



25 September 2014

Ms Samantha Parsons
Committee Clerk
Standing Committee on Legislation
Parliament House
PERTH WA 6000

UNIONSWA

WA's PEAK UNION BODY

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Dear Ms Parsons

Custodial Legislation (Officers Discipline) Bill 2013

UnionsWA is the governing peak body of the trade union movement in Western Australia, and the Western Australian Branch of the Australian Council of Trade Unions (ACTU). As a peak body we are dedicated to strengthening WA unions through co-operation and co-ordination on campaigning and common industrial matters. UnionsWA represents around 30 affiliate unions, who in turn represent approximately 140,000 Western Australian workers.

We are writing in response to your invitation to make a submission on the Custodial Legislation (Officers Discipline) Amendment Bill 2013.

WA Prison Officers Union (WAPOU) and CPSU/CSA are both affiliates of UnionsWA, who represent workers who will be affected by this legislation. We support, in full, the submissions made by the WAPOU and CPSU/CSA to this Committee.

We are particularly concerned that the proposed amendments will deny natural justice and fairness for Custodial Officers. Natural justice is a fundamental cornerstone of our legal and industrial system. It should be upheld and respected as a fundamental principle of society; and not limited, without significant and compelling reasons. We are concerned that provisions in the Bill will fundamentally weaken and erode natural justice for Custodial Officers in WA.

Specific concerns with the Bill

We recognise the purpose of the Bill is to remove officers where it is difficult to prove involvement in covert, criminal activity. However, the Bill will unfairly prejudice employment of Custodial Officers by introducing provisions which would mean it is no longer necessary to **actually** find that misconduct has occurred.

There is no mandatory requirement for the CEO to even conduct an investigation into the alleged misconduct. Nor is there a requirement for the complainant to be available for their allegations to be 'tested'. All that is required is for the CEO to 'lose confidence' in the Custodial Officer. In the interests of procedural fairness, there should at least be some obligation on the CEO to (at least) conduct an investigation and document the outcome of that, even if the investigation may ultimately prove to be inconclusive.

The observations from the WA Police Union on Part 11B of the Police Act, as outlined in the WAPOU submission are instructive. In particular, the observation that the Commissioner of Police has shown an increasing propensity to use the 33L provisions as "a first option for the overwhelming majority of offences".

Clearly, it will be tempting for the employer to use provisions which require less attention to procedural fairness if they are made available as outlined in this Bill. Our submission is that there should be clear and rigorous limitations to the use of special provisions which would operate to deny natural justice. The Bill, as currently drafted, does not go far enough in this regard.

Secondly, we are concerned that the CEO's power to suspend is unreasonably increased under the Bill and Custodial Officers would have no ability to appeal a suspension decision. Furthermore, where suspensions occur without pay they may unreasonably prejudice the ongoing employment of the officer.

Prolonged investigations, with officers on long term suspension without pay, would result in an unfair burden for those officers. Few people are in a position of being able to survive without income for a prolonged period and officers may be forced to resign and seek other employment, rather than seek to demonstrate their innocence in an investigation and have their employment restored.

Thirdly, we are concerned that appeal rights to the WAIRC do not go far enough to ensure the CEO's powers will be used responsibly.

It seems unlikely Custodial Officers would have much prospect of winning on appeal against a dismissal when the primary consideration is simply the 'loss of confidence' by the CEO. As it is not necessary to demonstrate any actual misconduct, it is likely to be sufficient that the CEO merely had a proper basis to reach that conclusion; a much lower standard.

WAPOU argue in their submission that this would amount, in effect, to a reverse onus of proof. That is, the Custodial Officer would be required to prove the dismissal was unfair, harsh and oppressive instead of the more usual standard of natural justice, that the onus of proof should rest with the party that alleges the misconduct.

In summary, we are concerned that the provisions of the Bill erode natural justice for Custodial Officers and provide inadequate checks on the exercise of the new powers by the CEO. We support disciplinary procedures which ensure Custodial Officers receive access to quick, fair and equitable processes. The proposed Bill does not achieve this without prejudicing the employment of Custodial Officers and we therefore support the submissions made by WAPOU and CPSU/CSA recommending improvements and refinements to the current system.

I look forward to the opportunity to discuss our submission in greater detail with you.

Yours sincerely



Meredith Hammat
Secretary