WORKFORCE REFORM BILL 2013

Committee

Resumed from 1 April. The Deputy Chair of Committees (Hon Alanna Clohesy) in the chair; Hon Michael Mischin (Minister for Commerce) in charge of the bill.

Clause 4: Section 26 amended —

Progress was reported on the following amendment moved by Hon Liz Behjat —

Page 3, lines 7 to 25 — To delete the lines and insert —

(2A) In making a public sector decision the Commission must take into consideration any submission made to the Commission on behalf of the State Government that is to include such matters as —

(a) any Public Sector Wages Policy Statement that is applicable in relation to negotiations with the public sector entity;

(b) the financial position and fiscal strategy of the State as published by the Department of the Treasury in publications including —

(i) the most recent Government Financial Strategy Statement released under the *Government Financial Responsibility Act 2000* section 11(1);

(ii) the most recent Government Financial Projections Statement released under the *Government Financial Responsibility Act 2000* section 12(1);

(iii) the most recent Government Mid-year Financial Projections Statement released under the *Government Financial Responsibility Act 2000* section 13(1); and

(iv) any other submissions made to the Commission on behalf of the State Government;

(c) the financial position of the public sector entity.

Hon SUE ELLERY: I was on my feet last night scrambling for supplementary notice papers when we interrupted the debate. Clause 4 is that section of the bill that requires the Industrial Relations Commission to take into consideration, when making a public sector decision, certain matters, and various amendments are before us as to how those matters should be written in the bill. We did touch on this, I think, early in our discussion about clause 4, but last night the minister made it clear that these provisions will apply to public sector decisions that apply to those categories of employees who are covered by the Public Sector Management Act, and not to that category of employees employed by government trading enterprises. Can the minister tell us whether the government has given any instructions, directions or policy framework to government trading enterprises about how they should treat wage claims by their employees?

Hon MICHAEL MISCHIN: Not that I am aware.

Hon SUE ELLERY: Do I take it that government trading enterprises will effectively be able to apply market rates and reach agreement with the unions—which represent the workers they employ—on matters including wage increases beyond the cap of the Perth CPI?

Hon MICHAEL MISCHIN: The government would have expectations that they would have regard to the state wage policy but they actually operate under the federal jurisdiction, not state jurisdictions.

Hon SUE ELLERY: Do I take it if there were any—I do not know if there are; the minister might have advice to assist—agreements in place between the unions representing the employees of GTEs and the government about matters relating to redundancy for example and whether or not a person can be terminated, that those agreements will continue to be honoured despite the provisions of this act of course because this act will not apply to them? I appreciate that the minister said it is the government's expectation but has the government relayed that in any way to the GTEs?

Hon MICHAEL MISCHIN: They are not subject to the legislation that we are dealing with. As a general principle, they would be working within their own commercial environment and they would be reporting to their minister. One would expect that they would have regard to the economic realities that are facing the state

generally, but they are not governed by this legislation. No controls are placed on them, or any coordination of any negotiations, through the Labour Relations division of the Department of Commerce.

Hon SUE ELLERY: I note the minister's response. I guess part of the government's rationale for these changes included reference to wanting a level playing field and for everybody to be treated from the same point. Is the minister able to provide some advice? He might not have it in front of him, but I want to get a sense of the size. Are we talking about 140 000 public servants covered by the Public Sector Management Act? About how many are covered under GTEs? The minister might have to seek that advice later, but he might have a sense as well.

Hon MICHAEL MISCHIN: The figure I have been given is about 139 000 public sector employees. I suspect that is a fairly fuzzy figure. I do not know the precise number. I would have thought that GTEs would not be part of that, but I will make some inquiries to find out sometime before we finish dealing with the bill.

Hon SUE ELLERY: The point was also raised by some members—I want to test if it has been tested by government—that the policy in respect to a cap at the Perth CPI may act as a barrier for those agencies that might have particular vacancies in technical areas. In the past, for example, town planners at one point were an absolute scarcity and they were difficult for government to recruit. Also, the Department of Mines and Petroleum at various points had difficulty recruiting particular technical expertise because of course they were competing with the mining sector, particularly in the north west of Western Australia. Does the minister have any advice about categories of workers now? It seems to me it would be in the technical area, but the government might be having difficulties in other recruitment areas.

Hon MICHAEL MISCHIN: There are mechanisms and procedures available for agencies that can establish that there is a difficulty in attracting and retaining specialist staff to obtain the imprimatur, or the approval, of the Public Sector Commissioner to provide additional remuneration and allowances for that purpose. But that is very much out of the scope of what is being proposed because that is a particular facility to address the issue that the member raised. Those sorts of issues are not ones that can be accommodated by simple general wage increases or conditions in enterprise bargaining agreements. Those things are peculiar to particular agencies at particular times. We saw that during the mining boom of the first decade of the 2000s. People were leaving the public sector and going off into private enterprise to take advantage of more attractive opportunities, which could not, under any reasonable circumstances, be accommodated by public sector pay. Now that the economy has readjusted, many of those problems do not exist.

Hon SUE ELLERY: Thank you. I appreciate that advice. I certainly recall when we were in government we put in place what I think was called an attraction and retention package for child protection workers in remote Aboriginal communities, where it is very hard to get people to stay.

Hon Michael Mischin: Similarly, police were going off and getting security work on the mines and when the situation changed, they started to come back to the police force.

Hon SUE ELLERY: Yes. There is not a lot of call for child protection workers on mines, though!

Those attraction and retention packages—if that is what they are still called—are not captured by the cap of Perth CPI, are they?

Hon MICHAEL MISCHIN: No. They are certainly not the subject of the proposed amendments in section 26, which deal with the arbitrated outcome of a dispute as to whether a particular level of pay ought to be granted as part of a public sector decision within the meaning of the act. These are specific things that are provided in order to accommodate the need to obtain specialists in particular areas.

Hon KATE DOUST: I have a number of questions about clause 4 of the Workforce Reform Bill 2013 and I will probably go backward and forward a little as I work through those. Looking at clause 4 of the bill and the first proposed amendment to the bill about deleting section 26(1a), can the minister firstly explain to me why that deletion is proposed? I know the words that he has to insert there but I would like to know why that has been proposed given that it connects to another clause in the Industrial Relations Act 1979. I think it is section 50A of the act that deals with some quite general areas of minimum terms and conditions, apprenticeships and a range of other things such as wage rises that come through on particular dates. Can the minister explain why, in the first instance, that particular section needs to be deleted and the impact of that action?

Hon MICHAEL MISCHIN: I draw the member's attention to proposed subsection (2E), which reinstates that particular provision at the end of the amendments. If the member looks at page 5 of the bill, she will see that it is deleted but reinstated in a more logical place at the end of that provision. It is not going at all.

Hon KATE DOUST: I am a bit confused now, minister. Is it simply just shifting the language? I am not sure why it has been moved from one part to another part but I am glad that it is staying.

Hon MICHAEL MISCHIN: I will explain that better. The current provision—section 26(1a)—is replicated in the proposed amendment to section 26 which inserts subsections from (2A) through to (2E) but also includes reference to the new provisions by excluding those as well. It is moved into a more appropriate place and also adds the reference to the new provisions.

Hon KATE DOUST: I come back to what is currently in section 26 of the Industrial Relations Act, which the minister is seeking to amend. My first question is, given the language that is already in that section, which is quite detailed about what the commission has to take into account when it is involved in a wage determination, why does the government want to be treated differently from any other employer in this state? What makes the government so different from any other employer in the state that it needs to have a separate set of arrangements in the commission to basically do the same things that the commission is already doing?

Hon MICHAEL MISCHIN: I have already addressed this on several occasions. The scope of the Western Australian industrial relation system is essentially now limited to the state public sector and those employers, such as non-government organisations and the like, that do not fall within the federal sphere. It may be one thing to have the Industrial Relations Commission work out whether a pay rise from the local sweetshop—a small business—is something that can be afforded, but it is a very different thing when one is dealing with a government which, in one view, has a potentially bottomless pit of money. The government, in the public interest, is applying the same principles in order that the Industrial Relations Commission can more clearly assess the state of the economy in Western Australia and the affordability of pay increases by directing it to have a look at particular evidence that the government considers establishes the state of those matters which are, at the moment, framed in very broad terms in section 26(1)(d). That is the reason for the change.

Hon KATE DOUST: I am looking at proposed section 26(2A)(c) which refers to "the financial position of the public sector entity" and I see the definition of what the public sector entity is. Minister, last year we saw a whole series of cuts and a very harsh budget which saw a lot of departments losing cash, which in turn meant that a lot of staff were going to be offered redundancy. We have seen a massive take-up of those numbers. The minister may be able to give me the latest update, but I am sure it is over 1 000 or 1 200 and it may be even more now—I do not know. These people saw the signs and realised that because the government had not fully funded their sections of the department, they could not sustain employment; they saw the signs and left.

Hon Michael Mischin: That is a big assumption.

