WORKFORCE REFORM BILL 2013

Second Reading

Resumed from 12 March.

HON KATE DOUST (South Metropolitan — Deputy Leader of the Opposition) [12.29 pm]: I probably will not go back and remind members of the matters I canvassed in my introductory remarks last night, but I am happy to continue.

Hon Simon O'Brien: One more time!

Hon KATE DOUST: I know Hon Simon O'Brien was listening intently to the words I had to say last night. Not too many others on his side may have been.

Hon Simon O'Brien: I was captured—I mean captivated!

Hon KATE DOUST: I know, but Hon Simon O'Brien paid attention and kept me on track, and I thank him very much for that.

We are back dealing with the Workforce Reform Bill 2013. I still have a fair way to go with my second reading contribution, so I encourage members to kick off their shoes and get comfortable because it will take a while!

Hon Alanna Clohesy: Not the men, please!

Hon KATE DOUST: No, that is right—not the men!

Last night I talked about the Western Australian Police Union and read part of the letter that it sent to Michelle Roberts, the member for Midland, outlining its concerns about the bill. The WA Police Union has been an active participant during this process of inquiry. Given that it believes its members are in a unique position compared with other public servants, it has couched its submission in a slightly different way. It has been very positive because it has offered some options for the house to consider in the form of amendments to the bill.

I turn to the submission provided by the Western Australian Police Union in January 2014. Page 9 refers to other working conditions unique to police officers. Members should keep in mind that some of the matters it canvasses are of a similar nature to those raised by the WA Prison Officers' Union about transfers from one place to another. The submission reads —

> There are several other industrial conditions that highlight the difference between police employment conditions and those of their public sector counterparts. Firstly, police officers are unable to strike in support of their bargaining claims.

Last night we had a discussion about other workers in the public sector who have taken, or take from time to time, industrial action as part of their bargaining process—or after the bargaining process, in some cases. The submission continues —

> Being absent a "legal and moral right to strike" poses a challenge should officers seek effective means of defending their occupational interests. In the Western Australian industrial climate, industrial agreement negotiations are traditionally complex and drawn out, due in part to the fact that WAPU members cannot strike in objection to the Government's expansive and aggressive agenda of efficiency and reform.

I note that there were a number of media articles in November and December last year about cutbacks to jobs in WA Police. Indeed, the numbers are quoted in an article in the *Mandurah Mail* of 28 November last year that quotes Minister Harvey as saying that the state government has approved severance payments for 196 officers on non-front-line or limited operational duties. The article also quotes her as saying that front-line services would not be affected and that the government would still meet its 2008 and 2013 election commitments to boost police numbers by 350 and 400 officers respectively. I do not know how it can hope to do that. How can the government achieve those targets when a couple of hundred staff are culled? Another thing I never understand when they talk about putting off staff is the training aspect, because we know how much it costs an employer per person for training. It can run into thousands of dollars. I imagine that training a police officer requires a significant investment on the part of the government to skill up an officer before he or she is put on front-line services. It just defies logic that areas such as health, education and police have been considered for voluntary redundancies or for involuntary redundancies into the future. The Police Union submission continues —

> Secondly, police officers are the only public sector group who, as a holder of the office of Constable, has a responsibility to uphold the law at all times. Unlike other public sector workers, police officers

> "Exercise special discretionary powers which they derive directly from the law itself and not indirectly by delegation from some other source, such as a minister for police. A police officer, therefore, is the servant of no-one, 'save of the law itself' and 'answerable to the law and to the law alone'"

The union's third key point in the submission reads —

> Members of WAPOL (including police officers, Aboriginal police liaison officers and police auxiliary officers) are not employed under the *Public Sector Management Act 1994* (as all other government employees are appointed) but are employed under the *Police Act 1892*.

I look forward to the day when we update that piece of legislation.

Hon Michael Mischin: We did during the last government; it has been implemented.

Hon KATE DOUST: Why is the bill still "1892"?

Hon Michael Mischin interjected.

Hon KATE DOUST: I am looking at the date, minister.

The submission continues —

> The notable difference about being employed under the *Police Act 1892* instead of the *Public Sector Management Act 1994* is that the public sector standards that apply to all public sector appointments are not applicable for police officers. Therefore the Commissioner's arbitrary, unilateral decisions about certain employment matters cannot be tested against a minimum standard for compliance or reasonableness. The standards against which police officers cannot be measured alongside other public sector employees include:
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> - employment matters such as recruitment, selection, secondment, transfer and temporary deployment;
> - performance management;
> - grievance resolution;
> - redeployment;
> - termination; and
> - discipline
>
> For example, a public sector employee is entitled to return to the same position upon return to work from parental leave (or a position that is commensurate with the position that was held prior to commencing parental leave *if that original position no longer exists*). That public sector employee has the assurance that they will be working in exactly the same workplace from which they departed on leave and that anyone who has occupied their position whilst on leave has done so temporarily.

That situation is almost identical to the private sector parental leave arrangements. The submission continues —

> A police officer who takes the same parental leave entitlement is only assured that they will be placed somewhere within the same region or portfolio. Not only is the officer placed in Temporary Holdings (Parental Leave Unit) whilst on leave but another officer may be appointed to their vacant position. It cannot be guaranteed that on the officer's return they will be placed at the same station, let alone within a similar proximity.

There is already a difference in the way that type of worker is treated from any other worker in the public sector. I am sure that Hon Sally Talbot will talk about this difference when she is given an opportunity to speak. It is quite a significant difference, and we can fully understand why the WA Police Union seeks to have its members treated in a different way and does not understand why they have been captured under this set of changes. The submission continues —

> Finally, unlike other public sector agencies who have been forced to consider 'capping' their employment growth due to the current economic climate, WAPOL continue to recruit police officers and police auxiliary officers.
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> …
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> WAPU believes that WAPOL and Government need to ensure that all employees, both newly recruited and current, are incentivised to remain with WAPOL.

