CUSTODIAL LEGISLATION (OFFICERS DISCIPLINE) AMENDMENT BILL 2013

Second Reading

Resumed from 26 February.

MR J.M. FRANCIS (Jandakot — Minister for Corrective Services) [2.58 pm] — in reply: This is the third part of my second reading reply speech but I will try to wrap it up pretty quickly so that we can move on with the bill.

Before we were interrupted last time, I was reading out some emails from people who had worked for the Department of Corrective Services that highlighted their concerns that the reform agenda for the government is long overdue. The emails were effectively asking me not to underestimate the lengths to which some people will go to stop this obviously much-needed reform of the Department of Corrective Services. I do not want to spend too much time on this, but I want to make a couple of points. For the majority of the second reading contribution of the member for Warnbro, he basically played the man instead of the ball. I heard him go on about my involvement in the Young Liberal Movement in New South Wales 20 years ago. I have absolutely no idea what relevance that has to prison officers today. In fact, I also point out to the house that the debate from some quarters has got to a level —

Several members interjected.

Mr J.M. FRANCIS: Madam Acting Speaker, I am not going to take interjections; I want to get on with this.

Several members interjected.

The ACTING SPEAKER: Members!

Mr J.M. FRANCIS: It has got to the point at which it has become farcical. I have seen on social media comments from officials from the WA Prison Officers' Union ridiculing whether I have been circumcised and tweets repeated by the shadow minister. It has reached a gutter level and has become absolutely ridiculous.

Point of Order

Mr P. PAPALIA: I believe the minister just made an accusation regarding me re-tweeting a tweet about him being circumcised. I have never done that. I have no idea what he is referring to. I would ask that he review what he just said and consider whether he should retract that accusation.

The ACTING SPEAKER (Ms J.M. Freeman): It is not a point of order.

Mr P. Papalia: It is a substantive motion. He is making a reflection on me.

The ACTING SPEAKER: Excuse me! If you have an issue with my ruling, member, you know what to do. Minister, if you do not want interjections, and you have indicated that you do not, perhaps you should confine your reply speech to the bill.

Debate Resumed

Mr J.M. FRANCIS: Certainly, member for Warnbro, if I am wrong, I will apologise, but my recollection is that comments were made on social media by staff of the Prison Officers' Union that ridiculed my mental health state and whether I have been circumcised. If the member has not retweeted them, I apologise.

Mr P. Papalia: Why didn't you check that before making that accusation? Wouldn't you know that?

Mr J.M. FRANCIS: My recollection is —

Mr P. Papalia interjected.

The ACTING SPEAKER: Member!

Mr J.M. FRANCIS: The only other point I want to make about the member's speech is that he referred to styles of leadership and made parallels between what the government and I, as minister, are doing and lessons of leadership from the military. I make the point that the Defence Force has had a number of issues in its history. The member will remember the inception of the New Generation Navy program 10 years ago and how the Chief of Army handled a number of different issues that confronted the service last year. It was open and honest with the public and said that it had an issue with a small percentage of people in the service. They did not reach the level of conduct required by, and did not meet the expectations of, the defence leadership, their colleagues, the public or the government of Australia. That is unacceptable. The service highlighted the issue, said that it was unacceptable, did something about it and moved forward. That is exactly what we are doing with the Department of Corrective Services. The majority of people who work in the Department of Corrective Services—I have said this time and again—are great people motivated by the right reason. They want to reform and correct the

behaviour of some of the most troubled people in the state of Western Australia. They are good people motivated by the right reason. Unfortunately, a small percentage of people in the department do not meet that standard and are letting the team down.

In each of the last three years, up to 3.5 per cent of Department of Corrective Services staff working with people in custody have been charged with disciplinary offences. To some, this may sound as though it is a high percentage, but I consider it to be completely unacceptable. When we consider the role that prison officers and youth custodial officers play and the level of responsibility and control that they have over people's lives, it is clear that their integrity needs to be beyond reproach and beyond question. The level of integrity of 100 per cent of the staff needs to be 100 per cent 100 per cent of the time. It needs to be beyond question without doubt. A rate of 96.5 per cent is not good enough; in fact, I do not even believe that 98 per cent is good enough. It needs to be 100 per cent. Trust needs to be restored, and that trust needs to be maintained. This is why we have introduced the Custodial Legislation (Officers Discipline) Amendment Bill 2013.

Like police officers, prison officers and youth custodial officers hold a position of unique trust in society. Like police officers, custodial staff yield power over other members of society. They can lawfully compel other people to do things. They have the power to restrict their movements and control their access to friends and families. They tell them what to do and when and how to do it, when to wake up and when to go to sleep, when to eat their meals, and when to smoke cigarettes. As a community, we have an obligation and a responsibility to make sure that they do not ever get the chance to abuse their power. The amendments in the bill will achieve this by introducing a performance management–based system of ensuring the integrity of custodial staff. This will bring expectations about the behaviour of custodial staff into line with those for the rest of the public sector—no more and certainly no less. Every public servant in this state, regardless of where they work, is expected to behave in a manner that is ethical, open and transparent. At the same time, the community also has expectations about how these standards are to be maintained. The system that will be introduced will get rid of the antiquated adversarial processes that have been in use for far too long. They will be replaced with a streamlined approach that focuses on identifying issues early and, if possible, addressing them with a more constructive framework.

In order to support prison officers, the Commissioner of Corrective Services has created two new branches in the Department of Corrective Services on a trial basis: the investigation services directorate and the intelligence services directorate. The investigation services directorate will employ contemporary, best-practice approaches to assessing and investigating allegations of staff misconduct or criminality. The investigation services directorate will work closely with stakeholders such as Western Australia Police and oversight bodies such as the Corruption and Crime Commission to meet the department's statutory obligations. The directorate will develop an integrity model that promotes awareness of conduct, integrity and expectations. The directorate will independently investigate allegations concerning prison officers, custodial officers and public servants against the same standards of behaviour. The intelligence services directorate will provide a whole-of-agency strategic and operational coordination focus to enhance intelligence gathering, analysis and relevant information sharing. The professional standards division will cease to exist, with the key functions undertaken by the two new directorates.

As Minister for Corrective Services since March 2013, I have been impressed by the vocational calling of prison officers. For many officers, it is more than just a job. Prison officers play a vital role in the rehabilitation of offenders. The amendments in the bill will support the pivotal role of prison officers in the administration of justice.

In closing, I let the opposition know that I am obviously aware of all its amendments on the notice paper. The government has reviewed those amendments and will not support them.

Question put and passed.

Bill read a second time.

Leave denied to proceed forthwith to third reading.

Deletion of Part 3 — Standing Orders Suspension — Motion

MR P. PAPALIA (Warnbro) [3.10 pm]: I move —

> That so much of standing orders be suspended as is necessary to allow the following motion to be moved —
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> > That part 3 of the Custodial Legislation (Officers Discipline) Amendment Bill 2013 be deleted, and that if the motion is negatived, that part 3 is not taken to have been adopted by the house and that consideration of the bill proceed as if the motion had not been put and negatived.

At the outset, I will check across the chamber whether the minister will accept a suspension of standing orders.

Mr J.M. Francis: No.

Mr P. PAPALIA: In that case, I will make my contribution in support of this motion.

It is abundantly clear that the minister has completely failed to make a case at any time, whether just now in his reply to the second reading debate, during the second reading speech itself or in the public domain, to include youth custodial officers in the Custodial Legislation (Officers Discipline) Amendment Bill 2013. There has never been evidence of widespread corruption among youth custodial officers. Evidence of widespread disciplinary matters involving custodial officers has never been put before the people of Western Australia. The minister's arguments about prison officers are very flimsy. The minister has responded to information leaks, the source of which we can only guess, and told stories about a very small number of prison officers, but beyond claiming that some youth custodial officers are in the wrong occupation, the minister has never put before the people of Western Australia any argument to sustain the suggestion that this bill, which comprehensively changes the way prison officers and youth custodial officers are treated in their workplace, should include youth custodial officers. The minister has never put the argument. The minister cannot walk into the Parliament of Western Australia, after having made some fairly scandalous allegations about widespread corruption in one part of the workforce, and incorporate a completely separate part of the workforce into legislation that will fundamentally change their workplace. That is wrong and dishonest.

When I referred to the minister's leadership style, I was talking about the fact that he completely fails to take responsibility for his job and he places all responsibility for any failure upon his subordinates. That is poor leadership. In this case, the minister has incorporated youth custodial officers into the bill without any justification. I met with youth custodial officers and spoke to them about their feelings about the minister's determination to include them in this bill. They made it very clear that they, as the people directly affected by the bill, had observed that the minister has never made the argument for why youth custodial officers should be incorporated in this bill. Therefore, they ask why they are included in the bill, which is a legitimate question to ask the minister.

The youth custodial officers with whom I spoke also said that since 2007 very few breaches of discipline allegations have been made against youth custodial officers and none have related to integrity or corruption. If that is not the case, the minister should have put the cases before the house when he introduced this bill. If the minister is going to suggest that there is enough widespread corruption among the youth custodial officer workforce—it is a very small workforce—to justify introducing a bill that is focused largely on addressing that issue, he should provide evidence. Why has the minister not been able to present that argument?

The other significant point the youth custodial officers made is that they are not prison officers; they are youth custodial officers. All the claims the minister has made about prison officers do not apply to them. As the minister is fully aware, they are far more akin to social workers than they are to prison officers. The nature of their work is dramatically different. If they are to be effective, they are expected to engage much more directly with the juveniles with whom they work. Many youth custodial officers have left other occupations and career paths with the specific intention of effecting positive outcomes for the society of Western Australia through connecting with juveniles who are in a bad place and who have done the wrong thing. These juveniles need guidance and monitoring and need to be engaged by someone whom they can look up to and can aspire to emulate. That is not the picture of a workforce that needs a big stick brought to it. That is not a picture of a workforce that has suffered at the hands of corruption and that has been subjected to infiltration by organised crime. Those are the sorts of claims that the minister has thrown around about prison officers, without much evidence, I might add. The minister has never made the case for youth custodial officers.

A lot needs to be done to make this bill fairer, which is what these amendments hope to achieve. We put it to the minister that the first thing that needs to be done, in the interests of fairness and to acknowledge that he has completely failed to present any argument for including youth custodial officers in this bill, is to remove the part concerning youth custodial officers. Allow us to then debate and engage in a discussion about how the prison officers affected by this bill would be treated less poorly if the minister accepts some of our amendments. I find it extraordinary that at the outset the minister made a blanket statement that he will not consider any of the amendments. I do not expect the minister to just sit there; he should have the courage to stand and respond to these amendments when I move them and when I argue how they will make the legislation fairer on people. People's lives are being affected; the minister is questioning their integrity without evidence. The minister needs to have the courage of his convictions and tell the people of Western Australia why he disagrees with our amendments, which are designed to make this bill fairer. Firstly, the minister needs to respond to this motion, which calls for the minister to remove the part on youth custodial officers from the bill in its entirety and allow us to go on and deal with the rest of the bill. I do not think it would be entirely reasonable, but at least it would

be reasonable in the context of referencing the minister's own second reading speech, if our objective were to discuss the rest of the bill without youth custodial officers in it—just prison officers.

At the outset we call upon the minister to remove the part on youth custodial officers from the bill and accept that in the course of his second reading speech he failed to provide any argument for including them. The sort of language that the minister has used about upholding the high standards of ethical behaviour—I note the minister repeated the argument today and I assume that is where the minister is going to go because he is on pretty light ground with the corruption argument—indicates that he will argue that the bill protects people because youth custodial officers and prison officers have the power of use of force over the people whom they are responsible for imprisoning. If that is the case, why did the minister not mention youth custodial officers in his second reading speech other than at the end, almost as an afterthought? Why did the minister not put youth custodial officers in the meat of the minister's argument, flimsy and lightweight though it was? Why did the minister not incorporate youth custodial officers and provide some evidence of why he was concerned about them? He did not do so in his second reading speech or today. Other than the fact that they both work inside the minister's department, no real argument has been put.

Despite the minister's blanket rejection of the amendments at the outset, which I think reflects poorly on the minister, I ask him to reconsider this motion. It is a reasonable motion and it has been moved on behalf of the workforce that is directly impacted by this legislation—the youth custodial officers who have indicated that they do not believe the minister has made the case for including them in the bill. They feel aggrieved by the minister's intent and by the description of them as a workforce in the course of the minister's introduction of this bill and subsequently. If the minister will not accept this motion, he should stand and tell us why.

MR J.M. FRANCIS (Jandakot — Minister for Corrective Services) [3.20 pm]: Part 3 of the bill makes two key amendments to the Young Offenders Act 1994. It introduces loss-of-confidence provisions for youth custodial officers, and it introduces regulations to align the disciplinary procedures for youth custodial officers with those contained in the Public Sector Management Act 1994.

The rationale for part 3 of the bill is as follows. Both prison officers and youth custodial officers perform similar custodial functions and are responsible for the care, safety and security of detainees in the custody of the state. This can include the use of reasonable force and restraint as required. Such force and measures may involve deprivation of a detainee's liberties according to law. The public expects to be able to have a high level of confidence in the integrity, honesty and competence of the officers who discharge these important functions. The loss-of-confidence provisions will preserve public confidence by ensuring prompt removal of any officers deemed unsuitable for their position, having regard to their integrity, honesty, competence, performance or conduct. Youth custodial officers supervise young offenders, who may, given their immaturity, be more vulnerable and unpredictable than adult offenders. As such, youth custodial officers have the same, if not a higher, level of responsibility as prison officers.

The deletion of part 3 would deny youth custodial officers access to the Public Sector Management Act disciplinary procedure, which is more streamlined and efficient than the current disciplinary procedure contained in part 8 of the Young Offenders Regulations 1995. Part 3 provides that the same disciplinary process will apply to prison officers, youth custodial officers and departmental staff. The bill seeks to standardise disciplinary procedure across the custodial workforce.

I also make this point, member for Warnbro. I accept that because of the detainees that youth custodial officers are dealing with, the opportunities for those officers to partake in, say, corrupt activity will be far fewer than is the case with the adult prison population. However, youth custodial officers are still expected to answer direct questions from the Commissioner of Corrective Services about their performance and behaviour, and they are still expected to live up to the same standards of integrity and honesty when they are dealing with detainees.

Mr P. Papalia: Are you suggesting they do not do that?

Mr J.M. FRANCIS: No. As I have said, the majority of the staff of the Department of Corrective Services, whether they be youth custodial officers, public sector employees or prison officers, do the right thing.

Mr P. Papalia: How many youth custodial officers are there?

Mr J.M. FRANCIS: There are 230.

Mr P. Papalia: How many have not done the right thing?

Mr J.M. FRANCIS: That is not the point. The point is that it requires only one. The same standards should apply to youth custodial officers as apply to prison officers. That is why the government does not support the motion to suspend standing orders.

MR W.J. JOHNSTON (Cannington) [3.23 pm]: It is telling that the government did not respond to the issues raised by the shadow minister. The problem is that the government is not willing to explain to the people of Western Australia why this change is necessary. That is why the shadow minister is correct in the position that he is taking. The government has not been able to point to one problem or issue that demonstrates that the current system is not working. Is the government saying that the Corruption and Crime Commission is not adequately resourced? Is the government saying that the rules have not achieved what the government is after? None of those things has been suggested by the government. The government is simply saying that it wants change for change's sake. That is not an argument in favour of the government's position. We know what will happen, because the government has the numbers—that is the way the world works. But the fact that the government cannot—not will not, but cannot—explain why it is proposing this change demonstrates the weakness of this proposal that we are being asked to vote on.

Division

Question put and a division taken, the Acting Speaker (Ms J.M. Freeman) casting her vote with the ayes, with the following result —

Ayes (19)

Ms L.L. Baker	Mr W.J. Johnston	Mr M.P. Murray	Ms R. Saffioti
Dr A.D. Buti	Mr D.J. Kelly	Mr P. Papalia	Mr P.B. Watson
Mr R.H. Cook	Mr F.M. Logan	Mr J.R. Quigley	Mr B.S. Wyatt
Ms J. Farrer	Mr M. McGowan	Ms M.M. Quirk	Mr D.A. Templeman *(Teller)*
Ms J.M. Freeman	Ms S.F. McGurk	Mrs M.H. Roberts	

Noes (35)

Mr P. Abetz	Mr J.H.D. Day	Dr G.G. Jacobs	Dr M.D. Nahan
Mr F.A. Alban	Ms E. Evangel	Mr R.F. Johnson	Mr D.C. Nalder
Mr C.J. Barnett	Mr J.M. Francis	Mr S.K. L'Estrange	Mr J. Norberger
Mr I.C. Blayney	Mrs G.J. Godfrey	Mr R.S. Love	Mr D.T. Redman
Mr I.M. Britza	Mr B.J. Grylls	Mr W.R. Marmion	Mr A.J. Simpson
Mr G.M. Castrilli	Dr K.D. Hames	Mr J.E. McGrath	Mr M.H. Taylor
Mr V.A. Catania	Mrs L.M. Harvey	Mr P.T. Miles	Mr T.K. Waldron
Mr M.J. Cowper	Mr C.D. Hatton	Ms A.R. Mitchell	Mr A. Krsticevic *(Teller)*
Ms M.J. Davies	Mr A.P. Jacob	Mr N.W. Morton	

Pairs

Mr C.J. Tallentire	Ms W.M. Duncan
Mr P.C. Tinley	Mr T.R. Buswell

Question thus negatived.

Consideration in Detail

Clauses 1 to 6 put and passed.

Clause 7: Part X replaced —

Mr P. PAPALIA: I move —

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

Clause 7 is at the core of a large amount of our objections to this bill. The broad nature of the current draft of the bill does not reflect at all the argument that was put by the minister publicly in the media and in the minister's second reading speech. The minister acknowledged in his second reading speech—he repeated the assertion today—that the vast majority of corrective services officers uphold high standards of ethical behaviour. The minister prefaced his entire argument about needing to introduce this legislation with that statement. I put it to the minister that he has not talked about youth custodial officers in a disparaging way, other than to suggest that some officers should leave their job because they were affected by this government's bad decision to shut one of only two juvenile detention facilities. The minister has never made the argument for youth custodial officers but, putting that aside, the current legislation casts a very wide net over a person's suitability to continue as a prison officer. The first amendment I will move is to delete the definition of "suitability to continue as a prison officer". That definition states —

> ***suitability to continue as a prison officer*** means suitability to continue as a prison officer having regard to the officer's integrity, honesty, competence, performance or conduct;

That definition does not reflect the minister's argument that he made in his second reading speech or the contributions he has made to the public debate on this matter. The minister has not suggested that there is a problem with the performance, conduct or competency of officers; the minister has been consistently saying to

the people of Western Australia that there is a widespread cultural problem of corruption. The minister has increasingly suggested that this legislation is related to corruption. That is what he has said and that is the tenor of his argument. However, the minister has dropped that from the legislation completely, although he has incorporated part of it in his discussion. I will move a couple of amendments that are jointly related to this definition. We propose an amendment that will change the focus of the current definition by constraining it more so that it targets corruption. It will focus on corrupt conduct and people who are no longer fit and proper to hold the position of prison officer. That is what we think needs to be done. The definition needs to be constrained to reflect the minister's own argument.

I will deflect the suggestion that this legislation will fix the problem. I do not believe there is a problem. I believe there are people who do the wrong thing in the system, but that is true of any system. There are thousands of prison officers and of course there will be people who, on an individual basis, are corrupt and do the wrong thing, and they should be dealt with in accordance with the law and by the appropriate authorities—that is, the police and the Corruption and Crime Commission. In my view, this legislation seeks to solve a problem that does not exist. However, if the minister is to pursue this matter, he needs to constrain the definition. Therefore, because the first matter we have come to is this definition—my next amendment obviously proposes a better solution—I propose that we delete the current definition and constrain the provision with a tighter definition. By agreeing to my amendment, we will not allow an unnecessary focus across the workforce and we will not impugn the reputations and the integrity of the wider workforce. It will focus on the people we need to focus on. I do not believe the minister needs to introduce this legislation to do it. I believe that the Corruption and Crime Commission and Western Australia Police are the appropriate authorities to deal with the sorts of issues that the minister has suggested.

Mr J.M. FRANCIS: The government does not accept this amendment. The suitability of a person to continue to be a prison officer is about not only whether or not someone is corrupt, but also their competence and ongoing performance. I also point out that this is exactly the same definition that applies to police officers. The suitability issue, I am advised, has been considered extensively by the Western Australian Industrial Relations Commission. Certainly, there are a number of cases in the police force involving the use of loss-of-confidence provisions. Essentially, the Commissioner of Corrective Services would be given exactly the same powers that the Commissioner of Police has to assess the ongoing suitability of police officers. As we all know, there have been police officers in the past who may not have acted corruptly, but certainly they did not meet the acceptable standards of either the people of Western Australia or the Commissioner of Police. As I said, the current definition also refers to a person's competence and performance.