Hon KATE DOUST: I think it is a pretty clear assumption. Look at the minister's own department; look at how the Department of Commerce has been decimated because of the decisions that the minister's government made in the budget last year. He might sit there and laugh about it but we know how many people have walked out the door of his own department and the impact that has had on both industry and community because they do not have the seasoned, experienced people continuing to work there. Given that the government can make a decision that will create an environment where a department or a section is de-funded and not in a position to have an ongoing budget allocation to pay people or in a position where it has to send people out the door, at what level will the commission be required to look into the capacity to pay? Will it be a broadbrush approach right across the full spectrum of government or will it actually come down to individual sections in a department? How will that be impacted by whether or not money has been allocated in the budget, because things can change? It may be that one year the government does allocate funding to an area and the next year or for a couple of years it does not. This may impact on how those agreements are reached. I am curious about the level of the financial position—whether it is the broadbrush approach or whether it will come down to individual sections within a department or agency.

Hon MICHAEL MISCHIN: When the budget is set by government for the various agencies that form part of government administration, an allowance would be made for the CPI increases in accordance with government policy. Under the proposed amendments—I am taking into account the ones that the government proposes in lieu of the ones that are currently part of the bill—the relevant material would also be the budget papers tabled in the other place that deal with the public sector entity, under the title "Agency Information in Support of the Estimates", or, if the regulations prescribe, another part of those budget papers, and also any submissions made to the commission if it has to arbitrate a dispute because no agreement can be reached on behalf of the public sector entity or the state government. So it would be looking at the material that is provided that sets out the government's allocation of resources to that government department. As is the case in any other environment, the private sector in particular, economic circumstances can change, and they can sometimes change radically over a very short period. The private sector would accommodate that in particular ways, including potentially laying off staff. Government may need to be faced with the same thing, but that is not unusual, and it is more difficult under the current regime. The material that would be put to the commission, if it needed to have access to it, would be the material that we have identified that sets out the amount of money that has been allocated to that particular agency, and the chief executive officer of that agency would be responsible for managing the

affairs of that agency in accordance with the principles that apply, and have been applicable for quite some time, under the Public Sector Management Act.

Hon KATE DOUST: I thank the minister for that information. I accept that the minister has an alternative proposal on the supplementary notice paper that picks up on the midyear review. Proposed section 26(2A)(b)(iv) refers to any other submissions made to the commission on behalf of the state government. In addition to all of the information that is listed there, and the midyear review, if that amendment is accepted by the chamber, what other information would be provided to the commission under proposed section 26(2A)(b)(iii)?

Hon MICHAEL MISCHIN: I notice that we have gone back from looking at the entity to looking at the state.

Hon Kate Doust: I know. That was just the way my mind was working when I looked at this.

Hon MICHAEL MISCHIN: That is okay. I just want to make it clear for *Hansard*. It probably does not matter much, because there are submission provisions in not only the government's proposed post-amendment to subsection (2A)(b)(iii), but also subsection (2A)(b)(ii). They are submissions in the sense that they are the same as the sorts of submissions that are currently provided by the government in respect of a case that is being determined by the commission, any relevant evidence or considerations that the government considers ought to be taken into account in the commission's deliberations, and any argument of a legal or factual nature that the government considers is relevant and should inform the commission's decision. That is no different from what the situation is now, except it provides for some specifics that the commission also needs to direct its attention to, although, as I have pointed out, the weight that it places on those considerations and that evidence will remain a matter for the commission.

Hon KEN TRAVERS: I have listened to the minister's comments about the words "the financial position of the public sector entity", and I am trying to get a clearer understanding of what is meant by those words. When the minister talks about the financial position of the public sector entity, is the minister talking about the balance sheet of the entity or its appropriation?

Hon MICHAEL MISCHIN: I am again talking about the amendments proposed by the government on the supplementary notice paper. What would form that material would be the agency information in support of the estimates, which can be found at chapter 3 of the 2013–14 budget. To give an example, the Health portfolio is set out at pages 129 to 156 of the 2013–14 budget papers, and that includes appropriations, expenses and cash assets; spending changes; and outcomes, services and key performance information. All that material would be before the commission and would be taken into account.

Hon KEN TRAVERS: That is why I asked this question. In my view, that is the overall financial statements of the entity, as opposed to the actual financial position. If we look at the budget papers, and even the annual reports, there is a document called the statement of financial position —

Hon Michael Mischin: Where is that?

Hon KEN TRAVERS: It is in the annual reports and in the budget papers. The predictions are in the budget, and the finals are in the annual reports of the organisation.

Sitting suspended from 6.00 to 7.30 pm

Hon KEN TRAVERS: Obviously, a number of amendments are proposed to this clause. The first one that we are dealing with is the one recommended by the committee. I see from the supplementary notice paper that a number of amendments will be moved by the Minister for Commerce, which amount to an alternative proposition to that recommended by the committee. I am still not clear about the agency information in support of the estimates that the minister is referring to. Basically, one of the issues that the amendments seek to deal with, and certainly the bit I am interested in, is the statement dealing with the financial position of the public sector entity. Before the dinner break I was making the point that I think it is an interesting question, because without further amendment I would have thought anyone reading that would immediately go to the section of the budget papers headed "Statement of Financial Position", which is the equivalent of a balance sheet in the private sector. It would then be a case of looking at that and trying to work out the question: does it have a solid or sound balance or not? That would raise a set of questions in itself.

As I pointed out in my second reading contribution, this august institution—the Legislative Council—actually has a negative equity position. The question therefore is: if we take into consideration the statement of financial position that there is negative equity as outlined in the budget paper for this Council, does that mean that the Western Australian Industrial Relations Commission would have to consider whether or not it could do that when it was looking at pay rises for our staff; and that, therefore, until we get a sound balance sheet with a positive equity position, the WAIRC could not give any pay rise? That is one interpretation that could be put on this amendment, and that is why it is so very important to fully understand exactly what the government's intent is with these clauses. I used the example of the Legislative Council, and I understand the other provisions in this

bill about officers and the like. I understand members and the officers are not covered by this legislation but I suspect our staff members below the Clerk positions are. Of course, the government has its own amendment, which reads in part —

> The financial position of the public sector entity as set out ... in the most recent budget papers tabled in the Legislative Assembly —

That is always an insult to this place. To continue —

> that deals with the public sector entity under the title "Agency Information in Support of the Estimates" or, if the regulations prescribe another part of those budget papers, that other part;

I assume that if there was another part in terms of the existing budget papers it would be included in this bill. Clearly, that is what the government must have been trying to do with its original drafting, and the amendment it has foreshadowed will make that clearer. I am still trying to fully understand, even under the title "Agency Information in Support of the Estimates", what exactly that information is and what its relevance is. Surely, fundamentally, the policy decision has been taken by government about how that fits in. The other element I would have thought would be a key element is the budget appropriation for salaries, which, again, would be part of the income statements. When the minister says "Agency Information in Support of the Estimates", what exactly is he referring to?

The DEPUTY CHAIR (**Hon Liz Behjat**): Member, I seem to recall from yesterday evening's debate when we were dealing with this bill that we would deal with the committee recommendation first and then we would move on to other amendments if that is required, if this were to fail. You have now just gone into matters the Minister for Commerce himself will move and I am sure will answer when we deal with those amendments on the supplementary notice paper.

Hon KEN TRAVERS: I understand your point, Madam Deputy Chair. Obviously there is a choice of whether we support the first amendment we are dealing with and there is a foreshadowed amendment. Without understanding the intentions of the foreshadowed amendment and comparing them to the current amendment and, in fact, the clauses of the bill and understanding what each of them does, it is very hard for members to make their final decision about which ones they will vote for. I think there is general agreement that there is a need in the chamber for something to be done, but getting an understanding of the best option requires canvassing the issues. That is why I am trying to get a clearer picture of the Attorney General's proposed alternative amendment to this one. If it is a better proposition, we will all agree to defeat this amendment and move to the Attorney General's amendment. If we defeat this one and wait until we get to the Attorney General's, we could say that it is worse; it makes the position less clear. That is the point I am trying to get to.

The DEPUTY CHAIR: I understand the member's point. I will be guided by the will of the chamber. I wanted to point that out because last night we kept things very narrow in that regard. If members want to go over all the amendments and it is the will of the chamber and the minister agrees, we can do it that way, bearing in mind others may have restricted themselves to just the committee recommendation last night when they were making their contributions.

Hon MICHAEL MISCHIN: Thank you, Madam Deputy Chair. I am entertained by the idea there may be some prospect of support for the amendments at all, which is encouraging. I thought I had made it abundantly clear. At the moment, under section 26(1), the commission is required, in the exercise of its jurisdiction, to take certain matters into account. Proposed subsection (2A) specifies some of the materials that the government says the commission should take into consideration in making its decision. It does not state that those are the only materials that ought to be taken into account, and it does not direct the weight that is to be applied to those materials. Therefore, the idea that it is directing to a certain part of the budget papers as material that should be considered as part of the assessment of the agency's ability to pay, the claims that are brought before it and the application that is being sought, is not exclusive. At the moment, submissions in relation to a claim are put up by both parties. The government or the agency and the other party—the applicant or respondent—may refer to this material anyway. There is nothing in advance of what is able to be considered by the commission at present or what would be put to the commission by one or other party.