This is the same type of issue with prison officers that we talked about. I imagine that the police have a similar issue in trying to attract, recruit and retain police officers in some of the more remote and regional parts of our

state. Part of that attraction is monetary. There is a real concern about a loss of those potential incentives to keep people on the job in those places.

The WA Police Union has made a series of recommendations to the legislation that it thinks will assist its members if the bill is to proceed. I do not know whether the government has had the time to look at its submission, but I thought I would put its recommendations on the record. The submission continues —

> Police officers' working conditions are unique and different to other public sector employees, including other emergency services employees.
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> They have legislated restricted access to the WAIRC, which means that there are no formal, independent avenues to appeal decisions that arise from an officer's tenure, transfer or promotion.
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> Police officers are specifically excluded from Workers Compensation unless they suffer an injury and die as a result of that injury. Police officers are covered by the OSH Act but, again, are singled out as being unable to exercise Section 26 of the OSH Act when performing dangerous work in a covert or dangerous operation.

For those members of the chamber who are not aware of what that provision in the Occupational Safety and Health Act provides for, it states that where a worker has a reasonable belief that if he or she were to continue working, it would be unsafe, then he or she can make the decision to stop work. I think there is a particular set of words used in that section of the act—namely, "probable", or something like that. It is a very important section in the Occupational Safety and Health Act. It is not one that is used on a regular basis, but it is there to ensure that if people are in a dangerous environment and nothing can be done to stop it, then they can actually stop performing the task or leave the area.

Police do not have that option. We know that every day they get up they do not know what they will be dealing with. They do not know whether they will be coming home in the same way that they went to work or whether or not they will have somebody run them over, beat them up, stab them, shoot them or assault them. It is probably one of the most unpredictable types of work that a person can engage in in WA, but they do not have those other protective mechanisms to assist them or to be able to walk away from a situation without any negative implications. I hope that at some point those changes are put in place to assist those police officers, albeit certainly not only in the case of workers' compensation, but also to essentially give them the right to utilise that particular part of the Occupational Safety and Health Act.

The two options presented by WA Police Union are —

> **Option One**
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> WAPU proposes that the Legislative Council make an amendment to Schedule 3 of the *Industrial Relations Act 1979* to exclude police officers from the Government's Wages Policy by inserting a new subsection after subsection 2.(3). WAPU proposes the following wording:
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> > "2.(4) Despite any other provision in this Act, the provisions of subsections 2(A), 2(B), 2(C), 2(D) and 2(E) in Section 26 shall not apply to Police Officers, Police Auxiliary Officers, Aboriginal Police Liaison Officers or Special Constables appointed under the *Police Act 1892"*.

It further states —

> Inserting this new subsection not only supports the Government's traditional approach to police employment regulation (applying exceptions to public sector standards with respect to police officers in order to accommodate the requirements of operational policing) but acknowledges that the dangerous and unique work undertaken by police officer should be considered beyond the scope of the Public Sector Wages Policy Statement.

Then under option two, it states that if the government is not prepared to accept that change, it proposes another option; that is —

> ... that the Legislative Council remove, in its entirety, subsection 2.(3) from Schedule 3 of the *Industrial Relations Act 1979*. By removing the legislated restricted access to the WAIRC, police officers would be afforded the same treatment as other public sector workers, including access to the independent third party arbiter for disputes arising from all facets of their employment.
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> If the Public Sector Wages Policy is to apply to all government employees, including police officers, then some concession must be made for the dangerous and unique work that police officers face on a daily basis. This 'concession' ought then take the form of full access to the WAIRC for police officers'

> employment matters, providing a consistent whole of government approach for *all* employment matters for *all* public sector workers.

I think the police union makes a fair point there. If we want to pick up police officers as part of the catch-all for this legislation and treat them as though they are on the same footing, then we should treat them as though they are on the same footing by enabling them to have the same sort of access to the Industrial Relations Commission. To make it a fair and balanced playing field for those people who elect to work for us as police officers, we should allow them to have the other issues around employment applied to them as well.

The police union's statement and its contribution during the hearing were very positive. It has also provided a summary of its view, or feedback, on the report that was tabled on Monday. As I have said, when I get to that report I will be happy to provide to the house the detail of its response pertaining to its issues contained in that report. I thought it was very, very good that the police union has actually taken the time, and in such a timely fashion, to address the issues canvassed in the report and certainly to make its recommendations.

The next union that made a submission to the committee was the United Firefighters Union of Australia, West Australian Branch. The letter is signed by Mr Kevin Jolly, who is its secretary. This union has just over 2 000 members in WA. We know that it is a very difficult—again, similar to prison officers and police—and very complicated workplace for these types of workers. That fact has been acknowledged in the past year with the legislation that went through here dealing with the workplace cancers that some workers have been unfortunate enough to contract. The firefighters union has made a couple of clear statements in its submission to the Standing Committee on Legislation about its concerns about this legislation. A letter dated 16 January 2014 states —

> ... the current Industrial Relations Act provides a reliable system including final decision making arbitration for our members and the employer.

It goes on to state —

> The Workforce Reform Bill 2013 seeks to constrain the Commission to Government Wages Policy and that is both unnecessary and a restraint on the practice and principles of "good faith bargaining".

Again, that is a concern echoed by some of those earlier submissions that I have already spoken about. It further states —

> Another aspect of the Bill that is disturbing is the proposal that the legislation could over ride industrial conditions in our Agreements like our established redundancy provisions.

