

CUSTODIAL LEGISLATION (OFFICERS DISCIPLINE) AMENDMENT BILL 2013

Third Reading

Resumed from 19 March.

MR F.M. LOGAN (Cockburn) [4.33 pm]: As I was saying before I was rudely interrupted yesterday, the point I was making about this bill was that it is designed to effectively shift the industrial power balance—certainly the relationship in prisons and youth custodial officers in places such as Banksia Hill Detention Centre—firmly in favour of the chief executive officer of the Department of Corrective Services. That is the aim of the bill, but it does not say that; it refers to the change in discipline procedures and the power to remove, suspend or terminate as a result of the CEO's loss of confidence in a prison officer or youth custodial officer. That in itself is a shift in the relationship between the CEO and the staff of prisons whether they be adult prisons or youth custodial centres.

This side of the house condemns the minister and the government for introducing these provisions, not because we are opposed to the minister wanting to change the culture in prisons, but because, as the minister, he can do whatever he likes. He is the minister and he, along with the CEO, can run the prisons however he likes. If the minister thinks a prison has a cultural problem, he has every right as the minister to go about changing it. We are not opposing his right to do that; we are opposed to the minister not acknowledging that he already has the capacity to do that without introducing this bill and changing the dynamics of the relationship between the CEO and the CEO's staff, particularly front-line staff, because that is who it will apply to. The minister has the ability to bring about whatever changes he likes under the existing legislation and the existing policies that govern the way prisons and youth custodial services are run in Western Australia.

We think this is a horrendous piece of legislation because the minister has broadened the provisions from what he told the media and this house the bill was aimed at achieving; namely, to provide certainty for the CEO to remove the bad apples within the prison system, whether they be in the adult prison system or the junior prison system. He has broadened the aim of the legislation from issues to deal with integrity, honesty or even conduct to include in clause 7 the definitions of confidence and performance. As we discussed during debate on this bill, that goes way beyond dealing with prison officers who may have inappropriate relationships, inside or outside prison, with organised crime figures such as outlaw motorcycle gangs or prison officers who may be involved in transporting illegal items or drugs into prisons. It goes way beyond those inappropriate and illegal actions by prison officers or youth custodial officers to governing the way officers go about their normal work. It includes timekeeping—people turning up to work—as the minister himself indicated. They are normal managerial issues that can be dealt with, not by way of the Prisons Act, but simply by managerial policies within the corrective services portfolio. Yet those day-to-day managerial issues in running the prison system and the behaviour and industrial relationships between prison officers, the union and management, particularly the CEO of the Department of Corrective Services, have been included in and will be governed by this legislation. The minister himself has said, “Oh, look, there'll be only a few occasions when the CEO applies his power of loss of confidence that will lead to removal action or suspension et cetera.” We will see. Once we change power dynamics and provide someone with significantly more power than they had before, they will use it for sure. The CEO will use these powers set out in this bill not simply to remove the so-called bad apples from the prison system who may have done the wrong thing, but for the day-to-day running of the prison.

The chief executive officer will use these powers as normal managerial disciplinary procedures. That is what he will use them for—absolutely. These powers will be used on occasions when an officer has done the wrong thing, which may well be—the minister talked about this as well—a claim of bullying; for example, when one person makes a claim against another that someone has bullied someone or they have been spoken to harshly or they have been pushed in the corridor of the prison. Whatever occurs in the day-to-day hurly-burly of relationships in a pressure-cooker environment such as a prison or a youth custodial facility such as Banksia Hill Detention Centre, when they fall out with one another and one person makes a claim against another officer, I will guarantee the minister that the chief executive officer will use these powers. He will demand that both those officers be in his office and that they answer questions, and he will then take action—whatever action he takes—that may well lead to the suspension or dismissal of one of these officers, and he will use these powers to do it. I guarantee the minister that that is what will happen. They will not be used in the way the minister has described to this house—few and far between—and they will not be used to basically speed up the process of dealing with people who should not be in the prison system as officers, or catching the bad apples in the prison system and getting them out of the prison system. These powers will be used way, way beyond that; they will be used on an everyday basis to discipline officers who in the CEO's view have stepped out of line. They will be used as a normal industrial tool, as opposed to being used for the reasons set out by the minister in the second reading speech and during consideration in detail, when he told this house that the Custodial Legislation (Officers Discipline) Amendment Bill 2013 is designed to change the culture and clear the bad apples out of the prison

system. That is how the powers will be used; I and the minister know that. After this legislation passes, we will see. I assume it will pass the upper house. It may be modified in the upper house—who knows?—but, ultimately, I believe it will pass. It will come into force and it will be used. It will be used by the CEO of the Department of Corrective Services as an industrial tool to change the nature of the relationship between him, his management and the people on the ground—that is, the officers doing the day-to-day work.

