

EXECUTIVE SUMMARY AND RECOMMENDATIONS FOR THE

REPORT OF THE STANDING COMMITTEE ON LEGISLATION

IN RELATION TO THE

CUSTODIAL LEGISLATION (OFFICERS DISCIPLINE) AMENDMENT BILL 2013

EXECUTIVE SUMMARY

- 1 On Tuesday 9 September 2014 the Legislative Council referred the Custodial Legislation (Officers Discipline) Amendment Bill (**the Bill**) to the Standing Committee on Legislation (**the Committee**) for its consideration and report by 28 October 2014.
- 2 An extension of time to report was subsequently granted to the Committee, to report no later than 11 November 2014.
- 3 The Bill amends the *Prisons Act 1981* and the *Young Offenders Act 1994*. The key changes include:
 - the introduction of a power to remove custodial officers based on a loss of confidence by the insertion of a new Part X into the *Prisons Act 1981* and a new Part 3 Division 3 into the *Young Offenders Act 1994*. This proposed power is intended to mirror section 8 and Part IIB of the *Police Act 1892*;
 - the adoption of Part 5 of the *Public Sector Management Act 1994*, also in the proposed new Part X, which deals with substandard performance and disciplinary matters; and
 - the abrogation of the privilege against self-incrimination, which would compel custodial officers to provide the Commissioner for Corrective Services with information relevant to an investigation.
- 4 The Committee has received evidence from a variety of employee representative organisations, Government agencies and other organisations. This evidence has revealed a number of opposing views about the key changes outlined above.
- 5 The Committee has detailed the evidence it has received in this Report to demonstrate the diversity of views it has considered for the benefit of the Legislative Council.

RECOMMENDATIONS

6 Recommendations are grouped as they appear in the text at the page number indicated:

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Recommendation 1: The Committee recommends that the *Custodial Legislation (Officers Discipline) Amendment Bill 2013* be amended to reflect the reference in the Second Reading Speech that:

Importantly, the compelled information will not be used in any other proceedings and the officer must be advised of the implications of the abrogation, and the relevancy of the required information.

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Recommendation 2: The Committee recommends that the Minister representing the Minister for Corrective Services advise the Legislative Council whether information gathered pursuant to clause 7, proposed new subsection 101(4) and clause 16 proposed new subsection 11CC(4) of the *Custodial Legislation (Officers Discipline) Amendment Bill 2013* will be available for use by other agencies and, if so, the method by which it can be used.

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Recommendation 3: The Committee recommends that, given:

- (a) the Commissioner for Corrective Services deals with disciplinary actions under Part 5 of the *Public Sector Management Act 1994* and proposed under clause 7 and clause 16 of the *Custodial Legislation (Officers Discipline) Amendment Bill 2013*;
- (b) the requirement under section 79 of the *Public Sector Management Act 1994* for an investigation to be held; and
- (c) the evidence given to the Committee by Western Australia Police about current practice under Part IIB of the *Police Act 1892* and the evidence from the Department for Corrective Services that an investigation would be undertaken if removal for loss of confidence is contemplated,

the Minister representing the Minister for Corrective Services assure the Legislative Council, that, despite the word ‘may’ appearing in clause 7 proposed new subsection 101(3) and clause 16 proposed new subsection 11CC(3), an investigation will be held when removal action is contemplated.

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Recommendation 4: The Committee recommends that the Minister representing the Minister for Corrective Services assure the Legislative Council that once a decision has been made to take removal action against a custodial officer, the provision of a written notice to the custodial officer by the Commissioner for Corrective Services shall not be discretionary.

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Recommendation 5: The Committee recommends that the Minister representing the Minister for Corrective Services advise the Legislative Council whether the intention of the Bill is to restrict the right of appeal against a removal decision to that provided for in clause 7, proposed new subsection 106(6) and clause 16, proposed new subsection 11CH(6) to the exclusion of any other causes of action.

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Recommendation 6: The Committee recommends that the Minister representing the Minister for Corrective Services advise the Legislative Council why clause 7, proposed new section 110A and clause 16, proposed new section 11CL does not appear to include an opportunity for the appellant, with or without leave, to tender new evidence in response to the Commissioner's reformulation of reasons and tendering new evidence, such as is the case under clause 7, proposed new sections 108 and 109 and clause 16, proposed new sections 11CJ and 11CK.

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Recommendation 7: The Committee recommends that the Minister representing the Minister for Corrective Services reconfirm the Department's advice that the Industrial Relations Commission's jurisdiction to hear an appeal against a decision to stand down a custodial officer is not ousted by the Bill.

If this is the case, the Committee recommends that the Bill be amended to remove any doubt as to whether an appeal is available.

Minority recommendations

Recommendations of a minority of the Committee, comprising Hon Sally Talbot MLC and Hon Lynn MacLaren MLC, are grouped as they appear in the text at the page number indicated:

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Minority Recommendation 1:

A minority of the Committee recommends that:

All clauses relating to the application of loss of confidence provisions be deleted from the Bill.

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Minority Recommendation 2:

A minority of the Committee recommends that:

The Minister representing the Minister for Corrective Services provide to the Parliament a clarifying statement confirming that removal power for loss of confidence will not be used in cases where custodial officers are medically unfit.

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Minority Recommendation 3:

A minority of the Committee recommends that:

All clauses relating to the abrogation of the privilege against self-incrimination be deleted from the Bill.

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Minority Recommendation 4:

A minority of the Committee recommends that:

Applications for an extension of the maintenance period should be referred to an independent third party.

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Minority Recommendation 5:

A minority of the Committee recommends that:

Clause 7, proposed new subsection 106(5) and clause 16, proposed new subsection 11CH(5) of the *Custodial Legislation (Officers Discipline) Amendment Bill 2013* be deleted.

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Minority Recommendation 6:

A minority of the Committee recommends that:

The current arrangement whereby there is no cap on the amount of compensation payable to a prison officer who is reinstated to their position following a successful appeal be maintained and the Bill is amended accordingly.