) and insert:

13
14 (b) may be subject to —
15 (i) disciplinary proceedings provided for in
16 the regulations; or
17 (ii) if regulations are made under
18 subsection (1C) — disciplinary
19 proceedings under the *Public Sector*
20 *Management Act 1994* Part 5.
21

22 (3) After section 11(1b) insert:

23
24 (1C) The regulations may prescribe custodial officers for the
25 purposes of the *Public Sector Management Act 1994*
26 section 76(1)(b).
27

28 **15. Section 11B amended**

29 In section 11B delete “person who is appointed under
30 section 11(1) or (1a) as a”.

31 Note: The heading to amended section 11B is to read:

32 **Powers and duties of custodial officers**

s. 16

1 **16. Part 3 Division 3 inserted**

2 After section 11B insert:

3

4 **Division 3 — Removal of custodial officers due to loss of**
5 **confidence**

6 **Subdivision 1 — Preliminary**

7 **11CA. Terms used**

8 In this Division, unless the contrary intention
9 appears —

10 *appeal* means an appeal under section 11CH;

11 *appellant* means a person who institutes an appeal;

12 *Chief Commissioner* has the same meaning as in the
13 *Industrial Relations Act 1979*;

14 *decision notice* has the meaning given in
15 section 11CD(3)(b);

16 *industrial commissioner* means a commissioner as
17 defined in the *Industrial Relations Act 1979*
18 section 7(1);

19 *maintenance payment* has the meaning given in
20 section 11CE(1);

21 *maintenance period* has the meaning given in
22 section 11CE(1);

23 *new evidence*, on an appeal against the removal of a
24 custodial officer, means evidence other than evidence
25 of any of the following —

26 (a) a document or other material that was examined
27 and taken into account by the chief executive
28 officer in making the removal decision;

29 (b) the notice given under section 11CD(1);

- 1 (c) a written submission made to the chief
2 executive officer by the custodial officer under
3 section 11CD(2);
- 4 (d) a decision notice;
- 5 (e) a notification of the removal;
- 6 **removal action**, in relation to a custodial officer, means
7 the removal of the custodial officer under
8 section 11CC;
- 9 **removal decision** means a decision of the chief
10 executive officer to take removal action;
- 11 **suitability to continue as a custodial officer** means
12 suitability to continue as a custodial officer having
13 regard to the officer's integrity, honesty, competence,
14 performance or conduct;
- 15 **WAIRC** means The Western Australian Industrial
16 Relations Commission continued and constituted under
17 the *Industrial Relations Act 1979*.

18 **Subdivision 2 — Removal of custodial officers**

19 **11CB. Application of Subdivision**

- 20 (1) This Subdivision applies if —
- 21 (a) the chief executive officer does not have
22 confidence in a custodial officer's suitability to
23 continue as a custodial officer; and
- 24 (b) the chief executive officer —
- 25 (i) decides not to take, or continue to take,
26 disciplinary proceedings referred to in
27 section 11(1b)(b) against a custodial
28 officer; and
- 29 (ii) decides instead to take removal action in
30 relation to the custodial officer.

s. 16

- 1 (2) If regulations are made under section 11(1C), this
2 Subdivision applies despite the *Public Sector*
3 *Management Act 1994* section 76(2).
- 4 **11CC. Removal action**
- 5 (1) If the chief executive officer does not have confidence
6 in a custodial officer's suitability to continue as a
7 custodial officer, the chief executive officer may
8 remove the custodial officer.
- 9 (2) Subsection (1) applies in addition to, and does not limit
10 the operation of, the *Public Sector Management*
11 *Act 1994*.
- 12 (3) The chief executive officer may conduct any necessary
13 investigation to determine a custodial officer's
14 suitability to continue as a custodial officer.
- 15 (4) For the purpose of the investigation the chief executive
16 officer may require the custodial officer to do all or any
17 of the following —
- 18 (a) provide the chief executive officer with any
19 information or answer any question that the
20 chief executive officer requires;
- 21 (b) produce to the chief executive officer any
22 document in the custody or under the control of
23 the custodial officer.
- 24 (5) The custodial officer is not excused from giving
25 information, answering any question or producing a
26 document when required to do so under subsection (4)
27 on the ground that the information, answer or
28 document might —
- 29 (a) incriminate the custodial officer; or
30 (b) render the custodial officer liable to a
31 disciplinary measure under section 11 or
32 removal under this Division.