The change to the relationship between those carrying out the work of looking after prisoners and those carrying out the work of running the prisons is bad enough, but this bill is even worse in that it also applies to youth custodial officers. As I said during consideration in detail, I cannot understand why the minister wants to extend this legislation to cover public servants—youth custodial officers. I just cannot understand that. He provided no evidence whatsoever—not one shred—apart from some cock-and-bull story that really the minister should hang his head in shame about, and he possibly may well have broken the law in his description of the story to this house. He provided no evidence to justify why the loss-of-confidence powers of the CEO of the Department of Corrective Services and the removal and suspension powers should be extended beyond sworn officers of the Crown—prison officers—to public servants. These are youth custodial officers; they are not sworn officers of the Crown. They are not policemen or prison officers; they are simply public servants looking after, in the main, children, yet the minister thinks it is appropriate to extend these draconian powers he has given the CEO to manage youth custodial officers.

I asked the minister to give us some evidence of when youth custodial officers who work at Banksia Hill—because that is the only juvenile detention facility left in the state—have done things so dramatically bad that they require this piece of legislation to be introduced. The examples I asked him to refer to were consorting with organised criminal figures, consorting with outlaw motorcycle gang figures or bringing illegal contraband into Banksia Hill. When I asked him how many times people had been charged or suspended as a result of doing those things, he told the house that there had been none. That is the justification for bringing this legislation in for prison officers in adult prisons—that applied only to less than three per cent of the adult prison staff—but when I asked him how many times that type of behaviour was engaged in by youth custodial officers, there were no examples. But they will still be hit with the same draconian powers governing their work life as youth custodial officers, as sworn officers of the Crown who work every day in adult prisons are. That is just disgraceful.

To be honest, I do not know why the Community and Public Sector Union—Civil Service Association of WA has not pulled the job up right now, because if I were the organiser, there would not be anybody in Banksia Hill now. I would have pulled the job up immediately and I would have left them out there and the minister could look after them. As an organiser, I would not have copped that at all. I would have whacked the minister right between the eyes on this one—absolutely. There is no way the minister would get away with this. The minister can bring the legislation into this place and do what he likes or he can bring emergency powers in, but I would not cop it. It is just disgraceful that the minister treats public servants in such a way—disgraceful! These people go to work every day in a pressure-cooker environment and have been subjected to a riot at Banksia Hill. The women who work as youth custodial officers at Banksia Hill, in one case, were barricaded in one of the units in fear for their lives as their whole unit got smashed around their ears, thinking they were going to break through and possibly kill them. Do they get thanked by the minister for the efforts they put in and for the work they continue to do out there? No. The minister is going to give their boss a lot more power to whack them around the head if they step out of line. That is what this legislation does! So much for thanks for the effort they put in looking after sometimes—particularly the older youth are out there—dangerous people, as the minister himself said. There were no thanks to them.

The minister told the house that he went out to Banksia Hill Detention Centre to watch the grand final with the youth custodial officers. While the minister was there, he should have apologised to them for what he said about their workers' compensation claim. I am surprised he got out of Banksia Hill actually, given what he has said about them. I am surprised there was not a riot—this time with the youth custodial officers!

