

WESTERN AUSTRALIA

LEGISLATIVE COUNCIL

AMENDMENTS AND SCHEDULES

Supplementary Notice Paper No. 47
Issue No. 4

TUESDAY, 18 NOVEMBER 2014

CUSTODIAL LEGISLATION (OFFICERS DISCIPLINE) AMENDMENT BILL 2013 [47-1B]

When in committee on the *Custodial Legislation (Officers Discipline) Amendment Bill 2013*:

Clause 7

Hon Sally Talbot:

49/7 Page 4, line 1 to page 23, line 32 — To oppose the clause.

Hon Kate Doust: To move —

1/7 Page 5, lines 30 to 33 — To delete the lines.

Hon Kate Doust: To move —

2/7 Page 6, lines 7 to 9 — To delete the lines and insert —

- (a) the chief executive officer has formed the opinion on reasonable grounds that the officer —
 - (i) has engaged in corrupt conduct (or any other conduct constituting an indictable offence); and
 - (ii) is no longer a fit and proper person to hold a position as a prison officer; and

Hon Kate Doust: To move –

- 3/7 Page 6, lines 25 and 26 — To delete “does not have confidence in a prison officer’s suitability to continue” and insert —

has formed the opinion on reasonable grounds that the officer has engaged in corrupt conduct and is no longer a fit and proper person to hold a position

Hon Kate Doust: To move –

- 4/7 Page 7, lines 8 to 10 — To delete the lines and insert —

- (3) The chief executive officer shall conduct any investigation to determine that a prison officer —
 - (a) has engaged in corrupt conduct (or any other conduct constituting an indictable offence); and
 - (b) is no longer a fit and proper person to hold a position as a prison officer.

Hon Sally Talbot: To move –

- 45/7 Page 7, line 11 to page 8, line 20 — To delete the lines.

Hon Kate Doust: To move –

- 53/7 Page 7, after line 19 — To insert —

- (4A) The prison officer must be advised of —
 - (a) the implications of giving information, answering any question or producing a document when required to do so under subsection (4); and
 - (b) the relevance of the information or document that is required for the purpose of the investigation.

Hon Kate Doust: To move –

- 26/7 Page 7, lines 24 to 28 — To delete the lines and insert —

document might incriminate the prison officer.

Hon Kate Doust: To move –

- 54/7 Page 7, lines 30 to 32 — To delete “criminal proceedings except in proceedings for an offence under subsection (7).” and insert —

proceedings except in proceedings under this Subdivision.

Hon Kate Doust: To move –

- 27/7 Page 7, line 30 — To insert after “criminal” —

or disciplinary

Hon Kate Doust: To move –

28/7 Page 8, lines 19 and 20 — To delete “or 12 months’ imprisonment, or both”.

Hon Kate Doust: To move –

29/7 Page 8, line 21 — To delete “**Notice of loss of confidence**” and insert —

Written notice of CEO’s determination

Hon Kate Doust: To move –

30/7 Page 8, lines 24 and 25 — To delete “does not have confidence in the prison officer’s suitability” and insert —

has determined that the prison officer is not a fit and proper person

Hon Kate Doust: To move –

31/7 Page 9, lines 13 and 14 — To delete “does not have confidence in a prison officer’s suitability to continue as” and insert —

determines that the person is not a fit and proper person to be

Hon Kate Doust: To move –

5/7 Page 10, lines 7 to 10 — To delete the lines and insert —

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

Hon Sally Talbot: To move –

46/7 Page 10, lines 7 to 10 — To delete the lines and insert —

- (2) The Minister shall appoint an independent third party to review each maintenance period, and in the event that the independent third party determines that exceptional circumstances apply, the Minister shall direct that a maintenance payment must continue to be paid to the prison officer for a specified period after the maintenance period.

Hon Kate Doust: To move –

6/7 Page 10, after line 14 — To insert —

- (3A) At the end of the specified period, the Minister shall review the progress of the appeal and renew the maintenance period for a further specified period not exceeding 6 months unless —
- (a) the appeal has been determined by the WAIRC; or
 - (b) there are exceptional circumstances justifying why the prison officer should not be paid a maintenance payment.

Hon Kate Doust: To move –

7/7 Page 10, after line 17 — To insert —

- (5) A prison officer who has commenced an appeal under section 106 and is aggrieved by —
- (a) a period of being stood down; or
 - (b) the exercise of the Minister’s discretion to not make a maintenance payment that results in undue hardship to the prison officer,
- may apply to a commissioner in the WAIRC who may either substitute or vary or affirm the decision of the chief executive officer, or the Minister, as the case may be.

Hon Sally Talbot: To move –

48/7 Page 12, lines 10 and 11 — To delete the lines.

Hon Kate Doust: To move –

32/7 Page 12, line 14 — To delete “section.” and insert —

subdivision.

Hon Kate Doust: To move –

33/7 Page 12, after line 25 — To insert —

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

Hon Kate Doust: To move –

34/7 Page 12, lines 26 to 30 — To delete the lines.

Hon Kate Doust: To move –

35/7 Page 13, after line 13 — To insert —

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

Hon Kate Doust: To move –

36/7 Page 14, lines 5 to 13 — To delete the lines.