- 1 (6) The information, answer or document is not admissible
2 in evidence against the custodial officer in any criminal
3 proceedings except in proceedings for an offence under
4 subsection (7).
- 5 (7) A custodial officer must not, in response to a
6 requirement under subsection (4) —
- 7 (a) fail or refuse to provide the required
8 information or answer or produce the required
9 document; or
- 10 (b) give information or an answer that is false or
11 misleading in a material particular; or
- 12 (c) produce a document that the custodial officer
13 knows is false or misleading in a material
14 particular —
- 15 (i) without indicating that the document is
16 false or misleading and, to the extent the
17 custodial officer can, how the document
18 is false or misleading; and
- 19 (ii) if the custodial officer has, or can
20 reasonably obtain, the correct
21 information — without providing the
22 correct information.

23 Penalty: a fine of \$4 000 and imprisonment for
24 12 months.

25 **11CD. Notice of loss of confidence**

- 26 (1) The chief executive officer may give the custodial
27 officer a written notice setting out the grounds on
28 which the chief executive officer does not have
29 confidence in the custodial officer's suitability to
30 continue as a custodial officer.
- 31 (2) The custodial officer may make written submissions to
32 the chief executive officer in relation to the notice
33 within the following period (the *submission period*) —

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- 1 (a) 21 days after the day on which the notice is
2 given; or
- 3 (b) any longer period after that day allowed by the
4 chief executive officer.
- 5 (3) After the submission period, the chief executive officer
6 must —
- 7 (a) decide whether or not to take removal action
8 against the custodial officer; and
- 9 (b) give the custodial officer written notice of the
10 decision (the *decision notice*).
- 11 (4) The chief executive officer must not decide to take
12 removal action against the custodial officer unless the
13 chief executive officer —
- 14 (a) has taken into account any written submissions
15 received from the custodial officer during the
16 submission period; and
- 17 (b) still does not have confidence in a custodial
18 officer's suitability to continue as a custodial
19 officer.
- 20 (5) If the chief executive officer decides to take removal
21 action against the custodial officer, the decision notice
22 must contain the reasons for the decision.
- 23 (6) Except as provided in the regulations, the chief
24 executive officer must, within 7 days after giving the
25 decision notice —
- 26 (a) give to the custodial officer a copy of any
27 documents that were considered by the chief
28 executive officer in making the decision; and
- 29 (b) make available to the custodial officer for
30 inspection any other materials that were
31 considered by the chief executive officer in
32 making the decision.

1 (7) The removal action may be carried out when the notice
2 is given or at any time after that.

3 **11CE. Maintenance payment**

4 (1) If a custodial officer is removed as a result of removal
5 action, the custodial officer is entitled to receive a
6 payment (a *maintenance payment*) for the period of
7 28 days after the day on which the custodial officer is
8 removed (the *maintenance period*).

9 (2) The Minister may, in exceptional circumstances, direct
10 that a maintenance payment must be paid to the
11 custodial officer for a specified period after the
12 maintenance period.

13 (3) For the purpose of subsection (2), the specified period
14 is a period not exceeding 6 months specified by the
15 Minister but in any event ending on the day any appeal
16 is determined by the WAIRC.

17 (4) Any maintenance payment must be determined on the
18 basis of the salary of the custodial officer at the time of
19 the removal.

20 **11CF. Withdrawal of removal action and revocation of**
21 **removal**

22 (1) If a custodial officer is removed as a result of removal
23 action, the chief executive officer may, by notice in
24 writing to the custodial officer, revoke the removal.

25 (2) Subsection (1) applies even if an appeal has been
26 instituted against the removal.

27 (3) Despite any other enactment, if the removal is revoked
28 under subsection (1), the removal is to be taken to be of
29 no effect and to have never had any effect.

30 (4) If the chief executive officer revokes the removal of a
31 custodial officer under subsection (1), the custodial

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1 officer is not entitled to be paid his or her salary for
2 any period the custodial officer received a maintenance
3 payment.

