CUSTODIAL LEGISLATION (OFFICERS DISCIPLINE) AMENDMENT BILL 2013

Third Reading

Resumed from an earlier stage of the sitting.

MR P. PAPALIA (Warnbro) [3.39 pm]: I am not sure how much time I have remaining, but I think it is a worthy task to revisit the objections held to this legislation by the youth custodial officer workforce, and I am happy to do that on their behalf in this place. I understand the minister has been contacted by one or two people but I am pretty comfortable that we on this side of the chamber are representing the views of many more people than that. The vast majority, if not the overwhelming majority of the workforce find this legislation to be in many respects offensive, completely inappropriate, unnecessary and, ultimately, very heavy-handed. They wanted us to offer on their behalf those views and to reject the legislation as it applies to them, which we did. I feel that the opposition has represented the workforce—the people who stand to be most impacted by this legislation. We have pointed out the flaws and the failures in the minister's argument, and the inadequacies in his contentions that these laws must be applied to youth custodial officers. Again, on behalf of the people who stand to be most impacted by this legislation, we offered up or proffered alternative legislation, significant amendments to the legislation, and we did not hide them away. We did not ambush the minister with them. We did not attempt to surprise him with any of our proposals. We made it very clear what we were doing. We got them on the notice paper and we ensured that the minister and his advisers would have time to consider them and, we had hoped, that he would then be reasonable in the government's response to our proposals. I must concede that we wanted to throw out that whole section on the youth custodial officer provisions—the part of the legislation that dealt with the Young Offenders Act 1994. We wanted to oppose and get rid of these onerous new conditions on the workforce of youth custodial officers, but we accepted that. We then proposed some eight pages of amendments. Many of these were minor and consequential to earlier amendments to make sense of the bill and for consistency in the event that the government accepted the earlier amendments, which magnified the amount of actual change.

Essentially, we were contending with a few factors—not that many—that needed to be amended in this legislation. Firstly, the part of the bill that referred to the Young Offenders Act 1994 needed to be removed. There should be no reference to youth custodial officers in this legislation—they should not be included in this legislation. The minister has not made a case for this. There is no substantial evidence in any of the arguments he put about prison officers and, essentially, in the end the minister is relying almost entirely upon some nebulous claim that this legislation will enhance the esteem with which youth custodial officers are held within the community. I find that extraordinary because when we explain to members of the public who these people are and what they do, we find that they are already held in high esteem and already have the respect of the community. What the community finds extraordinary, as does the workforce, is the minister's assertion that they are in the wrong job, which the minister made very quickly after taking the oath of office. He determined that very quickly in a non-consultative fashion and publicly made a brutal attack on their integrity. The minister made that comment, so he is the person whose behaviour is in question, not that of the workforce.

It is undeniable that youth custodial officers are struggling under the weight of the appalling decision by the Barnett government to shut one of only two juvenile detention facilities. I suspect that we will see more action on this matter if the minister insists upon pursuing the legislation recently championed by the Minister for Police on aggravated burglary. I am not talking about the violent offenders who break in; of course they should go to jail. They already are in jail, so why would we oppose that? However, the minister releases them—that is undeniable. He gives them to Serco and it releases them—that is a fact. The blueprint for violent assaults conducted by burglars that might lead the minister to impose a mandatory sentence on that type of individual was the violent rapist who escaped from the custody of Serco in Geraldton earlier this year. It is undeniable; the minister's government releases these people. The urgent motion that we moved in this house today related to legislative or procedural change that the minister has made that enabled that type of individual to be released. It was bad and we opposed the concept of releasing those people—of course we do—but the minister knows that the aggravated burglary legislation that the minister has recently championed —

Mr J.M. Francis: You are jumping across bits of legislation.

Mr P. PAPALIA: It is the same one. I have just gone off and now I have returned. As the minister knows and has been advised by his department, that legislation will have incredible consequences for juvenile detention in Western Australia. If it plays out as the minister has been advised, there will be a massive increase in the challenges faced inside juvenile detention facilities. The minister will be confronted with exorbitant increases in recurrent expenditure as a consequence of having to pay for increased numbers in prison, and in these times of

need for increased austerity the minister will have to find and waste more money on detention alone, which is not a good sign.

I fear the minister will also be confronted with the challenge of finding money for capital works to house more juveniles and that, again, will be a waste of money because the more we cram into these overcrowded conditions, the less effective the facilities are and the more stressful and dangerous it is for the workforce.

We have gone through a large number of amendments to the legislation governing prison officers, with the exception of a few that we moved en bloc. In his second reading speech, the minister provided a very flimsy justification for this legislation. He referred to a couple of media reports obliquely, not directly. We had to infer that he was talking about some of the stories that appeared in *The West Australian* following some leaks right around the time that he was talking about these matters. Who knows where the leaks came from, but the minister was not willing to come into this place and state specifically what cases he was referring to when making accusations of widespread corruption amongst prison officers or vast cultural challenges that confronted him when he took over the role of the corrective services minister. He would not say or give us enough detail. He continually hid behind the need for secrecy, some need associated with protecting the individuals concerned and their identity, or alternatively it was suggested that there might be some charge impending or some court case underway as he spoke and therefore he could not talk about it. All of those excuses meant that he came in here without any actual cases, explanation, justification or argument for why these laws are needed. We said that on day one of this debate and nothing has changed. I have referred extensively to the flimsy contribution the minister's second reading speech represents in an effort to pull it apart and find or search for some justification that we had perhaps overlooked. I searched for some evidence that what the minister said is required is actually needed and is therefore justified, but we could not find it. The only things the minister had was a few dot points regarding unspecified instances of improper and inappropriate relationships including links between prison officers and organised criminals, prison officers supplying drugs to outlaw motorcycle gangs or prisoners associated with them, and sexual relationships between prison officers and prisoners. We may guess at what those relate to, but we do not know for sure because the minister has failed to provide any evidence.