Again, it reflects a fairly consistent line from the organisations representing the vast bulk of the public sector workers in our state. As I said last night, when a person sits down at the negotiating table and comes to an agreement and the deal is done, then the deal should be done. That should be the end of it. I do not know in any circumstances where once a person has signed off on an agreement, the person can go back and change their mind. That is what this government has done. I think it is very good that all these unions have made this point because this goes to the heart of the issue. It goes to the question of the integrity of this government. We know that this bill is a key example of the failure of integrity by this government. We know that the Premier, as I said last night, made a range of commitments to the Western Australian community and to public sector workers, both before and after the election, and he has deliberately broken those commitments. It is just another example of his poor understanding of the value of integrity.

As we go through the rest of these submissions—I know it is getting very difficult for members on the other side to stand up for their leader every time he breaks a promise because he is speaking on their behalf. Government members have to cope; they have to cop the fact that he is misleading the community. He is not telling the truth to the community. He is becoming a snake-oil salesman, going out and saying one thing and doing another thing.

Point of Order

Hon MICHAEL MISCHIN: I seem to recall a couple of days ago, Hon Kate Doust got bent out of shape because it was suggested that the opposition had been spreading misinformation. But she now seems to be able to say these things and it is suddenly not unparliamentary. Now she is either a hypocrite because she wants two different rules to apply or she stands bound by her own principles, which is that that is unparliamentary language and unparliamentary comments. I invite her to withdraw the remarks. So she is either a hypocrite or she stands by her principles and withdraws those remarks.

The DEPUTY PRESIDENT (Hon Adele Farina): Members, having considered the point of order I think the terminology of the sought used by Hon Kate Doust has been used in this place previously. It probably would be a nice practice if we did not use them, but as there is precedent for them, I do not think there is a point of order.

Debate Resumed

Hon Michael Mischin: I take it you're not withdrawing. You're a hypocrite then.

Hon KATE DOUST: I do not know what the member wants me actually to withdraw.

Hon Michael Mischin: I just mentioned it; it was not hard to understand.

Hon KATE DOUST: We know it is a fact.

Hon Michael Mischin: Do you withdraw it or not?

Hon KATE DOUST: We know that the Premier has made statements and then not delivered on them. We know the Premier went out to the public and said he will do certain things and then reneged on them. We know the Premier misled the community. I do not know why Hon Michael Mischin does not think that is fact—it is fact. We can provide a list of 51 different broken promises. Related to the issue we are dealing with, two very clear broken promises were cited publicly on a number of occasions—in fact, probably more than two. The Premier's words are on the public record saying, "No jobs will be lost. No public servant will lose their job", and within three months he comes out with something totally different. I do not know what the member's world is like, but I would say that in my world that is misleading and untruthful. That is deliberately not telling the truth.

Hon Michael Mischin: So you are not going to stand by your principles then; you are not going to withdraw your remark?

Hon KATE DOUST: I have principles. I am not too sure what remarks the Attorney General wants me to withdraw because I am telling the truth. We know as a fact that this Premier and this government makes statements and then reneges on them. What is not truthful about that? It is on the public record. The media has reported on it. The Premier takes a very laid-back attitude; he says, "So what! People don't care." I realise the Attorney General has a problem—he is in cabinet and this affects him. Every time the Premier goes out and does this, that colours the Attorney General's world. That is his problem. Leading up to the next election, that will become a bigger problem.

Point of Order

Hon MICHAEL MISCHIN: Hon Kate Doust seems to be talking to someone over the other side of the chamber. I would appreciate it if she sticks to the bill—that might save a bit of time—and addresses her comments to the Chair.

Hon Sue Ellery: Keep up that level of interjection, seriously, because we could be here for months if that is the extent you are going to!

The DEPUTY PRESIDENT (Hon Adele Farina): Members, there is no point of order.

Debate Resumed

Hon Sue Ellery: Watch where you're looking!

Hon Alanna Clohesy: You certainly don't want to look directly opposite, do you?

Hon KATE DOUST: I find that quite amazing. I suppose, Madam Deputy President, I should look at you. You are a fantastic person to look at, and I will endeavour to do so. It is force of habit. Having spent a long time working in lunch rooms speaking to people, I tend to move around and wave my arms. That is just how I do these things. I will not be constrained by the Attorney General if he has a problem with that. He will just have to deal with that. What I was leading up to say before I was so rudely interrupted is that if members listen quietly in this chamber—there are rare occasions when it is quiet—we start to hear a bit of a rattle. It will get louder and louder leading up to 2017. That rattle is the death rattle of this Liberal government! Every time the Premier misleads the Western Australian community, that death rattle will get louder and louder to the point where it will not matter how much members on the other side rant and rave at us because the Western Australian community will understand that and will send that lot out the door. They will not want to deal with a government that is devoid of integrity.

I will come back and talk about this bill because this bill is based on a lie. This bill is based on a commitment that the government gave and then reneged upon—and that is a lie. If the Attorney General has not woken up to that, that is his problem; not mine.

I come back to the transcript of evidence provided on 7 February by the Western Australian branch of the United Firefighters Union of Australia. It talked about the issues affecting its own membership. In response to a question from the committee, it was stated —

> Our professional personnel are highly specialised and their skills are unique and not readily transferrable to other government departments or agencies.

We have seen that happen with a range of unions that have presented evidence; that is, skills are not necessarily transferable because of the nature of the work performed by their membership area. I would imagine that that is definitely the case for firemen. Mind you, I think we have a former fireman here in the chamber. It is good that he was able to transfer those skills into this place. Volunteers are good.

Several members interjected.

Hon KATE DOUST: I am sure he will tell us later.

Several members interjected.

The DEPUTY PRESIDENT: Order, members! Hon Kate Doust has the call.