Mr P. PAPALIA: We will not divide on this amendment because the next one is largely related and we can have more of a discussion about it. However, it is important, and I do intend to divide on these matters of importance. The point is that the minister has never made a case that there is a problem to solve or that this legislation is the solution. The minister must make the case if he is to go to the trouble of maligning the reputations of a large workforce, change their conditions of service and subject them to powers at the hands of the CEO that are quite extraordinary compared with the powers they are currently subjected to. He cannot just come into this place and say, as he has on occasion, "Well, you know, it's the vibe. We need to sort out the problem. We know that the vast majority of prison officers don't have this problem and have the highest integrity." The minister has publicly maligned a lot of people, perhaps inadvertently, in the course of the debate over the past few months. However, the minister is acknowledging that the vast majority of officers do not need this sort of legislation. I might let this amendment go so that we can move onto the next one, but this is about more than just constraining the provisions. The opposition does not believe that the phrase "loss of confidence" is appropriate. That phrase has certain implications and is about more than just opposing the concept of the minister introducing these powers. In the event that this legislation passes, it is about the consequences—although perhaps unintended—that someone might be brought before the CEO and the CEO declares publicly that he or she has lost confidence in the officer but the officer is later found to have been wrongly accused. The consequences are serious for an officer who is found to be completely innocent of the charge. It is a very difficult matter when we consider how an officer can regain confidence after having publicly lost confidence. That has been the experience within Western Australia Police. I understand that the minister has effectively duplicated the terminology relating to the provision governing Western Australia Police. When it has been known publicly that someone has lost the confidence of the commissioner, how then does that person regain confidence if there was an investigation and they have appealed to the Western Australian Industrial Relations Commission and the commission found that the person had been inappropriately dealt with or the charge was not right? That is the discussion we will have later, but I will move on with this particular amendment and discuss it more when we debate the next one.

Mr J.M. FRANCIS: I will make a couple of points in response, although I do not want to spend too much time on it. The primary purpose of this legislation is to align the discipline process with the Public Sector Management Act 1994. The loss-of-confidence provisions, I am advised, would be used in a similar way to the way the police commissioner uses his powers within the police force. It is not necessarily related at all to only those who may or may not have been charged with a criminal offence. It is also about the competence and the performance of a prison officer. I do not want to use this forum to go into hypotheticals but I will give a couple of examples. I also do not want to use this forum to outline potential breaches that are still under investigation or would identify —

Mr P. Papalia: Does the minister want to put this amendment? I will let it pass on the voices and we can then get on to the next one.

Mr J.M. FRANCIS: We can get into this argument.

Mr P. Papalia: The minister can get one under his belt that way.

Amendment put and negatived.

Mr P. PAPALIA: I move —

> Page 6, lines 7 to 9 — To delete the lines and substitute —
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> (a) the chief executive officer has formed the opinion on reasonable grounds that the officer:
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> (i) has engaged in corrupt conduct (or any other conduct constituting an indictable offence); and
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> (ii) is no longer a fit and proper person to hold a position as a prison officer; and

This is at the heart of the matter that we were discussing. I am sorry that I interrupted the minister. The opposition is seeking to remove this statement from proposed new section 100(1)(a) of the Prisons Act —

> the chief executive officer does not have confidence in a prison officer's suitability to continue as a prison officer; and

The CEO cannot come back from that statement, regardless of the outcome of any appeals process. There is an appeals process in the legislation that we will discuss in due course, and the minister does acknowledge that someone might be initially found to have lost the confidence of the chief executive officer and then theoretically regain it through the process. In that event, how does a prison officer ever regain the confidence of the commissioner? As I understand it, one does not; it is pretty much impossible. This completely undermines any appeals process and any notion of the integrity of the process in which someone gets to make a complaint about the nature of the accusation, test the evidence in the course of an appeal to an appropriate authority and then subsequently be found not to have been correctly dealt with. How does that person regain the confidence of the chief executive officer? It would appear to be impossible. I do not think it is right; it appears to rob a person accused of losing the confidence of the CEO of natural justice. The opposition proposes that the wording be changed. This is not to get rid of the focus on corruption; it is all about corruption—that is what the minister is talking about, the really bad guys, the serious individuals, the ones who concern him the most, where there is a suggestion of a connection with organised crime and who are acting in a corrupt fashion. That is the minister's focus and his argument in the public domain. Why does the minister not respect that in the language used and terminology employed in this legislation? The opposition proposes that the chief executive officer —

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

Changing the terminology so that, firstly, the prison officer has engaged in corrupt or illegal activities or, using the correct terminology, something that might be an "indictable offence" and, secondly, "is no longer a fit and proper person" would not permanently rule them out in the event that they were found to be innocent of the charge. The CEO is being given a serious power and there should be some constraint on it. The power should be isolated to affect the people who are the worst—those conducting themselves in a corrupt or illegal fashion. The terminology should not result in an inadvertent, irreversible condemnation of someone who has initially been found to have lost the confidence of the CEO and then subsequently, through a fair process, is found to have done nothing wrong. It is possible, and I do not think it is the intent of what the minister is doing, that a person is ruled out and the whole process after the initial notification becomes irrelevant. If there is only what is available at the moment and a change to the terminology is not allowed, people will be condemned and will not even

bother with the appeals process because it will be irrelevant as they will never regain the confidence of the CEO. The terminology that is employed assumes that the CEO will never change their mind.

Mr M.P. MURRAY: I would like to add to the debate on the amendment of this clause. I was contacted by prison officers from Bunbury who have great concerns along the lines of personalities. Their concerns are about the CEO making decisions on the basis of personality—do not say it does not happen because we know that it does. There are also concerns that the person at the top has some sort of medical problem—as we have seen—and makes a decision that is not complimentary to the person concerned; out the person goes because someone is at the end of their time and trying to square things up. This is really basic human stuff, not as per the legislation, but on a personal basis. There are great concerns in this area and the prison officers and I see that this could happen. The legislation states the chief executive officer "does not have confidence in a prison officer's suitability to continue as a prison officer". There needs to be more depth than that. I understand there is a process before things reach this stage but in the end it is a one-man decision. What comebacks are available if a mistake is made along the way? I think the previous speaker mentioned this. What happens when a mistake is made? What is the right of appeal? Under the legislation, a prison officer is dismissed and tagged as "not suitable"; how do they get that back?

Mr J.M. FRANCIS: I will reiterate the member for Warnbro's first point that suitability is not just about corruption; it is also about competence and performance. Essentially, this is aimed at staff who do not meet the standard expected by the public of those in the role of a custodial officer; be that a youth custodial officer or a prison officer. Before we dealt with the amendment, I said that I did not want to use hypotheticals and I did not want to go into too much detail on current issues before the commissioner. Suffice to say I do not have a crystal ball and I cannot tell the member for Collie–Preston who the commissioner for corrective services will be in five years' time. I have to say that the CEO, the current commissioner, is a man of absolutely impeccable character and I have complete faith in his suitability to exercise judgement in these situations.

Mr M.P. Murray: What I am saying is that there is also the unknown, and unfortunately we are painted into a corner here.

Mr J.M. FRANCIS: I do not want to harp on to make a political point, but in front of me is the debate in *Hansard* on the Police Amendment Bill 2002. The member for Midland was the Minister for Police and brought an amendment to this house that gives exactly the same powers to the police commissioner to deal with police officers. I know the member for Warnbro calls these extraordinary powers, but I do not accept that. I accept that they are fair and reasonable and that the overwhelming majority of staff have absolutely nothing to fear from the commissioner having these powers. I do not want to go into hypotheticals but I will give one example that is not corruption. Let us say a prison officer, or a youth custodial officer for that matter, repeatedly fails to lock down cells at night. As the member would know from his military service, this person does rounds and signs off a logbook, saying that the cell has been locked. They do this not on just one occasion, but on many occasions. This person is a repeat offender, so to speak, not in a criminal matter but they repeatedly fail to do the very basic role, which is to ensure the safety and security of the prison in which they work. We can retrain them and correct them, and we can retrain and re-correct them for years, but for whatever reason they continue to refuse to do the very basic job, which is to, let us say, check the locks on a cell. At the end of the day, I foresee that this might perhaps be a provision that the Commissioner of Corrective Services might use as far as the suitability of that person to remain in that position is concerned. I do not have any concerns that this provision may be abused. I think that at the end of the day the safety of the public also revolves around prison officers acting with competence and integrity. As I said, I will not go into current cases, current investigations or past ones that may potentially lead to the identification of someone who is no longer a staff member of the Department of Corrective Services. But mark my words: it happens, and it happens enough for us to be concerned enough to bring this bill into the house.

Mr D.J. KELLY: I also have concerns about imposing these powers or giving the commissioner these powers over prison officers. They are extraordinary powers. They are not widely applicable to people in the community in their employment. They take away a lot of the basic provisions that apply to most members of the community in their employment. The example the minister just gave was: what do we do with a prison officer who repeatedly leaves cell doors open? I am no expert on prison life, but I would think that locking cell doors is a pretty basic part of a prison officer's job. If someone repeatedly does not do that and repeatedly signs logbooks to say that they have done that and they have not, the minister could deal with them adequately under the existing disciplinary procedures. If the minister's management in his department cannot deal with a prison officer who has that level of poor performance, I suggest the minister's managers need to have a good, hard look at themselves. At the moment my son is very fond of the word "nong". I would think that any manager who cannot deal with a prison officer who cannot lock a cell door at night is a bit of a nong—is incompetent. The minister does not know what that means. The prison officer is a bit incompetent. The example that the minister

has just given is, I would have thought, management 101 and could be dealt with under the existing provisions. That, to me, is not an argument to impose a disciplinary regime that revolves around losing confidence and takes away some of the basic procedures that apply elsewhere in the community. If that is the best example the minister can come up with for why this provision should apply to issues of competence and performance, the minister has failed. The amendment that has been moved by the shadow minister would limit these extraordinary powers to issues around corruption. If the minister were to progress this change, if he is going to do it at all, but limit it to issues of corruption, he would be on much stronger ground. The amendment that has been moved would limit this new provision only to incidences of corruption. If the minister were to do that, he would at least be on some firmer ground.

Finally, the minister says that if people do not like this, they have nothing to fear. It is not easy being a prison officer, and it is not easy to attract people to do this sort of work because it is really tough. There are lots of easier ways to make a buck out there than being a prison officer. If the minister is going to bring in provisions to apply to prison officers that, for example, apply to police, he may well find that more good officers will think twice about choosing this as a career. Being a prison officer does not have, if you like, the level of community prestige that being a police officer has, for example. The minister wants good people to do this work, but he should not overburden them with oppressive provisions such as those that he is putting in this bill. The minister might say that if they are good officers, they have nothing to fear; the system will not be abused. We all know that if we make a system—any system—that gives powers to officers or managers within it, there is always the possibility that there will be abuse. That in itself is not an answer.

Mr P. PAPALIA: That is a good point to follow on with respect to the comparison that the minister made with police and the suggestion that these powers are nothing exceptional because they were introduced in 2002 by a Labor government for police. The truth of the matter is that the police hold exceptional powers over everyone in the public. They have the use-of-force provisions that enable them, if necessary, to use force against any member of the public, right up to and including lethal force. That is not true of prison officers and youth custodial officers. Prison officers and youth custodial officers encounter some people whom they may apply use-of-force provisions to, but those people have all, at the very least, been charged, and in the vast majority of cases have been found guilty and sentenced. The minister is suggesting that general members of the public somehow need to be protected from prison officers and youth custodial officers who are wandering around out there, employing their powers of force against general members of the public. That is not the case at all. If the minister is making the suggestion that members of the public need to be protected from prison officers because they are corrupt and a lot of corruption is going on and, therefore, offenders will leave the prison system worse than they were when they went in, or that they will in some way be able to manipulate the prison system because of that corruption, he should make the case. The minister cannot say, "I don't intend to refer specifically to any cases." What that means in the real world is that he has no evidence. If something is sub judice and he does not want to refer to it, he should say that, but if he is talking about past cases and he does not want to refer to something because someone has left the service, why not? The minister was quite comfortable making observations about individuals in the newspaper; he was quite comfortable going on the Gary Adshead show on 6PR and making allegations about individuals whose photos had appeared in the newspaper. Why can he not, therefore, give some evidence—real evidence—with specific numbers, about the extent of this problem that he claims he needs to address?

I am now going to refer to a new bit of evidence, which we had not heard before, that the minister threw into the debate earlier in his response to the second reading debate when he referred to something like three per cent of the custodial officers' population having been charged with some disciplinary matter. Can the minister please table the evidence, because I have evidence from the minister's department of the number of disciplinary cases over the past three years, which does not indicate an extensive problem? In fact, it indicates that in the last 12 months there were 24. That is 24 out of a workforce of—how many prison officers are there—some 3 500 or 3 000. What is the number, minister?

Mr J.M. Francis: There are 2 500 prison officers and 230 youth custodial officers.

Mr P. PAPALIA: The number of disciplinary cases is 24, and that does not include cases involving corruption. As I indicated in my second reading contribution, they are not what I consider to be serious matters that might be the subject of this sort of legislation. That is the entire number; therefore, the number of serious cases is even fewer than that. If there are cases that justify this legislation, the minister should put them on the table—he should tell us. He should not make inferences or vague and ambiguous references to stories that he knows about that we do not know about and say, "If only you knew." I cannot take the minister at his word if he sets out to change people's employment and sets out to have a direct impact on the conditions of employment for a large number of people without justification. The minister must place the evidence on the table and in the public domain so that people can judge it. I will make two points. First, prison officers and youth custodial officers are

not police officers. Yes, they have some powers, but those powers directly relate to the people over whom they have custody, not general members of the public. Secondly, the minister has presented no evidence to suggest that this is a widespread phenomenon that has to be dealt it. If such evidence exists, I look forward to the minister presenting it.

Mr J.M. FRANCIS: Firstly, I make the point that I do not accept the member for Bassendean's argument that this legislation will prompt good prison officers to resign. I have received a number of emails from, and spoken with, a number of prison officers all of whom have indicated that these provisions are long overdue; indeed, they offered me nothing but absolute encouragement. The reality is that prison officers and youth custodial officers raise this issue with me. I visit prisons on a regular basis; in fact, I was at Albany Regional Prison at 7.10 this morning to talk with the superintendent and a number of prison officers. I accept the challenges and dangers that they face on a daily basis. But a number of prison officers who have contacted me have said that the exact opposite is true—that is, if we lift the bar and raise the standard of integrity, we will attract a higher calibre of person, if I can put it that way. Certainly, we will not see good prison officers resign; if anything, we will see those who do not meet the standard that we expect resign.

Mr P. Papalia: There is no standard attached to the phrase "loss of confidence". It is a subjective judgement by the CEO or some subordinate who, as was indicated by the member for Collie–Preston, despite having a grievance or a motivation that is not aboveboard, passes through the system. It may be that someone is —

Mr J.M. FRANCIS: Is the member suggesting that James McMahon would sign off on that without being totally —

Mr P. Papalia: Look, mate, I know James McMahon far better than you do. Don't suggest that he's an angel.

Mr J.M. FRANCIS: Please do not call me "mate". I am not the member for Warnbro's mate.

I have complete confidence in his ability to make a judgement.

Mr F.M. Logan: He will not be there forever.

Mr J.M. FRANCIS: I said that as well.

Several members interjected.

The ACTING SPEAKER (Mr I.M. Britza): Member for Cockburn, the minister has the floor. Members will get their opportunity to speak.

Mr J.M. FRANCIS: I have complete confidence that the person who succeeds him can be entrusted in exactly the same way as the Commissioner of Police is entrusted with the authority to deal with police officers who do not meet the standard. I am happy to refer members to the *Hansard* of the Labor Party's police minister who made the same argument in this place in 2002 when the same provisions—and the reasons for them—were brought in to deal with police officers. I have complete confidence that due process will be followed. The member for Warnbro asked for some figures. During my reply to the second reading debate I said it was up to 3.5 per cent. I will address that now. In 2010–2011, 36 prison officers were charged, which equates to 1.8 per cent. In 2010–2011, seven out of 199 youth custodial officers were charged, which equates to 3.5 per cent.

Mr P. Papalia: What were they charged with?

Mr J.M. FRANCIS: I will provide the breakdown for youth custodial officers. In 2010–11, there were no cases of abuse of authority. There were five cases of a conflict of interest/improper association.

Mr P. Papalia: What was the nature of those offences?

Mr J.M. FRANCIS: I do not have a breakdown on them.

There were five cases of a neglect of duty/failure to report. I am not talking about someone who does not turn up one day. An officer has to repeatedly not turn up for work before he is charged. It is a significant issue. It is not like what happens in the military in that a person who is absent without leave for five minutes faces the table. A prison officer has to be a fairly significant repeat offender before he is charged.

Several members interjected.

The ACTING SPEAKER: Members, the minister is not taking interjections.

Mr F.M. Logan interjected.

The ACTING SPEAKER: Member for Cockburn!

Mr J.M. FRANCIS: There were five cases of a neglect of duty/other. There were four cases of official information/unauthorised access. There was one case of personal behaviour/unprofessional conduct. Those were the discipline charges by category for youth custodial officers in 2010–11. It does happen, member for Warnbro.

Mr P. Papalia: You just indicated that you have no idea of the extent of the cases to which you referred. You don't know the details. You're just using a number.

Mr J.M. FRANCIS: I am telling the member for Warnbro that before a youth custodial officer is charged —

The ACTING SPEAKER: Thank you, minister.

Mr P. PAPALIA: I would like to hear from the minister if he has more to add.

Mr J.M. FRANCIS: It is a serious matter when five youth custodial officers are charged with a conflict of interest/improper association in the one year. That behaviour undermines the standard and does not meet the standard that is expected by the public or the government.

Mr P. PAPALIA: Does the minister know what the youth custodial officers did in that year; does he know the nature of their offence? I know what the headline or banner accusation is for the offence under which they have been charged, but does the minister know the nature of the offence?

Mr J.M. FRANCIS: I do not know the details after 2010. I do know the details of current staff in the Department of Corrective Services who have not met that standard and expectation.

Mr M.P. MURRAY: In his second reading speech the minister brushed on the subject of people having contact with outlaw motorcycle gangs and organised criminal gangs. What effort is put into the employment side; that is, what checks and balances are done before a person begins work as a prison officer? If the department does those checks and balances after a person is employed or halfway through the process, it might be a case of oops, it has made a mistake, which causes disruption.

Mr J.M. FRANCIS: I ask for some leeway in this answer, because this does not directly relate to the clause. One of the first things I asked the department to review was the selection criteria for youth custodial officers and prison officers. Alarmingly, the selection criteria did not meet what I thought should be the acceptable standard of vetting. That has changed and the vetting process is far more extensive. I do not want to dwell on this because it does not really relate to this clause, but members should consider the level of integrity in workplace safety. We are looking at bringing in alcohol and drug testing for staff within our prison walls because, firstly, it is a workplace safety issue and, secondly, it is an integrity issue. I was alarmed to learn that drug testing for those who apply to become prison officers and youth custodial officers was not a prerequisite of the selection process. It is suitable for other dangerous workplaces in Western Australia, such as the defence forces, mining, police and construction. The member for Cockburn knows what I am talking about. A lot of dangerous workplaces have selective testing. I think that it is appropriate that as part of the process to increase the standards, integrity and workplace safety in this area, we have that extra check of primarily reporting in. The short answer to the member's question is that the process for selection of staff will change; there will be a much higher degree of vetting in the process.

Mr P. PAPALIA: Firstly, the number to which the member referred for 2010–11, at least—I may have missed the other couple of years if he read them out—did not accord with the ones the department has already given to me, so it would be appreciated if that evidence can be tabled.

Mr J.M. Francis: Which numbers?

Mr P. PAPALIA: They concern disciplinary matters for 2010–11, 2011–12 and 2012–13. We have answers given in the upper house estimates committee hearings that do not appear to accord with those the member just mentioned.

That aside, I want to respond to the minister's observation —

Mr J.M. Francis: I am happy to get a copy of it.

Mr P. PAPALIA: That is fine; in due course. I want to make sure I am referring to the right numbers because they do not seem to accord with the ones I already have.

Mr J.M. Francis: I will provide them for you. I was referring to YCOs.

Mr P. PAPALIA: I made an interjection about the commissioner and the minister's observation that he has "full confidence" in him. No-one is questioning the confidence of the commissioner; he is a great bloke. I have known him for 25 years; he is a good guy. That is irrelevant. We are passing legislation for the future. Until it is

changed again by another Parliament, this legislation will be enforced. It is essential that, regardless of people in play, or of individuals in positions, the legislation is sound.

The minister's response to the opposition's criticism of the subjective nature of "loss of confidence" as terminology and the associated very broad definition of why the CEO can lose confidence in an individual by the minister saying, "It's all okay because the current commissioner is a good guy and I trust him", is not adequate. Nor is it adequate for the minister to say, "I'm fully confident", because he is the current minister. In the course of one government there have been four ministers already in this portfolio. Any individual could end up in the role.

Mr D.J. Kelly: Even the member for Swan Hills!