Hon KEN TRAVERS: I have moved on from the debate about the government's purpose, and I accept that we have agreed to disagree. The minister is saying that it is just a matter for the commission to consider, but it can still make its own decision. Of course, that raises the question of why we are doing it. If that is all the commission is going to do, it would already do that, which is the alternative view. I accept that the government's will is to have something in the bill to do that. I am trying to understand what exactly the minister is referring to in his amendment where it refers to "Agency Information in Support of the Estimates". What exactly does he expect the commission to give consideration to?

Hon Michael Mischin: I have already said that.

Hon KEN TRAVERS: I did not understand it and I am asking the minister to —

Hon Michael Mischin: I pointed to part 3 of the budget papers that bears that heading.

Hon KEN TRAVERS: So there is nothing in budget paper No 2. The minister cannot shake his head. He is saying that it is in part 3, so he is saying that budget paper No 2 does not count.

Hon MICHAEL MISCHIN: This goes to show the frustration of trying to deal with someone who is being obstructive. I am not saying that part 2 does not count. When did I ever say that part 2 does not count?

Hon Ken Travers: You're saying that it is part 3.

Hon MICHAEL MISCHIN: Yes. I will take it through at a kindergarten level. In the proposed government amendment, it states that in making a public sector decision, the commission must take into consideration the following, and it sets out a variety of documents, plus any submission made to the commission on behalf of the public sector entity or the state government as a minimum. I have said on repeated occasions that it is a minimum; it is not exclusive. One of the documents for the public sector entity is found in the government amendment to proposed section 26(2A)(c), which states —

> the financial position of the public sector entity as set out in the following —
>
> (i) the part of the most recent budget papers tabled in the Legislative Assembly that deals with the public sector entity under the title "Agency Information in Support of the Estimates" or, if the regulations prescribe another part of those budget papers, that other part;

That is one of the things that the commission must take into account. It is not exclusive and not to the exclusion of any other part of the budget papers, but at least that one. It continues —

> (ii) any submissions made to the Commission on behalf of the public sector entity or the State government.

I have never suggested that they are exclusive. I have said entirely the contrary; those are the minimum things that the commission must take into account, not that part of the budget papers to the exclusion of any other part.

Hon KEN TRAVERS: Maybe I will try this another way. I am not trying to be obstructive; I am trying to understand what the amendment means. To make it simple so that we can move on, does the minister have an example of the agency information in support of the estimates that he wants the commission to take into consideration?

Hon MICHAEL MISCHIN: The 2013–14 *Budget Statements* has several chapters in it. One of them is headed "Chapter 3: Agency Information in Support of the Estimates". It is in volume 1, starting at page 41. In that material is information about all the several agencies that are provided for in the budget, including for example in part 3 of chapter 3 the portfolios under the responsibility of the Deputy Premier; Minister for Health; Tourism. In that part, as I have indicated, pages 127 through to 156 deal with the budget position of the Department of Health. That is one of the things that the Industrial Relations Commission has to take into account when considering a public sector decision. It is one of the things—not all. It does not stop the commission from looking at any other part of the budget papers that it considers relevant. It does not stop the commission from looking at any other material relating to the state of the economy or the state of that particular entity that it considers material and relevant. It is simply one of the things that it has to look at. It is identified with specificity. It also has to consider the submissions made on behalf of that public sector entity as a party to the proceedings. That is no different from what happens now. All it is doing is specifying the minimum consideration that needs to be done. I think I have explained that on numerous occasions. I do not think I can make it any clearer than that.

Hon KEN TRAVERS: For ease of reference, what the minister is talking about is chapter 3, which is generally presented as budget paper No 2. For the past couple of years there have been volumes 1 and 2. A range of information is contained in those chapters, in terms of the explanation the minister gave. It includes the appropriations, expenses and cash assets; the spending changes that have occurred; and the outcomes, services and key performance information. It goes through all of those. It then goes into the financial statements. The minister suggests the commission needs to look at all of the information contained in those chapters or those parts relating to the relevant agency. My concern is about the way it is written. It refers to the financial position of the public sector entity yet within those documents there is actually a statement of financial position. Arguably, the Industrial Relations Commission could narrow down to that. I would not have thought that is necessarily what we want it to take into consideration. I thought the government would want a broader picture than just the statement of financial position. I have made the point, and I will make it again in this chamber, that the primary thing to consider, I would have thought, is that our equity position is actually negative. There are not too many agencies that get into there. One would expect, because of the size of the Department of Health, it

would have a reasonable degree of equity. I am not sure that it is exactly clear what the government seeks to have them look at, from the way this amendment is drafted. We can get into that detail when we get to that amendment, but for the time being, I think the government's intent and the actual wording are two different things.

Hon MICHAEL MISCHIN: I do not think it will pre-empt the discussion, but if the government's proposed amendment is accepted, it states —

> (c) the financial position of the public sector entity as set out in the following —
>
> (i) the part of the most recent …

And it goes on to state it. It does not identify the passage saying "Statement of Financial Position". It is talking about a broad set of material and identifying which part of the budget papers it is concerned with. It is not exclusive, as I have indicated, and it is not identifying that particular passage in the budget papers, which may of course be retitled from time to time.

If, as it happens, some regulations are passed that direct the commission to a particular document or set of information, that is open on the legislation but that is something that will come up for review in the house. The way it is framed, it is referring to the financial position as a concept, not to a particular passage in that part. Indeed, I would have thought, on any construction of it, it could not be taken that way.

Hon KEN TRAVERS: I have one final question. My understanding of the current budget papers is that the way they are generally presented is that often the component for wage increases is not specifically listed for individual entities; a consolidated amount is held within the Department of Treasury, I think, for wage increases. Given the information that the minister will ask the commission to give consideration to, is it the government's intention to distribute that funding for future pay rises to each individual entity or is it still intended to have it held by Treasury as a consolidated amount?

Hon MICHAEL MISCHIN: How Treasury allocates the funds and identifies them in the budget papers is a matter for Treasury. However, Treasury has identified this part of the budget papers as the appropriate reference. I stress yet again that the material to which the commission's attention is being directed as a bare minimum is not exclusive. If the entity or whoever is the party that is relying on this particular clause considers that the information is inadequate in presenting either the agency's position or the other party seeks to look at other material that will colour the position that is set out in the budget papers in that particular part, it is entirely open to them to raise that and for the commission to put such weight as it thinks fit to the information that is before it, in the same way as it does now.

Hon KEN TRAVERS: I understand that. It is an interesting concept. The minister keeps saying that these are minimums and the commission is not bound by them; it is basically up to the people who are making the submissions. That raises the whole question of why we are even bothering with these proposals. When the government goes before the Industrial Relations Commission, its advocates put together all the arguments and the targets, including the financial circumstances of the state and the entity, and makes that clear. The minister is proposing as a minimum that we draw the commission's attention to the financial circumstances of the public sector entity in that chapter. The minister is then saying that if the advocates for the employees, the workers, want to draw that out, they will need to somehow identify—not many people would probably know how to do that—how much is allocated in the budget for future wage increases and draw that in. If we are going down that path of having that reserve for future pay increases allocated to each entity, it requires a corresponding change to the way in which the government manages its budget. It would then be clear that for entity X, X amount of money is provided in the budget for this year; and, because in most of these cases the enterprise bargaining agreement goes for three to four years, if the current policy was based on a CPI of 2.5 per cent, an additional CPI figure would then be allocated to that entity over the forward estimates, rather than being allocated to a common pool of money. I will get the budget papers—because I am sure this debate will go for a little while longer—to see whether I can find where within the Treasury figures that global amount is indicated. I think that even though the government is trying, through these amendments, to make the bill clearer for people to understand, it will actually make it harder for people to understand and people will have to spend days at the commission arguing about what is the financial position of the entity and whether any provision for pay rises is included in the budget. I make those comments, and I am happy to move on.

Hon SALLY TALBOT: I want to get back to the point that Hon Ken Travers raised at the start of this session some 25 minutes ago about the order in which we are dealing with these amendments. I understand what your ruling is, Madam Deputy Chair (Hon Liz Behjat), but you did also say that you would listen to the will of the chamber about how we would deal with these amendments. Without making any inappropriate or non-permitted excursions into the deliberations of the committee, it would be obvious to anyone who has read the committee

report that we spent some time on this matter. It is a source of personal regret that I have not been able to be part of the debate that has occurred this week because I have been away from the house on urgent parliamentary business. One of my colleagues made the comment tonight that it is a sad indictment of the state of one's life when one comes into this place and says that one has read the entire *Hansard* debate for the clauses that one has missed. But I have done that.

Hon Donna Faragher: I did that too.

Hon SALLY TALBOT: I am sure Hon Donna Faragher did that too, because we have all done a lot of work on this part of the bill. If I can make a comment for myself as an individual member of Parliament and not necessarily as a member of the committee: the reason this clause is so problematic is that it was so poorly drafted in the first place. In going back over the *Hansard* debate I did note that Hon Michael Mischin is not in a particularly good mood at the moment, for reasons that I have no idea about.

Hon Michael Mischin: I am in a fine mood.