Hon KATE DOUST: The union goes on to say —

> … and any limits on our capacity to fairly bargain for improved wages and conditions will trigger other expensive problems for government. The movement of highly specialised and trained firefighting personnel to the private sector becomes an economic burden on the state because it is not cheap to train and develop professional firefighters and officers from the time they are recruits up to and including promotion through our rank structure.

That reinforces the comment I made earlier about police officers and prison officers. It is a significant investment from the state to attract, recruit and train those people. Why would they be moved out only to employ new people? When I worked in the retail sector we used to talk about the cost to the employer to train a register operator. As a ballpark figure, it cost about $1 500 a head to appropriately take them through the process and skill them up. For a retailer, that is a significant investment. That was a good 12 or 13 years ago, but I would imagine it is now even more. But that would pale into insignificance with the cost to properly train a prison officer, police officer or firefighter. The idea of making any one of them redundant or redeploying them, or involuntarily making them redundant, defies logic. The firefighters union has made an exceptionally valid point. The point that it becomes very expensive for the government to replace these people is entirely appropriate. The government said that this issue has arisen because of the structural problems it has with finances. We have to ask ourselves: why is the government going down this path? If it is looking to the future, it will quite possibly cost a lot more in the long term than it does now.

Evidence provided by Ms Lea Anderson, the assistant secretary of the United Firefighters Union, states —

> It is our view that in terms of our operational personnel and our members, that involuntary redundancies are an imperfect mechanism to deal with somebody who may be inefficient or unable to do their work. One of the other issues we face as a union and as an industry is that our people from time to time are injured and cannot work in operational fire defence so they have to come off the trucks. Those injuries can be physical as well as mental injuries because of the sorts of trauma they face. We have a very efficient system under the Fire Brigades Act and its regulations of a medical panel and access to earlier retirement, but it is our view that many of these people are able to be redeployed within the department but back into more administrative functions. We think that that is a far more humane approach.

I agree that it is far more humane to keep people employed and functional than it is to pay them off and terminate them because it does not suit the plan. In response to Hon Donna Faragher's question —

> … how do you see the current general rule of thumb for how officers are dealt with changing under this bill?

See, I quoted Hon Donna Faragher!

Hon Donna Faragher: Excellent.

Hon KATE DOUST: Ms Anderson replied —

> Our concern would be that people who have been successfully redeployed within the department may be cast out. We do not think that is fair or humane in the approach. Many of these people have taken huge risks to protect our communities and we think there is a better way of dealing with them … The more the government has spent on training someone into a highly specialised professional position, the less sense it makes to just say, "That's it; there is no opportunity for you; off you go." We think there is an obligation for government as a whole to consider that investment.

I must say that I totally agree with her on that count. Ms Anderson also said in response to Hon Donna Faragher —

> These are men and women who have some incredible skills and talents that are not transferable because our industry is as narrowly focused as it is.

The union also made some comments about the consumer price index in its submission to the committee. Ms Anderson said —

> … CPI may not be particularly relevant for personnel who are living outside the metropolitan area and are facing much higher costs of living. The district allowance has come a long way to address some of those issues, but one of the anomalies in that process, from our perspective, was the failure to recognise how expensive it is to live in Kalgoorlie. There was no change at the end of that process, but we struggle to attract and retain personnel in Kalgoorlie. The professional station that sits on the edge of Kalgoorlie and Boulder —

I thought it might have sat in the middle of Kalgoorlie–Boulder; it sits in the middle —

> not only services those cities, but it has a fire district that is larger and they go out of that district, particularly to deal with road crash and hazardous material incidents.

That was a very useful example. She goes on to say —

> We believe that those proposed changes that would limit the powers of the commission fly in the face of natural justice and that people who are being made redundant on an involuntary basis should have the right to be able to put their case.

That comes back to the lack of equity for this group of public sector workers who, although they might argue about the value of entitlements, will not be able to argue about the value of their employment.

Sitting suspended from 1.00 to 2.00 pm

Hon KATE DOUST: Before lunch I put on the record the views and concerns of the United Firefighters Union of Western Australia about this bill. I will share with the chamber some of the submission to the Standing Committee on Legislation made by the Health Services Union of Western Australia, which was signed off by the secretary, Dan Hill. The Health Services Union of Western Australia is a significant union that represents more than 20 000 workers in this state. It is a very diligent and active union on behalf of its membership. The union's concerns are expressed in this statement. It states —

> … the Bill's proposed changes to redundancy and redeployment arrangements are particularly worrying. They will amount to a reduction in employment rights for HSUWA members in the public sector at a time when the health budget is under pressure. This is particularly obnoxious as the Bill also reduces the independence of the WAIRC—thus leaving public sector workers with fewer rights than those in the private sector.
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> The Bill's privileging of the state government's *Public Sector Wages. Policy* for 2014 is also of deep concern. The HSUWA has commenced the bargaining period for a replacement enterprise agreement from 1 July 2014 and is committed to bargaining in good faith. However it is hard to accept that the state government feels the same way when it seeks to legislate itself the unilateral power to impose a cap of no more than 'projected CPI' on any pay rise. Writing policy into legislation in this way is a way of bypassing accountability for the ways in which government deals with its workforce.

The submission goes on to state —

> Pay rises for HSUWA members pegged at projected CPI of 2.5% per annum for the next three years (7.5%) will cause considerable workplace tension and disharmony in light of recent government agreement to a minimum of 11% for Doctors and the political fix prior to the last State Election, of 14% for Nurses.

I think this union is an excellent example of the time frame—the list of where various agreements are at for the parts of the public sector—and although some of those agreements may be coming to pass, this union, if it is not already sitting down with government representatives, will do so in the very near future to try to negotiate the next round of agreements for its members. Before the union even walks in the door, it knows that it is not a balanced playing field and that the government has already made decisions about redundancies and wages. It will be very difficult for the union, acting on behalf of its members, to get a decent outcome if it already knows that the figures that it can aim for are restricted. I do not know whether the government will provide leeway to these unions to start looking at other issues in which conditions can be improved, which may not have a substantial monetary advantage for them. I do not know whether there is the capacity to do that. I think the union has hit the nail on the head in terms of the difficulties it faces going into this agreement. How can the union enter the room prepared to act in good faith when the rug has already been pulled out from under it?