Mr P. PAPALIA: Not any individual, but any unknown individual could end up in the role. The question must be: does the legislation stand up to scrutiny now? If our questioning whether it is appropriate to use the phrase "loss of confidence" and whether that phrase in the broad context of why a CEO can lose confidence in someone are reasonable questions, the minister must respond to that now. He cannot say, "Oh, it's all okay." The minister knows we will not criticise the commissioner. Why would we do that? That is not the point. No number of photographs of someone standing next to a guy in uniform with medals on his chest will make us ask fewer questions about the minister's legislation. That is true of photos of the Premier standing next to guys who have a Victoria Cross on their chest and anyone else. It does not mean we will not ask questions. We are asking on behalf of, firstly, the public of Western Australia and, secondly, in this case, those people most directly affected by this legislation—the prison officers and youth custodial officers. They are saying to us, quite reasonably, that the provisions in this part of the bill are too broad. They do not agree with the minister. They do not think there is a widespread problem, but given the minister is in government and he wants to implement a change to the disciplinary process, the youth custodial officers would like the legislation to be reasonable and fair and to be focussed on people who are corrupt and/or who have broken the law. Why does the minister object to that, unless he has another agenda? If his agenda is to do something else, he should be up-front and honest about it. If his agenda is to target corrupt behaviour and/or people who are breaking the law, what is wrong with these amendments? They are quite legitimate; they will let him have his way. They do not reflect us opposing outright the legislation; they would constrain it to what I would have thought was the real target of the legislation, and that is people who have really done the wrong thing.

Mr F.M. LOGAN: Thank you, Mr Acting Speaker (Mr I.M. Britza), for bringing me up to speed with where we are up to. I was delayed sorting out the member's computers.

Mr P. Papalia: Did you have a win?

Mr F.M. LOGAN: Yes, I think he should be pretty happy with the computers that will be offered.

The specific wording of the proposed new subsection that is of concern, I think, to everyone on this side of the house relates to the very broad powers that it gives the chief executive officer, which powers are broadened by the term "suitability". The term "suitability to continue as a prison officer" has been defined in the bill, but that does not provide any succour because on page 5 of the bill the interpretation of the wording reads —

> ***suitability to continue as a prison officer*** means suitability to continue as a prison officer having regard to the officer's integrity, honesty, competence, performance or conduct;

If that wording had been included in the proposed new subsection itself in the way in which the member for Warnbro is seeking—that is, the chief executive officer has formed the opinion that the officer is engaged in corrupt conduct et cetera —

Mr P. Papalia: I am seeking to constrain it to corrupt conduct.

Mr F.M. LOGAN: Yes. That would be one thing, but the minister is seeking to give the CEO a much broader range of powers under the term "suitability", but the definition of "suitability" goes to only "having regard to" five elements, but what else, minister? The words are "having regard to". That is not an end in itself. They are just five of a broad range of elements that the CEO will have cognisance of.

Mr J.M. FRANCIS: I understand that at this stage of the debate comments may well be reflected upon in interpretation of this legislation by a court or the Industrial Relations Commission in this particular case, so I will obviously put the following on the record to clarify the intent. As the interpretation of the provision used in the Police Act has been settled by the Industrial Relations Commission, there is no reason that there should be a departure from it in the Prisons Act. The analogous position of police and prison officers is such that the test for fitness and for removal should be the same under both acts. Obviously, clause 7 of this bill defines "suitability to continue as a prison officer" to mean suitability to continue as a prison officer having regard to the officer's integrity, honesty, competence, performance and conduct.

For further clarification I refer also to when the Police Amendment Bill was debated in this place and the then Minister for Police, Hon Michelle Roberts, said the following —

> It introduces a requirement that before a police officer can be removed from office under section 8 the commissioner must have lost confidence in the officer's suitability to continue as a police officer, having regard to the officer's integrity, honesty, competence, performance or conduct. These criteria are very broad. They ensure that the commissioner retains a wide managerial right to summarily remove unsuitable officers. This is consistent with the need identified by Justice Wood following the NSW police royal commission. In the absence of such authority, the community would understandably have grave concerns about the risk to the integrity of, and public confidence in, the Police Service. It is important that the commissioner not be impeded from efficiently and effectively removing those officers whose integrity, honesty, competence, performance or conduct he considers to be wanting. Under the Bill, the existing legislative requirement that the Governor remove commissioned officers and that ministerial approval be obtained before any other police officer is removed is retained.

Mr P. Papalia: That's about police officers. The one you're referring to is about police officers.

Mr J.M. FRANCIS: While I am on my feet, I should outline that the member was asking about the genesis or history of where we are at today with loss-of-confidence provisions. Loss-of-confidence provisions were introduced in Western Australia in 2003 as a reform to discipline police officers. In July 2010 the Independent Commission Against Corruption in New South Wales recommended legislative changes to enable the Commissioner of Corrective Services New South Wales to remove prison officers for loss of confidence. Subsequently, the Department of Corrective Services in Western Australia considered the possibility of introducing loss-of-confidence provisions to its custodial workforce. In November 2010 the provisions were inserted into the draft corrective services bill. That bill was drafted with approval from cabinet, but in order to expedite the process this proposed clause has been brought into Parliament as a stand-alone bill.

Mr D.J. KELLY: I take the minister back to the example he gave for why these provisions need to extend beyond corruption and why they need to go to competence and performance. The minister gave the example of a prison officer who shows poor performance, who cannot lock cell doors at night and who fraudulently fills out their logbooks. I do not think the minister gave me an answer in his response, as those issues seem to me to be a slam dunk for removing someone with the use of existing disciplinary procedures. Why can the minister not deal under the existing provisions with an officer who behaves so badly in the way he described? Why does the minister need to impose another regime for dismissing an officer who I would have thought would be regarded under existing disciplinary procedures as in a perilous position?

Mr J.M. FRANCIS: I used that scenario as a hypothetical, even though I said I did not want to go into too many hypotheticals. I refer the member to my second reading speech, which states —

> The existing disciplinary processes are hampered by workplace relationships such as can be experienced by prison officers. Instances of improper and inappropriate relationships —

These are real instances —

> include links between a prison officer and organised criminals; prison officers supplying drugs, and other contraband, to prisoners associated with outlaw motorcycle gangs; and sexual relationships between prison officers and prisoners —

Mr D.J. Kelly: I am sorry, minister, you gave an example.

Mr J.M. FRANCIS: I will get to that. To continue —

> where cells within a maximum security prison may be left unsecured, thereby compromising the security and good order of the prison.

The example I gave the member is similar to that last point.

Mr D.J. Kelly: Why wouldn't you just dismiss someone using the existing disciplinary procedures?

Mr J.M. FRANCIS: It is because the current system of discipline for prison officers is very drawn out and very time consuming. At the end of the day, prison officers may well be stood down for months and months pending a disciplinary procedure yet may well still be paid by the taxpayers of Western Australia. They may be unsuitable to be employed in any position in the Department of Corrective Services, and it may be that the commissioner has lost confidence in their ability to be employed as prison officers because of issues surrounding their integrity and those five key gates.

Mr F.M. LOGAN: I thank the minister for providing that broader interpretation of the wording in the clause that we are so concerned with—"suitability to continue as a prison officer". By taking the broader explanation for why he has introduced this clause for the purposes of future WA Industrial Relations Commission hearings, the minister has probably confirmed the reason why the member for Warnbro has introduced his amendment to the clause—that is, it is too broad. It is broad because it was designed that way for the purposes of dealing with corruption and other forms of illegal behaviour inside the police system—inside the police itself. It is to ensure that the commissioner can act quickly within the police force to deal with an officer who may well be able to inform other corrupt police officers or other criminal members in society about what might be happening to him or her. That is the reason it was introduced and, as the minister pointed out in his explanation, that came out of previous ICAC inquiries and other corruption inquiries held in various states.

But these people we are talking about are not police officers; they are prison officers. There is a world of difference between a police officer and a prison officer. There is a world of difference in the job that a police officer does and the job that a prison officer does. The most basic explanation of what a prison officer is charged to do is to keep people in prison. It is not to restore or keep order in society. It is not to interact on a day-to-day basis with the general community to ensure that the law is not broken by various members of the community. It is not to deal with the very broad range of subjects that a police officer has to deal with every single day of his or her life. Prison officers do not have to deal with those issues. What do they do? They patrol prisons and make sure that people are in the cell when they should be and out of the cell and in the right place when they should be within a confined, secure area. That is it. It is nothing more than that. They do not have the level of responsibility and interaction with the general community that could lead to all the issues the minister has identified as the reasons for introducing this clause. They do not come into contact—or do so only very rarely—with those types of issues. Police officers may do so on a day-to-day basis because of the nature of the people they have to deal with. Most of the time they have to deal with people who are breaking the law or who are about to break the law and people undertaking criminal behaviour. That is the reason why they are police officers.

Prison officers deal with people who have broken the law and been sentenced; and the minister's job is to keep them locked up. It is quite a narrow band of job responsibility. Therefore, why does the minister have to provide to the chief executive officer the same powers for managing custodial officers as he would provide to the chief executive officer of police? Why would the minister need to do that? He is doing it only because he thinks that this is the easiest way to do it and that it will give more power to that CEO. The minister himself identified just a minute ago that the CEO —

Mr D.A. TEMPLEMAN: I am interested in the line of inquiry from the member for Cockburn and want to hear some more.

Mr F.M. LOGAN: Thank you very much indeed, Mr Acting Speaker (Mr I.M. Britza). The minister has changed! He has got older all of a sudden! He has aged before our very eyes! I knew this was going to be a tough bill, but I did not think it was that tough!

Mr W.R. Marmion: I am right across this bill, member! I am right across this one!

Mr P. Papalia: It could be the effect you've had on him!

Mr F.M. LOGAN: That is right; I have aged him!

The issue, though, for the minister when he comes back from his break, is that he identified that the process of dealing with prison officers who may have transgressed the rules and policies and possibly the law itself takes too long. The minister gave examples of a number of prison officers who were stood down for months. Surely that is a managerial problem. I cannot see how that will be resolved by this clause in a way that is fair and appropriate for the prison officers. It will certainly give the CEO a huge amount of power to do whatever he likes with the employment of prison officers. If the minister wants to resolve the matter that he just talked about as the reason for introducing this bill—that is, the current process takes too long—one of the first things that the CEO, whom the minister claims is so great, should have done is identify how that matter could have been resolved using the existing managerial policies. The manager is paid to fix any process that has dragged on for too long within the current terms and policies that he operates under. He should not come running to this place for more powers that will tip the balance of industrial power so heavily in favour of the CEO against prison officers, which is what we are dealing with in this bill. Prison officers are not police officers. They do not do the same job. They have nowhere near the same range of job requirements as police officers, yet the minister is saying that the only way to deal with any transgression by these people that might take place within prisons—he has identified a couple of handfuls across both youth custodial services and adult custodial services over quite a number of years—is to give the CEO the same powers as the police commissioner has. That is rubbish. The minister paid a lot of money to bring in this so-called guru CEO, so the minister should tell him to get on with

his job and fix the management structure that has led to those guys being stood down for five months. I agree with the minister; it is wrong. It should not happen. The manager should get on and fix it, not come running to this place looking for more powers.

Mr P. PAPALIA: Conceding the points that have been made by the member for Cockburn, I disagree with him on one point; that is, I do not think the minister has produced the evidence. The minister has made vague references to some unspecified cases. He has suggested that a number of prison officers are languishing within the disciplinary process for months on end. In each of the past three 12-month periods, in how many cases were individuals engaged in the disciplinary process and the CEO was frustrated by the inability to remove them to such an extent that they were there for months on end? How many are we talking about?

Mr J.M. Francis: I am advised that there are 13 in the process at this time.

Mr P. PAPALIA: No; the minister made the suggestion that it was months on end. I understand that there might be 13 individuals in the disciplinary process right now, but how many of those have taken longer than a period of six months, for example?

Mr J.M. Francis: I do not want to provide details because some of these matters are sub judice. I can tell you that I know of at least one case right now in which, I guess you could say, the process is being frustrated by the criminal law.

Mr P. PAPALIA: For what period of time?

Mr J.M. Francis: It would be for six months now.

Mr P. PAPALIA: Did the minister say that they are before the courts?

Mr J.M. Francis: Still.

Mr P. PAPALIA: They are being dealt with in accordance with the law.

Mr J.M. Francis: Regardless of the outcome.

Mr P. PAPALIA: They have broken the law and they have been charged and dealt with. The frustration might lie with the courts, not necessarily with the disciplinary process that the minister is seeking to change. Is the minister suggesting that of the 13, only one has extended beyond six months?

Mr J.M. Francis: There are 13 charged and awaiting a hearing at the moment.

Mr P. PAPALIA: I am sure that a number of individuals in the system have been charged and are awaiting a hearing, and that could be any number at any particular time, but I asked how many have extended for longer than six months and the minister has suggested one.

Mr J.M. Francis: I would have to take that on notice.

Mr P. PAPALIA: This is fundamental to the minister's argument, because he is trying to make the case that there is a serious issue that needs to be addressed. Can the minister also provide us with the number of disciplinary cases in each of those years that extended for a period longer than six months?

Mr J.M. Francis: I would have to take that on notice, too.

Mr P. PAPALIA: I understand that. I think this is fundamental to the minister's argument. We are not saying that the minister should not do this. We are not going to die in a ditch over whether we change legislation. We are arguing that the people who should be subject to this bill should be constrained to people who are corrupt and who break the law. We do not think it is as extensive as the minister is trying to suggest in the public domain. If it is, he should be able to produce that evidence. I saw this quite often with some of the legislation that Hon Christian Porter introduced. He would make vague references to a serious problem and we would find subsequently that he was referring to one case, and even that was a bit dodgy. If the minister has an argument and a good strong case for why this legislation is required, it should be easy to present the case in this place. If he is worried about compromising the identity of individuals, he can do it without using their names, but he should not make vague references to lots of cases going on for years and to the disciplinary process getting bogged down, because that is not adequate. That is not an argument. It does not make the point adequately when the minister is seeking to change people's conditions of employment so substantially.

Mr J.M. FRANCIS: I am advised that in the past two years, at least two were suspended and were awaiting that process for at least eight months.

Mr P. Papalia: Sorry?

Mr J.M. FRANCIS: There have been two cases in the past two years in which the process from the date of their suspension to their termination lasted approximately eight months.

Mr D.J. Kelly: Did either of those involve criminal proceedings in court?

Mr J.M. FRANCIS: No.

Mr P. Papalia: Were they related to corrupt behaviour?

Mr J.M. FRANCIS: They involved inappropriate associations and failing to follow procedures.

Mr P. Papalia: Did they leave in the end? Is that what happened to them?

Mr J.M. FRANCIS: One of them did and one left prior to termination.

Mr P. Papalia: Was the other one terminated?

Mr J.M. FRANCIS: Eventually, but the process took far too long. They were significant inappropriate associations.

In the matter of Carlyon v Commissioner of Police [2004] WAIRC 11966, the Western Australian Industrial Relations Commission extensively considered the removal provisions contained in the Police Act. It held that the police commissioner exercised the power provided in the removal provisions in the public interest, not in order to punish an officer. The commissioner was under an obligation, when a member of the force was thought to be untrustworthy, to take prompt action to maintain public confidence in the police force. On review, the commission must be satisfied that the commissioner's reasons are soundly based and that the officer has been given an opportunity to respond to them. The test to be applied is whether there has been "a fair go all round", having regard to the interests of the appellant and the interests of the public, which include the importance of maintaining public confidence in the integrity, honesty, conduct and standard of performance of members of the police force and the special nature of the relationship between the Commissioner of Police and members of the police force.

In response to the member for Cockburn's comments, I do not accept his job description for prison officers and, in fact, I find it belittling. There is far more to being a prison officer than ensuring that prisoners are locked in their cells and in the right place at the right time. Prison officers play a significant role in the rehabilitation of very troubled offenders, some of whom have significant mental health issues and are undergoing rehabilitation for drug addiction. Some prisoners are very difficult to deal with. Prison officers carry out a range of duties. A very important task that they do, which is especially in the consideration of this bill, is to manage the public's access to prisons. They manage members of the public making both contact and non-contact visits to the prison. Prison officers screen members of the public so that contraband is not carried in and have the power to arrest members of the public who are caught trying to bring in contraband. There is a bit more to being a prison officer than what the member for Cockburn outlined. Prison officers are behavioural mentors because it is essential that troubled people who live behind the walls of a prison have a very good and solid mentor to help them in their rehabilitation. From what I have seen within prisons, the same prison officers work within a wing of a prison and develop a relationship with those —

Mr D.J. Kelly: Steady!

Mr J.M. FRANCIS: They develop a working relationship with those whom they are entrusted to look after, to a degree. We need people of the highest calibre to develop that positive relationship and foster prisoners' improvement before they are released.

Mr P. PAPALIA: I question the minister's suggestion that prison officers are so alike to the police. Clearly, the only members of the public whom prison officers will encounter are ones who specifically come into that environment, which is very constrained and limited; their powers are not exercised over the wider public.

That aside, I want to refer to a finding of the WA Industrial Relations Commission in the case of AM v Commissioner of Police [2010] WAIRC 61 of 11 February 2010, which concerned the powers of the Commissioner of Police to find "loss of confidence" in police officers. The observation was made, I think fairly, that the process that the minister is establishing for prison officers could have an unfair impact on people because it enables the system to ultimately—I understand that this claim has been made about the police—allow managers to avoid the proper responsibilities associated with their office. Instead of dealing with people in accordance with proper management practices and correcting and changing that behaviour in an appropriate fashion, it is possible under this sort of regime for people to take shortcuts and to avoid their own responsibilities and ultimately pass up the chain for termination through loss-of-confidence processes any cases that they find too difficult. It has happened in the police —

> However in a case such as this, the loss of confidence by the Commissioner of Police does not allow any prospect of any remedial activity by which the officer can regain that trust. The Commissioner of Police is now in the difficult position of having to assign duties to the appellant that requires the exercise of extensive police powers when interacting with the community where the Commissioner of Police believes that AM represents a risk to the community.

This is the point I was making to the minister before: he is establishing a process whereby someone can appeal, and it is quite feasible that that will happen. No-one, not even James McMahon, is beyond having a case brought to him that may not be entirely justified. The result may be that an individual is not completely acquitted and a finding is not necessarily found in the favour of the commissioner. What happens to these people? Having created a system whereby the commissioner can make the subjective finding that he has lost confidence in an individual, how do we regain that confidence? It is impossible. The minister claims that employing the terminology "loss of confidence" is a reasonable process. The use of an appeals process assumes that some of those appeals will be successful and that natural justice will be provided to the individuals subjected to these laws. It assumes that there will be an occasion when someone is found to have been harshly dealt with by this process. Therefore, the commissioner might be told that he is wrong in that case. If the commissioner has found a person to be so poorly behaved that the commissioner has lost confidence in them, how does the commissioner ever regain confidence in them? That is not a possibility and that is why we say that the terminology should be changed. We should constrain the people subjected to this legislation to those who have acted in a corrupt fashion or broken the law. Quite obviously, they would be dealt with appropriately, rather than people being dealt with under this legislation for any number of subjective reasons. The minister is allowing a very subjective process to be put into play, which I think will result in managers and leaders in the chain being given the opportunity to avoid their responsibilities and then, potentially, people being subjected to an unfair process whereby they cannot regain the confidence of the system or preserve their public reputation.

Mr J.M. FRANCIS: I will put it into some kind of context. We can agree or disagree on the comparisons with police. I will beg the Minister for Police's pardon on this, but I had a conversation with the Commissioner of Police some time ago about how this system applied to police. The Commissioner of Police has used this system for 12 years and, in general terms, he indicated to me that in the police approximately 50 notices are issued each year and half respond in a way that prompts him to withdraw the notice while the other half resign or are finally terminated through that loss-of-confidence provision. Roughly 25 a year over 12 years is 150 cases. The member is highlighting one case out of —

Mr P. Papalia: Does the minister not see that that is a legitimate observation? The minister is putting into play a subjective decision by the commissioner in advance of all the appeals processes, which completely undermines any appeals process. In the event that someone enters that appeals process and is found to have been unfairly dealt with by the system, how does that person regain the confidence of the commissioner?

Mr J.M. FRANCIS: The simple answer is that they may not.

Mr P. Papalia: Why not constrain it to the people you really want to target? Why is the terminology so broad?

Mr J.M. FRANCIS: The member wants to constrain this to only those —

Mr P. Papalia: Just to corrupt and illegal acts.

Mr J.M. FRANCIS: Our position is that inappropriate relations and loss-of-confidence provisions should apply to things other than just corruption, which is exactly the same as what happens within the police force. There is more to it than just corruption. If the member wants to constrain it to only corruption, that is fine. However, our position is that a higher standard should be expected from the small minority of prison officers who do not live up to the expectations of our side of the house or the general public, and that includes things broader than corruption; it also includes competence and performance. I am not quite sure but I suggest that the Western Australian Police Union of Workers does not have a problem with the standards applying to police; I may be wrong. It is surprising that the Western Australian Prison Officers' Union has a problem with it being applied to prison officers when, as I have said, a number of police officers have written to me and approached me in person and suggested that a large number of prison officers absolutely welcome this reform and think that the legislation should be applied in its current form.

We can agree to disagree on this one, member for Warnbro. But our position is that the integrity and standard of conduct, and also the perception of the integrity and standard of conduct, of prison officers should be beyond reproach.

Mr P. PAPALIA: Is the minister saying that the integrity and standard of conduct, and the perception of the integrity and standard of conduct, of prison officers is not currently held in high regard by the public?

Mr J.M. Francis: For a small percentage of them.

Mr P. PAPALIA: Are those officers being dealt with?

Mr J.M. Francis: Of course they are being dealt with.

Mr P. PAPALIA: Then why do we need this change?

Mr J.M. Francis: Because the process currently takes far too long.

Mr P. PAPALIA: The minister said that there have been two cases in the past two years that took more than six months to resolve.