Hon SALLY TALBOT: There has not been a lot of goodwill in this debate between the two sides of the chamber. I recognise that this is not the minister's bill, and having been in that position myself when I was on the other side of the chamber, I know that it is not easy to pick up another minister's legislation. I can say very frankly that my concern, from having looked at this bill for many, many hours in committee, is that the government will not end up with the result that it wants to end up with. I want that remark to be taken at face value. I am not trying to score political points here. As somebody who has served one term in office, I know that when we are looking at a set of books such as the books the government is looking at now, it is a problem. I know that if the Labor Party had won the election a year ago, we would be looking at a similar set of books that would have caused a problem because of what the government chooses to call the blow-out in the public sector wages bill. Obviously, there is some disarray in the budgetary situation. I have not made any secret of the fact that I concede that there is a problem here that needs to be solved. If I can cut to the chase about clause 4, the problem that the committee found, and the reason that the amendment that stands in the name of the committee was unanimously agreed to by the committee—despite the fact that the two Labor members on the committee are also proposing a subsequent amendment to delete clause 4, for reasons that we will get to later—is that all the legal advice that we took was about the appealability of an amendment to the bill because of phrases that were ill-defined. I will speak for myself, and other members of the committee can make their own contributions. The problem I had, given all the legal advice we received, was that we were heading into territory where two things would happen. One is that we would be funding the private school fees and dental bills of lawyers for years to come as they tried to sort out exactly what the government was trying to get to here. The other thing, which was of more concern to me, was that we were not going to achieve the kind of effective budget management that the government was trying to put into place.

I will conclude my remarks on this point. In paragraph 6.54 on page 30 of the committee report, honourable members can see that our concern was based on the fact that when a phrase or clause is not defined adequately, the default position—in relation to the particular parts of clause 4 that we are dealing with—is that the commission would be referred, presumably after appeals, to the balance sheet of the agency. The information contained on the balance sheet in the agency annual report would effectively be 18 months old by the time the commission got to have a look at it. That clearly was something that the government was trying to avoid. This was raised with Treasury witnesses and is all on the public record; it was recorded by Hansard in those hearings. As I said, later in this debate we will come to the reasons why a minority of the committee, which included me, believed that clause 4 should simply be deleted. The government was presumably arguing—it was quite unclear—that the existing provisions of the Industrial Relations Act were inadequate to direct the commission's attention to relevant, up-to-date information. We all know how this works. We do not need to be economic geniuses, and I have certainly never claimed to be one, to work out what the particular problems in this state might be, because we are a resource-rich state. Just look at the iron ore price and how quickly that can fluctuate. We are subject to far more vagaries that might beset the financial projection system than almost any other state in Australia. Therefore, with our legislators' hats on—not trying to score political points, but working together as a committee—we tried to put together an amendment that would not just clarify things, but in clarifying them would give the government what it seemed to be asking for.

Going back through *Hansard*, I read that the Minister for Commerce noted that there was some kind of grammatical problem with the way that the committee's amendment was raised, but I honestly could not understand in much more detail exactly what it was that he was objecting to on behalf of the government in substituting the committee's amendment with his own. To go back to the point that Hon Ken Travers was making, we have a unanimous committee amendment in front of us and we have a second attempt to amend a deeply flawed clause that has come from the government. Apart from those grammatical errors, which I would have thought could have been fixed just by speaking behind the Chair, it is not clear to me why the government's

amendment is much superior to the committee's amendment. I ask the Minister for Commerce again, as Hon Ken Travers did, whether he can just go through point by point why, in the government's view, we ought to be considering the amendments on page 2 of supplementary notice paper 42-3 rather than the committee amendment, which is on the first page.

Hon SUE ELLERY: The opposition is in the position that it is bound to follow the committee's unanimous recommendation to try to make this clause better and will support the committee's amendment. When I compared the committee's amendment with the amendments in the name of the minister, I saw only two points of difference. One was some words which, basically, when referring to one of the financial instruments refer to "and it being made publicly available", so what was the question about that? However, in respect of the other amendments in the name of the Minister for Commerce, the only other bit that I could see that was perhaps substantially different was the addition of the words after the title of the agency information in support of the estimates, "or if the regulations prescribe another part of those budget papers"—again, if you like, the granting of a powerful, extra regulation-making power to refer to some other documents. I was going to ask questions about what the minister might be anticipating to capture there that cannot be captured in the committee's recommendations. Could the minister answer that?

As I indicated last night, the opposition will support the committee's recommendation. If I get a satisfactory answer to the questions I have about the amendments in the name of the Minister for Commerce, the opposition may support those too, but the opposition is going to vote to support the minority recommendation. In order for someone reading this in the future to not get terribly confused about what the opposition's position is, the opposition thinks this is bad law, full stop. However, the opposition has an obligation to the people of Western Australia to make it as least bad as possible. That is why it is going to support amendments when it can, but it is also going to vote against what it thinks is ultimately a bad law.

Division

Amendment put and a division taken, the Deputy Chair (Hon Liz Behjat) casting her vote with the noes, with the following result —

Ayes (10)

Hon Alanna Clohesy	Hon Lynn MacLaren	Hon Sally Talbot	Hon Samantha Rowe *(Teller)*
Hon Kate Doust	Hon Rick Mazza	Hon Ken Travers	
Hon Sue Ellery	Hon Amber-Jade Sanderson	Hon Darren West	

Noes (17)

Hon Martin Aldridge	Hon Jim Chown	Hon Col Holt	Hon Simon O'Brien
Hon Ken Baston	Hon Peter Collier	Hon Mark Lewis	Hon Brian Ellis *(Teller)*
Hon Liz Behjat	Hon Donna Faragher	Hon Robyn McSweeney	
Hon Jacqui Boydell	Hon Nick Goiran	Hon Michael Mischin	
Hon Paul Brown	Hon Dave Grills	Hon Helen Morton	

Pairs

Hon Stephen Dawson	Hon Peter Katsambanis
Hon Ljiljanna Ravlich	Hon Alyssa Hayden
Hon Adele Farina	Hon Nigel Hallett
Hon Robin Chapple	Hon Phil Edman

Amendment thus negatived.

Hon MICHAEL MISCHIN: I move —

Page 3, line 17 — to insert after "section 11(1)" —

and made publicly available under section 9 of that Act

This amendment will insert in the bill after the words "*Government Financial Responsibility Act 2000* section 11(1)" the words "and made publicly available under section 9 of that Act". This will achieve two objectives; firstly, to add specificity to the document being referred to; and, secondly, to lead into the amendments that succeed it at 14/4 on supplementary notice paper 42–3 to introduce the matters that I have already foreshadowed.

Hon SUE ELLERY: What I do not understand—I am not trying to be obtuse—is why we need to make reference to "and made publicly available". Is it not always the case that it is made publicly available, or are there some times when it is not?

Hon MICHAEL MISCHIN: It is my understanding that under the Government Financial Responsibility Act, if a section 11(1) document is released there is a provision that it is made publicly available as a second step of the process. It is already prescribed under the act, is my understanding. For completeness, that is being specified in this as well—one that is released and "made publicly available".

Hon KEN TRAVERS: I am looking at section 9, which relates to how it is made publicly available. But section 9 is also a process section, which reads —

> (1) Where this Act provides for the release of a statement or report, the statement or report is to be —
>
> (a) tabled in each House of Parliament; and
>
> (b) made publicly available.

I do not think it does any damage, but I do not understand why it was necessary, and if it was so necessary why was it not in the original drafting of the bill? What exactly are we trying to achieve with this whole clause? It is just going to end up confusing people.

Hon MICHAEL MISCHIN: I will assist the honourable member on that. Section 11(1) of the Government Financial Responsibility Act 2000 prescribes —

> The Treasurer is to release a Government Financial Strategy Statement at least once in each calendar year.

Subsection (4) reads —

> The new Government Financial Strategy Statement is to be released as soon as possible after the change in financial strategy, but in any case no later than when the next Government Financial Projections Statement is released.

There is a timing element to it, and that timing element ties in with section 9(1), which reads —

> Where this Act provides for the release of a statement or report, the statement or report is to be —
>
> (a) tabled in each House of Parliament; and
>
> (b) made publicly available.

There is a process, and what this section does, in the interests of the specificity that was of concern to the committee, is simply reflect that process. The document that the commission is to have regard to is not only the one released by the Treasurer, but also the one made publicly available by the Treasurer by the process in the act. Regardless of whether the member agrees with the philosophy of the clause or not that is proposed to be introduced, it is simply making it quite plain at what stage the commission must have regard to that document, not only when it is released, but also after it has been made publicly available.

Amendment put and passed.

Hon MICHAEL MISCHIN: I move —

> Page 3, lines 18 to 25 — To delete the lines and insert —
>
> (ii) the Government Financial Projections Statement;
>
> (iii) any submissions made to the Commission on behalf of the public sector entity or the State government;
>
> (c) the financial position of the public sector entity as set out in the following —
>
> (i) the part of the most recent budget papers tabled in the Legislative Assembly that deals with the public sector entity under the title "Agency Information in Support of the Estimates" or, if the regulations prescribe another part of those budget papers, that other part;
>
> (ii) any submissions made to the Commission on behalf of the public sector entity or the State government.

I have already indicated the purpose of this amendment and I do not think there is anything more I can usefully say on it.

Hon SUE ELLERY: I have two questions. I do not know why it needs to be repeated. If the minister's amendment is agreed to, the clause will insert into the Industrial Relations Act section 26(2A)(b)(ii) and (iii). The effect of that is that the proposed section will read —

(2A) In making a public sector decision the Commission must take into consideration the following —

...