I have pointed out two things about this legislation over and again. Firstly, it is bad legislation that should not have been introduced into this house. The things that the minister is trying to achieve can be achieved under existing legislation and managerial policy in the Department of Corrective Services. Secondly, the drafting of this bill is bad. The powers of the chief executive officer will be extended way beyond the minister's claimed objectives of cleaning up the bad apples in the adult prison system. The minister has gone way beyond that to include day-to-day managerial policies in the definitions in this legislation. It is heinous that the minister has extended this draconian legislation to youth custodial officers. It is absolutely unacceptable because the poor people who work at Banksia Hill deserve better than this. The workers at Banksia Hill have been through a shocking time. As I informed the house earlier, the poor Banksia Hill workers came to the steps of this house in July 2012 to tell the then minister, Hon Terry Redman, that things were so bad at Banksia Hill that it would

ultimately lead to a riot. Sure enough there was a riot, and officers were injured—with some in fear for their lives. As a result of that experience, they get legislation that will make their lives a lot worse. The minister should hang his head in shame for bringing this legislation into this house. It is bad legislation and the opposition opposes it.

MR J.M. FRANCIS (Jandakot — Minister for Corrective Services) [4.52 pm] — in reply: I thank members for their contributions. I hope members know that I listen to their concerns even if I do not agree with them. On the issue of the loss-of-confidence provisions, I think it is appropriate that prison and youth custodial officers, who are charged with a very difficult and dangerous job, as I have always said—I agree with members' comments about this—need to meet a higher standard of integrity than is expected in other workplaces. I think it is entirely appropriate to apply the same standard of integrity to prison officers and youth custodial officers as is applied to police officers. I will not dwell on this aspect, suffice to say that in 2006 the then Minister for Police reviewed the Western Australia Police force's four-year-old loss-of-confidence provisions. The minister's review stated that loss-of-confidence provisions worked well for police and enabled the police commissioner to assess the suitability of police officers to remain in their positions and to improve their performance if possible. It was a managerial function. I will put in *Hansard* paragraph 69 of the "Report on part IID of the Police Act", pursuant to the review, which stated —

Delays which occurred in finalising investigations in the past are being addressed. Matters to which the Kennedy Royal Commission drew attention and in which the Corruption and Crime Commission have a vital interest are kept under review.

Finally, in the management of complaints, the Commissioner of Police has moved to a managerial approach in WA Police to maintaining discipline and the commitment to ethical standards in policing. This model functions on the basis of addressing behaviour, conduct and performance and holding officers and supervisors accountable for achieving and maintaining outcomes that are consistent with values under the WA Police's Code of Conduct.

I know the standing orders on bringing new information in at the third reading; I am not going to do that. Suffice to say, I am happy if this helps to answer the member for Cockburn's question about whether there would ever be a situation in which loss of confidence could apply to youth custodial officers. At the moment, youth custodial officers come under the Public Sector Management Act, and as loss-of-confidence provisions do not currently exist in that act, there are situations in which they would have applied. I sought advice on this issue. For the benefit of members in the other place when the bill reaches that place, I will put on record a couple of quick scenarios. These are real scenarios that may help people interpreting this legislation in the future.

Mr P. Papalia: This is the third reading of the bill. Why is the minister introducing new information?

Mr J.M. FRANCIS: This is in response to a point raised by the member for Cockburn in his speech on the third reading. He suggested there could be a situation in which a youth custodial officer would be the subject of loss-of-confidence provisions —

Several members interjected.

The ACTING SPEAKER: Members! The minister has the floor.

Mr J.M. FRANCIS: I quote a scenario provided to me by email; it states —

A Youth Custodial Officer is employed by the department. It is subsequently found that there were a number of WAPOL intelligence holdings that indicate the officer had:

1. Six different relationships with six different women over a ten year period

That is not an offence, or anything wrong, by itself —

2. Each woman complained to WAPOL of the same course of conduct including:
 - a. Violent behaviour towards them including attempting to strangle (hold against the wall by the throat)
 - b. Abusive behaviour towards the women's children including taping their mouths and drawing smiling faces on the tape,
 - c. Handcuffing the child to the bed
 - d. Rolling the child in dog manure as a lesson for not having picked it up

Point of Order

Mr P. PAPALIA: We are at the very end of the third reading debate on this bill. We have had days to introduce information and evidence into this place, and this minister, in the last five minutes of the debate, seeks to introduce new information that denies members the opportunity to consider, debate and discuss what he is saying. It is ridiculous and should not be allowed.

The ACTING SPEAKER (Ms L.L. Baker): I agree with the member's interpretation of standing orders. This is a third reading speech, minister. No new information should be entered into the debate.

Several members interjected.