Mr J.M. Francis: That is two too many. Do you think it is appropriate that those officers continued to be paid by the taxpayer?

Mr P. PAPALIA: For what incidents were those individuals charged?

Mr J.M. Francis: One was for inappropriate relationship, and the other was for providing an insecure environment by failing to follow proper process, which resulted in a maximum-security prison being vulnerable.

Mr P. PAPALIA: I do not understand. It sounds to me as though those persons should have been dealt with using the normal management practices. Is the minister suggesting that management was incapable of dealing with those incidents? Is that the problem?

Mr J.M. Francis: No, I am not suggesting that.

Mr P. PAPALIA: With regard to the inappropriate relationship, has that person been charged? Has that person conducted themselves in such a fashion that they have drawn themselves to the attention of WA Police?

Mr J.M. Francis: The person has been charged under the Prisons Act, because the offence comes under the disciplinary provisions of the Prisons Act.

Mr P. PAPALIA: So the person has been charged, and it has extended beyond six months; is that correct?

Mr J.M. Francis: That is correct.

Mr P. PAPALIA: Why has there been a delay?

Mr J.M. Francis: There are a number of different administrative reasons, including continued delay in seeking advice.

Mr P. PAPALIA: It could just as easily be the case that maybe we do not have enough evidence and maybe the charges are unfounded. If the minister is incapable of giving us more than two cases in two years of people who have been engaged in disciplinary matters for longer than six months, it does not sound as though there is an overwhelming argument in favour of this legislation.

The minister has suggested that the public expects to have confidence in the performance of prison officers. Normal management practices would allow the minister to deal with people who fail to achieve proper levels of competency and performance. As I have said, I think the minister is seeking to remove from people in the management chain the responsibility to manage poor performance and incompetence. That is their job. If people in management are not performing their job in an inappropriate manner, they should be given training and guidance so that they can correct their poor behaviour and act as a leader and manager. These people should not be given the opportunity to duckshove it up the chain to the chief executive officer. That will not solve the problem or compel people in the command chain to do their job properly. The minister is undermining the chain of command. The minister has still not presented any evidence about the extent of this problem to justify making this major change, other than to say that prison officers and youth custodial officers should be treated in the same way as the police. That is just a cop-out. They are not the police; they are prison officers and youth custodial officers.

Mr F.M. LOGAN: I concur with what has been said by the member for Warnbro. The point is whether it is appropriate to introduce this type of clause to deal with the management of sworn prison officers. I will not talk about youth custodial officers at this stage, because the nature of their employment is such that that is a completely different scenario. The minister has given to the house a number of instances of not only breaches of policy, but also possible criminal offences for which people may be charged and have legal action taken against them. The minister talked also about the number of people who have been stood aside and said that in the past two years, out of a total workforce of about 2 000, only 13 people have been stood aside, and only two of those have been stood aside for longer than six months. The number of people who have transgressed in one form or another, ranging from minor indiscretions to very serious, is slightly over 50, I believe.

Mr J.M. Francis: It was 24 prison officers in 2012–13 and 58 in 2011–12.

Mr F.M. LOGAN: So the number has gone down, yet the minister is seeking to introduce this new law. The minister is not using a hammer to crack a nut; he is using a bulldozer to crack a nut. This is a managerial issue. The minister made the decision to get rid of the previous manager and introduce new management. That is obviously the minister's choice if he thinks that is best way to change the culture inside the workforce. But the minister should give the manager the opportunity to introduce his own form of culture and change in the workplace before he brings in this type of heavy-handed legislation. For how long has the new chief executive officer been in the job?

Mr J.M. Francis: For about 125 days.

Mr F.M. LOGAN: Whose idea was it to introduce this bill? Was it the minister's idea or was it the CEO's idea?

Mr J.M. Francis: The member was not here when I went through the history of how we got to this place.

Mr F.M. LOGAN: The minister went through the history. I did hear that.

Mr J.M. Francis: It has been looked at over a period of time.

Mr F.M. LOGAN: It would be interesting to know whether the chief executive officer agrees with this. He probably does agree with this, because it will give him more power. From the minister's perspective, why not give the CEO the opportunity to manage and bring about change? To allow the CEO to manage within the existing structure or the laws or policies that he has, including that disciplinary procedure where people have been stood aside, and maybe stood aside for too long—I am not defending that whatsoever. What I am suggesting is that can be changed by managerial direction. It does not need to be supported in the way the minister seeks by this amendment.

Mr J.M. FRANCIS: I thank the member for Cockburn. He went back, starting in 2004 through to 2010. Very simply, as the Minister for Corrective Services I am made aware of a number of investigations, situations or events that occur with detainees, prisoners and staff within the Department of Corrective Services. When this was originally flagged, it followed a conversation I had with the department. Is there an issue with those prison officers who do not meet the expected standard being processed under the Prisons Act? Is there an issue with some of them delaying the inevitable termination of their employment? The answer was clearly yes. Given all the sections in a redrafted act that will cover the administration of prisons in Western Australia, this was the key section that the department suggested could be and should be expedited.

I am happy to agree with the member for Warnbro that we disagree. However, I have a significant issue with prison officers who clearly have not met an acceptable standard—for whatever reason as outlined—being paid by the taxpayer to sit at home pending months and months and months of twists and turns of different management appeals; at the last minute yelling "workers' compensation", looking for any excuse to delay the inevitable; when matters drag out for an unacceptable period of time, paid for by the taxpayer. People cannot be employed within the Department of Correctives Services to sit at home. This provision will essentially address that. There may be circumstances where one significant act occurs, whereby the commissioner loses confidence in that particular person's suitability, or there may be a number of cumulative acts. Regardless, there are situations that exist right now where prison officers, for a number of different reasons—as I said, there are a very small percentage of them—do not meet the acceptable standard.

I have absolutely no problem whatsoever with the commissioner, whoever it maybe, and as I said before, I do not have a crystal ball. I do not know who it will be in five or 10 years' time. I do understand the legislation, although it is not forever —

Mr P. Papalia interjected.

Mr J.M. FRANCIS: Absolutely!

Mr P. Papalia interjected.

Mr J.M. FRANCIS: I never met the previous commissioner. Personally, I do not know him, but the position of commissioner —

Mr P. Papalia interjected.

Mr J.M. FRANCIS: Let us keep this simple. There is a process that we go through that investigates the conduct of prison officers. Then, there is a process that we go through to terminate their employment. This is to do with the termination of their employment. This is essentially it. Also, it brings the process of management under the Public Sector Management Act. It is a pretty clear reform. I do not accept it is anything that is outrageous. I do not think it is anything that is obnoxious or offensive. I appreciate that the WA Prison Officers' Union does not hold the same view as me. However, I also appreciate that there are a lot of prison officers and staff in the Department of Corrective Services who say, "Bring this on, we'll welcome this." That is fine, but at the end of

day, as I said before, the absolute majority of prison officers who do the right thing have got absolutely nothing to worry about here. It is not, in effect, a change in their conditions of employment. It will only impact upon those who do not meet a certain standard of conduct or behaviour that is expected by the public of Western Australia, indeed the government and the Department of Corrective Services.

Mr P. PAPALIA: I will not delay this debate too much longer by debating this clause, but I will make one point. I disagree with the minister and the ambiguous way he responded about where this legislation came from because I asked the advisers at the time of my briefing, who initiated the provision. It was the minister who initiated it. I know the history of the legislation. I know that it was not brought forward, but that was in 2010. In the event that the minister is initiating this legislation, he should stand up for it, accept it and take responsibility; that is fine. If Mr Buckingham wants to suggest that was not the case—that is, what he told me—then that is an interesting observation. However, the truth of the matter is the minister has initiated this provision as part of a strategy. He has never made the case that there is a requirement or a real problem to deal with. He still has not made it tonight. Again, I disagree. Two individuals in two years —

Mr J.M. Francis: Over six months.

Mr P. PAPALIA: The minister does not know who was extended beyond six months within the disciplinary process that he does not even know the details of!

Mr J.M. Francis interjected.

Mr P. PAPALIA: The minister just said "an inappropriate association". Was it referred to the Corruption and Crime Commission? It would appear to me if that were the case, that is corrupt behaviour and it should have been appropriately dealt with by the Corruption and Crime Commission. If not, why not? If there is any law-breaking involved; if someone is breaching a law, then they should be charged by the WA Police. If not, why not? Do not say, "Oh, it's all too difficult, and they're twisting and turning." That would suggest the minister does not have evidence. It would suggest that maybe it is not an appropriate charge that he is charging them with. It might suggest that the management is not doing its job. All of these are reasonable assertions, but the minister cannot deny it because he cannot provide the evidence.

The minister is being ambiguous in an effort to suggest that there is this problem associated with a salacious photo on the front page of *The West* some months ago of an individual who has left the department. I understand, and we have conceded all along that there are people who will do the wrong thing in a large workforce. They should be dealt with appropriately. If the minister comes into this place to apply this legislation to everybody, the vast majority of whom he acknowledges conduct themselves with the utmost integrity, then he must put the case. I do not think he has. He and his government will be judged for it. In the future, as people are subjected to what is a very subjective process, there may well be unfairness. There may well be situations where people's reputations are impugned to such an extent they will never be recovered, and that is just part of the process he is applying because of his unwillingness to confine this to people who are really serious.

The minister is not willing to say what he actually said when he first started this debate shortly after taking over the role—namely, that he was going to deal with corruption, with people who had broken the law, who are a threat to the security of Western Australians. What the minister is now saying is, "We just can't be bothered doing a management job, so we're going to expand it out and we're going to give the commissioner a whole lot of powers, enabling people further down the chain to avoid their own responsibilities." Therefore, the minister will not be specific about anything; he will not articulate any argument. He will not provide any cases, any evidence, any support of the suggestion that there is a real problem to deal with. It has all unravelled since the minister stood up the first time and went on the media blitz to suggest he is knight on a white charger coming to save the Department of Corrective Services. It has all unravelled.

In the future, when people are looking backwards to see where the problem began and where someone unnecessarily was exposed to these changes, it will be the minister who was responsible—not some department; not some nebulous other people. It will be the minister and his government who are responsible for introducing an unnecessary legislative change, and a significant change to people's terms of employment. The provision has been introduced unnecessarily, without justification and without proper argument. That is no way to drive legislative change. There is no real reason for it other than a political point, which is a sad indictment on the minister.

Division

Amendment put and a division taken with the following result —

Ayes (18)

Ms L.L. Baker	Mr D.J. Kelly	Ms M.M. Quirk	Mr P.B. Watson
Mr R.H. Cook	Mr F.M. Logan	Mrs M.H. Roberts	Mr B.S. Wyatt
Ms J. Farrer	Mr M. McGowan	Ms R. Saffioti	Mr D.A. Templeman *(Teller)*
Ms J.M. Freeman	Mr M.P. Murray	Mr C.J. Tallentire	
Mr W.J. Johnston	Mr P. Papalia	Mr P.C. Tinley	

Noes (33)

Mr P. Abetz	Mr J.H.D. Day	Mr S.K. L'Estrange	Mr J. Norberger
Mr F.A. Alban	Ms E. Evangel	Mr R.S. Love	Mr D.T. Redman
Mr C.J. Barnett	Mr J.M. Francis	Mr W.R. Marmion	Mr A.J. Simpson
Mr I.C. Blayney	Mrs G.J. Godfrey	Mr J.E. McGrath	Mr M.H. Taylor
Mr I.M. Britza	Mr B.J. Grylls	Mr P.T. Miles	Mr T.K. Waldron
Mr G.M. Castrilli	Dr K.D. Hames	Ms A.R. Mitchell	Mr A. Krsticevic *(Teller)*
Mr V.A. Catania	Mrs L.M. Harvey	Mr N.W. Morton	
Mr M.J. Cowper	Mr C.D. Hatton	Dr M.D. Nahan	
Ms M.J. Davies	Dr G.G. Jacobs	Mr D.C. Nalder	

Pairs

Dr A.D. Buti	Mr T.R. Buswell
Mr J.R. Quigley	Ms W.M. Duncan
Ms S.F. McGurk	Mr R.F. Johnson

Amendment thus negatived.

Mr P. PAPALIA: I move —

> Page 6, lines 25 and 26 — To delete "does not have confidence in a prison officer's suitability to continue" and substitute —
>
> > 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

This goes to the same point raised earlier. I will move all these amendments, but debate will not be as long on all of them as occurred on the previous amendment because to do so would be repetitious. It is necessary to make the point—I am not doing this to make things uncomfortable—that the loss-of-confidence provision is not appropriate or fair. It is very subjective and allows someone the opportunity to appeal, yet effectively pre-judges that appeal because of the application of the term "loss of confidence". Confidence can never be regained, as identified in the Industrial Relations Commission judgement I referred to earlier. Once a commissioner has lost confidence in an individual, how on earth is the commissioner going to re-employ that person? They cannot. Effectively, the minister is saying that it is a one-way street. There is no appeal process by virtue of the definitions and the language employed; it is just a joke. The appeal process is cursory and irrelevant because, ultimately, if the commissioner loses confidence in someone, he or she will never get it back, and those individuals in whom the commissioner has lost confidence will be sent to the purgatory of being unable to regain the public perception of their integrity and the confidence of the commissioner. That is the opposition's point.

I will not dwell on this too much, except to say that the language the opposition proposes is considered. The language in this bill is just a duplication of the police legislation. The wording the opposition has chosen for this amendment is thought out and takes into account the concerns of the people impacted upon by this legislation; the government's does not. The minister continually refers to prison officers who have emailed him. Okay, that is fine, but that is not necessarily a large number of people. I could just as easily say that I have received lots of emails suggesting that what the minister is doing is wrong. That is true, but it is not an argument to convey in this place. The opposition has consulted people about the impact the legislation will have on them, and their perception of its unfairness. The opposition has taken that into account, sought advice and drafted potential amendments that those affected people would be comfortable, albeit not happy, with. They are not happy with the legislation but they are comfortable with the amendments to the legislation the opposition is suggesting. Why does the minister refuse to even countenance the possibility that he may have got it wrong? The minister has not talked to the workforce beyond a couple of emails from individuals.

Mr J.M. Francis: I talk to them all the time.

Mr P. PAPALIA: No, the minister has not consulted the bodies about this legislation with specific reference to the language employed—I know he has, but he has said that he will not listen; he will just ignore them.

Why is it that the minister is necessarily on the right path and the opposition, which has consulted and taken into consideration the views of the workforce to be impacted by this, wrong? I would appreciate it if the minister could address that question. In this case, the wording that we have chosen to use reads —

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

I think that is quite reasonable. It is talking about the serious cases and the people that we really need to get rid of, and it does not have the ambiguity of the current drafting of the legislation and the potential for unfairness that that allows.

Mr J.M. FRANCIS: I do not accept the member saying that I have not consulted. I am regularly out talking to prison officers. It happens on a very regular basis. I was out at Albany Regional Prison at 10 past seven this morning. I talk to prison officers, with all due respect to the member for Warnbro, far more often than he does. In fact, it is my recollection that the member for Warnbro has not requested to visit a prison since July. To suggest that I have not consulted with prison officers is absolutely wrong. There is more to the youth custodial workforce than the Community and Public Sector Union —

Mr P. Papalia: How'd you get down to Albany?

Mr J.M. FRANCIS: I flew down. I came back this morning.

Mr P. Papalia: How did you fly back?

Mr J.M. FRANCIS: I flew back this morning.

Mr P. Papalia: On what—the government jet? I don't have access to a government jet, yet I've been to Albany three times.

Mr J.M. FRANCIS: There are numerous prisons in the metropolitan area to which the member has access.

Mr P. Papalia: Yes, all of which I have been to at least twice. You're catching up.

The ACTING SPEAKER (Mr P. Abetz): Order, member for Warnbro!

Mr J.M. FRANCIS: I am suggesting that the member for Warnbro's suggestion that I did not talk to and consult with prison officers is wrong. As I said, there is more to youth custodial officers than just the Community and Public Sector Union; and, there is more to prison officers than just the Western Australian Prison Officers' Union. I like to consult on a much broader basis and talk to people about these matters on a much broader basis. I did not say that my consultation is just emails they have sent me. I have had a number of conversations with prison officers. I accept that not everyone employed as a prison officer or a youth custodial officer accepts these reforms.

Mr P. Papalia: Are you contending that the two unions are unrepresentative of those workers?

Mr J.M. FRANCIS: I am not saying that.

Mr P. Papalia: I went to a public meeting at which there were about 140 youth custodial officers. How many are there?

Mr J.M. FRANCIS: There are 230.

Mr P. Papalia: That's a fair chunk of them, isn't it?

Mr J.M. FRANCIS: Absolutely. What I am saying is that I talk to youth custodial officers and prison officers on a regular basis. Moreover, the Department of Corrective Services directly engaged in substantial consultation about this reform. The new commissioner has met with both unions a number of times and has discussed the changes, as have I met with the unions and discussed the changes. Sure, the member for Warnbro and I have a difference of opinion. We do not see the need to reform the Department of Corrective Services in the same light. That is the way of life. We will have to agree to disagree.

Mr F.M. LOGAN: My question follows on from an issue that was raised previously and goes to the wording that the "chief executive officer does not have confidence in a prison officer's suitability to continue as a prison officer". I will pose a scenario and ask a question for the minister to consider. Should a prison officer be suspended or have his employment terminated by the CEO because the CEO does not have confidence in the prison officer's ability to continue as a prison officer, and the prison officer seeks redress by way of an appeal in the Western Australian Industrial Relations Commission and wins the appeal, will the prison officer be reinstated; and, if so, how?

Mr J.M. FRANCIS: The Western Australian Industrial Relations Commission can order that the officer be reinstated. That is in the appeal provisions in the bill.

Mr F.M. LOGAN: I cannot see how the power of the appeal board or the appeal court of the Western Australian Industrial Relations Commission—depending on how it sits—to order the re-employment of an officer whose employment is terminated under these provisions can override the legislation. The wording is quite clear—"the chief executive officer does not have confidence in a prison officer's ability". The Western Australian Industrial Relations Commission will not put a person back into employment if the employer has lost confidence in that person. If it is quite clear that the employer has lost confidence in the person, how will the IRC power override the decision?

Mr J.M. FRANCIS: In exactly the same way as it would with the police. I appreciate that the member has my best interests at heart in trying to update our technology issue. I am not quite sure whether the member was here when I made the point that—this is the short version—about 50 are issued each year in the police force, with 25 providing substantial reasons to the commissioner as to why it should not proceed. About 25 either resign or have their employment terminated under the loss-of-confidence provisions. During the 12 years that the provisions have been in place force for the police, only one or two cases have not been upheld by the Industrial Relations Commission. I refer the member to proposed section 110E(2), which reads —

> The WAIRC may —
>
> (a) order that the appellant's removal is, and is to be taken to have always been, of no effect; or

Therefore, he is effectively reinstated or does not have his employment terminated in the first place. It continues —

> (b) if it is impracticable to make an order under paragraph (a), order the chief executive officer to pay the appellant an amount of compensation for loss or injury caused by the removal.

Mr F.M. Logan interjected.

Mr J.M. FRANCIS: I think it makes it very clear that there is an option. What I read into (b) is that if it is practicable, they continue on in that role.

Mr D.J. KELLY: Following on from the point made by my colleague, I would be interested to know the number of police cases that have gone to the Industrial Relations Commission in which the commission has found for the police officer; and, how many times the commission has ordered reinstatement as opposed to compensation. This is a real issue. Following on from the member for Cockburn's point, if the commissioner has determined that he has lost confidence in an officer, I suspect that in many cases in which a matter is taken to the Industrial Relations Commission, what we will find is that even if the IRC finds, for example, that the conduct that an officer was said to have engaged in did not, in fact, take place, that does not automatically mean that the commission will order reinstatement. I suspect that the Commissioner of Police often argues that, notwithstanding the findings of fact made by the commission, the commission should not order reinstatement because—this is high up there—of the fact that the Commissioner of Police has lost confidence in the officer. The remedy that would be ordered would not be reinstatement, but a monetary payment. The minister looks a bit puzzled.

Mr J.M. Francis: I am with you.

Mr D.J. KELLY: As an example, I refer to a situation in which a police officer, under the existing arrangements, receives a notice that the commissioner has lost confidence in him because of an inappropriate relationship with a prisoner and the commission finds that the conduct did not in fact take place. Most people would think that if they were not guilty of misconduct, they should get their job back, but the Western Australian Industrial Relations Commission will always entertain argument about the appropriate remedy. Employers often argue that notwithstanding, as a finding of fact, there was no misconduct, the commission should not order reinstatement because the employer—in this case the police commissioner—has lost confidence in the employee. Quite often the Industrial Relations Commission will take that into account and determine that reinstatement is not practicable, therefore the employee will be given monetary compensation rather than their job back. Most employees want their job back. I am saying to the minister—this is the point the member for Cockburn is exploring with the minister—that because it is inhibiting for the commissioner to say that he has lost confidence in the person, that will bear heavily on the Industrial Relations Commission when determining whether reinstatement is possible. The minister said that, in the 12 years this provision has been in place, reinstatement of the police employees who have gone through this process has been ordered only once or twice. I am interested to know how many times the commission has found in favour of a police officer on the findings of fact, but not ordered reinstatement and instead ordered monetary compensation. I suspect the minister will find that in the bulk of cases, when employees have been exonerated as far as their conduct goes, they did not get their jobs back because of the heavy label attached to them that the commissioner no longer has confidence in them. If the minister has that information, I would appreciate receiving it.