(b) the financial position and fiscal strategy of the State as set out in the following —

(ii) the Government Financial Projections Statement;

(iii) any submissions made to the Commission on behalf of the public sector entity or the State government;

The amendment inserts new paragraph (c) so that in addition to new paragraphs (a) and (b) —

... the Commission must take into consideration the following —

…

(c) the financial position of the public sector entity as set out in the following —

...

(ii) any submissions made to the Commission on behalf of the public sector entity or the State government.

I am not sure why we need that repeated. I have read this about five times to try to figure out why that needs to be stated twice. I understand one is in reference to proposed subsection (2A)(b) and the other is in reference to proposed subsection (2A)(c), but I still do not know why we need to state it twice.

The question I have about the substance of the amendment is on proposed section 26(2A)(c), which states —

the financial position of the public sector entity as set out in the following —

(i) the part of the most recent budget papers tabled in the Legislative Assembly that deals with the public sector entity under the title "Agency Information in Support of the Estimates" —

That is the general agency heading about the specifics of their budget allocations. I seek further explanation on —

or, if the regulations prescribe another part of those budget papers ...

There was an exchange between the minister and Hon Ken Travers about this, but what other part of the budget papers does the government envisage it might need to refer to?

Hon MICHAEL MISCHIN: As has been identified, proposed section 26(2A)(b) deals with the financial position and fiscal strategy of the state and then it identifies things, including proposed section 26(2A)(b)(iii), which is in the same terms as proposed section 26(2A)(c)(ii), which refers to "the financial position of the public sector entity" as set out in that, among other materials. Arguably it could have been drafted in a different way, but it is clear and connected with the separate proposed subsections (2A)(b) and (c) that are being dealt with. There is simply no harm done by it. Submissions are filed in any event, so all that is being said for completeness is that these are the minimum things that the commission needs to take into consideration.

As to what might be embraced by proposed section 26(2A)(c)(i)—as in, if the regulations prescribe another part of those budget papers, that other part—that is to not only enable more parts of the budget papers to be specifically referred to as a minimum requirement for consideration by the commission, but also accommodate any change in title to the relevant parts of the budget papers. For example, at the moment it specifies the part that deals with the public sector entity under the title "Agency Information in Support of the Estimates", and it may be that Treasury, in the way that it drafts the budget papers, will rename that part of the papers. Alternatively, there may be, as Hon Ken Travers has foreshadowed, a possibility that a separate allocation of moneys to agencies in a separate part of the budget papers will indicate how much the salaries and wages component is, and that the commission will need to be directed to that at some time in the future.

Division Count

The DEPUTY CHAIR (Hon Liz Behjat): Members, before I give any other member the call, I just need to draw the attention of the chamber to the report of the last division. The actual numbers for that division were ayes 10, noes 17. It does not change the outcome of the division, but so that *Hansard* reflects the true vote of the chamber, I just need to bring that to members' attention.

Committee Resumed

Hon SUE ELLERY: I flag that one of the reasons the opposition will support the minority report when we move on is that these amendments, and, indeed, the Workforce Reform Bill 2013 itself, will tell the commission that it must take into consideration a phrase that appears in both the bill and the amendments: "any submissions made to the Commission on behalf of the State government". I make this point again: there is no evidence, because it has never happened, that the Western Australian Industrial Relations Commission has ever said to a state government, "We will not take into consideration submissions you've made to us in respect of a public sector wages decision." That has never happened, so I make the point again that this is absolutely unnecessary and frankly a bit insulting to the commission, because it has never, ever not listened to the state government in a state government wages matter.

Hon KEN TRAVERS: I would just like to add to those comments. I take it that the minister cannot provide any evidence for a decision having been made by the Industrial Relations Commission beyond wages policy. In fact, the celebrated cases in which decisions have been made outside wages policy have always been situations in which deals have been negotiated directly between the government and the unions, and the most recent such case was one in which the government, in my view, breached the caretaker provisions of government and did not even seek the agreement of the Leader of the Opposition, and entered into an agreement that it claimed was a non-binding agreement, but in reality it knew that it was setting up a binding arrangement for both sides of politics in respect of a wages outcome. That may have been justified, in view of the costs incurred by those workers. I do not begrudge them that at all, but it set a standard that other public sector workers then felt should also apply to them, and that is the question. In fact, it is my view that many of these amendments that have been put forward by the government have been put forward for one reason, and one reason only: to create a smokescreen to suggest that the problems the government has with its budget management are something to do with either the Industrial Relations Commission or the unions, when in fact the real budget management problem for the government is its lack of budget control at the cabinet level.

That is the real problem. This is just a classic case of legislation that we get now on almost a daily basis from the Barnett government. It is smoke and mirrors legislation that is more about spinning a political outcome than actual real outcomes. The minister says that people must take consideration of all of this. I reckon that when they read all this and read the section in budget paper No 3 on the government's fiscal strategy and financial targets, they will realise that the government does not even intend to meet most of the targets it set for itself. How do they interpret that? What are they supposed to do with it? It is a complete and utter nonsense. The government is asking them to look at documents and when they do, they will ask, "Well, how are we supposed to interpret that now?" The core issue here is the government's wages policy, and the minister cannot demonstrate that it has ever carried it out. The rest of all of this nonsense that the minister is putting in the bill is just a smoke and mirrors exercise in an attempt to provide a political spin rather than any meaningful legislative reform.

Amendment put and passed.

Hon MICHAEL MISCHIN: I move —

Page 3, after line 26 — To insert —

> ***Government Financial Projections Statement*** means whichever is the most recent of the following —
>
> (a) the most recent Government Financial Projections Statement that is —
>
> (i) released under the *Government Financial Responsibility Act 2000* section 12(1); and
>
> (ii) made publicly available in the budget papers tabled in the Legislative Assembly under the title "Economic and Fiscal Outlook" or, if the regulations prescribe another part of the budget papers, that other part;
>
> (b) the most recent Government Mid-year Financial Projections Statement that is —
>
> (i) released under the *Government Financial Responsibility Act 2000* section 13(1); and
>
> (ii) made publicly available under section 9 of that Act;

This amendment standing in my name at 15/4 on the supplementary notice paper defines with specificity the *Government Mid-year Financial Projections Statement* that is referred to in the preceding elements of the clause so that it is apparent which document is being referred to.

Hon SUE ELLERY: The opposition is not going to oppose this amendment. It does give effect to the committee's report in which the committee said that there needed to be more specific definitions to address some

of the issues that Hon Sally Talbot raised. We will therefore not oppose the amendment because it takes a bad law and makes it slightly less bad, but the real argument will come when we oppose the clause.

Hon SALLY TALBOT: I make the point, which is not substantially different from the one just made by Hon Sue Ellery, that as a member of the Standing Committee on Legislation, bearing in mind this bill has been extensively debated in not only this place but also the other place, the point has been made over and again about the bill's poor drafting, particularly of this clause. As I said in my earlier contribution to the committee stage, one of the problems is that when terms are left wide open, it leaves open also the possibility of various parties to actions of appealing, and that ties up a lot of time. A point was made on several occasions by witnesses who appeared before the committee that, although decisions of the Industrial Relations Commission obviously are often not welcomed by both parties to a particular wage case, the commission is seen by both sides as being an honest broker. One of the concerns, I think it is probably fair to say of all the members of the legislation committee, was to make sure that nothing compromised that perception of the commission. Looking at what the government has done here, it seems to me to be the most extraordinary sleight of hand. I draw honourable members' attention to what the Acting Under Treasurer of the state said at a public hearing on Wednesday, 12 February 2014, when the committee, as can be seen from the transcript, had come to the end of all the questions we had to ask. The Acting Under Treasurer raised a point of his own volition, which reads as follows —

> … Chair, somewhat unusually, can I raise an issue with the bill?
>
> **The CHAIR**: Certainly.
>
> **Mr Barnes**: This only came about this morning whilst I was reading the bill closely. —

I will not use up the time allotted to me now to wonder why the Acting Under Treasurer was presumably reading the bill over his Weet-Bix before he came into the public hearing. To continue —

> I believe that there might have been a minor drafting oversight in relation to a couple of the provisions. The same issue appears twice in the bill. The first place it appears is in clause 4, which inserts section 26(2A)(b)(ii)—lines 18 to 21—into the IR act. This clause will require the Industrial Relations Commission to take account of —
>
> > the most recent Government Financial Projections Statement released under the *Government Financial Responsibility Act 2000* section 12(1);
>
> That reference to section 12(1) of the Government Financial Responsibility Act is explicitly to the annual budget that is brought down, generally in May each year. There is of course an updated government financial projection statement released in the midyear review, generally in December each year, and that is referenced in section 13(1) of the Government Financial Responsibility Act. My view is that this particular clause—this also appears later on in relation to the Salaries and Allowances Tribunal—should refer to not only section 12(1) of the Government Financial Responsibility Act, which is the budget time projections, but also section 13(1) of the Government Financial Responsibility Act, which is the updated midyear review projections. In the absence of that, if the commission is hearing a matter in January, February, March or April, then as it stands it would be required to look at the previous May budget projections when updated midyear review projections would have been released in December. I believe that is probably a drafting oversight, confirmed with the Treasurer's office that the Treasurer is happy for that amendment to be made, so I would recommend that to the committee.