In evidence to the committee, Dan Hill related a number of comments from the union membership. The union had obviously canvassed its members about what was happening. His evidence states —

> We have asked our members a number of questions in relation to their current employment. This is just in the public sector.

The membership were asked —

> … have you observed cutbacks in funding or resources that have impacted on the quality of care provided?

This committee hearing was on 7 February 2014. Mr Hill's evidence continues —

> As of yesterday, 65.2 per cent of respondents have answered yes to that. Of the 266 that have answered yes, I think the count was about 190 that had provided input as to where they have seen those cutbacks and what impact that has been. I have not provided that information. The second question goes to security in employment and has asked the question —
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> > Compared to 12 months ago, how secure do you currently feel in your job?
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> Only six per cent said more secure; 50.2 per cent about the same—whether that means about the same level of insecurity, perhaps we should have framed the question a little clearer—but I think very clearly 43.7 per cent feel less secure now than they did 12 months ago. Again, this is in government health services. The third question again goes to the issue of security in employment. We have asked members to rate the importance to them of a number of conditions, and the rating average of security of employment is 1.13, which is very high. So, it is the highest of those particular conditions which we have asked for feedback on.
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> Finally, the question in relation to salary increases and expectations, and members have been informed of the government wages policy. They have been informed of wage increases that have been delivered for doctors and nurses within government health over the last 12 months, and have been provided with the second document, the one-pager which is a summary table of increases that are included in current enterprise agreements for doctors, nurses, support workers in health, enrolled nurses, an agreement we have with Serco for Fiona Stanley Hospital and the WA Prison Officers' Union current agreement. All of those agreements have delivered far in excess of the state government wages policy, which was implemented with effect from 1 November 2013. Particularly in health, our members work in multidisciplinary teams in a lot of situations.

Mr Hill's transcript of evidence goes on to state —

> With respect to the redeployment–redundancy issue, one aspect not borne out in our brief submission was the unequal impact of changes on rural and remote areas in country areas, and we do have and have had examples of members working in country hospitals where positions have become redundant, where their opportunities for redeployment–retraining within their particular locality are very remote, very low; and therefore if the changes that are proposed are implemented and government employers have the capacity to force redundancy to a far larger extent than they do now, then that may end up being the first choice or the primary choice for employers to deal with excess staff.

Hon Dave Grills asked Mr Hill —

> Have you a number for how many people it may have happened to in regional hospitals where we actually had that happen?

Mr Hill answered —

> … we have an example in Albany, examples in Carnarvon, and more recently with the contracting out of radiology services at Albany Hospital and Busselton Hospital, we had to manage the redeployment and/or redundancy of radiographers and clerical staff at those two hospitals. They are more current examples but I have not got exact numbers.

He goes on to say —

> One is too many in our view, particularly when it is impacting on an individual's lifestyle, their family life.

In answer to the question on consultation; no, this union, the Health Services Union of WA, was certainly not consulted about any aspect of this legislation. Given that this union is about to come to table to commence negotiations on behalf of its members, one would have thought that it might have been given a heads up about how things are going to change for its members.

In relation to the public sector wages policy in the Industrial Relations Act, Mr Hill's evidence states —

> Why should the government be in such a position that every other employer in the state is not in—that is, to have their bargaining policy enshrined in legislation? In our view it puts the employer, in this case the government, in an unfair bargaining position and it is one that we clearly do not support for that reason. We acknowledge the government has a wages policy; it has a whole range of budgetary considerations. The act already provides that the commission take into account the state of the WA economy, amongst other things, in terms of the commission deliberating or arbitrating on matters.

He went on to say —

> Second, we do not believe it is fair and equitable that the government wages policy, which is subject to change from time to time, should be enshrined in legislation. Further, we do not believe that the government should in effect nobble the independent arbitrator—umpire—by putting into legislation that their wages policy must be given due consideration in any decisions they make.

Hon Sally Talbot asked Mr Hill whether he was now negotiating in a different climate to the one in which he was negotiating three years ago. That is fairly obvious. We now know that the union is about to enter into an entirely new regime in terms of how it represents its members at the negotiating table, and I would imagine that its expectations have changed significantly with this proposed legislation. Mr Hill answered by saying —

> Most definitely. Health has already indicated that its wages policy is CPI at 2.5 per cent and what is the point in negotiating. That is an off-the-cuff comment, but one that is relatively serious.

That is the case. What is it going to do? The government has said, "That's it. This is the limit. You cannot ask for any more. This is all you are going to get and you have to cop the redundancy provisions as well." It makes it very difficult for this organisation to try to get the best deal possible for its membership. Mr Hill made other observations. He stated —

> … the Public Sector Commissioner is saying there are at the moment 70 to 80 long-term redeployees. Do we need legislative change to deal with 70 to 80 people? It shows a failure of management to manage, to be honest. If they are unable to manage the process within the existing legislation, I think they need to look at their management processes around redeployment, redundancy, retraining—the processes that are already available that put significant pressure, even under the current legislation, on individuals who are registered redeployees to accept suitable alternative employment.

Again, that sentiment has been echoed on a number of occasions by a range of other unions, and it is a sentiment that we certainly agree with when we ask why we are going down this path when we are of the view that the mechanisms to be able to achieve the outcomes already exist in current legislation.