Mr J.M. FRANCIS: I will not pretend to have any understanding of the workings of the Western Australian Industrial Relations Commission to the level the member for Bassendean has. I obviously do not have that information at hand; it is a different department, but I am happy to take that on notice. Either way, regardless of the answer, I do not think it is a show stopper concerning this clause, but I will ask the Attorney General to provide the answer to that question.

Mr F.M. LOGAN: Further to this point, which goes to the point the minister took me to earlier, although the number of police who have been reinstated to their jobs may not be a show stopper for the government concerning this bill, proposed section 110E, "Decision by WAIRC", at page 20 states —

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

This goes to the very point the member for Bassendean just made. The wording of paragraph (a) would hardly ever be used by the WAIRC. This is why I asked the question in the first instance. Should the Industrial Relations Commission order the reinstatement, that provision allows that the decision made by the CEO did not occur, so the loss of confidence is not in the individual but the loss of confidence is by the minister in the CEO. Should the Industrial Relations Commission reinstate the person, according to the wording in proposed section 110E(2), the loss of confidence is in the CEO because the CEO's decision did not happen. I can tell the minister that from the experience the member for Bassendean, I and others in this chamber have had, we know that no commission will do that because it knows the end result. The minister will say to the CEO, "What have you done?" The WAIRC will automatically implement proposed subsection (2)(b) and say that it will not give the person their job back; they will get paid.

Mr J.M. Francis: Correct me if I'm wrong, but the member for Warnbro read from *Hansard* how this situation had arisen and the Industrial Relations Commission did not agree with the —

Mr P. Papalia: Not in that one.

Mr J.M. Francis: What is the relevance? Are you saying that —

Mr P. Papalia: It's not the identical situation to that which the member for Cockburn is referring. I will get the terminology.

Mr J.M. Francis: We'll come back to it; you know the point I'm trying to make.

Mr F.M. LOGAN: The point I am making is that the wording of the provision for the purpose of the Western Australian Industrial Relations Commission would put more onus on the CEO and in his or her relationship with the minister than the termination, because it is saying that the termination did not take place in the first place. Therefore, the CEO will get called in by the minister for dragging his department through the commission. I can tell the minister now that the Industrial Relations Commission will not drop the CEO in it. The Industrial Relations Commission will do as the wording in proposed subsection (2)(b) states, which is that if it is impracticable to reinstate the employee—that wording is there deliberately to give an out to the WAIRC—the WAIRC will order that person is compensated.

Mr P. PAPALIA: I would like to hear more from the member for Cockburn.

Mr F.M. LOGAN: The minister's argument to encourage us to support this provision is that he knows these are heavier powers than existed before and that they have been taken straight from the police legislation, but that he has to fix the culture and problems within the department and that this is the way to do it. He is also saying that, in any case, the employee can appeal the decision. However, because of the way the appeal provision is worded, it will hardly ever be used. The minister knows that, otherwise it would not be worded in that way. After a decision for a termination has been made by the CEO, the only decision the WA Industrial Relations Commission will make will be for compensation; the employee will not be reinstated. The minister should mark my words that that is exactly what will happen in these cases. Even when an absolutely incorrect decision is made by the CEO and the person should never have been terminated, we can guarantee that the employee will not get his job back; he will only be compensated. The minister should watch and see.

Mr J.M. FRANCIS: I will not pre-empt any possible decision by the Western Australian Industrial Relations Commission on this. My understanding is that proposed section 110E(2)(a) and (b) are crystal clear. The reality

of those words is that the Industrial Relations Commission, comprising three members, would have two options: firstly, the loss-of-confidence notice, and there is no provision for officers being reinstated; or, secondly, if it is impracticable to make that order, to order financial compensation. The people involved either keep their job or get compensation. They are the two options available to the Western Australia Industrial Relations Commission. How that provision is applied will be at the commission's discretion.

Mr F.M. Logan: The wording is set up to fail. That wording is a one-way street.

Mr J.M. FRANCIS: I do not accept that. I think it has to be judged on a case-by-case basis and I am comfortable that the Western Australian Industrial Relations Commission would do so.

Mr P. PAPALIA: It is patently obvious that anyone entering this process will be on a one-way street to the loss of their job and, regardless of the findings of the Western Australian Industrial Relations Commission, the loss of their reputation. Even if they were successful in appealing, as has been pointed out in the case to which I referred—that was not the end of that case, by the way, as the Commissioner of Police indicated it is subject to a further hearing in the Court of Appeal—they will ultimately have their reputation tarnished forever. They will not be able to be reinstated. As the member for Cockburn indicated, it is impossible; it is not going to happen. It is not going to happen if the commissioner has indicated that he has lost confidence in that individual. They are not going to get their job back. They will then, as the minister indicated, become eligible for compensation. We will deal with this issue later in following clauses of the bill. However, given the way the legislation is constructed, the level of compensation is limited to one year's pay minus any maintenance payments they have already received. Therefore, the maximum compensation for an eligible person who could conceivably have gone into this process as an innocent person and successfully appealed is one year's pay minus any maintenance payments they have received. They will have no chance. The minister knows that, as a consequence of their reputation being diminished in that fashion, they will never recover and get a job in the public service. We have seen what has happened to people when their public reputation is destroyed, regardless of findings down the track of their innocence or otherwise: they do not get future employment in the public service. The only compensation they will get, given the words used in the construction of this bill, is limited to 12 months' pay minus any maintenance payments they have received. When we consider the options left to them, that is pretty painful and pretty significant. Whichever few cases this bill might apply to, the minister is opening up that possibility. The minister needs to accept that that is a possibility and actually redress it. He should not just dismiss it as something he is not concerned about. The minister is responsible for applying a degree of fairness.

The minister has not provided any case for a necessary change in the legislation. The rules governing discipline of prison officers and youth custodial officers have not been demonstrated to be inadequate. The minister is changing the rules just out of a stubborn insistence on sticking to the path he has chosen, but it is unfair in all manner of ways. The minister must address that. He must respond to the concern that some individuals who enter this system may not be guilty and may be found subsequently not guilty, yet they will still be subjected to all the negative outcomes.

Mr J.M. FRANCIS: My point is that if this clause is so inherently unjust and so inherently unfair, why did the Labor Party in government and the member for Midland as police minister bring in exactly the same provisions for police officers?

Mr P. Papalia: It was for police officers. They are not the same people.

Mr J.M. FRANCIS: If it is so unfair, why did the Labor Party have no problem doing it for police officers? I do not see the logic in this argument whatsoever. I just do not see it.

Mr D.J. KELLY: The logic is that most nursing staff wear a uniform, so is the health minister going to walk into Parliament next week, apply this argument to the nursing profession and say, "You accepted it for the police officers. What's your problem?" It just does not follow.

I take the minister back to the issue that we were talking about—whether reinstatement is a real prospect under this legislation. Proposed section 107, "Proceedings on appeal", identifies in proposed subsection (2) —

> The appellant has at all times the burden of establishing that the removal decision was harsh, oppressive or unfair.

If the appellant officer succeeds in having the commission find that the decision to remove them was harsh, oppressive or unfair, is the minister telling us that in his view under this legislation reinstatement is a genuine option for the commission? If he is saying it is, would he accept then that he would not expect the department or the government to argue that the original finding of a lack of confidence, of itself, should not be a factor preventing reinstatement?

I know that the minister is trying to listen to three people at the same time.

Mr J.M. Francis: Yes.

Mr D.J. KELLY: I will go through that again. If an appellant officer succeeds in having the removal decision found to be harsh, oppressive or unfair, is the minister telling us that under this legislation in that circumstance reinstatement is a genuine option? I am asking: does it not follow that the minister would not expect the department to argue that the original finding of no confidence should not, of itself, be used as an impediment to stop the commission ordering reinstatement rather than monetary payment?

The ACTING SPEAKER (Mr P. Abetz): Before I give the call to the minister, I remind everyone that we are dealing with the amendment at the bottom of page 11 of the notice paper commencing "Page 6, lines 25 and 26". Let us try to keep our comments focused on that particular amendment.

Mr J.M. FRANCIS: I think I am as guilty as everyone else of drifting in the conversation, and that is fine as I am sure the opposition and I will work out some kind of credit when it comes to the time on this.

I take the member back to the clause, which gives the Industrial Relations Commission two clear options. I would suggest that if the Western Australian Industrial Relations Commission thinks that, for example, the CEO can restore his confidence by retraining an officer, the Western Australian Industrial Relations Commission could order the reinstatement of the officer. It is really a competence issue. On a point of language, I pick up the member for Warnbro's point on the question before the Western Australian Industrial Relations Commission. It is not a question of innocence or guilt; it is a question of confidence. The member said, "What if they find him guilty or not guilty?" It is not a question of guilt; it is a question of confidence.

Mr P. Papalia: But what if the loss of confidence is based on incorrect assumptions or inaccurate information?

Mr J.M. FRANCIS: Then the commission has two clear options: it either rules that the loss of confidence has no effect or it orders compensation. It is exactly the same.

Mr P. Papalia: As we have indicated, you can't get your reputation back.

Ms M.M. Quirk: You can't boil a cabbage twice, minister.

Mr J.M. FRANCIS: I have never tried to boil it once; I am not really a cabbage eater actually.

Mr D.J. Kelly: The question I asked, though, was if the appellant is successful at having the original decision of no confidence found to be harsh, oppressive or unfair, which is the test for people —

Mr J.M. FRANCIS: Sure.

Mr D.J. Kelly: — in order to make that reinstatement option real, does the minister expect that the department would not argue—notwithstanding that it was unfair—that the mere finding of a loss of confidence would be an impediment to reinstatement?

Mr J.M. FRANCIS: It is a bench of three members of the Western Australian Industrial Relations Commission.

Mr D.J. Kelly: But it will end up with what you are going to argue.

Mr J.M. FRANCIS: I firmly believe that the Western Australian Industrial Relations Commission will take one of those two options; it has to under this bill.

Mr P. Papalia: But if then, the Industrial Relations Commission having made that finding, the commissioner receives back that finding, does the minister understand that the commissioner will re-employ this individual?

Mr J.M. FRANCIS: That is an option.

Mr P. Papalia: It is an unlikely option.

Mr J.M. FRANCIS: I am not going to sit here and think of all the different possible case-by-case scenarios, but it is an option and it is clearly spelt out in the act. It is a very clear option for the Industrial Relations Commission.

Mr P. Papalia: Did we already ask if that had happened with the police and you have taken it on notice?

Mr J.M. FRANCIS: I have taken that on notice. That is why I said that, regardless of the answer to that question, it is not a show stopper as far as we are concerned. But it is a very clear option that is spelt out in the act. I do not have a crystal ball. I do not know what the Western Australian Industrial Relations Commission may or may not do. I do not know whether at some point in the future a commissioner might mistakenly proceed with the last resort of issuing a loss-of-confidence notice when it is unwarranted. I cannot put my hand on my heart and say that that will never happen—of course not. That is why there is a clause with options for the

Western Australian Industrial Relations Commission to find that either the notice of loss of confidence was issued incorrectly or without just grounds, or whatever wording is used in the bill, or, for whatever reason, the officer cannot be re-employed by the department and will be paid out. Those are the two options for the Industrial Relations Commission. I appreciate that the member for Bassendean probably knows a lot more about this than I do. I am sure that the member for Cockburn knows more about this than I do. I have never been in front of the Western Australian Industrial Relations Commission, but I can read the bill in front of me, which makes it pretty clear that it will have two options.

The ACTING SPEAKER: Members, remember that we are dealing with this amendment only.

Mr D.J. KELLY: This is directly on this point. I would not want to suggest that the minister is deliberately not answering my question; perhaps he just does not understand the scenario. In the appeal process, the Industrial Relations Commission would hear argument on whether or not—the minister has a cheat sheet; that is good —

Mr J.M. Francis: It is spelt out in the bill.

Mr D.J. KELLY: We need to go a bit deeper than just reading the words in the bill. The commission will hear argument on whether the removal is harsh, oppressive or unfair, and it will make a finding. It will then hear argument about the remedy. It is a two-step thing. There is no point arguing about the remedy if the commission does not uphold the appeal. The commission will hear argument and make a finding that the removal was harsh, oppressive or unfair. Then the commission will hear argument about the remedy and what it should do—option A or option B. Our fear is that the government will say that, notwithstanding that the commission has found that the removal was harsh, oppressive or unfair, the commission should not order reinstatement because the employer has already said that it has lost confidence in the officer. Notwithstanding the fact that the Industrial Relations Commission might find that the loss-of-confidence notice was harsh, oppressive or unfair, it still does not get over the barrier that the employer has lost confidence in this employee and therefore the commission should not order reinstatement, but should offer monetary compensation. If the minister is saying to us that reinstatement is a genuine remedy, would he say that it would not be appropriate for the government, as the employer, to argue that the mere finding of no confidence by the Commissioner of Corrective Services is, of itself, an impediment to reinstatement if the notice is found to be harsh, oppressive or unfair? Does the minister want me to write that down for him?

Mr J.M. FRANCIS: No, I do not. I am following what the member for Bassendean is saying; it is crystal clear. I cannot foresee the circumstances that may transpire in the Western Australian Industrial Relations Commission one day. However, there may be circumstances in which the employee appeals the loss-of-confidence notice to the Western Australian Industrial Relations Commission and it determines that it was harsh or unfair. The next question is what it does about it. There are two options. The removal of the loss-of-confidence notice will go, and the employee will be either reinstated or given some kind of restitution or compensation for that process. Even though the loss-of-confidence notice was found to be harsh or unfair, there could be myriad different reasons why a particular person would still not be suitable to be re-employed within the prison system. The easiest option could be to give the person their job back and let them continue as a youth custodial officer or prison officer. We do not know what the future holds, but the Industrial Relations Commission will have two clear options: the person will go back to work or they will be paid out.

Ms M.M. QUIRK: This amendment refers to dismissal on reasonable grounds. I want to canvass a couple of issues in relation to that. I refer to the minister's second reading speech. Firstly, does the minister anticipate that the criteria for improper and inappropriate relationships will be further information and regulation or were the parameters adequately set out in the second reading speech?

Mr J.M. Francis: The commissioner will issue a policy, procedures and acceptable standards of conduct that will make that crystal clear.

Ms M.M. QUIRK: Will that be publicly available?

Mr J.M. Francis: I would expect so. I can't think of any reason why something like that would not be published.

Ms M.M. QUIRK: The second reading speech also refers to links between a prison officer and organised criminals. I certainly know that one of the minister's advisers is well aware that the term "links" is used pretty broadly in relation to investigative practice. For example, if a prison officer's daughter was going out with one of the Coffin Cheaters, would that be sufficient? Where do we draw the line for links between a prison officer and organised criminals?

Mr J.M. Francis: This would have to be determined on a case-by-case basis, but if the daughter of a prison officer were dating an outlaw motorcycle gang member, we could not reasonably expect him to forbid her from dating a particular person and then hold him to account.

Ms M.M. QUIRK: Perhaps I will sit down and let the minister expand on what sorts of links he would regard as coming into play.

Mr J.M. FRANCIS: The point I made in the second reading speech was that instances of improper and inappropriate relationships include links between prison officers and organised criminals, prison officers supplying drugs to prisoners associated with outlaw motorcycle gangs, and sexual relationships between prison officers and prisoners when cells in a maximum-security prison were left unsecured. They are real cases. They are actual events that have taken place in recent history within the Department of Corrective Services. They are not just different options that we have thought about. I made it crystal clear in the second reading speech, without compromising any ongoing investigation or identifying any particular individual, that this was accurate and reflective of real-life situations.

Mr P. Papalia: So are you going to answer the question?

Mr J.M. FRANCIS: The answer is that it will be a judgement call. I expect the person who will make that call will be reasonable about it. If my daughter were over 18 years old and started a relationship with a bikie, I would not be able to control who she dates and I do not think it would be reasonable for my employment to be impeded because of that. If a prison officer were in a relationship with a bikie, that would be a significant concern, and that would fall under this particular provision. I am saying, member for Girrawheen, that everything will have to be looked at on a case-by-case basis.

Ms M.M. QUIRK: Can we just expand on that a bit more? What information will be relied on? Will it be internal investigations or will it be evidence from the police? I know of an example in which a constituent of mine was refused a commercial licence by the Department of Transport because 20 years earlier he had been at the same school as a member of an outlaw motorcycle gang. The police referred to that as being "a known associate of". I want to know what source of information will be relied on and how much the advice that is received will be drilled down into.

Sitting suspended from 6.00 to 7.00 pm

Mr P. PAPALIA: The member for Girrawheen was on her feet prior to the dinner break. I was interested in the line of questioning that she was pursuing, which related to some refinement or narrowing down of the definition of links by way of some examples that might give some indication to anyone who reads this legislation and the debate in the future of what constitutes a link. The example given by the member was whether it would be a link that a prison officer should be concerned about if their daughter was going out with a bikie, and whether that would be deemed inappropriate. The minister might be able to give some examples that actually reflect the types of links to which he referred, because he suggested that that would not be right. Does the minister have some further examples of the types of links that would be inappropriate?

Mr J.M. FRANCIS: All of this will obviously be determined in guidelines that will be clearly spelt out by the department and the commissioner. Questions will have to be asked about whether it is a direct or an indirect relationship that has the potential to influence the decisions or behaviour of the prison officer. It would be judged on a case-by-case basis as to whether a conflict occurs. I do not think there is a simple answer. I am certainly not going to spend too much time going through hypothetical examples, but a similar provision would apply to the police on what is an appropriate or inappropriate relationship.

Ms M.M. QUIRK: Would the failure to declare a link, however innocent, in itself constitute a ground for dismissal? For example, if an officer had an innocent connection but failed to disclose it to anyone, would that in itself be a subject for discipline?

Mr J.M. FRANCIS: My advice would be that if it were a very distant, innocent link and there was absolutely no potential for it to influence a decision or the behaviour of a prison officer, then, no. My advice to anyone employed by the department is similar to the advice given to us as cabinet members or members of Parliament; that is, if in doubt, declare it. That would be my advice; let someone else make that decision about whether there is a conflict.

Ms M.M. QUIRK: I will give an example that occurred to a constituent of mine. He applied for a commercial driver's licence through the Department of Transport and it was refused. When the constituent came to see me he said, "Oh, I did go to school with Fred Nerk, who is now sergeant-at-arms or whatever of the Club Deroes. Maybe that's the problem, but I haven't seen him for 15 years." I then wrote to the Department of Transport and asked whether its decision had been based on information from the police and whether the basis of the refusal

was his alleged known links with the Club Deroes outlaw motorcycle gang. I did not get a response in the affirmative; I got a letter back that said that having reconsidered the matter, the department would grant a licence to my constituent. What I am saying is that the department revisited the information that the police had given to it, but I am concerned that in this case, if the department relies on information from other sources such as the police, someone might be minded to act on the basis of that evidence without drilling down and finding the source and the nature of the links.

Mr J.M. FRANCIS: As I said, it will be done on a case-by-case basis. I do not want to dwell on what-ifs, but I will take the member's example. If, for example, a prison officer had, 15 or 20 years before, gone to school with someone who was now the sergeant-at-arms or an associate of an outlaw motorcycle gang and they had not spoken for 20 years and they had not declared that, my personal call would be that that would not be something we would expect someone to declare. I have no idea what has happened to some of the people I used to run amok with 20 years ago. They could be bikies; who knows? Anyone could be in the same situation. It would not be reasonable to expect that. But if it turned out to be a relationship that was so close that it could influence their position and they did not declare it, that would obviously be an issue.

Ms M.M. Quirk: What I am seeking from the minister is an assurance that if you are getting evidence from third parties and that information provides grounds for dismissal, you will at least confirm or clarify the nature of the information or assertion that that person has a link with organised crime.

Mr J.M. FRANCIS: I am happy to give that assurance. I am happy to make it perfectly clear to the commissioner that that is the expectation of this chamber.

Ms M.M. QUIRK: The next point I want to make is about something that really concerns me. It relates to the term "reasonable grounds" in my colleague's amendment. I refer to the point in the second reading speech when the minister said —

> … sexual relationships between prison officers and prisoners where cells within a maximum security prison may be left unsecured, thereby compromising the security and good order of the prison.

In other words, the minister is saying that in all other cases—for example, minimum-security prisons, work camps or whatever—sexual relationships between prison officers and prisoners will not be grounds for dismissal. That really disturbs me.

Mr J.M. FRANCIS: There is a pretty easy explanation. That is not what I am saying. The member may not have been in the chamber at the time I was outlining real situations that have occurred in recent history. Guidelines for the expected standard of conduct will be outlined very clearly by the commissioner to everyone within the Department of Corrective Services. There are already guidelines that make it crystal clear that a romantic or sexual relationship between any prisoner and any prison officer or staff member of the Department of Corrective Services, regardless of the security classification or whether a cell door was left open, is unacceptable behaviour and must immediately be declared and will be dealt with. The member read the bullet point from the second reading speech. It is actually a real occurrence; that did happen in a maximum-security prison.

Ms M.M. Quirk: It happens frequently, minister, in case you did not know.