4 **11CG. Resignation of custodial officer who has been**
5 **removed**

- 6 (1) Even if a custodial officer is removed as a result of
7 removal action, the custodial officer may resign at any
8 time before the end of the maintenance period.
- 9 (2) Subsection (1) does not apply if an appeal has been
10 instituted against the removal.
- 11 (3) A resignation under subsection (1) takes effect at the
12 end of the maintenance period.
- 13 (4) Despite any other enactment, if a custodial officer
14 resigns under subsection (1), the removal of the
15 custodial officer is to be taken to be of no effect and to
16 have never had any effect.

17 **Subdivision 3 — Appeal against removal of custodial officer**

18 **11CH. Appeal right**

- 19 (1) If a custodial officer is removed as a result of removal
20 action, the custodial officer may appeal to the WAIRC
21 against the removal decision on the ground that it was
22 harsh, oppressive or unfair.
- 23 (2) The custodial officer may institute the appeal by a
24 notice to the chief executive officer stating —
- 25 (a) the reasons for the removal decision being
26 harsh, oppressive or unfair; and
- 27 (b) the nature of the relief sought.
- 28 (3) The appeal cannot be instituted —
- 29 (a) after the maintenance period; or

- 1 (b) if the custodial officer has resigned under
2 section 11CG(1).
- 3 (4) For the purposes of proceedings relating to the appeal,
4 the WAIRC is to be constituted by not less than 3
5 industrial Commissioners, at least one of whom must
6 be —
7 (a) the Chief Commissioner; or
8 (b) the Senior Commissioner within the meaning of
9 that term in the *Industrial Relations Act 1979*.
- 10 (5) The only parties to the appeal are the custodial officer
11 and the chief executive officer.
- 12 (6) The custodial officer does not have any right of appeal
13 against the removal decision other than under this
14 section.

15 **11CI. Proceedings on appeal**

- 16 (1) On the hearing of an appeal, the WAIRC must proceed
17 in the following manner —
18 (a) first, it must consider the chief executive
19 officer's reasons for the removal decision;
20 (b) second, it must consider the case presented by
21 the appellant as to why the removal decision
22 was harsh, oppressive or unfair;
23 (c) third, it must consider the case presented by the
24 chief executive officer in answer to the
25 appellant's case.
- 26 (2) The appellant has at all times the burden of establishing
27 that the removal decision was harsh, oppressive or
28 unfair.
- 29 (3) Subsection (2) has effect despite any law or practice to
30 the contrary.

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- 1 (4) Without limiting the matters to which the WAIRC is
2 otherwise required or permitted to have regard in
3 determining the appeal, it must have regard to —
4 (a) the interests of the appellant; and
5 (b) the public interest, which is to be taken to
6 include —
7 (i) the importance of maintaining public
8 confidence in the integrity, honesty,
9 conduct and standard of performance of
10 custodial officers; and
11 (ii) the special nature of the relationship
12 between the chief executive officer and
13 custodial officers.

14 **11CJ. Leave to tender new evidence on appeal**

- 15 (1) New evidence cannot be tendered to the WAIRC
16 during a hearing of an appeal unless the WAIRC grants
17 leave under subsection (2) or (3).
18 (2) The WAIRC may grant the chief executive officer
19 leave to tender new evidence if —
20 (a) the appellant consents; or
21 (b) it is satisfied that it is in the interests of justice
22 to do so.
23 (3) The WAIRC may grant the appellant leave to tender
24 new evidence if —
25 (a) the chief executive officer consents; or
26 (b) the WAIRC is satisfied that —
27 (i) the appellant is likely to be able to use
28 the new evidence to show that the chief
29 executive officer has acted upon wrong
30 or mistaken information; or

- 1 (ii) the new evidence might materially have
2 affected the chief executive officer's
3 removal decision; or
4 (iii) it is in the interests of justice to do so.
- 5 (4) In the exercise of its discretion under subsection (3),
6 the WAIRC must have regard to —
- 7 (a) whether or not the appellant was aware of the
8 substance of the new evidence before the
9 appellant's removal; and
10 (b) whether or not the substance of the new
11 evidence was contained in a document to which
12 the appellant had reasonable access before the
13 appellant's removal.