The next union that provided a submission on this matter is the Australian Rail Tram and Bus Industry Union of Employees, a very important trade union in this state for all those train drivers and bus drivers. This submission has been provided by Mr Paul Robison, the branch secretary. He stated —

> 2. The Union's is opposed to the Bill given it seeks to:
>
> Limit the Western Australian Industrial Relations Commission's ("the Commission") exercise of jurisdiction when arbitrating wage claims.
>
> …
>
> 4. The Union submits that the Amendment limits the Commission's exercise of jurisdiction and discretion when arbitrating wage claims. This is as the Amendment seeks to impose the State Wages Policy into the Commission's consideration, thus overriding the Commission's proper purpose of effectively resolving industrial disputes.
>
> 5. Further it is submitted that the imposition of the State Wages Policy will restrict the Commission's ability to determine wage claims on their merits.
>
> … the Consumer Price Index Growth, is unreasonable as:
>
> a. It revokes the entitlement of employees to share in the growth of wealth in the overall economy, which they have assisted in creating;
>
> b. Denies employees their share in the productivity improvements they have assisted in creating; and
>
> c. It does not consider the full merits and industrial realities of a wage claim being brought before the Commission.

> 7. The Union submits that the purpose of the Bill is to implement a "one size fits all" approach when awarding wage increases through arbitration. This approach diminishes the ability of employees to obtain fair and equitable wage outcomes.

Well said. He went straight to the core issue.

I will move on to two of the key unions in the public sector, including United Voice, which has made substantial presentations to the committee. I understand that its submission also includes a lot of evidence from real people in the workplace—members in that union who will have to deal with the outcomes of this legislation in how they are able to manage their lifestyle on future limited wage rises. I will not read every one of these submissions that has been lodged by these working people. If members encourage me, I will.

Hon Peter Collier: Thank you for that. I really appreciate that.

Hon KATE DOUST: I encourage the minister to look at them because they are heartfelt and straight from the workplace. There are some very interesting comments in these submissions about how people have reacted to these changes. These are people who are predominantly already on low incomes, in situations in which they may not necessarily have permanency in their employment and who are battling to pay their bills on a daily basis. All power to them to come together and put their views on the public record! I certainly hope that the legislation committee was able to work its way through these submissions and take into account the views of these public sector workers when arriving at its recommendations. I sincerely hope that the government also looks at the views of that set of workers.

I will now share with members some of the evidence provided to the committee by the secretary of United Voice, Ms Carolyn Smith, who talked about the impact and the areas of concern that that union has for its members if this bill is passed. She said —

> … there are three major areas of concern. One is the effect it will have on workers, and the practical effects that it will have on workers in the public sector. Another is that the impact of these changes does not line up with what we have been told publicly is the aim of the bill. The third is the general issue of a government entering into a legally binding agreement—essentially, doing a deal with its workers—and then overriding that deal with legislation. We have pretty grave concerns about that.

If members recall, last night I read into *Hansard* the letter that Ms Smith wrote to the Premier late last year expressing her concerns about the fact that he had made a number of public commitments to workers in the public sector, expressing their concern about the fact that the negotiating process had now been changed and these people felt betrayed. She went on to state —

> … three of the key issues relate to the overriding of our enterprise bargaining agreement. One is wage maintenance for staff at a time of huge change in hospitals.
>
> …
>
> The other issue is forced redundancies.
>
> …
>
> The third issue is the government having reached agreement with over 30 000 workers across the public sector in education and health about a year ago. Essential to that agreement was the issues of job security, the things that I have mentioned to you—wage maintenance, no forced redundancy, not being forced to work for a contractor. They were absolutely essential to workers in hospitals and workers in schools coming to agreement with their employer, the state government. We now have a situation where, a year later, a law is being written to override that. The government is the only employer in Australia who is able to strike a legally binding three-year deal and then change the law to override it. I think that is a special ability that only the government has as an employer, but I think it really strikes also at the heart of the relationship—the employer relationship between a government and their workers.

Again, this union was not consulted at any stage prior to this bill being brought into this house. It has stated that in evidence. Ms Smith went on to state —

> …the act gives the employer the ability to offer suitable alternative employment.
>
> …
>
> We are being told again and again in health, where we are facing cuts of about 1 500 workers, and in education, where we have cuts of 350 FTE but that is probably 1 000 workers because people work part-time, that there will not even be voluntary redundancies offered and that they will manage those changes with turnover, with redeployment and with people on temporary contracts, which is a whole other issue so I will not go there; that is not what we are talking about today.

The union then went on to state —

> For that reason we did not feel it was necessary to go through the technical aspects of the bill, so we have not checked for those kinds of errors. We were making submissions more on the effect of the bill; and our view is that it is not a bill that should be pursued.

Ms Smith talks about the CPI, stating —

> The CPI is the most ridiculous measure of inflation for a person on a low wage. There is plenty of academic and social research that supports that. The CPI works if you are a middle to well-paid worker. The CPI includes a basket of goods that might include electronic goods. Many or most of our members are talking about food, housing, education and medical bills, which rise at a much higher rate than the CPI. So holding the government wages policy to the CPI will essentially take our members backwards.

The industry that I worked in is similar to the one that Hon Sue Ellery and Hon Amber-Jade Sanderson worked in. It has essentially lower-income workers. Whenever we went into bat for our members in wages negotiations, the main goal in that process was always achieving a flat rate of pay increase, because we knew that was the only way we could get a genuine benefit for our members and they would see real dollars in their pay packets. We knew that if we went for a CPI increase, those groups of workers would not see a real benefit in their pay packets. The union is absolutely correct in saying that the group of workers who would gain the benefit from that type of pay increase is doctors and others on higher incomes. It is certainly not health workers, orderlies, school cleaners and education assistants. Those workers have to meet basic life costs for rent, mortgage, food, utilities, clothing and education for their children. Those are the essential things that those workers need to focus on. Therefore, they need as many dollars as they can get. The idea of being restricted to a pay increase of 2.5 per cent will not reap a real benefit for people who are on a low income. It certainly will not provide real assistance to them as they see all their other costs go up in a much more significant way, and that means that the gap will become greater and the burden will become greater, and ultimately, as we have seen happen at other times, the burden will fall back on government to make up the difference in the form of subsidies or other assistance, and that will create other challenges for government.