As honourable members will have noticed, the committee did indeed take that on board and in the amendment that was defeated at an earlier stage of tonight's proceedings, the midyear financial review was included. That was the committee's recommendation. If I am reading this correctly, we have here a tweaking of the definition of government financial projections statement. Our new definition of that statement now includes the midyear financial review. The problem is that—Hon Ken Travers has already referred to this document—chapter 3 of budget paper No 3 is headed "Financial Projections and Fiscal Strategy". It just seems to me to be extraordinarily clumsy. I do not understand why we have to do it in this way. Having said that, I know that the Minister for Commerce will not be inclined to respond to me, at least not at any length, because he will say, as he said earlier tonight to Hon Sue Ellery, that there might have been other ways of doing this but this is the way that the government has decided to do it.

I come back to the fundamental point I am making about the sloppiness behind all this drafting. It seems to me that the committee's work is indeed being repaid in spades, because the government has at last accepted the fact that the bill needs to be amended to provide this certainty. There was nothing exceptional about the work that the committee did. We are all enormously talented members of Parliament of course, but, with respect to my colleagues on the committee, that work had already been done in the other place. The fact that the committee put

its name unanimously to the fact that sloppy drafting needed to be corrected finally made the government realise that it had to do something. However, what an extraordinarily convoluted way to fix the problem. Instead of just including a reference to the midyear review, the definition of "Government Financial Projections Statement" has now been changed. I suppose one of the reasons the government has gone for a piece of skeletal legislation is that the regulations relating to this bill will be constantly changing. We cannot include in a definition a major document that is referred to in its own section of the Government Financial Responsibility Act simply to broaden the definition of a term that was poorly defined in the original drafting of the bill. I cannot let this pass without placing on record the fact that it has been noted by members on this side of the house as a very devious and convoluted way of fixing the problem, all because the government wants to stand on its laurels and resist an open admission of the fact that the whole bill is a dog's breakfast and that what we are doing now is just cobbling together some peripheral fix-its.

Hon KEN TRAVERS: At page 39 of the most recent *Economic and Fiscal Outlook* released in August last year there is a summary of financial projections, which is the section that the minister is suggesting the commission should take into consideration as a minimum. The summary of financial statements on page 39 gives the expenses outcomes that the government expects aggregated up. There is also provision for the variations that have occurred. On page 42 there is the expenses impact of the fiscal action plan, which sees $3.894 billion being cut over the forward estimates. I assume someone at the commission would be required to look at this document and make sense of it. I would imagine that in the expenses section, when agreement is reached and the enterprise agreement is signed off by cabinet, the growth would be factored into that expense line on page 39 of $27.592 billion this year and $28 billion next year. A figure would be taken off that for redundancies that the government expects to get out of the *Fiscal Action Plan*. That would be incorporated into those variations that are highlighted a little later in the *Economic and Fiscal Outlook*. I guess the thing that intrigues me, though, is we are referring people to wages in this. Into the out years of the forward projections, as the existing agreements run out within the public sector and are due to be renegotiated, do those expense figures include provision for an increase in accordance with the wages policy or are those expense figures based on the last wage when the current agreement expires?

The DEPUTY CHAIR (Hon Simon O'Brien): Order! Members, we are considering amendment 15/4 to insert a definition of "Government Financial Projections Statement" at page 3, after line 26. I suggest to the Committee of the Whole House that the question is, as the question always is, that "The words proposed to be inserted be inserted." That is what we should be debating. In a recent vote, amendments were made to previous lines in the draft clause and now this is a debate about inserting this particular definition. I am wondering whether members are keen to get on with debating clause 4 as amended —

Hon Ken Travers: That is why I just asked a question on it.

The DEPUTY CHAIR: The question is that the words proposed to be inserted be inserted. That is the question that we should be addressing. I will allow this question now because we have heard from the member, but I think we need to get things in order, so I will limit the debate. If members want to debate the amended clause in due course, they can do that. Does the minister wish to seek the call?

Hon MICHAEL MISCHIN: Yes; only to say that they are what they are. Treasury prepares the budget papers. It has nothing to do with the legislation as such. Treasury will frame the budget papers and use the parameters that it has always used or that it feels meet them from time to time, and they will mean what they mean. I cannot comment any further on that. How these matters are dealt with is a matter for Treasury. What is being directed is to have regard to a particular document. The specificity of that document was part of the problem that the committee had. That has been clarified. The definition is either agreed or, if objection is taken to the definition, the clause, if it is passed, will stand without a definition and leave it at large, which I would have thought defeats the entire purpose of the committee drafting an amendment in the first place.

Hon KEN TRAVERS: The Minister for Commerce has actually summarised for me the problem with even trying to specify what we mean by the "Government Financial Projections Statement". Even if it is clear what we mean by them, I am not sure that the information contained in them is of any use. The Minister for Commerce said we should look at a document that he himself cannot give us an interpretation of tonight and says, "That's just what Treasury says." I am not sure how those figures would be calculated in the forward estimates. I would be fairly confident that the expenses in the forward estimates would include the salary increases that have been agreed to and signed off on. If a three-year EBA was signed just before the cut-off period last year, that money would be factored for the next two or three years in the forward estimates. I am not sure about this but I suspect that beyond that period, because of the way the government does its accounting, it would quite likely say that the salary levels that are in place at that time will continue because it does not know what the future decision will be. The point of referring anyone to look at this is that it does not help them; it does not inform them in any way. That is the point I make. The Minister for Commerce, the minister who would primarily be responsible for those

future increases, is not able to indicate whether the document that he is specifying as a good document for people to be referred to contains any useful information that could assist the Industrial Relations Commission.

Hon MICHAEL MISCHIN: I do not want to get into a debate about it because it is really not relevant to this. If there is an argument about whether the documents produced under the Government Financial Responsibility Act 2000 have any meaning and what they might mean, that is an argument in respect of that act. They are documents that are taken into account. They are documents that seem to have value to government and to the opposition and, indeed, to others who think that there is a purpose behind having a Government Financial Responsibility Act creating certain documents. It is an irrelevant argument. The point is that this is material that the commission is being directed to. The value of that material will ultimately be one for submissions by the parties and no doubt questioning on the part of the commission in due course if it has some concerns as to the significance to be placed on those. There is nothing unusual about that; it has been happening for years.

Hon KEN TRAVERS: That is an extraordinary statement; I hope the Minister for Commerce reads it in *Hansard* and reflects on it. The first point I make is that the documents he referred to have a use and a purpose. A shovel has a use and a purpose but if we try to use it to cut wood, it might work but it would be very difficult. We would be better off using an axe. By his own admission, the minister has said that we are not going to pass legislation that says a document should be referred to. Then he said that it is up to submissions to determine whether there is any use to that document. If that is the case, why would we not leave it for the submissions to put the relevant documents before the commission rather than the Parliament directing that they must give consideration to a document that, by the minister's own admission just then, may not be of any use to them?

Hon Michael Mischin: I didn't admit that at all. I said nothing about it not being relevant. I am saying that the relevance will be determined by the commission. You were concerned before that that the commission was having its discretion and its powers constrained. I am pointing out that the commission can add such weight to the material as it thinks fit but that does not seem to be satisfactory now.

Hon KEN TRAVERS: The point I am making is that the minister is referring them to look at a document. The minister cannot explain how it will be of use to them as we are passing the legislation. When we are passing legislation and we are including a provision that says they should be instructed to look at this document and give consideration to it, he should be able to give us some examples of how this document would then be useful for them in determining a wage outcome and reaching a conclusion, but he does not seem to be able to do that tonight.

Amendment put and passed.

Division

Clause, as amended, put and a division taken, the Deputy Chair (Hon Simon O'Brien) casting his vote with the ayes, with the following result —

Ayes (16)

Hon Martin Aldridge	Hon Paul Brown	Hon Nick Goiran	Hon Michael Mischin
Hon Ken Baston	Hon Jim Chown	Hon Dave Grills	Hon Helen Morton
Hon Liz Behjat	Hon Peter Collier	Hon Col Holt	Hon Simon O'Brien
Hon Jacqui Boydell	Hon Donna Faragher	Hon Mark Lewis	Hon Brian Ellis *(Teller)*

Noes (10)

Hon Alanna Clohesy	Hon Lynn MacLaren	Hon Sally Talbot	Hon Samantha Rowe *(Teller)*
Hon Kate Doust	Hon Rick Mazza	Hon Ken Travers	
Hon Sue Ellery	Hon Amber-Jade Sanderson	Hon Darren West	

Pairs

Hon Peter Katsambanis	Hon Stephen Dawson
Hon Alyssa Hayden	Hon Ljiljanna Ravlich
Hon Nigel Hallett	Hon Adele Farina
Hon Phil Edman	Hon Robin Chapple

Clause, as amended, thus passed.

Clause 5: Section 80E amended —

Hon KATE DOUST: Some of the matters that are canvassed in clause 5 probably have a more direct link to part 3 of the bill, which deals with the proposed amendments to the Public Sector Management Act. However, I have some questions about clause 5.