14 **11CK. Opportunity to consider new evidence**

- 15 (1) If the chief executive officer is given leave to tender
16 new evidence under section 11CJ(2) —
- 17 (a) the WAIRC must give the appellant a
18 reasonable opportunity to consider the new
19 evidence; and
20 (b) the appellant may, without the leave of the
21 WAIRC, tender new evidence under this
22 section in response to the new evidence
23 tendered by the chief executive officer.
- 24 (2) If the appellant is given leave to tender new evidence
25 under section 11CJ(3), the WAIRC must give the chief
26 executive officer a reasonable opportunity to consider
27 the new evidence.

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- 1 **11CL. Revocation of removal after consideration of new**
2 **evidence**
- 3 (1) If, having considered any new evidence, the chief
4 executive officer revokes the removal under
5 section 11CF(1) —
- 6 (a) the chief executive officer must give the
7 WAIRC notice of the revocation; and
- 8 (b) the hearing of the appeal is discontinued when
9 the WAIRC receives the notice.
- 10 (2) If the chief executive officer does not give notice under
11 subsection (1), the hearing of the appeal must continue
12 but the chief executive officer may —
- 13 (a) reformulate his or her reasons for not having
14 confidence in the appellant’s suitability to
15 continue as a custodial officer; and
- 16 (b) without the leave of the WAIRC, tender new
17 evidence under this section in response to the
18 new evidence tendered by the appellant.
- 19 (3) Reasons reformulated under subsection (2)(a) may
20 differ from, or be additional to, the reasons given to the
21 appellant in the decision notice.
- 22 (4) If the chief executive officer reformulates reasons
23 under subsection (2)(a) —
- 24 (a) the chief executive officer must give the
25 WAIRC and the appellant notice in writing of
26 the reasons before the resumption of the
27 hearing of the appeal; and
- 28 (b) the WAIRC must consider the reasons as if
29 they had been reasons given to the appellant in
30 the decision notice.

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11CM. Application of *Industrial Relations Act 1979* to appeals

The provisions of the *Industrial Relations Act 1979* listed in the Table apply to, and in relation to, an appeal and its determination, subject to —

- (a) any specific modifications set out in the Table; and
- (b) all other necessary modifications.

Table

s. 26(1)(a) and (b)	
s. 26(3)	
s. 27(1)(b), (c), (d), (e), (f), (h), (ha), (hb), (l), (m), (n), (o) and (v)	
s. 27(1a)	
s. 28	The section applies only in relation to powers conferred by section 27 listed in this Table.
s. 31(1)	Paragraphs (b) and (c) do not apply but the subsection is to be read as if it contained the following paragraphs — “ (b) with the leave of the Commission, by an agent; or (c) by a legal practitioner. ”.
s. 31(3)	

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s. 31(5)	
s. 32	<p>Section 32(1) is to be read as if a reference to “Where an industrial matter has been referred to the Commission the Commission shall, unless it” were a reference to “Where the Commission is dealing with an appeal instituted under the <i>Young Offenders Act 1994</i> section 11CH, a member of the Commission may recommend that the parties to the appeal, unless he or she”.</p> <p>References to “the matter” and “an industrial matter” are to be read as if they were references to “the appeal”.</p>
	<p>For the purposes of subsections (2) and (3), Commission does not include an industrial commissioner constituting the WAIRC to hear the appeal.</p> <p>Subsections (4), (6), (7) and (8) do not apply.</p>

s. 33	<p>A summons must not be issued under section 33(1)(a) to the Governor.</p> <p>A summons may be issued to the chief executive officer or the Minister but only at the direction of a commissioner appointed under the <i>Industrial Relations Act 1979</i> if that commissioner is satisfied that there are extraordinary grounds for doing so.</p> <p>A summons may not be issued to any other person except at the direction of a commissioner.</p>
s. 34	<p>A reference in subsection (1) to “an award, order, or declaration” is to be read as if it were a reference to “an order”.</p> <p>A reference in subsection (3) to “the President, the Full Bench, or the Commission” is to be read as if it were a reference to “the Commission”.</p>
	<p>A reference in subsection (4) to “no award, order, declaration, finding, or proceeding of the President, the Full Bench, or the Commission” is to be read as if it were a reference to “no decision, order, finding or proceeding of the Commission”.</p>
s. 35	
s. 36	

s. 16

s. 86	The section does not apply in relation to costs and expenses, other than expenses of witnesses.
s. 90	A reference in subsection (1) to “any decision of the President, the Full Bench, or the Commission in Court Session” is to be read as if it were a reference to “a decision of the Commission under the <i>Young Offenders Act 1994</i> section 11CP”.