The ACTING SPEAKER: Members! I have the Chair covered; you do not need to help.

Debate Resumed

Mr J.M. FRANCIS: I hear the Acting Speaker's ruling, but I would suggest that I am just responding to the points made by the member for Cockburn. The member for Cockburn suggested that there should be no circumstances whatsoever in which a youth custodial officer should be subject to loss-of-confidence provisions. I am trying to say that there are. The member for Cockburn does not want to hear the truth—that suits me fine. He does not want to support this bill—that suits me fine.

The ACTING SPEAKER: Minister.

Several members interjected.

Mr J.M. FRANCIS: The opposition does not want to —

The ACTING SPEAKER: That is enough. Let us get through the third reading of this bill, please. The minister has the floor.

Mr J.M. FRANCIS: The opposition does not believe that youth custodial officers and prison officers should be accountable to the commissioner for their actions. That is fine. The opposition can go ahead and vote against this bill. Go and tell the people of Western Australia that the opposition does not think that the people employed in these situations should be accountable to the Commissioner for Corrective Services for the way they go about doing their business. The opposition does not think these people should have to reach up and meet a certain level of integrity. Go ahead and tell that to the people of Western Australia.

Mr P. Papalia interjected.

Mr J.M. FRANCIS: Very simply, when I sit down —

Several members interjected.

The ACTING SPEAKER: Members! Unless I am interpreting what you are saying differently or incorrectly, minister, I made the call about the information that you are providing being new information, not the opposition. Please keep to the third reading of this bill.

Mr J.M. FRANCIS: I have certainly moved on from that, Madam Acting Speaker.

The government believes that prison and youth custodial officers should be able to meet a certain level of integrity that the people of Western Australia believe they should meet. These people should be accountable to the commissioner for their actions and behaviour. As I have said many times in debate on this bill, loss-of-confidence provisions will preserve public confidence by ensuring the prompt removal of any officers unsuitable for their positions, having regard to their integrity, honesty, competence, performance or conduct. If the opposition does not support that, that suits me fine. When I sit down and the question is put that the bill be read a third time, the opposition should vote against it—and be it on its head. Having said that, the government believes that this bill is an appropriate course of action. We believe that although the overwhelming majority of officers do the right thing, a small percentage effectively let the team down. We believe in giving the Commissioner of Corrective Services the authority and the ability to address those concerns. I commend the bill to the house.

Division

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

Extract from *Hansard*
[ASSEMBLY — Thursday, 20 March 2014]
p1735b-1739a
Mr Fran Logan; Mr Joe Francis

Ayes (29)

Mr P. Abetz
Mr F.A. Alban
Mr C.J. Barnett
Mr I.C. Blayney
Mr I.M. Britza
Mr G.M. Castrilli
Mr M.J. Cowper
Ms M.J. Davies

Mr J.H.D. Day
Ms E. Evangel
Mr J.M. Francis
Mrs G.J. Godfrey
Dr K.D. Hames
Mrs L.M. Harvey
Mr C.D. Hatton
Mr A.P. Jacob

Mr S.K. L'Estrange
Mr R.S. Love
Mr W.R. Marmion
Mr P.T. Miles
Ms A.R. Mitchell
Mr N.W. Morton
Dr M.D. Nahan
Mr D.C. Nalder

Mr J. Norberger
Mr A.J. Simpson
Mr M.H. Taylor
Mr T.K. Waldron
Mr A. Krsticevic (*Teller*)

Noes (14)

Ms L.L. Baker
Dr A.D. Buti
Mr R.H. Cook
Mr D.J. Kelly

Mr F.M. Logan
Mr M. McGowan
Mr M.P. Murray
Mr P. Papalia

Mr J.R. Quigley
Mrs M.H. Roberts
Ms R. Saffioti
Mr C.J. Tallentire

Mr P.C. Tinley
Ms S.F. McGurk (*Teller*)

Pairs

Ms W.M. Duncan
Mr T.R. Buswell
Mr D.T. Redman
Dr G.G. Jacobs
Mr J.E. McGrath

Ms J. Farrer
Mr W.J. Johnston
Mr P.B. Watson
Mr D.A. Templeman
Ms J.M. Freeman

Question thus passed.

Bill read a third time and transmitted to the Council.