The union goes on to say —

> I think from our point of view that the state commission, in a similar fashion to the state commission already considering the state wages policy, that there is already provision within the act for the state commission to consider considerations of that nature. It is required to take into account the state of the national and Western Australian economies, the capacity of the employee to bear costs associated with the decision and whether the decision it makes is likely to have an effect on the national and Western Australian economies. We think that the act already contains sufficient provision to ensure that the commission is not making decisions that are either not able to be met by government or that are going to potentially damage the economies moving into the future, which presumably is also why you would be seeking for the commission to consider fiscal policy and the current economic forecasts.

The organisations that use the commission on a daily basis and that have a detailed understanding of the Industrial Relations Act 1979 know that the commission already had the power to take into account capacity to pay. Therefore, no-one can understand why this additional burden will be placed on the commission with regard to public sector workers, when the commission already has the capacity to do that. It will be interesting to hear the minister at some point explain to this chamber why the government has moved down the path of establishing this new provision just for a group of public sector workers.

The union goes on to say, in relation to involuntary severance —

> Effectively, this aspect of the bill is limiting the rights of appeal of public sector workers below those rights which are available to workers more broadly. I think that is particularly troubling for us because the way in which this bill has been presented by the government is that they are simply trying to do something that every other employer is able to do, when in fact the terms of this bill mean that they would be able to go further than any other employer in either the state or federal systems, which is to preclude an employee from challenging the basis of their redundancy; whether it is a genuine redundancy or not.

That is a very important point. It is often the case that issues around redundancy are outside the control of employees. Employees do not have control over a government cutting funding to a department or agency. One of the other unions talked about that as well in its submission. That puts individual employees in the difficult position that they cannot seek the appropriate redress if they are made redundant on an involuntary basis.

The submission from United Voice, a significant union in Western Australian workplaces, is very substantial. United Voice also provided an additional submission about this legislation, but I will leave that for one of my colleagues to pursue.

The committee also received a submission from Pat Bryne from the State School Teachers' Union of WA. The submission states —

> At the outset, the SSTUWA adopts the submission made by UnionsWA to the Standing Committee.

As we know, that is an excellent and very detailed submission. It continues —

> In addition to the comments made in that submission, there are concerns specific to public school teachers and lecturers which we would like to raise.
>
> …
>
> Our specific concerns go to the change to the definition of redundancy which now allows for EITHER a position OR a person to be declared surplus, whereas the previous requirement was for both these factors to be present before a redundancy could be offered …
>
> … The recent dismantling of the teacher transfer system, coupled with the proposed changes to redundancy provisions will mean that teachers who are deemed surplus to requirements will have their employment terminated after 52 weeks, rather than be transferred to another place of work. This is further exacerbated by Department of Education policy which allows a large number of schools within the system (IPS) to refuse to accept redeployees. This will have a significant impact on teachers generally and especially in country locations, where the options for redeployment are limited to begin with. Indeed, for secondary subject teachers, the options are even more restricted.

I expect that my colleagues who have greater involvement in the education area and in regional areas will speak at length about the issues for these workers, who form a very important part of our public sector. I will not go through the transcript for that union, because its comments and concerns are similar to others that I have raised.

I will refer now to the submission from Mr Wayne Wood of the Australian Services Union, which was provided to the committee on 17 January. The union also gave evidence to the committee on 7 February. Mr Wood said —

> ASU Members are deeply concerned that The Workforce Reform Bill (WR Bill) 2013 is seeking to undermine employment rights of public sector workers, resulting in those workers having fewer unfair dismissal and collective bargaining rights than private sector workers. The WR Bill will also reduce the independence of the WA Industrial Relations Commission (WAIRC).
>
> In addition it is noted the current state government Public Sector Wages Policy for 2014 states at its point 3 that:
>
> *The Government of Western Australia requires that increases in wages and associated conditions for all industrial agreements be capped at the projected growth in the Perth Consumer Price Index, as published from time to time by the Department of Treasury.*
>
> *Perth CPI growth will be 2.5 per cent in 2013-14, and each year thereafter, according to the 2013-14 Government Mid-year Financial Projections Statement issued by the WA Treasury.*
>
> This position is rejected by ASU Members given the rapidly increasing costs of living in WA, in particular the enormous costs of essential public services (electricity, gas and water), and is seen as part of a general attack on the public sector that includes privatisation, cut backs and under-funding threatening our public hospitals, schools, and other services
>
> ASU and its Members support UnionsWA's submission on the Workforce Reform Bill 2013 in its entirety and the position set forth in it that 'such retrograde changes, if successfully instituted in the public sector, will add to the pressure by employer groups and conservative governments to erode the job security of all Western Australians.'

I therefore congratulate the Australian Services Union on those statements. I think public servants are being used as the canary in the mine shaft to test a broader plan by this government for future erosion of the conditions of other workers. We have seen it happen in the past under former Liberal governments with the second and third waves of industrial relations changes under former Minister Kierath. I would not be too surprised if in the future this government seeks to make changes that impact in a negative way on workers in the private sector as well. We have already heard that ongoing discussion about whether penalty rates should be cut back, which is of significant concern to low-income workers in the private sector.