- 1 **11CN. Adjournment of appeal if appellant charged with**
2 **offence**
- 3 (1) The chief executive officer or an appellant may apply
4 to the WAIRC for an adjournment of the hearing of an
5 appeal if the appellant has been —
- 6 (a) charged with an offence relating to any matter,
7 act or omission that was taken into account by
8 the chief executive officer in deciding that he or
9 she did not have confidence in the appellant’s
10 suitability to continue as a custodial officer; and
- 11 (b) the charge has not been finally determined by a
12 court or otherwise disposed of.
- 13 (2) If an adjournment application is made by the chief
14 executive officer, the WAIRC may adjourn the hearing
15 of the appeal if it considers that it is in the interests of
16 justice to do so.
- 17 (3) If an adjournment application is made by the appellant,
18 the WAIRC must adjourn the hearing of the appeal for
19 the period (not exceeding 12 months) requested by the
20 appellant.
- 21 (4) Before the end of the period of an adjournment under
22 this section, the chief executive officer or the appellant

1 may apply to the WAIRC for a further adjournment
2 and, if it is in the interests of justice to do so, the
3 WAIRC may grant a further adjournment for the period
4 specified by it.

5 (5) Subsections (2) and (4) do not affect any other power
6 of the WAIRC to grant an adjournment.

7 **11CO. Resumption of appeal before end of adjournment**

8 If the charge is finally determined by a court or
9 otherwise disposed of before the end of the period of
10 an adjournment under section 11CN, the chief
11 executive officer or the appellant may apply to the
12 WAIRC for the hearing of the appeal to be resumed on
13 a date specified by the WAIRC.

14 **11CP. Decision by WAIRC**

15 (1) This section applies if the WAIRC decides on an
16 appeal that the decision to take removal action relating
17 to the appellant was harsh, oppressive or unfair.

18 (2) The WAIRC may —
19 (a) order that the appellant's removal is, and is to
20 be taken to have always been, of no effect; or
21 (b) if it is impracticable to make an order under
22 paragraph (a), order the chief executive officer
23 to pay the appellant an amount of compensation
24 for loss or injury caused by the removal.

25 (3) In considering whether or not it is impracticable to
26 make an order under subsection (2)(a), it is relevant to
27 consider —

28 (a) whether, at the time of the appellant's removal,
29 the position occupied by the appellant is vacant;
30 and

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- 1 (b) whether there is another suitable vacant
2 position in the Department.
- 3 (4) If the WAIRC makes an order under subsection (2)(a),
4 the appellant is not entitled to be paid his or her
5 remuneration as a custodial officer for any period the
6 appellant received a maintenance payment.
- 7 (5) An order under this section may require that it be
8 complied with within a specified time.
- 9 **11CQ. Determining amount of compensation**
- 10 (1) An amount of compensation ordered under
11 section 11CP(2)(b) must be determined in accordance
12 with this section.
- 13 (2) In determining the amount, the WAIRC must have
14 regard to all of the following —
- 15 (a) the efforts, if any, of the chief executive officer
16 and the appellant to mitigate the loss suffered
17 by the appellant as a result of the removal;
- 18 (b) any maintenance payment received by the
19 appellant;
- 20 (c) any redress the appellant has obtained under
21 another enactment where the evidence
22 necessary to establish that redress is also the
23 evidence necessary to establish on the appeal
24 that the removal was harsh, oppressive or
25 unfair;
- 26 (d) any other matter that the WAIRC considers
27 relevant.
- 28 (3) In determining the amount, the WAIRC may have
29 regard to the average rate of remuneration as a
30 custodial officer received by the appellant during any
31 relevant period of service.

- 1 (4) The amount must not exceed 12 months' remuneration
2 as a custodial officer.