I am interested in the explanation in the explanatory memorandum of the deletion of section 80E(7) of the Industrial Relations Act. I noted when looking at the IR act that this amendment changes a couple of words at the beginning of that subsection and then basically inserts new provisions that would limit the jurisdiction of the

public sector arbitrator in the Industrial Relations Commission. As it says in the EM, the public sector arbitrator does not have the jurisdiction to inquire into or deal with any matter in respect of the decision made under the regulations referred to in sections 94 or 95A of the Public Sector Management Act. As I said, there are changes mooted in the later part of the bill. I will canvass this issue briefly, because we will deal with it in more detail later, but in looking at those sections I got a bit confused because the public sector arbitrator and the commission cannot deal with those issues under those provisions. However, regarding clause 15 of the bill, the explanatory memorandum states —

> The Industrial Commission will be able to determine whether the regulations have been fairly and properly applied up to the point of involuntary severance.

How will the Industrial Relations Commission be able to determine that if under clause 5 the public sector arbitrator in the Industrial Relations Commission cannot inquire into or deal with any matter made as a result of those regulations? I am trying to work this out. If the arbitrator cannot do that, how will the commission at that later point be able to make sure that the public servant has been redeployed or made registered—I forget the language—in a fair and equitable manner? That comes back to that very first discussion we had, I think, last night about section 26(1) of the Industrial Relations Act and the way the commission has to view matters. I am a bit confused about how that works. Can the minister explain to me exactly what under clause 5 the public sector arbitrator can and cannot do under those proposed changes to sections 94 and 95A of the Public Sector Management Act?

Hon MICHAEL MISCHIN: Part of the confusion may arise because the chamber is dealing with amendments that are logically consequential upon the jurisdictional set-up in the Public Sector Management Act which is the subject of further amendments in the bill. That will set up a jurisdiction in which these matters are dealt with by the general division of the Industrial Relations Commission. This amendment is confirming that the arbitrator does not have jurisdiction to deal with those matters. If one reads it assuming that the subsequent amendments are made dealing with the jurisdictional set-up, it is the Industrial Relations Commission that deals with these matters, not the arbitrator.

Hon KATE DOUST: Minister, what we are talking about in section 80E of the Industrial Relations Act is a public service arbitrator who is appointed by the Industrial Relations Commissioner. In fact, it could be one or more, and it could be a commissioner of the Industrial Relations Commission who acts in that capacity, as I see it, in section 80D, for a period not exceeding two years. Section 80D sets out who is the public service arbitrator in the industrial relations arena, which is being referred to in clause 5 of this bill. The way I read it is that their capacity to perform certain inquiries under clause 5 of this bill will be restricted in those matters that will be—maybe—amended at a later stage in this bill. I want to make sure that I have that right.

Hon MICHAEL MISCHIN: Clause 13 of the bill will amend existing section 94 of the Public Sector Management Act, which deals with regulations concerning redeployment and redundancy by inserting definitions of a registered employee, a registrable employee and so on. Also, clause 14 will insert proposed sections 95A and 95B, and clause 15 will replace existing section 95 and also insert proposed section 96A. For example, proposed section 95A deals with termination of employment of registered employees. Proposed section 95B deals with inconsistent provisions and proposed section 95 deals with the jurisdiction of the Industrial Relations Commission on matters that will be dealt with in section 94.

Hon Kate Doust: That is the link-up I referred to.

Hon MICHAEL MISCHIN: Those matters that are being dealt with in the Public Sector Management Act, and that will remain with the Industrial Relations Commission to be dealt with if there are disputes, will not be able to be dealt with by the arbitrator set up under the Industrial Relations Act. That extends the current exclusion that is present in section 80E(7) of the Industrial Relations Act, which already states —

> Notwithstanding subsections (1) and (6), an Arbitrator does not have jurisdiction to enquire into or deal with, or refer to the Commission in Court Session or the Full Bench, any matter in respect of which a procedure referred to in section 97(1)(a) of the *Public Sector Management Act 1994* is, or may be, prescribed under that Act.

All that is happening is that the government will extend that to also embrace the provisions being introduced that deal specifically with the scheme established under the bill at hand. It would probably be more explicable if we had dealt with those other provisions first so that members could see, if those were passed, how it would fit together. It simply extends that limitation of jurisdiction on the part of the arbitrator to matters that will specifically be within the jurisdiction of the Industrial Relations Commission set up pursuant to the provisions being introduced into the Public Sector Management Act.

Hon KATE DOUST: I appreciate what the minister has said and that that restriction already exists to deal with those types of matters. When we deal with clauses 13, 14 and 15, we will deal with some new definitions. If a

restriction is already in place in the Industrial Relations Act that would prevent the Public Service Arbitrator from dealing with those types of matters set out in the Public Sector Management Act, why is clause 5 necessary?

Hon MICHAEL MISCHIN: It is because the government is also introducing some new sections that are not referred to in section 80E(7) of the Industrial Relations Act as it currently stands. It is dealing only with an exclusion of those matters that are presently covered by section 97(1)(a) of the Public Sector Management Act, but we are introducing some further provisions vesting jurisdiction in the Industrial Relations Commission to deal with those and we are saying at the same time that because it is with the Industrial Relations Commission, the arbitrator will not deal with those. It reflects the current scheme and extends it to the new provisions that are being introduced.

Hon SALLY TALBOT: I have a question on the same point. It is not clear to me what the remaining status of section 97(1)(a), which is not being amended or deleted, is.

Hon MICHAEL MISCHIN: The restrictions on jurisdiction currently apply only to standards set by the Public Sector Commissioner under section 97 of the Public Sector Management Act. The new regime provides for a scheme that goes beyond simply the public sector standards.

Hon KATE DOUST: My next question is a fairly simple one. If the public sector arbitrator cannot deal with those matters, including this new issue around registrable employees, who would have the capacity to make an inquiry into that new area as defined in the Workforce Reform Bill 2013? I ask that because I went through the committee's report and I must say that although it was a very, very well written report, clause 5 seemed to get a miss in terms of inquiry by the committee. It seems that even when the committee refers at later stages in its report to those relevant changes to sections 94 and 95, it certainly does not link back to clause 5 in the WR bill. I am just wondering if that restriction on the arbitrator has been extended in clause 5, because there is a range of questions around this new definition set out in clause 14. If there were an issue that needed to be looked into on behalf of an employee in that situation, who would have the capacity to do that if it is no longer the Industrial Relations Commission?

Hon Michael Mischin: It is the Industrial Relations Commission. Under section 96A, the Industrial Relations Commission will have jurisdiction in respect of proposed section 95A matters.

The DEPUTY CHAIR (Hon Simon O'Brien): Minister, if you want to respond, perhaps I will formally give you the call.

Hon MICHAEL MISCHIN: My apologies. As I was saying, proposed section 96A sets up the jurisdiction for the Industrial Relations Commission in order to review, within the bounds prescribed, decisions made or purported to be made under regulations referred to in proposed section 95A of the Public Sector Management Act. It is not as though there will not be anyone who is able to deal with issues; there will be the Industrial Relations Commission.

Clause put and passed.

Clauses 6 to 8 put and passed.

Clause 9: Section 22A amended —

Hon SUE ELLERY: Part 3 of the Workforce Reform Bill makes changes to the Public Sector Management Act, and the primary purpose of those changes is to introduce provisions around involuntary redundancy.

Clause 9 seeks to amend section 22A of the Public Sector Management Act. Section 22A provides —

> (1) The Commissioner may issue written instructions concerning the following —

It lists a range of things, and clause 9 adds the following to the list —

> dealing with —
>
> (i) redeployment and redundancy of employees; and
>
> (ii) termination of employment;

When this legislation was first introduced, the Premier, or it may have been the former Treasurer, said that WA is the last jurisdiction to introduce these sorts of provisions. It is not clear to me whether that is the case, because when the committee looked at other jurisdictions, it looked only at Queensland and New South Wales. In any event, my question is: how many other jurisdictions have involuntary redundancies in their legislation? How many of those jurisdictions also have enterprise bargaining agreements or industrial agreements or policies in place that mean they do not utilise the powers that exist, if they exist at all, in any legislation, to deal with the people covered by those agreements?

Hon MICHAEL MISCHIN: Every jurisdiction has the power, although some as a matter of policy may choose not to exercise it.

Hon SUE ELLERY: The advice that was included in the submission from, I think, the Community and Public Sector Union–Civil Service Association of WA—I will stand corrected; it was certainly provided in one of the submissions—was that in a number of jurisdictions governments choose not to utilise those powers and rely on the provisions to which they have agreed with various unions through mechanisms of industrial agreements. I would have thought that advice on that should be available to the minister because when the agencies were preparing the material to give effect to the legislation, they surely would have looked at other jurisdictions and seen whether those jurisdictions were choosing to apply things they had agreed to in respect of redundancies in industrial agreements rather than applying their legislative framework. I find it hard to believe that that advice was not available to the minister.

Hon MICHAEL MISCHIN: As I indicated, on my advice, every jurisdiction except for Western Australia has the power to effect involuntary redundancies. I cannot tell the member whether as a matter of policy other jurisdictions utilise those provisions, but I can find out. The point is that if these provisions are introduced in Western Australia, nothing would prevent Western Australia as a matter of policy not using the provisions at some stage in the future.