The minister tried to justify this bill, and in his second reading speech he referred to loss-of-confidence provisions. The minister also refers to streamlining the disciplinary process. The opposition asked what evidence the minister has that the disciplinary process is not currently streamlined. We were told, if I can recall, that there were two cases in the last couple of years that extended beyond six months. It is difficult to recall, and I am grasping at straws. I do not blame the minister for not being able to remember, as I cannot recall myself, but I think that were something like two cases in the last two years that extended beyond six months as a consequence of the process taking that long. I did not think that was excessive or outrageous. I did not think that in the evidence that was tabled and produced, both in this place and in the upper house estimates committee hearings, when the new Commissioner for Corrective Services appeared for the first time, that there were a large number of serious offences amongst the disciplinary cases that were listed; the vast majority of them appeared to be minor. There were a few serious cases and as the opposition has said consistently those individuals who break the law or commit a corrupt act should not be in the Department of Corrective Services, either as prison officers or youth custodial officers—or in the head office for that matter, although they are not going to be subject to this law. The opposition says that we should get rid of those people, but we can do that right now by referring them to the appropriate authorities—WA Police, the Corruption and Crime Commission, the Public Sector Commission, or any other appropriate body under the Public Sector Management Act. We need to do whatever needs to be done to get rid of them. The opposition has not seen any evidence of the need to streamline the disciplinary process any further.

The final type of change that the minister refers to in the second reading speech is abrogation of the privilege against self-incrimination. I will spend a little time at the end of this long, involved and interrupted debate to focus on this one fact. What the minister is proposing, which he has conceded he is doing, is to impose upon prison officers something that is not imposed upon those whom they lock up. The criminals they oversee and supervise will not be subjected to this onerous provision. The minister gave the extraordinary example, in justifying that particular provision, of a prison officer apparently being seen discussing something with a prisoner, and in that event there was suspicion of he or she acting in an inappropriate fashion and then being compelled to respond to questions and having to abrogate their right to silence or the privilege against self-incrimination. When we asked the minister what would happen, the minister said they would get the prison officer in front of them and they would ask him the questions. If he or she did not answer, they would be in trouble and would be subjected to the loss-of-confidence provision. The interesting thing was that when we asked the minister what would happen to the prisoner, he confirmed that that prisoner will not be subjected to the same sort of rules and can avoid incriminating themselves by not saying anything. Beyond that, as was pointed out by the member for Cannington, the simple flaw in the whole theory is that if someone is corrupt and is acting in an illegal fashion, and the only bit of evidence is being able to compel them to speak and tell the truth about

what they are doing, would not the minister think that someone who is doing that would be likely to lie? In all likelihood, anyone in that position who is already knowingly breaking the law or acting in a corrupt fashion will not provide the evidence the minister is seeking. They will say, as the member for Cannington suggested, "We were just talking about the weather." That is an easy defence for them. Therefore, the minister's argument does not hold water. The minister's whole justification is flawed and flimsy.

I am disappointed that the minister did not concede or at least consider any of the opposition's amendments. They were considered and reasonable amendments, and they would have made the legislation a lot less onerous for the people who will be directly impacted on by the laws, and they would not have stopped the minister in any way from having the ability to get rid of people or from implementing his proposals for loss-of-confidence provisions; they would have changed the name and made things a bit fairer. That is all the amendments would have done. They would not have stopped the minister in his publicly lauded campaign to tackle corruption.

MR F.M. LOGAN (Cockburn) [3.55 pm]: I rise to add a few comments to the third reading of the Custodial Legislation (Officers Discipline) Amendment Bill 2013. The bill can be summarised as simply shifting power, particularly industrial power, from one group of people to another group of people. I use the word "power" in the broadest sense. I am not talking about the exercise of power; I am simply talking about the rights that come with power.

The legislation has been drafted—particularly the definition of suitability to continue as a prison officer, which goes to the whole point of this legislation—basically to bring in a notice of loss of confidence and the right to the chief executive officer of the Department of Corrective Services to remove prison officers. The definition "suitability to continue as a prison officer" goes way, way beyond the reasons that the minister used as justification for the introduction of this legislation in the first place. The minister expressed to the media—as he always does before he brings a bill to this house—and then to this house the necessity to introduce legislation giving the CEO these new-found powers because of a whole series of issues that have occurred and are occurring within the adult prisons of the Department of Corrective Services. The minister referred to a culture that needed to be changed within the Department of Corrective Services and the behaviour particularly of prison officers, not so much youth custodial officers, that related to prison officers mixing with representatives of organised crime and possibly having inappropriate dealings with members of outlaw motorcycle gangs and prison officers who may have introduced contraband into prisons. It would shock members of the general public to think that prison officers were behaving in such a way inside our prisons. Those were the reasons for the minister's public announcement of the legislation and the justification in this house for the need to introduce this legislation and amend the Prisons Act and the Young Offenders Act.

As I pointed out in debate on the second reading speech and we talked about continually during consideration in detail, if those concerns were as dire and as real as the minister has portrayed to the media and to this house, why would he then broaden the application of the legislation to deal with competence, performance or conduct? Certainly, we would have the legislation apply to the integrity, honesty and possibly the conduct of prison officers, but why broaden the application of the legislation to deal with the competence or performance of prison officers? We know why. It is because the minister effectively said so at the end.

Debate adjourned, pursuant to standing orders.