3 **11CR. Restriction on publication**

- 4 (1) If the WAIRC is satisfied that it is in the public
5 interest, it may direct that any evidence given before it,
6 or the contents of any document produced to it, on an
7 appeal —

- 8 (a) must not be published; or
9 (b) must not be published except in a manner, and
10 to persons, specified by the WAIRC.

- 11 (2) A person must not contravene a direction given under
12 this section.

13 Penalty: a fine of \$4 000 and imprisonment for
14 12 months.

15 **Subdivision 4 — General**

16 **11CS. Effect of charge for, or conviction or acquittal of,**
17 **offence**

18 The chief executive officer can take removal action in
19 relation to a custodial officer for a particular matter, act
20 or omission even if the matter, act or omission is an
21 element of an offence —

- 22 (a) with which the custodial officer has been
23 charged; or
24 (b) of which the custodial officer has been
25 convicted or acquitted.

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11CT. Failure to comply with procedure

An act or omission of the chief executive officer is not invalid, and cannot be called in question, if —

- (a) the act or omission comprises a failure to comply with procedure prescribed for the purposes of this Division; and
- (b) the failure is not substantive.

11CU. Transfer, standing down and leave of custodial officer

- (1) This Division does not derogate from the chief executive officer's power to —
 - (a) transfer a custodial officer; or
 - (b) stand a custodial officer down from performing that custodial officer's usual duties, with or without pay, until the custodial officer is directed by the chief executive officer to return to those duties; or
 - (c) allocate duties to a custodial officer other than the custodial officer's usual duties.
- (2) If the chief executive officer stands down a custodial officer in relation to whom removal action is being taken, the chief executive officer must review the decision to stand the custodial officer down every 60 days and advise the custodial officer in writing of the result of the review.
- (3) The chief executive officer must not direct a custodial officer in relation to whom removal action is being taken to take leave during the removal action unless the leave accrues during any period that the custodial officer is stood down from performing the custodial officer's usual duties.

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11CV. Review of Division

- (1) In this section —
commencement day means the day on which the
Custodial Legislation (Officers Discipline) Amendment Act 2013 Part 3 comes into operation.
- (2) The Minister must carry out a review of the operation and effectiveness of this Division as soon as is practicable after the expiry of 24 months after the commencement day and in the course of that review the Minister must consider and have regard to —
- (a) the effectiveness of this Division; and
 - (b) the need for the retention of the Division; and
 - (c) any other matters that appear to the Minister to be relevant to the operation and effectiveness of this Division.
- (3) Without limiting subsection (2), in carrying out the review, the Minister must consult with and have regard to the views of the Chief Commissioner of the WAIRC, the chief executive officer and any union that has custodial officers as some or all of its members.
- (4) The Minister must prepare a report based on the review and, as soon as is practicable after the report is prepared (and in any event not more than 30 months after the commencement day), cause a copy of it to be laid before each House of Parliament.

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1 **17. Part 3 Division 4 heading inserted**

2 Before section 11C insert:

3

4 **Division 4 — Management, control, security and**
5 **wellbeing of young offenders**
6

7 **18. Section 11C amended**

8 In section 11C(1) and (2) delete “person who is appointed under
9 section 11(1) or (1a) as a”.

10 **19. Section 11E amended**

11 (1) In section 11E(2) delete “officer appointed under section 11(1)
12 or (1a),” and insert:

13

14 officer,

15

16 (2) In section 11E(3) delete “appointed under section 11(1) or
17 (1a)”.

18 **20. Section 11F amended**

19 In section 11F(2) delete “officer appointed under section 11(1)
20 or (1a),” and insert:

21

22 officer,

23

1 **21. Part 3 Division 2 heading replaced**

2 Delete the heading to Part 3 Division 2 and insert:

3

4 **Division 5 — Arrangements with councils of Aboriginal**
5 **communities**

6

7 **22. Section 169A amended**

8 (1) In section 169A(4) delete “person who is appointed under
9 section 11(1) or (1a)” and insert:

10

11 custodial officer

12

13 (2) In section 169A(5) delete “person who is appointed under
14 section 11(1) or (1a),” and insert:

15

16 custodial officer

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