Hon Kate Doust: To move –

8/7 Page 15, after line 30 — To insert —

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

Hon Kate Doust: To move –

9/7 Page 19, line 12 — To delete “(not exceeding 12 months)”.

Hon Kate Doust: To move –

10/7 Page 21, lines 13 and 14 — To delete the lines.

Hon Sally Talbot: To move –

47/7 Page 21, lines 13 and 14 — To delete the lines.

Hon Kate Doust: To move –

11/7 Page 22, lines 3 to 6 — To delete the lines and insert —

of which the prison officer has been convicted.

Hon Kate Doust: To move –

12/7 Page 22, after line 30 — To insert —

- (2A) A prison officer aggrieved by the period of being stood down may appeal the chief executive officer’s decision under section 103(5).

Clause 16

Hon Sally Talbot:

50/16 Page 28, line 1 to page 47, line 25 — To oppose the clause.

Hon Kate Doust: To move –

13/16 Page 28, lines 4 and 5 — To delete “**due to loss of confidence**”.

Hon Kate Doust: To move –

14/16 Page 29, lines 11 to 14 — To delete the lines.

Hon Kate Doust: To move –

37/16 Page 29, lines 21 to 23 — To delete the lines and insert —

- (a) the chief executive officer has formed the opinion on reasonable grounds that the custodial officer —
 - (i) has engaged in corrupt conduct (or any other conduct constituting an indictable offence); and
 - (ii) is no longer a fit and proper person to hold a position as a custodial officer; and

Hon Kate Doust: To move –

38/16 Page 30, lines 5 to 8 — To delete the lines and insert —

- (1) If the chief executive officer has formed the opinion on reasonable grounds that the officer has engaged in corrupt conduct and is no longer a fit and proper person to hold a position as a custodial officer, the chief executive officer may remove the custodial officer.

Hon Kate Doust: To move –

39/16 Page 30, lines 12 to 14 — To delete the lines and insert —

- (3) The chief executive officer shall conduct any necessary investigation to determine if a custodial officer is a fit and proper person to be a custodial officer,

Hon Sally Talbot: To move –

51/16 Page 30, line 15 to page 31, line 24 — To delete the lines.

Hon Kate Doust: To move –

40/16 Page 30, lines 28 to 32 — To delete the lines and insert —

document might incriminate the custodial officer

Hon Kate Doust: To move –

15/16 Page 31, line 2 — To insert after “criminal” —

or disciplinary

Hon Kate Doust: To move –

16/16 Page 31, lines 23 and 24 — To delete “and imprisonment for 12 months”.

Hon Kate Doust: To move –

17/16 Page 31, line 25 — To delete “**Notice of loss of confidence**” and insert —

Written notice of CEO’s determination

Hon Kate Doust: To move –

18/16 Page 31, lines 28 to 30 — To delete the lines and insert —

which the chief executive officer has formed the view that the custodial officer has engaged in corrupt conduct or is no longer a fit and proper person to hold a position as a custodial officer.

Hon Kate Doust: To move –

19/16 Page 33, lines 9 to 12 — To delete the lines and insert —

- (2) Where a custodial officer has commenced an appeal under section 11CH, the Minister shall direct that a maintenance payment must be paid to the custodial officer for a specified period after the maintenance period unless there are exceptional circumstances justifying that the custodial officer should not be paid a maintenance payment.

Hon Kate Doust: To move –

41/16 Page 33, after line 16 — To insert —

- (3A) At the end of the specified period referred to in subsection (3), the Minister shall review the progress of the appeal and renew the maintenance period for a further specified period not exceeding 6 months unless —
- (a) the appeal has been determined by the WAIRC; or
 - (b) there are exceptional circumstances justifying why the custodial officer should not be paid a maintenance payment.

Hon Kate Doust: To move –

42/16 Page 33, after line 19 — To insert —

- (5) A custodial officer who has commenced an appeal under section 11CH and is aggrieved by —
- (a) a period of being stood down; or
 - (b) the exercise of the Minister's discretion to not make a maintenance payment that results in undue hardship to the custodial officer,
- may apply to a commissioner in the WAIRC who may either substitute or vary or affirm the decision of the chief executive officer, or the Minister, as the case may be.

Hon Sally Talbot: To move –

52/16 Page 35, lines 10 and 11 — To delete the lines.

Hon Kate Doust: To move –

43/16 Page 35, after line 25 — To insert —

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

Hon Kate Doust: To move –

44/16 Page 35, lines 26 to 30 — To delete the lines.

Hon Kate Doust: To move –

20/16 Page 36, after line 13 — To insert —

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

Hon Kate Doust: To move –

21/16 Page 38, after line 30 — To insert —

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

Hon Kate Doust: To move –

22/16 Page 42, line 19 — To delete “(not exceeding 12 months)”.

Hon Kate Doust: To move –

23/16 Page 45, lines 1 and 2 — To delete the lines.

Hon Kate Doust: To move –

24/16 Page 45, lines 22 to 25 — To delete the lines and insert —

of which the custodial officer has been convicted.

Hon Kate Doust: To move –

25/16 Page 46, after line 31 — To insert —

- (4) A custodial officer aggrieved by the period of being stood down may appeal the chief executive officer’s decision under section 11CE(5).