Hon SUE ELLERY: To give effect to that policy we would have to change the legislation.

Hon Michael Mischin: No; simply do not apply it.

Hon SUE ELLERY: Has the minister contemplated that?

Hon Michael Mischin: No, because we want to apply it.

Hon SUE ELLERY: Exactly. I turn to one of the reasons the Premier has said that we need these provisions. He referred publicly to what he described as chronic poor performers in the public service. I turn to the existing provisions in the Public Sector Management Act and start at section 82A, "Disciplinary matters, dealing with".

Section 82A(3) states —

> Subject to subsection (4) —

Subsection (4) is just about a minister being bound to follow a direction —

> and section 89 —

Which I will get to in a minute —

> after dealing with a matter as a disciplinary matter under this Division —
>
> (a) if the employing authority finds that the employee has committed a section 94 breach of discipline, the employing authority must take disciplinary action by dismissing the employee; and

It continues. Section 89, "Dismissal of CEO for breach of discipline", sets out certain things, including that the chief executive officer can be dismissed. Section 82A provides for dealing with disciplinary matters, subject to the fact that the minister is bound and subject to the fact also that there is a different process, with ultimately the same outcome, whereby a chief executive officer can be dismissed, if the person has committed a breach under section 94, "Regulations concerning redeployment and redundancy", which I will go to now. It reads, in part —

> (1) The Governor may under section 108 make regulations prescribing arrangements for —
>
> (a) redeployment and retraining; and
>
> (b) redundancy,
>
> for employees who are surplus to the requirements of any department or organisation, or whose offices, posts or positions have been abolished, and specifying which parts of the Public Sector must comply with those regulations.
>
> (2) Without limiting the generality of subsection (1), regulations referred to in that subsection may provide for —
>
> (a) the situation in which the whole or any part of —
>
> (i) the undertaking of a department or organisation is, or is to be, sold or otherwise disposed of to; or
>
> (ii) the production or provision of goods or services or both by a department or organisation is, or is to be, replaced by the production or provision of goods or services or both by,

a person outside the Public Sector, and an employee of the department or organisation is offered a suitable office, post or position by that person; and

(b) an employee referred to in paragraph (a) who —

(i) refuses the offer of a suitable office, post or position, to be directed by his or her employing authority to accept that offer; or

(ii) hinders or obstructs the process by which an employee is selected for the making of an offer of a suitable office, post or position, to be directed by his or her employing authority to refrain from that hindrance or obstruction;

and

(c) the terms and conditions (including remuneration) which are to apply to an employee who accepts an offer referred to in paragraph (a); and

(d) the terms and conditions (including remuneration) which are to apply to an employee who is dismissed under section 82A(3)(a), 88(a) or 89(1).

I ask the minister: what advice does the minister have that between section 82A(3)(a) and section 94(2)(b) we cannot dismiss what the Premier describes as "chronic poor performers"?

Hon MICHAEL MISCHIN: I am not sure what the Premier had in mind when he made those comments, but I will tell the member the problem that is being dealt with. Section 82A deals with disciplinary matters. Disciplinary matters are of a very narrow compass and the term "disciplinary matter" is not, as I understand it, defined in the Public Sector Management Act. However, section 80, which precedes section 82A, also falls under division 3, "Disciplinary matters". Section 80 specifies what a breach of discipline is, and again, it has a very narrow compass. Section 80 reads —

An employee who —

(a) disobeys or disregards a lawful order; or —

There may be arguments as to what a "lawful order" is, or what "disobeys" or "disregards" mean, and whether it is wilful or not. Section 80 continues —

(b) contravenes —

(i) any provision of this Act applicable to that employee; or

(ii) any public sector standard or code of ethics;

or

(c) commits an act of misconduct; or

(d) is negligent or careless in the performance of his or her functions; or

(e) commits an act of victimisation within the meaning of section 15 of the *Public Interest Disclosure Act 2003*,

commits a breach of discipline.

That is a breach of discipline. The terms "disciplinary action" and "section 94 breach of discipline" are defined and there are definitions for offences. They fall under the ambit of division 3, which deals with disciplinary matters generally. This scheme is directed to how one disposes of officers from the public service whose positions are redundant and unnecessary, and how one disposes of officers who may not be able to be trained for another position to perform a function that is necessary to the public service and to provide necessary services to the public. At the moment there is no facility for that. The examples I commented on in the course of my second reading reply were of certain officers at a middle management or senior level whose jobs have been abolished. Their positions no longer exist, their services are no longer required and no placement can be found for them that they are capable of taking up that provides a useful service. They may not have committed a disciplinary breach but they are surplus to requirements in the public sector. Notwithstanding very extensive attempts to find them a place in which they can at a commensurate level provide a useful service, one has not been found or cannot be found. Therefore, at the end of that process we are left with either an officer who is drawing a salary or occupying a full-time equivalent position that is unnecessary to the public service. No other employer can afford to have someone of that character, nor should the public service. There is, therefore, a facility for moving them on, and there is a facility for doing so at the end of a long process when attempts are made to find them a home. However, if that is unsuccessful and they are surplus to requirements, there must be a means of getting rid of

them without setting them up, as was suggested, in a direction to go to what may be a job that is unsuitable and then treating them as if it were a disciplinary matter.

Hon SUE ELLERY: Forget about the chronic poor performer for a moment and let us talk about the person who is surplus to requirements because, for example, it has been decided that the function of the agency they are working at will no longer be carried out by government. Right now section 94 of the Public Sector Management Act states that regulations can be made about someone who is surplus to requirements in that situation and regulations can be made about someone who in that situation refuses the offer of a suitable office. "Suitable office" is not narrowed down to mean one that the employee just says no to. There is a general understanding of the phrase "suitable office", and I guess it could be tested in the relevant commission if that is where it needed to be tested. However, section 94 says that regulations can be made now about someone who is surplus to requirements and who refuses the offer to be directed to a suitable office or post. Regulations can also be made about the terms and conditions, including remuneration, that are to apply to a person who is dismissed. The section then refers back to sections 82A, 88 or 89. If we go back to section 80A of the Public Sector Management Act, which is where the minister just took us and is the part I have just read, it states in part —

> ***section 94 breach of discipline*** means a breach of discipline arising out of disobedience to, or disregard of, a lawful order referred to in section 94(4);

I refer to even before that, where it refers in section 79 to substandard performance. I assume that picks up the Premier's chronic poor performers. Although the minister says it may be unpalatable to direct someone to accept a position that they think is not suitable for them—I understand that is an unpalatable thing to do—it still has not been shown to me where the act prevents the government from doing it.

Hon MICHAEL MISCHIN: I am not sure I understand. Is the member suggesting that a means be contrived to use the existing legislation by providing a position that is not suitable to that person's rank, years and qualifications because none can be found, but as a next measure an offer be made to put them in a position that is not suitable because it does not meet their rank, years of experience and qualifications, and when they decline to take that position, it be used as a basis for a disciplinary matter? I would not have thought that is the way the Public Sector Commissioner would prefer to act with an employee.

Hon SUE ELLERY: I am not suggesting a contrivance at all. I am expressing that I find it incredible that in an entity the size of the Western Australian public sector with the broad range of functions it carries out, from running hospitals, to oversighting mining regulations, to running transport systems—all the functions the Western Australian government provides, such that it employs 140 000-odd people—it cannot find a position for someone so that any reasonable test by the Industrial Relations Commission or any other tribunal would find that the fact that person X does not want to do it or says it is not suitable does not mean that it is unsuitable. I find it absolutely incredible in an organisation as big and as vast as the Western Australian public sector that, despite all the provisions that exist right now in the Public Sector Management Act, the government cannot direct a person to accept a position that any reasonable test would say is suitable. The fact they do not like it does not make it unsuitable; it just means that they do not like it. I find it incredible that the government cannot do that. I do not think the evidence has been provided that the act itself is insufficient or deficient in any way. It seems to me that the approach to management is deficient, not the actual legislative framework.

I appreciate that the minister might not want to respond to me, but there are further matters that I think need to be raised. I go to the power that the Public Sector Commissioner has to make regulations to direct an agency to accept an employee, which is in section 94(3)(c)(ii). The commissioner has the power to make regulations to enable him to direct an agency to accept a redeployee. I am interested to check that such regulations do exist in the first instance and that they have in fact been made. I am interested in whether that is the case.

Hon MICHAEL MISCHIN: I think we are dealing with another part of the bill rather than clause 9, which deals with an amendment to section 22A.

Hon Sue Ellery: We can deal with it later if you want to.

Hon MICHAEL MISCHIN: I will explain something. The directions must be in accordance with the relevant regulations. They are the terms of proposed section 95A(4). What we are dealing with in the amendment to section 22A is expanding the power of the commissioner, who must of course make instructions that are consistent with the act and cannot be inconsistent with regulations, to deal with issues of redeployment, redundancy and the like. I would have thought that the member's objections to other parts of the bill are unrelated to the ability of the commissioner to issue written instructions covering those sorts of things as part of his functions.

Progress reported and leave granted to sit again, on motion by **Hon Michael Mischin (Minister for Commerce)**.