Mr J.M. FRANCIS: I am aware that it happens. It is unacceptable for a whole number of different reasons, not least the fact that it jeopardises the good order and security of a prison. Therefore any sexual relationship between a staff member and a prisoner is unacceptable regardless of any further action. There are two issues: firstly, a sexual relationship, which is unacceptable; and, secondly, leaving the cell door unlocked is unacceptable. The fact that it happened at a maximum-security prison makes it even worse. Either of those particular events would be an instance of unacceptable behaviour.

Ms M.M. QUIRK: Is the minister saying that sexual relationships between a prison officer and a prisoner, whatever the prison configuration, would be grounds for dismissal?

Mr J.M. FRANCIS: I am pushing my recollection of reading the current code of conduct. My recollection—I stand to be corrected—is that any sexual relationship between a staff member and a prisoner is unacceptable and would be grounds for dismissal. I might stand corrected on that. That is my understanding at the moment.

Ms M.M. QUIRK: We are trying to discern when proposed section 101 will come into play. There seems to be a bit of ambiguity in relation to sexual relationships between prison officers and prisoners. I concede that by and large they are alleged to be consensual although with the power of a relationship they really are not consensual and should be treated as rape. Be that as it may, the other question I ask is: if that is the basis for dismissal, is that the end of the matter or would the minister also contemplate pursuing criminal proceedings?

Mr J.M. FRANCIS: My understanding is that misconduct of that nature would have to be reported to the Corruption and Crime Commission. It may or may not be dealt with under an external court. I guess the easiest way to explain my expectations would be that we are human beings, and the nature of human beings is we cannot necessarily always help whom we fall in love with. This happens in the defence forces; the member for Warnbro knows this. If a person has a relationship with someone, whether it is sexual or not, which is thought to be inappropriate, it is declared and appropriate action is taken for a number of different reasons. I do not think it would be appropriate for a prison officer to be in a relationship with a prisoner in the same prison in which they work. But as I said, the exact guidelines will be made crystal clear by the Commissioner of Corrective Services as to what his expectations are.

Mr W.J. JOHNSTON: Would a prison officer having sexual relations with a prisoner be considered misconduct under the current discipline regime?

Mr J.M. Francis: My advice is yes.

Mr W.J. JOHNSTON: If it is considered misconduct, would the employer have the right to summarily terminate the employment of that prison officer?

Mr J.M. Francis: Not at the moment. They would have to go through a disciplinary procedure.

Mr W.J. JOHNSTON: No, no; that is current procedure. If it is misconduct, summary termination is implied. In what circumstances would misconduct not lead to a right to summarily terminate?

Mr J.M. Francis: You have to go through a disciplinary process. You cannot just summarily dismiss.

Mr W.J. JOHNSTON: That is the process about whether the charge is proved or not. I am saying if misconduct is proven, the employer has the right to summarily terminate.

Mr J.M. Francis: If it is proved.

Mr W.J. JOHNSTON: In fact the minister does not propose any additional right. There is already the power to get rid of people who have been involved in misconduct. What is the purpose of what the minister is doing? Given there is already this right —

Mr J.M. Francis: Member for Cannington, we spent the best part of question time in here debating this, and this is your first appearance in the chamber —

Mr W.J. JOHNSTON: With due respect, if the minister is incapable of answering a simple question, that is not a reflection on me. If the minister says—he has said it on record—that he currently has the power to summarily terminate a prison guard for misconduct, if it is proved that they have had sexual relations with a prisoner, why is it that that right is inadequate? It does not make any sense. If that is the minister's power today, what makes that power inadequate? Surely the minister is not saying he wants to be able to summarily terminate somebody's employment when there is no proof that they were involved in misconduct. That is the implication—that the minister wants a power that he currently does not have. That is the point. I do not understand why the minister wants the power to summarily terminate the employment of a person against whom it has not been proven was involved in misconduct. It does not make any sense, minister. It is probably pretty crucial for the minister to try to explain to the chamber, if he is able to, why it is that he wants to have a power to summarily terminate somebody when there is no proof that they were involved in misconduct. It will be interesting to hear the minister's answer to that question. It is pretty fundamental to the employment relationship. When the minister has answered that question, I have another one on the same issue.

Mr J.M. FRANCIS: Member for Cannington, loss of confidence does not apply to any particular circumstance in its description in this particular bill. It is to do with the member's integrity, honesty, confidence, performance and conduct. As I pointed out when the member was not in the chamber, this is exactly the same definition, exactly the same reasoning and exactly the same interpretation as brought in by the Labor government in 2002 to give the Commissioner of Police the ability to dismiss police officers, with loss-of-confidence provisions for exactly the same reasons.

Mr W.J. JOHNSTON: But there is a huge difference, as I am sure the minister's advisers can explain to him. A police officer does not have an employment contract; they are servants of the crown. That is why they do not get workers' compensation for example. A range of things happen with police officers because they have a special relationship with the people of the state. They are fundamentally different, which is why they get paid more. That is why a police officer is paid more than a security guard, even though they might do similar work. The arrangements of service are very, very different. But that is not what we are talking about here; we are talking about employees. The minister currently has the right, as he explained, to summarily terminate a prison officer

for sexual relations with a prisoner. I can go through all the definitions of misconduct—there are many. Like the member for Cockburn —

Ms M.M. Quirk: Maybe he is having a Bill Clinton problem.

Mr W.J. JOHNSTON: Maybe he is.

Ms M.M. Quirk: "I did not have sexual relations with that woman"!

Mr W.J. JOHNSTON: There are many issues around misconduct; I could go through each of them. The minister's advisers will tell him if misconduct is proven—I was given the example that I gave—that gives the minister the right to summarily terminate. Why introduce an artificial system in which someone can be terminated without proof, which is the only reason that the minister is doing this? He is doing this to reduce the protection for prison officers. It does not make any sense. If the minister could explain why he wants the power to summarily terminate without proof, that would be handy.

I return to the example that we were talking about—sexual relations with a prisoner, which is clearly misconduct. I am not an official with that union and I do not know what particular circumstances might arise, but I cannot imagine any circumstances in which it would not be considered misconduct. We could look at other examples of misconduct in which the Commissioner of Corrective Services would have the right to summarily terminate. What power is the minister looking for? He is looking for the power to summarily terminate without proof. He says it is the same as the police, but it is not the same because the police have a different relationship. That is a different set of issues. Why is the minister trying to take something from the police service, where there is a particular set of circumstances, and apply it to a contract of employment?

Mr J.M. FRANCIS: I will make three points. I refer again to a case I referred to before. The member for Cannington was here when I spoke about it earlier. It is an Industrial Relations Commission matter back in 2004 to do with police, and it held that the commission should exercise the power provided in the removal provisions in the public interest and not to punish a particular officer. An amendment to the Police Act, like this one, does not require proof that the conduct that gave rise to the commissioner's loss of confidence occurred. However, there must be reasonable evidence before the commissioner upon which he or she reasonably suspects that it did.

Lastly, I point out that this bill refers to the special nature of the relationship between the chief executive officer of the commission of the Department of Corrective Services and prison officers.

Mr W.J. JOHNSTON: However, the point is that is what the minister is now introducing. He is now introducing a different relationship. The minister cannot argue that because we are changing the law, things are different. Of course, that is what we are doing, but that is not the point we are talking about. We are talking about the commissioner's powers today. He has the right to summarily terminate a person for misconduct. That is a legal right to the employing authority today. The only thing we are changing is the circumstance in which that right is exercised. At the moment, the commission can exercise that right when it has proof, and now the minister is saying that it will have the right to do so without evidence. The minister should read the whole case to which he referred; he should not read only one section of the decision. It states that the commissioner cannot use the power capriciously, but that is the not the same thing as stating that he or she cannot use it. That is not an argument in support of the bill that the minister has brought to us. What are the commissioner's rights today? Why does the minister want the commissioner to have a right to terminate someone's employment when he does not have proof that they are involved in misconduct? That is what the minister is asking the chamber to do.

Mr J.M. FRANCIS: I refer the member for Cannington back to part of that industrial relations ruling from 2004, Carlyon v Commissioner of Police —

> Removal of an officer from the Police Force is not done as a punitive measure. In this case there is no charge of misconduct nor was it to be the basis upon which punishment was determined. Removal action results from the Commissioner of Police's lack of confidence in a member's suitability to continue in the Police Force, it is effected to protect the public, to maintain proper standards of conduct of members and to protect the reputation of the Police Force.

I am aware that prison officers are not police officers and some things make them different, but a lot of things make them similar in the expectation of the government and the public of Western Australia because they have use-of-force provisions. We have been through this many times before the member for Cannington came into the chamber.

Mr P. Papalia: How frequently do they encounter the public? The minister said on the occasions they visit the prison. Police do it every day.

Mr J.M. FRANCIS: Last time I checked, prison officers were responsible for supervising both contact and non-contact visits to prisons by members of the public and for ensuring that they are done safely and securely.

Mr P. Papalia: It is constrained to the circumstances of the prison.

Mr J.M. FRANCIS: There is still an expectation of integrity of prison officers and police officers. I am sure the public of Western Australia supports such a standard.

Mr P. Papalia: Is the minister suggesting that it is not currently the case?

Mr J.M. FRANCIS: This bill does a number of things. No doubt we will get to this further on during consideration in detail. This legislation compels prison officers to answer questions of the commissioner about their conduct—just like the Commissioner of Police has that power with police officers. I do not have a problem with that either. It raises the bar on standards. I will not gild the lily; of course, it does.

Mr P. Papalia: Do you do that to prisoners?

Mr J.M. FRANCIS: We will have that debate when we reach that clause. That is the point; prisoners are incarcerated and have been convicted of an offence. I have no problem whatsoever with prison officers being compelled to answer questions about their performance. What sort of workplace does not have that?

Mr P. Papalia: So the whole public service should be subject to the same rules?

Mr J.M. FRANCIS: Certainly those who deal with prisoners inside the walls of a prison should have the requirement upon them to honestly answer questions from the commissioner about their actions.

Mr P. Papalia: Youth custodial officers?

Mr J.M. FRANCIS: Why not?

Mr P. Papalia: Why would they be subject to any sort of manipulation by juveniles?

Mr J.M. FRANCIS: A youth custodial officer or a prison officer may leave a cell open or tick off the rounds sheet, as we went through before the member for Cannington arrived, to indicate that the cell has been locked, and the commissioner may ask the youth custodial officer why he or she left the cell door open. The prison officer or youth custodial officer could say that they do not want to answer that question. Is the commissioner meant to say, "That's okay, sonny Jim. Back to work. Don't worry about that. There's nothing I can do about it"? What world is the member for Warnbro living in when he thinks it is appropriate for youth custodial officers to not be compelled to answer questions. I would go so far as to say that if a prison officer is asked a question about their conduct and they refuse to answer the question, how on earth could the commissioner have confidence in them?

Mr W.J. JOHNSTON: The minister just demonstrated why he is not fit for the job. What a ridiculous answer he gave. He says that if a prison officer leaves a cell door open and then refuses to answer questions, we would let him go back to work. What sort of management team is the minister running? What sort of management team would let a prison officer who has breached the rules return to duty? That is a ridiculous argument. This minister let a prisoner walk a puppy in my electorate. Let us understand what this minister is like. To say that people should not be disciplined and management should not accept its responsibilities is a ridiculous argument. If today the prison officers are not acting in accordance with procedures, action should be taken. The people responsible for that action are not the prison officers; they are the prison management. This is about lazy prison management, it would appear. Prison management are not prepared to do the work they are paid to do. They are paid to make sure that the prison is run properly. If they are not doing their job, this law will not change that, because after the law passes tomorrow, they still will not be competent. The minister should not blame the prison guards if management is incompetent. If a typical boss does not run his business properly, it would be ridiculous for him to blame the workers. What a ridiculous position. If we have evidence, act on it. Do not come in here and whinge. The minister should do his damn job. That is what we and the people of this state expect. If the minister knows something is going wrong, he should take action to fix it. The one thing that we should demand in this chamber is that this minister does his job, because if he is saying to me that there are discipline problems in the prison today, there is only one person responsible for that and he is sitting in that chair there. He is the minister! The minister must accept his responsibilities. The law will not change the attitude of the minister's management team. It is not going to change the attitude of the managers. If the managers are not doing their job today, they are not going to do their job tomorrow either. Today, the minister has the right to summarily sack anybody involved in misconduct. That is the minister's right today. He has already acknowledged that. The only difference the minister is asking for is that he be given the right to summarily dismiss without evidence. That is what this law does. The minister can say, "Well, we will never do that." If he does not want to do it, he should not ask the Parliament for the right to do it. This is not particularly complex. The minister cannot argue that

because police officers, who have a completely different role and function in society, have one set of rules that therefore extends to this group of employees.

The minister said in an answer a moment ago that all public servants should be required to answer questions in discipline actions. Is this the thin edge of the wedge? Will the minister come back tomorrow with laws for public servants? Is that what he is saying? If he is saying, "No, we are not coming back about public servants", why use it as an argument. It is really ridiculous. It shows that the minister does not actually understand the law he is presenting to the Parliament or its implications. Those of us familiar with industrial law—I see the member for Bassendean here now—understand these things. We do not have to have them explained to us. If the minister wants a right, he must explain why he wants the right and not expect people to grant a right if he cannot explain rationally or reasonably why he wants it. I am flabbergasted that he does not understand his rights or responsibilities today! The minister does not need to change the law to sack people for misconduct or to get managers to do their jobs. He does not need to change the law to provide discipline in the workplace. The minister should not come to the Parliament saying he needs those things.

Ms M.M. QUIRK: Can I go back to the issue about sexual relationships between prison officers and prisoners? From what the minister said earlier, the implication seems to be that not all cases will result in dismissal. I see the adviser nodding. Is that correct? The adviser is now shaking his head. In the case of sexual relationships between prison officers and prisoners, will that invariably result in action being taken for dismissal?

Mr J.M. Francis: It depends on the circumstances, whether the commissioner loses confidence in their ability under those particular criteria.

Ms M.M. QUIRK: If, for example, it is a sexual relationship between a youth custodial officer and a detainee where we accept that the detainee is under the age of 18 years, would you say that would invariably be grounds for dismissal?

Mr J.M. FRANCIS: I would say there is a fair chance.

Ms M.M. QUIRK: "Fair chance" sounds like it is not invariably the case, only sometimes. The minister talked about reasonable grounds. What is the onus for those reasonable grounds? Is it beyond the balance of probabilities or is it a higher standard? Does the minister not accept that there is a major power disparity between a youth custodial officer and detainee and it would be inappropriate to do anything other than dismiss if reasonable grounds were made out?

Mr J.M. FRANCIS: I would say that a relationship between a youth custodial officer—obviously someone over the age of 18—and the majority of juvenile detainees—not all under the age of 18—would be totally unacceptable for a number of different reasons. Youth custodial officers are certainly different from prison officers because of the nature of the people they detain. There is a much different standard once again in the expectations and the work that they are required to do. They are dealing with juveniles, sometimes down to the age of 10, through to over the age of 18. I think there are a handful of detainees at Banksia at the moment who may be 18—there may be one 19 year old—but generally they are under the age of 18. I could not fathom a single excuse where a relationship between a youth custodial officer and a juvenile detainee would be acceptable.

Ms M.M. QUIRK: Can the minister enlighten us, as I did ask a question about what standard of proof would be necessary?

Mr J.M. Francis: Balance of probabilities.

Ms M.M. QUIRK: When the minister said that the majority of cases for juveniles, presumably the cases where it may not be the case, the minister is saying where the juvenile is over 18; but is the minister saying in all other cases it would be unacceptable?

Mr J.M. Francis: No.

Ms M.M. QUIRK: He is not saying that?

Mr J.M. Francis: I was explaining the mix of the age population in the youth custodial officers.

Ms M.M. QUIRK: Can we not even be certain that these provisions would apply and would be grounds for dismissal where there was sexual contact between a youth custodial officer and a detainee?

Mr J.M. FRANCIS: In any circumstance it would apply. As outlined, similar to police, this would allow the commissioner to take prompt action to that end if he deems it necessary and desirable. This is about whether or not the Commissioner of Corrective Services has confidence in the ability of that particular officer to carry on in

the employment of the department. I would put it that if any youth custodial officer were involved in a sexual relationship with a juvenile detainee, that would be unsuitable.

Ms M.M. QUIRK: I do not understand why the minister cannot give an absolute proposition. He is saying, "Oh well, I cannot see any circumstances. Maybe." Is it or is it not a problem? I would have thought it was a problem. If not, can the minister explain why it is not invariably the case? Maybe the minister can outline the circumstances where that conduct would be okay for a youth custodial officer.

Mr J.M. FRANCIS: I am pretty sure. I am going to say what I just said. I cannot foresee any circumstance where a relationship between a youth custodial officer and juvenile detainee would be acceptable.

Ms M.M. QUIRK: The minister will not have these figures now, but could he provide tomorrow the number of allegations that were investigated in relation to sexual relationships between prison officers and/or youth detainees? I do not care whether they are consensual; I just want a ballpark figure on how often the allegation is investigated. In my day there was a running sheet of investigations that were current, so I would not imagine that it would be too much of an effort for the minister to at least advise us tomorrow how many instances there are. I would also like some information on the next step—that is, referring the matter to the police for prosecution.

Mr J.M. FRANCIS: I am happy to take it on notice. Could the member clarify the last question?

Ms M.M. Quirk: I asked for any instances when it was referred to police for prosecution and the number of allegations maybe in the last two calendar years or financial years, whatever is easier.

Mr J.M. FRANCIS: For prison officers or youth custodial officers?

Ms M.M. Quirk: For both, when there has been an allegation of sexual congress between the officers and the detainees or prisoners.

Mr J.M. FRANCIS: I will take that on notice.

Mr P. PAPALIA: I would like to follow up that request for information by referring to the minister's example of a prison officer who has left a door open in a cell refusing to answer questions about why they left it unlocked, which then stymies the disciplinary process. Could the minister provide information on how often that has occurred in each of the last three years? I note that the minister gave it as an example for the justification of the type of thing that needs to be rectified with this legislation.

Mr J.M. FRANCIS: I understand that the case law is fairly recent—within the last six months. I refer to the Baff case in New South Wales. I will have to get the exact reference for the member.

Mr P. Papalia: So it hasn't happened in WA?

Mr J.M. FRANCIS: No, I am not saying that at all, but certainly I think the abrogation of the right to silence is a reasonable power for the Commissioner of Corrective Services to have. It would apply to an investigation only when the commissioner is considering the implementation of the loss-of-confidence provisions. If there is an investigation of a prison officer who allegedly left a cell door open, and perhaps repeatedly, and was not frank about the reasons—the rounds sheet was not ticked off, or whatever it may be—and the commissioner is considering implementing loss-of-confidence provisions, I do not believe it is an acceptable answer for a prison officer to say, "I don't want to say anything in case I incriminate myself", in response to a question by the commissioner. I think it is perfectly acceptable for the Commissioner of Corrective Services to have the ability to compel a custodial officer within the Department of Corrective Services to answer questions while he is considering implementing a loss-of-confidence motion.

Mr P. PAPALIA: We will get to those clauses in due course, but I have to say that the Minister for Corrective Services is making a claim for legislation that he has brought into this place without any real justification. He put a very flimsy argument during his second reading speech, as indicated by some of the holes that have been punched through it during questioning tonight. If the minister is going to make the claim that this has occurred, but his only reference is that it may have happened in New South Wales at some time, that is not adequate; it is just not good enough. It would be reasonable to expect Parliament to be given a reason for needing this legislation. If the minister is going to use a reference, he should be able cite a number of occasions on which this has occurred over the last three years, and it should be reasonably large to indicate that this is a significant problem. It should also be conveyed in such a way that we know it is not just a poor management issue, as was indicated by the member for Cannington. There is the suggestion that what the minister is doing here is excusing poor management and allowing people to avoid taking their own responsibilities at lower levels of the chain, and encumbering the CEO with that responsibility, by way of allowing these people to avoid doing their job. They get paid to be a manager; if someone is not doing their job, such as not locking a cell door in a prison, one might

think that that is a management issue at the lower levels and is not necessarily something essential that goes to the CEO. The point is that if the minister has data, can we have it?

Mr J.M. FRANCIS: I am not sure whether it does exist; loss-of-confidence provisions obviously do not exist at the moment, so it has not been tested, but I am told that during normal disciplinary processes it is common for officers to not provide evidence that will either provide them with a defence or an explanation for their actions. I am told that it is common.

Mr P. Papalia: This is just like hearsay. You're justifying your legislation based on hearsay.

Mr J.M. FRANCIS: No, I am taking my advice from someone across the table from me who has a lot of experience in investigating these things within the Department of Corrective Services, so if the department gives me advice that when disciplinary hearings take place there are a number of instances in which prison officers refuse to answer questions, I believe the advice that is given to me.

Mr P. Papalia: About not having locked a cell door?

Mr W.J. JOHNSTON: Could the minister tell me of an occasion when a prison officer has refused to answer questions regarding serious misconduct and no disciplinary action has occurred? A lot of criminals are convicted without ever giving evidence, as the minister well knows. Just because they do not give evidence, it does not stop the courts from convicting them, and I imagine that it is the same in the disciplinary process. Just because someone does not say something, it does not mean they are innocent in a disciplinary procedure. I would imagine that there are many occasions on which an employee does not say anything in their defence and they still get turfed. I am just wondering whether the minister can give me the number of occasions on which a prison officer has been accused of serious misconduct, has refused to give answers to questions and has retained their job. The fact that they have refused to give answers does not matter if they are sacked; it only matters if they have retained their job. I understand that this is very important to the minister; he wants this power to compel the answers, so there must have been a lot of occasions on which a person has refused to answer and has kept their job. Can the minister tell us how many times a custodial or prison officer has been accused of misconduct, has not given evidence or answered questions, and yet has kept their job?

Mr J.M. FRANCIS: Giving the commissioner the power to compel prison officers to answer questions when they are facing loss-of-confidence provisions is to enable the commissioner to develop the complete picture so that he or she can further consider the action against a particular officer. I am told that, during disciplinary procedures, it is currently not uncommon for officers to not answer questions about their conduct. Obviously this bill has not passed this house and is not a law, so there has not been a loss-of-confidence hearing as such up until now, but on a simple basis, I have absolutely no problem with the Commissioner of Corrective Services compelling staff to answer questions about their performance. I take the member's question on notice and I will try to get him that information.

Amendment put and negatived.

Mr P. PAPALIA: I move —

Page 7, lines 8 to 10 — To delete the lines and substitute —

(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.

Again, this just flows from our original amendments, suggesting that what the minister is doing is providing a raft of really broad criteria that are very subjective upon which a CEO can deliberate and find someone to have lost their confidence. We feel that that is inappropriate and that it should be constrained far more appropriately to people who have engaged in a corrupt act or any other conduct constituting an indictable offence and are then found to be no longer a fit and proper person to hold a position as a prison officer. That language not only constrains the whole thing, but also means that this almost nebulous "loss of confidence" phrase is not applied to people who might then be found to have been innocent of the charge and have lost their reputation forever. I again seek the minister's consideration of my amendment to clause 7.

Mr J.M. FRANCIS: I am not quite sure where it is but I refer members back to exactly the same justification used by the then Labor Minister for Police in 2002. It is exactly the same interpretation of the criteria. I do not want to keep repeating myself but as I said before, Hon Michelle Roberts, when she was the Minister for Police, introduced this requirement on 13 November 2002 —

> … before a police officer can be removed from office under section 8 the commissioner must have lost confidence in the officer's suitability to continue as a police officer, having regard to the officer's integrity, honesty, competence, performance or conduct.

The exact words are used again in our bill. She continues —

> These criteria are very broad. They ensure that the commissioner retains a wide managerial right to summarily remove unsuitable officers. This is consistent with the need identified by Justice Wood following the NSW police royal commission.

We are using exactly the same definition and exactly the same interpretation that the opposition government used when giving the police commissioner the same powers.

Mr W.J. Johnston: What provision did it replace? What words were used prior to that provision being inserted?

Mr J.M. FRANCIS: It replaced section 8 of the Police Act 1892.

Mr W.J. Johnston: That was also a summary power, was it not?

Mr J.M. FRANCIS: It replaced section 8 of the Police Act 1892.

Mr W.J. Johnston: It is replacing one summary power with another summary power.

Mr J.M. FRANCIS: They still had the disciplinary process but they did not have loss-of-confidence provisions until 2002.

Mr W.J. Johnston: It was not going from the Industrial Relations Act 1979 to a summary power. It was going from one style of summary power to another.

Mr J.M. FRANCIS: It included the same protections with the Industrial Relations Commission. I again quote from the minister's speech —

> The bill also introduces a number of measures to protect the interests of police officers. Before taking action to remove a police officer in whom he has lost confidence, the commissioner is required to provide the officer with a notice setting out the grounds of his loss of confidence. The officer will generally be entitled to 21 days to respond to the commissioner's concerns. This will ensure that the officer has a fair opportunity to respond but that the process is expeditious.

This is a key reason why this bill is now before the house.

Ms M.M. QUIRK: It is probably somewhere else in the act, but is the chief executive officer's statement of reasons subject to, for example, defamation? Is there any defence if it is made in good faith or is there potential that it could be subject to a defamation action?

Mr J.M. FRANCIS: It must not be harsh, unfair or unreasonable.

Ms M.M. QUIRK: There is no protection for the chief executive officer?

Mr J.M. FRANCIS: It is not subject to defamation.

Mr F.M. LOGAN: This provision replaces an existing award and enterprise bargaining set of conditions which govern the relationship between the employer and the employee regarding a whole series of issues including the right to remove a prison officer—the issue we are dealing with—and the terms under which a prison officer may be removed. That goes to the suitability to continue as a prison officer and to the definition on page 5 of the bill. One of the five elements that give the chief executive officer the right to act is performance. In industrial relations, performance is as broad as it is long. It can include turning up late for work, having too many sickies, appearing to be slack on the job; there is a wide range of issues around the performance of an officer that could, ultimately, lead to the summary removal of an officer under these new powers as long as these actions that we are dealing with now—the amendments to proposed section 101 of the bill—are followed. The amendment being discussed at the moment is to proposed subsection (5) of this section of the bill on page 7, which actually requires that the prison officer give information, answer any questions and produce documents. That is the sort of power that is given to a royal commission, under a committee of this house, or the Corruption and Crime Commission. They are the only areas where this power would be applied. Can the minister tell me, if an issue revolving around the removal of a prison officer is about performance, does that prison officer have the right to have his union official with him during the interview with the chief executive officer, particularly when the interview is structured around the prison officer's obligation to answer any question that the chief executive officer may choose to ask him as stated in proposed subsection (5)?

Mr J.M. FRANCIS: Yes, member for Cockburn, they do have the right to have someone with them during that process. There are many examples where an authority has the ability to compel an employee to answer questions. One that the member did not mention was the Western Australian Commissioner of Police and police officers. As well, section 68 of the Australian Securities and Investments Commission Act 2001 states that it is not a reasonable excuse for a person to refuse or fail to give information that might tend to incriminate that person. There is also the Victorian Credit Administration Act 1984, the Western Australian Equal Opportunity Act 1984 and the Criminal Assets Recovery Act 1990 in New South Wales. There are a number of different organisations, obviously not least the Australian Securities and Investments Commission, where an authority has the ability to compel someone to answer questions. I have used this parallel many times, but it was in fact the Labor government which, in 2002, did this with police officers and the Commissioner of Police.

Mr F.M. LOGAN: I will clarify the minister's statement for *Hansard*. The minister is confirming that when a prison officer is under examination by the chief executive officer for removal from his or her position over the question of whether they are suitable to continue as a prison officer, having regard for the prison officer's whatever, they have a right to be represented, particularly by their union. Can the minister confirm that for *Hansard*?

Mr J.M. FRANCIS: That is the case; they are allowed to have someone with them.

Mr D.J. KELLY: I would hate to be accused of being pedantic, but I asked whether the prison officer has a right to have someone there representing them. The minister said yes, they have a right to have someone with them. There are occasions on which lawyers split hairs on that proposition and say that the prison officer can have someone with them in these proceedings, basically to hold their hand but not to represent them. In that case, they are obviously more active as they are able to speak and put a point of view. Can it be made clear whether they are able to have someone there to represent them as well as be there in a support role?

Mr J.M. FRANCIS: My advice is that they are not entitled to representation but they are entitled to have someone such as a union delegate or a friend with them.

Mr D.J. KELLY: Is the minister saying that they cannot have someone there to represent them during proceedings in which they may lose their job; they can only have someone there to mop their brow, hold their hand and make them a cup of tea?

Mr J.M. FRANCIS: That is the case. They cannot have someone there to represent them. The primary reason is that the material cannot be used in a criminal conviction; it is used only for loss-of-confidence procedures.

Mr F.M. LOGAN: Can the minister tell me where in the bill it says that a prison officer cannot be represented? We are dealing with a person who, under normal circumstances, is being hauled before the CEO and is likely to lose their job. The minister is telling this house that they cannot be represented by a union official. I do not think so.

Mr J.M. FRANCIS: They are allowed to have a union delegate with them but they cannot be represented by that delegate.

Mr F.M. LOGAN: I repeat: where in the bill does it say that they cannot? All this bill is dealing with is whether the individual concerned answers or does not answer a question; it has nothing to do with their right to representation. The minister has already indicated that the union official can be there beside them. I assure the minister that they will be there to represent them; they will not be there to hold their hand. I ask the minister to show me where in this bill it says they have no right to be represented. This is not just advice from the minister's advisers; I ask him to show me the clause that says they cannot be represented.

Mr J.M. FRANCIS: The purpose of this clause is to ensure that a prison officer being questioned under loss-of-confidence provisions answers the question of the commissioner. Either they answer the question or they do not. I am not quite sure how representation in that forum would benefit the person who is being asked that question. I am advised that they cannot be represented but they can have a union delegate with them during the process.

Ms M.M. QUIRK: Can the minister appreciate that the prison officer might not necessarily be well versed in all the provisions of criminal law? He may not realise that the particular admission or concession might expose him to action. We are effectively saying that he needs some advice so he can manoeuvre his way through the criminal law. For example, it might not be able to be used in a criminal offence, but it might be used if there are allegations of racial vilification or something like that. He might be exposing himself to action by the Equal Opportunity Commission or something like that. That person needs the assistance of someone who understands how to manoeuvre their way through criminal law.

Mr J.M. FRANCIS: The intent is not to allow someone to manoeuvre their way through a particular process; the intent of this clause is very clear—to require a prison officer or a custodial officer to tell the truth to the commissioner, not to manoeuvre their way out of a loss-of-confidence provision. As I said, any information they provide to the commissioner cannot be used in criminal proceedings.

Mr P. PAPALIA: In the event that a police officer appears before the commissioner in the same circumstances, are they entitled to representation by their union? Is that currently the case?

Mr J.M. FRANCIS: I do not know. I will find out.

Mr P. PAPALIA: I have to place on the record the inadequacy of that response. That is incredible. All day the minister has been claiming, erroneously in our view, that this bill will apply a similar law to a similar group of people. We believe it is not a similar group of people. There are some similarities but they are not the same, as identified by the member for Cannington. The minister is incapable of saying whether the same representational rights are allowed for police officers in this circumstance. It is extraordinary. It demonstrates how little research he has conducted, even into the very core of his claims of justification for this bill, being that these people are the same as police officers, even though that is wrong. The fact that the minister is incapable of giving an adequate response on that matter reveals a lot about the lack of research and lack of work that have been done in this regard. It is inappropriate to suggest that individuals in this case should not be entitled to union representation. I do not see the minister's justification for that. That aside, he cannot tell us whether the police get the same thing in the same circumstances. It is just extraordinary.

Mr F.M. LOGAN: Following on from that point, we have to consider what we are debating here and the penalty incurred, which is set out on page 8. The scenario I pointed out is a possible real scenario because it is defined in the bill—that is, someone could be terminated for a performance-related issue in their job. We are not talking about leaving keys in the door —

Mr P. Papalia: Personality conflict.

Mr F.M. LOGAN: That happens all the time, by the way. We are not talking about prison officers having sexual relationships with prisoners or looking the wrong way when one of the prisoners is walking a dog at a soccer match and then disappears and is never seen again. We are not talking about any of those things. They could be a series of relatively small minor performance-related issues in which the CEO has decided to get rid of a person because they do not fit the new culture that the CEO is creating for the department. That person then gets notified that they will be terminated because of their unsuitability and the removal actions on pages 6 and 7 are implemented. They are hauled before the CEO and the official from the WA Prison Officers' Union is informed. The official is there but they cannot represent the person who is just about to get the bullet. They can be in the room but they cannot represent them. The person who is being examined by the CEO cannot not respond; they have to answer the CEO's request. If they fail to respond to the CEO's questions or produce the document as required, a penalty of $4 000 or 12 months' imprisonment or both will apply. The union representative sitting alongside that person is not allowed to say anything. Is the minister for real? Is this the industrial relations culture that the minister is going to introduce in the WA prison system under his ministry? It does not work like that at the moment, and the minister knows it. Is this the culture the minister is going to introduce? If an officer does not answer a question—by the way, this could be used against them later in an appeal—at a point at which they are going to get the sack, they face a $4 000 fine, 12 months' imprisonment or both and their union official has to sit there and say nothing. That representative cannot interject, intervene or represent their member. They cannot say to their member, "Don't say any more." The minister has got to be kidding. Is this the industrial relations system that the Premier wants in Western Australia? Is this the new culture that the minister wants to introduce into the Department of Corrective Services under the new CEO? I would like the minister's opinion.

Ms M.M. QUIRK: Could the minister explain why proposed section 101(5)(b) is necessary? I would have thought that subsection (5)(a) would cover the field, namely, the answer may incriminate them. Why include subsection (5)(b) "render the prison officer liable" when I would have thought that the word "incriminate" would be a cover-all.

The ACTING SPEAKER (Ms L.L. Baker): I remind members that we are on the amendment to delete section 101(3) and substitute new subsection (3) —

> The chief executive officer shall conduct any investigation …

Mr J.M. FRANCIS: Member for Girrawheen, the situation is that questions are asked only during the course of a loss-of-confidence action when the information cannot be obtained from other sources. Proposed section 101(6) states —

> The information, answer or document is not admissible in evidence against the prison officer in any criminal proceedings except in proceedings for an offence under subsection (7).

That is why proposed section 101(5) paragraphs (a) and (b) are worded in the way that they are.

Mr D.J. KELLY: I am not sure that the minister has satisfactorily responded to the issue of union representation. This is probably an academic issue for the minister, but I can speak from the experience of sitting in numerous disciplinary procedures with employees and employers in which the employer has inevitably been represented by someone who is, if not legally qualified, very experienced in industrial relations. The CEO never comes down and speaks; they are represented by someone who is a skilled industrial relations practitioner. The employer will be represented by someone who is skilled in the trade and the employee will usually have no idea of the legalities of what they are dealing with. That is balanced when the employee can be represented, either by their union or their own lawyer or whatever. That would at least provide some fairness in the proceedings so that both parties understand the process they are going through and their legal rights and can participate in the proceedings in a fair way. I have sat in many of these meetings at which the employer has tried to say to the union representative that they can be there to hold their member's hand or mop their brow, but they cannot speak or represent their member. That is incredibly unfair. In most circumstances, the union representative will explain to the employer that that is not how things work and the employer backs off. If the minister is saying that under this regime there will be some statutory substance to the claim that the employee will have to represent themselves and not have access to legal representation, it is incredibly unfair. The minister is saying that this legislation is in the public interest and is fair and equitable and if an officer has done nothing wrong, they have nothing to worry about. However, if the minister is saying that an officer will have to participate in these proceedings without being represented by their union official, words fail me in describing how unfair that is. I have seen this occur in practice time and again. The employer is represented by their HR manager. They drag in the cleaner and level some allegation against them and expect them to deal with proceedings at the end of which they could lose their livelihood, and subsequently their house and all that supports their family, and the employer tries to pull the swifty that they cannot be represented.

Prison officers should not be treated like second-class citizens in a process that is inherently unbalanced. The opposition is not saying that the employee should not have to participate, but they should be able to be represented to ensure that everybody knows their legal rights. The employer will certainly know and be represented. It is beyond belief that members on the government side expect employees to be in a lesser position.

Mr J.M. FRANCIS: I am advised that the current process for disciplinary procedures is that an officer can be represented by a union delegate but not a legal officer. I point out that we are dealing with loss-of-confidence provisions and not the disciplinary process, which under this bill will come under the Public Sector Management Act.

Mr P. Papalia: Are you talking about penalties?

Mr J.M. FRANCIS: We are talking about loss-of-confidence provisions. The member for Bassendean is talking about the disciplinary process, which is a separate process under the Public Sector Management Act. As I said, I accept that opposition members do not agree with me but, I have no problems whatsoever giving the commissioner the authority to compel someone against whom he is considering taking loss-of-confidence proceedings to answer questions about their performance.

Mr P. Papalia: I am talking about whether they can be represented, minister.

Mr J.M. FRANCIS: I have said that they can have a representative there, whether that is someone from the union, a friend or whoever it might be.

Mr D.J. Kelly: You're a bully, minister. That is what you are.

Mr J.M. FRANCIS: If the member wants to run a protection racket for dodgy prison officers, he can go ahead and do it! The member called me a bully. At the end of the day, I have no problem whatsoever with the Commissioner of Corrective Services having this authority.

Mr W.J. JOHNSTON: The problem is that some of us with experience know how things work. I will give the minister some examples. In a hearing, the hearing officer misunderstood the answer of the witness and when they next posed a question it was based on a false premise. As a union official, I objected to the question and pointed out that they should go back and listen to the tape because they had the previous answer wrong. That is an example of when a union official is needed. I have another example. A security officer had come to the conclusion that people had stolen goods from a supermarket. I asked the security officer what he knew about the presumption of innocence; he did not understand the question. Those sorts of things actually happen. They are not inventions; they are a couple of things I have been involved in. The members for Cockburn, Bassendean and

Fremantle all have stories like this. Representation is needed because sometimes the person making the inquiry gets it wrong, not the person answering the questions.

I return to a point I made previously. Without this legislation, if somebody has engaged in this misconduct they can be summarily dismissed now. That is not a new activity. That is not being added to the minister's rights; as the employing authority, the minister has that right today. That is not what we are talking about. We are talking about reducing the protection on working people; that is what the Custodial Legislation (Officers Discipline) Amendment Bill 2013 is about. It is not about sacking a guilty officer, because if they are guilty, they can be sacked today. If they are not being sacked today, that is not a reflection on the officer; that is a reflection on the minister and his management team. The minister has all the powers he needs today. That is not the debate. This is not about, as the minister wrongly alleges, us trying to protect guilty people, because if they are guilty, they are gone today. The minister does not need new laws. We are talking about what the minister is doing, not what the officers are doing, because if they are guilty, they can be gone today. The minister has incredible capacity to surveil them through the Corruption and Crime Commission. The minister has incredible capacity to watch what they are doing and managers who are supposed to do their job of managing their staff in these difficult workplaces. If the minister has a problem with his management team, he should get them together and sort that out.

But that is not what we are debating; we are debating the rights of working people during an investigation. The minister says we are talking about only the loss of confidence. Yes, but the result of the loss of confidence, which is part of the discipline procedure, is getting the bullet. The question is: why should they get some kangaroo court that is not applied to the managers of the department who sit in the office? It is ridiculous. The minister is providing a split system. He keeps using the police service as the example, but the police service is an integrated entity. The senior and junior ranks come under the same set of disciplinary procedures. Here we are setting up a system whereby some will be in and some will not because some are public servants and some are prison officers. The minister is splitting everybody up and not providing the same level of accountability to senior people. At least the mining industry has the hang of the idea that the same rules should be applied to the senior people as to the juniors; that way, nobody can drink at work even in the office anymore, whereas it used to be just the blue-collar blokes who were prevented.

This is bad management practice. If the minister goes to the Harvard school, it will tell him to not do what he is proposing. This is because the people proposing this legislation do not know what they are doing. That is why we are so upset about it. It is bad legislation that is invalidly constructed. It is based on a false set of premises and it is providing a set of arguments not related to the issues we are raising with the minister. Nobody is protecting the guilty here; if they are guilty, sack them today. What is more, the minister has the power to sack them today; he does not need new laws for that. This is not about that; this is about the way people are treated. As an example, would a union official there with the worker be able to point out to the person asking the questions that the basis of the question is wrong? Would that be allowed?

Mr P. PAPALIA: Minister, I want to seek a little clarification. The loss-of-confidence process to which we are referring, the minister has suggested all day that it is the same as the police process. Is that right?

Mr J.M. Francis: Correct.

Mr P. PAPALIA: I understand that in the police service when a loss of confidence occurs, it is not actually like a hearing; it is a letter from the Commissioner of Police directly to the individual concerned, who then undertakes to reply. Does that mean that a bit of what we have been debating may not necessarily be applicable in that when someone receives a letter, they can obviously go and seek advice from a union representative and be assisted with compiling their response? Is that what the minister envisages or does he envisage them being hauled in front of the chief executive officer, confronted with an accusation and having to make a response?

Mr J.M. FRANCIS: Obviously, the commissioner would have to have reasonable cause to consider a loss-of-confidence provision in the first place. Once the current commissioner has that reasonable cause, he would explore that option further. Part of that may or may not be that if he cannot obtain information from any other source, ask the custodial officer in question to provide answers about perhaps their conduct or actions. My understanding is that, yes, there will be written notice, much like a notice to show cause—whatever it is called in police terminology; NTSC—and they will have a time frame to respond to that. If they want to take that loss-of-confidence notice—it is 21 days, the same as police—and seek legal advice, that person is perfectly entitled to do so.

Mr P. PAPALIA: In that case the question with regard to the current police process is still applicable, and I would appreciate the minister responding when he gets the answer tomorrow or whenever. Are police, when they appear in those preceding processes, or the earlier part of the investigation, entitled to representation by their union? Is it common and normal practice for their union to be alongside them and representing them, not just

standing next to them holding their hand? I cannot imagine the Western Australian Police Union being reluctant to step forward and represent their members, and I would not even be surprised if they did not have legal representation, knowing the police officers' union. Every aspect of that process as it applies to police I would like to know about, and whether or not they are entitled to union representation and whether or not the union ensures that they have legal representation paid for by the union, which would not surprise me at all.

Mr F.M. Logan: Where's Quigley when you need him?

Mr P. PAPALIA: Yes, where is the expert when we would like him?

That is the sort of information I would like, because the minister's argument all along has been that it is the same process that is being rolled in. We do not believe that is the case because custodial officers are not police officers, but nevertheless if the minister makes that argument, they should at least have the same entitlements. I would suggest, at a stretch, that the police officers' union would be there.

Mr J.M. FRANCIS: Firstly, it is not my portfolio but I will endeavour to get that information for the member for Warnbro by tomorrow. Secondly, I should point out that as to the nuts and bolts of the process, my understanding is that the commissioner has written to the WA Prison Officers' Union and the public sector union asking them for input. I think they are developing at this point in time the exact rules and regulations around the process.

Mr P. Papalia: Is the process not a step of events?

Mr J.M. FRANCIS: It has to be within the guidelines of the act, but there will be an agreed rules and regulations of the process between the union and the Department of Corrective Services. From recollection, I believe the commissioner approached the union a couple of weeks ago. That is ongoing.

Mr P. Papalia: Is it the commissioner's intent to duplicate the police process?

Mr J.M. FRANCIS: That depends on negotiations with the relevant unions, obviously. As for the information about the representation of the police union and legal representation at those proceedings, I will endeavour to get the member an answer to that for tomorrow.

Ms M.M. QUIRK: The whole rationale for this and other clauses is that the culture of Corrective Services is toxic and that the minister wants the opportunity to have, if you like, a clean sweep of people who act inappropriately, corruptly or take advantage of their position. I raise this now because the member for Cannington has mentioned the issue about there being a whole group in that department who are excluded from the application of this legislation—namely, the senior managers. If the rationale is to clean up the department, why is there a group that is, effectively, "Do as we say, not do as we do" that does not have to comply with that? Is the position that if someone wants to get rid of the commissioner, they ring up the Public Sector Commissioner and tell him to do the deed, and if it is anyone below the commissioner, but who is not covered by this legislation, the commissioner will have to be instructed to take action, which breaches the Public Sector Management Act?

Mr J.M. FRANCIS: I was about to refer the member to the relevant section of the Public Sector Management Act, but I obviously do not have to do that. If a minister is involved in the appointment, determination, promotion or any other reappointment or otherwise of a public servant—the member knows this—a minister has significant limitations on their involvement in that process. The middle managers that the member talked about—I think she used that example—are covered by the Public Sector Management Act; prison officers are not. This aligns prison officers with the Public Sector Management Act.

Ms M.M. Quirk: But it is a different procedure; it is not a loss-of-confidence procedure.

Mr J.M. FRANCIS: As I said, the member is talking about people covered by the Public Sector Management Act. Prison officers are not covered under that act and this legislation will bring them under the Public Sector Management Act for disciplinary procedures. This will put them all under a pretty even umbrella regarding the disciplinary process; it will put them all under the Public Sector Management Act.

Mr F.M. LOGAN: I just want to clarify this because we seem to have been going around in circles. This discussion started off with me asking the minister questions in light of the amendments before the house on proposed section 101 on page 7 about the CEO's rights to require officers to answer questions and provide documents and then their right to representation. Regarding representation, the minister answered that an officer could have a union official present but they cannot be represented. Later on in the discussion, after the member for Warnbro pointed out to the minister that that is not how this occurs with police —

Mr P. Papalia: I am not sure.

Mr F.M. LOGAN: The member is not absolutely sure, but that is his understanding of the process. As the minister would well know, prison officers would not sit back and be without representation. We can guarantee that they will get representation in any process, whether or not this provision is in the legislation. The minister now says that the actual process for this entire provision has not been worked out and is being discussed with the CEO, the Western Australian Prison Officers' Union and the Civil Service Association; is that correct?

Mr J.M. Francis: We are still working out the nuts and bolts of the process.

Mr F.M. LOGAN: Therefore, the first bit of the scenario I put to the minister is not actually correct; what is really correct is that the processes have not been worked out yet.

Mr J.M. Francis: My understanding and advice is that they will still not be entitled to have legal representation there. If they want to have someone from the union with them, that is acceptable.

Mr F.M. LOGAN: Minister, I am trying to get to the bottom of what will happen. The minister has said that there would be representation for the officers but that the union official cannot represent them; they can just be there—I do not know what else they can do—but the government has not sorted out the process. We are trying to get to the bottom of why the minister is asking this house to pass this bill. If everything has not been sorted out yet, the minister should just tell us so. The right to have a union representative defending their member may well be under discussion forthwith—I do not know. The minister has to tell us because at the moment there are two different stories before the house.

Mr J.M. FRANCIS: As I said before, this only really relates to the loss-of-confidence provision; it is not the disciplinary process. The disciplinary process is totally different and falls under the Public Sector Management Act, which, as the member knows, would be a totally different process.

Mr F.M. Logan: You're right, minister. You say that, and that would all be okay in your argument if you had not included the words "performance" or "conduct" on page 5 in the definition of the CEO's right to remove someone for unsuitability. That goes to disciplinary proceedings supposedly covered by the Public Sector Management Act. The minister cannot have it both ways.

Mr J.M. FRANCIS: I can have it both ways because I expect anyone employed as a prison or custodial officer in this state to answer questions from the commissioner about their performance when they are being considered for a loss-of-confidence action. I think it is perfectly reasonable for people to answer those questions. I do not get the member's objection.

Mr W.J. JOHNSTON: If a person was being interviewed today as part of a procedure that might lead to them being summarily terminated for misconduct, what would be the consequence of an absence of an answer from a question from the investigator? Clearly, everybody knows that this is not a criminal investigation; it is an investigation to a lower standard—that is, the civil standard on the balance of probabilities. The employing authority does not have to know beyond reasonable doubt that misconduct has occurred; the authority only has to have the knowledge that misconduct has occurred on the balance of probabilities. Therefore, even today, if an officer was accused by the commissioner's representative of not locking a door, and the officer said they would refuse to answer questions, it would not save them. They will still get the bullet and they will still be sacked; they will not be protected. This ridiculous idea that someone not answering a question means they cannot be sacked is rubbish—it is 100 per cent wrong and the minister should not present it as a defence. If an officer being investigated for misconduct fails to answer a question, even today the commissioner can reasonably hold the absence of an answer against that officer. How many times does that happen in industrial relations? It is very, very common. Not answering the question does not help the officer. What is the minister trying to achieve by making them answer the question? The minister says that provision cannot be used in criminal matters, so what is the advantage? If the officers do not defend themselves, they will not keep their jobs. That applies under the rules today; there is no advantage other than some warm feeling. I will remind the minister of the words of Bill Hayden regarding ideological purity. I will not repeat them exactly, because I will probably get into trouble! He said that it might make us feel good, but at the end of the day it does not achieve anything. That is what we are doing here. The fact that the minister is unable to answer simple questions about the procedure he is bringing to us shows that he is not convinced of the need for these provisions, because if he was, he would be able to answer the questions. The minister has to give us an example of when a prison officer who refuses to answer a question under the current arrangements is protected from disciplinary action, whereas tomorrow, after the law is changed, their requirement to answer a question will result in disciplinary action. Show us when not answering a question is of benefit to a corrupt officer. Even by way of interjection, the minister should give us an example of when refusing to answer a question helps someone keep their job—silence.

Mr J.M. Francis: I have one.

Mr W.J. JOHNSTON: Go on.

Mr J.M. FRANCIS: I have a real example of a case that is currently under consideration, but unfortunately I cannot give it.

Mr W.J. Johnston: That's convenient!

Mr J.M. FRANCIS: I know it sounds convenient, member for Cannington.

Mr W.J. Johnston: Of course it is; it is complete rubbish.

Mr J.M. FRANCIS: It is not. There is a case that is still subject to significant investigation, so I will not detail it. At the end of the day, it is punitive information that is not available from any other source. Just because a prison officer at the moment declines to answer a question does not mean they will lose their job. There are circumstances in which a prison officer may refuse to answer a question and still keep their job if they answer the question honestly, or they may incriminate themselves to some degree.

I have had an example presented to me. The required information is not obtainable from another source. A prison officer is seen talking to a well-known criminal. The chief executive officer can only obtain content of the conversation from the prison officer. The CEO will not be able to obtain the same information from the criminal due to reasons of privacy; in other words, the privilege will prejudice the investigation.

Mr W.J. Johnston: Sorry, what are you saying they cannot get off the prisoner?

Mr J.M. FRANCIS: The CEO will not be able to obtain the same information from the criminal due to reasons of privacy; in other words, the privilege will prejudice the investigation. I am aware of a situation, which I will not divulge; but it does happen. Because a prison officer refuses to answer questions does not necessarily mean they will be sacked or vice versa.

Mr W.J. Johnston: You need evidence, of course. But if you have evidence, it does not matter whether they answer or not.

Mr J.M. FRANCIS: Member for Cannington, we can agree to disagree; that is fine. As I said —

Mr W.J. Johnston: But you need an argument, minister.

Mr J.M. FRANCIS: I have stood here for hours answering questions. The bottom line, and the simplest answer, is that I have no problem—the member does—with the Commissioner of Corrective Services compelling prison officers to answer questions about their conduct, especially if that information, as required under this bill, is not obtainable from another source. I have no qualms whatsoever with staff being required to answer questions about their performance, especially considering it will be part of a loss-of-confidence action anyway.

Mr W.J. JOHNSTON: Let us get back to the example the minister gave. Somebody observes a prison officer talking to a known serious criminal. The prison officer is asked, "What were you doing?" Today they say, "I'm not answering that question." What action would occur? It would be interesting to know what action would occur because the minister is the one who knows. Let us say they answer, "I was talking about the weather." If there is no other source of information, that is the end of the investigation because they were talking about the weather! If they are a corrupt officer, I would imagine they are not going to give an honest answer. Talk about a stupid example. Could the minister have thought of a worse example to give than the one he just gave? Quite frankly, I could think for a month and not come up with a more ridiculous answer to the one the minister just gave. That is an appalling example. The minister will not achieve what he is trying to get. In fact, he will bind himself to an answer that is false. Suddenly the minister says, "That's okay because he was talking about the weather. He gave me that answer and I know he is telling the truth because I compelled him to give me the answer." Do members know what I was told when I first started doing industrial matters? "Don't forget all witnesses lie." That was the first thing that I was told. Guess what? That is what witnesses do—they lie. Every single witness who appears in the stand does not tell the truth. That is just the way it works. Talk to any lawyer. The trick is to get the evidence together so that when they lie, it can be proven they have not told the truth. That is what is called an investigation. If the limit of the investigation is to ask the officer what they said to the criminal, guess what—nothing will be found! That is the most stupid example I have ever heard in my entire life.

There are surveillance methods including cameras; there are all these different things. In fact, why would they not be filmed and then asked, "Did you talk to so and so?" They answer, "No, I didn't talk to them." They have lied because there is the surveillance to prove that they did. That is an investigation. That is how people get caught out—by telling lies, not by holding themselves silent. I keep going back to the same question I asked before: can the minister give me a single example of any officer who was subject to an investigation on a discipline matter and the discipline matter stopped because they refused to answer a question? Give me one example! Let us go back to that. There is an investigation because there is a belief that something has happened.

The officer is called in as part of the investigation. They refuse to give an answer and the investigation stops. Give me even one example. I will tell the minister the answer—there is none; it never happens. If senior officers think there is a corrupt officer in place and they fail to answer a question, I bet $100 that they go off and investigate more. The person then becomes a target. The minister knows, I know, everybody in the entire world knows that that is the way things work. The idea that somehow or other the right to silence has got that person off the hook is complete and utter nonsense. The minister knows it is nonsense. That is why he cannot provide a single example in which the right to silence has stopped an investigation leading to discipline matters.

Mr F.M. LOGAN: I have to say in the house to the minister that I am still completely confused about where we are up to as a result of the minister's explanation. We are dealing with the proposed amendment to section 101(5), which is on page 7. The minister has told the house that the officer being investigated is entitled to have someone with him but not being represented. When it was pointed out to the minister that we think it is not quite the same as the police union, he told the house, "We haven't worked out the process yet." Will that process be the same as the police process? The minister keeps saying that this is the same as the police process. Is it all of the police process including the right to represent as with the police union, or is it not? The minister has still not answered that.

The other thing the minister continues to point out in justifying this provision is that it is not a disciplinary process—that is done under the Public Sector Management Act. I keep directing him back to the definition of this particular term that includes "performance and conduct". I ask again: if this is not a disciplinary procedure—the minister keeps saying it is about the suitability of the officer—define "performance and conduct" so it is distinguished from that of the disciplinary provisions. What are the examples of performance and conduct under this action that are so different from the disciplinary proceedings? That is a critical thing. The minister has not explained it properly.

Mr P. PAPALIA: I have one final point on this proposed amendment. I have been trying to find out separately what happens with the police. I appreciate that the minister will check. When the minister checks what police do now, make sure it is what they do now and not what the Commissioner of Police is trying to have done. I understand the commissioner may be trying to change the circumstances of representation. I understand there is currently an entitlement to representation. Perhaps the commissioner is not happy with that; perhaps he is trying to get those bolshie union guys out of the room. But that is not the process I am interested in; I am interested in the current process.

Mr J.M. Francis: Sure—what happens today.

Mr F.M. LOGAN: I have asked the minister two questions. Is he going to answer them or not?

Mr J.M. FRANCIS: I have answered these questions many times. I will refer the member to the *Hansard* of the former Labor government's police minister in 2002, when exactly the same provisions were brought in for the Commissioner of Police to use exactly the same words in assessing the suitability of police officers to continue in their role. Exactly the same words are used in this bill for the Commissioner of Corrective Services to use his role. They are identical words—word for word. Yes, they are broad, but I refer the member to the *Hansard* of Hon Michelle Roberts in 2002.

Mr F.M. LOGAN: They are not the same when it comes to performance and conduct. I am only asking you, minister. The minister is trying to get this bill through the house. He should justify that to the people of Western Australia and this house for the purposes of clarity of this bill and, more importantly, for the purposes of clarity for future cases and actions that the minister has raised as an issue in this house in the discussion of this bill. What is the difference under this action by the CEO? What is the difference when it comes to performance and conduct to that of performance and conduct that would be under a disciplinary procedure? What makes it so different that these stringent provisions are needed, whereby the CEO has the right to require at law that the officer being investigated answer questions and that he can be terminated without comeback? What is so different?

Mr J.M. FRANCIS: My advice is that loss-of-confidence provisions will be used only in exceptional circumstances. The Commissioner of Corrective Services will outline what will be classified as exceptional circumstances. I do not want to get bogged down in hypotheticals, but someone turning up late for work, not calling in or not turning up once is no big deal. A repeat offender over a long period of time is absolutely a big deal.

Mr F.M. Logan: Is it a performance matter under the Public Sector Management Act or is it a performance matter under this bill?

Mr J.M. FRANCIS: For repeat offenders, for significant breaches of integrity and for significant breaches of the standards that are expected, it is a loss of confidence. For less frequent minor matters, less frequent

unexplained and no advance notice absenteeism, it is a different kettle of fish and would be dealt with under the Public Sector Management Act. For repeat offenders or serious offences and for those who continually do not meet the standard or do not meet the standard on occasions when the breach is significant, I can foresee the use of the loss-of-confidence provisions. The commissioner will make crystal clear the expectations.

Mr P. PAPALIA: I did say that the last question was a final question, but I have an additional question on this matter. Is it the minister's intention that once this legislation passes, an officer might be dismissed through only the loss-of-confidence measures or will they still be subject to dismissal or termination—whatever you want to call it—through disciplinary measures?

Mr J.M. FRANCIS: It could be either.

Mr F.M. LOGAN: Clearly, from the interpretation given by the minister, there is really no difference between the two. They are both disciplinary matters. One is a disciplinary matter under the Public Sector Management Act; the other one is a disciplinary matter under the loss-of-confidence provisions. The example given by the minister was that under the Public Sector Management Act, they might have come late or their performance might be minor or slight; under the loss-of-confidence provisions, the employee, the officer, may have come late quite a number of times and the CEO has lost confidence in them. They are both the same thing. It is ridiculous. We have a Public Sector Management Act in place. We have a whole series of disciplinary provisions under it. Now, on top of that, the minister has walked this in here and is implementing another disciplinary code but with a far more heinous outcome; that is, people will get sacked and will have no right of reply. That is what it is all about. That is exactly what the minister is doing.

Division

Amendment put and a division taken, the Acting Speaker (Ms L.L. Baker) casting her vote with the ayes, with the following result —

Ayes (15)

Ms L.L. Baker	Mr D.J. Kelly	Mr J.R. Quigley	Mr P.B. Watson
Mr R.H. Cook	Mr F.M. Logan	Ms R. Saffioti	Mr B.S. Wyatt
Ms J.M. Freeman	Mr M.P. Murray	Mr C.J. Tallentire	Mr D.A. Templeman *(Teller)*
Mr W.J. Johnston	Mr P. Papalia	Mr P.C. Tinley	

Noes (31)

Mr P. Abetz	Ms M.J. Davies	Dr G.G. Jacobs	Mr D.C. Nalder
Mr F.A. Alban	Mr J.H.D. Day	Mr S.K. L'Estrange	Mr J. Norberger
Mr C.J. Barnett	Ms E. Evangel	Mr R.S. Love	Mr D.T. Redman
Mr I.C. Blayney	Mr J.M. Francis	Mr W.R. Marmion	Mr A.J. Simpson
Mr I.M. Britza	Mrs G.J. Godfrey	Mr J.E. McGrath	Mr M.H. Taylor
Mr G.M. Castrilli	Mr B.J. Grylls	Ms A.R. Mitchell	Mr T.K. Waldron
Mr V.A. Catania	Mrs L.M. Harvey	Mr N.W. Morton	Mr A. Krsticevic *(Teller)*
Mr M.J. Cowper	Mr C.D. Hatton	Dr M.D. Nahan	

Pairs

Dr A.D. Buti	Mr T.R. Buswell
Ms M.M. Quirk	Ms W.M. Duncan
Ms S.F. McGurk	Mr A.P. Jacob
Mr M. McGowan	Dr K.D. Hames
Mrs M.H. Roberts	Mr P.T. Miles

Amendment thus negatived.

Mr P. PAPALIA: I move —

Page 7, lines 24 to 28 — To delete the lines and substitute —

document might incriminate the prison officer.

I am aware that the Leader of the House wants to move on, so I will just speak briefly to this and perhaps we can then adjourn debate.

This amendment goes to the argument that the member for Cockburn advanced earlier with respect to the exposure of prison officers or youth custodial officers to two forms of disciplinary action: the loss-of-confidence process, which is the new one, and the disciplinary process under the Public Sector Management Act, which the minister has indicated they will be subject to. That is part of the reason for our scepticism as to why this needs to be introduced for youth custodial officers. That aside, this amendment suggests that proposed section 101(5)(b), "render the prison officer liable to a disciplinary measure under Division 2 or removal under this Division",

exposes an individual to two separate processes. I am not a lawyer. This amendment was not drafted by me; it was drafted by a lawyer, and I think the concern is about whether we are acting appropriately by subjecting an individual to both those processes —

Mr W.J. Johnston: Jurisdiction shopping.

Mr P. PAPALIA: Yes, effectively. That is a good reference from the expert to my right, the member for Cannington. With jurisdiction shopping, we might pursue them under one process and not achieve what we want, so we then go to the other one and get them to incriminate themselves under both processes at the outset so they have no defence. I wonder whether the minister can provide his justification for why he has both those processes, and why he would not consider our amendments to have just "document might incriminate the prison officer."

Mr J.M. FRANCIS: I am advised that the reason both a disciplinary measure and removal are used is that the words "render the prison officer liable to a disciplinary measure under Division 2 or removal under this Division" basically gives the commissioner options; that is the result of this particular proposed section.

Mr D.J. Kelly: Sorry; it gives the commissioner options?

Mr J.M. FRANCIS: Of course it gives the commissioner options. The prison officer is not excused from giving information, answering any question or producing a document when required to do so on the grounds that the information, answer or document might incriminate the prison officer or render the prison officer liable to a disciplinary measure or removal so that the same evidence cannot then incriminate them in disciplinary proceedings or under loss-of-confidence provisions. Essentially, it is a protection for the prison officer to leave that in there.

Mr P. Papalia: I thought you were removing that, so that the effect of the proposed section is that they will not be excused from giving evidence on those grounds. It's actually not a protection; you're doubling the opportunity to smack them.

Mr J.M. FRANCIS: It is mentioned in both because the same evidence can be used for either.

Mr P. PAPALIA: We are probably not going to achieve much by continuing to repeat ourselves with regard to this, but the point that was made by the member for Cockburn and has been observed by the members for Cannington and Bassendean—all those individuals who have vast experience in industrial relations; I do not—is that, effectively, we do not need all this legislation. That is the point we have been making from the outset. We already have the capacity to deal with these matters under the current provisions, and ensuring that we still have the capacity to deal with them under similar provisions for prison officers and identical provisions for youth custodial officers who are already subject to the Public Sector Management Act, and adding to their vulnerability to being subjected to loss-of-confidence provisions, underlines the overall lack of necessity for this legislation. The point we have made continually is that it is not justified and the minister has not made his point.

I will not labour this right now, because the Leader of the House is looking at me with a grimace on his face, so I will sit down and we will let that amendment be put.

Amendment put and negatived.

Debate adjourned, on motion by **Mr J.H.D. Day (Leader of the House)**.