This union provided evidence that it also was not consulted in any way, shape or form about this bill. The union has a diverse range of members across the public sector spectrum in local government and railways and in administrative roles throughout health and education, energy utilities and a range of other workplaces. It has a quite diverse range of employment, and I imagine wage structure as well. The union used the example of local government in its evidence to the committee, and stated —

> In fact, as the local government union, WALGA has put on the public record CPI is not adequate in terms of being where wages should sit in terms of increases. It is just a basket of goods and therefore we do not support CPI wage increases. In fact, in other industries that we cover, we are averaging anywhere between 3.75 up to five per cent, especially in local government. We see that as a benchmark for us.

The union identified a significant issue. We know that there are issues in attracting people to work in local government. Mind you, there might not be as many issues now that this government is about to axe a lot of local governments, as there is a concern about which enterprise bargaining agreements would apply to specific local governments if they are merged with or collapsed into one another. The question the union put back to the committee was —

> … how do we bargain in good faith if there is that cap in place?

That is an excellent question, the answer to which I hope the minister will be able to provide. How do these organisations go into the negotiating room in future and sit at the table and bargain in good faith if the outcome is already predicted? How do they do that? How do they go into the room and try to get the best for their members if they already know the outcome? The chair of the committee asked whether the union saw a need for a right of appeal, to which the union said, "Absolutely." The union was asked —

> Do you have any further comments about proposals to require the SAT to consider the financial position and fiscal strategy of the state?

The union said that although that was probably covered in the UnionsWA submission —

> What I would say is that workers should not be penalised because the state government has not handled the budget right.

The union is absolutely on the money. As I said earlier, the first line of the second reading speech makes reference to the fact that the government needs to restructure its financial arrangements. We all know what that is code for. We know that this government has consistently mangled the handling of its fiscal responsibilities. It has handled them in an appalling manner and as a result our debt level is ever increasing and the members of our community are finding it harder and harder to make ends meet and have a decent standard of living. As a short-term, very predictable, old-fashioned employer method, the government therefore says, "Let's try to fix this," and introduces this legislation, which is just about cutting back jobs and getting rid of people whom it does not want to deal with.

I believe there is enough evidence in all those union submissions and transcripts to show that the unions have broken down and articulated clearly their various concerns about the impact of this legislation on their members. They have indicated how difficult it will be in the future to negotiate with the government, which has already set the terms and left no capacity for variation of the terms. They have raised their concerns about the imposition placed on the Western Australian Industrial Relations Commission to take into account the state's capacity to pay and its fiscal situation. They have also raised their concerns about the definition of employees as registered or registrable and their lack of ability in the future to seek redress through the commission for an involuntary redundancy, as opposed to redress for the terms of an involuntary redundancy. What we will see happen with this particular legislation is an uneven playing field. The concept of industrial relations is all about dealing with people. It is about building relationships with people. It is about having opportunities to come together and work out the best set of arrangements for both employers and employees.

These unions that I have been talking about over the last day have at heart the best interests of their members. They want the government to be successful. They want the government to have a good return, because they want their members to see that return flow back into their pay packets so that they can have a good standard of living and opportunities in the future. They also want to see the benefit of our boom flow back. That will not happen with this legislation.

The quotes I read out from those unions give the flavour of concern of the organisations that represent the vast bulk of public servants in this state. It was seen from those documents that the public service is not generic. Public servants do not all have the same job requirements or skill sets. They are all quite diverse and specialised. The way people will be moved around may cause issues, and the impact of that on each of those subsets of the public sector is also of concern.

I have taken a bit of time to get to this point. A lot of evidence was provided to the committee by various government departments, which raised some interesting questions. In evidence provided by the Department of Commerce, the Department of Treasury, the Public Sector Commissioner and the Department of the Premier and Cabinet, the committee raises a number of interesting questions about how certain aspects of the public sector came into being. The transcript of evidence from the Department of Commerce is very interesting to read. The Department of Commerce, with, I expect, the Minister for Commerce, is usually the body that is fairly heavily engaged in enterprise bargaining processes with the industrial unions that represent public sector workers. I hope the minister has a fairly high level of engagement and expertise in this area. I would have thought, given that that department usually has sign-off on these agreements, the department would have been knee-deep in the drafting process and in consultation on this legislation, but that does not appear to be the case. That is very interesting because we then start to wonder who was involved and where the whole concept for this legislation came from. We know that prior to March last year the Premier certainly was not considering it. He was telling people that it was not going to happen.

On Wednesday, 5 February the Department of Commerce provided evidence to the committee. The department was represented by Mr Brian Bradley, the director general, and Ms Sandra Newby. The committee put a series of questions to both those people. I will quote from some of the transcript. Mr Bradley started by making a brief, but very important, statement. He said —

> … Madam Chair. I think it is important to acknowledge and understand that the Department of Commerce did not have carriage of the development of this legislation. The 2013–14 budget fact sheets identified and outlined the public sector workforce reforms and the Department of Commerce worked with Treasury on the development of a new wages policy applicable to part of those reforms and the Department of Commerce then provided industrial advice when requested in the development of this bill.

The chair asked —

> Did the department provide any legal advice to government about including the state public sector wages policy, references to the financial position and fiscal strategy of this state and the financial position of the relevant agency in the bill?

Mr Bradley replied, "No." Then the chair asked —

> Did you advise government of the potential for the new statutory relevant considerations to become the subject of Supreme Court litigation?

Ms Newby said, "No." We have to ask where the government was getting its advice from on these matters.

Then there is the issue around transitional arrangements. Ms Newby said that the Department of Commerce did suggest that perhaps there needed to be transitional provisions for prospective arrangements. So rather than saying, "As of this date, November 2013, the no redundancy provisions will be removed and the government will have the capacity to make involuntary redundancies", the Department of Commerce is on record as saying that it had made the suggestion that there should be transitional arrangements so that there would not be a sudden cut-off and people could be eased into it. That does exist for some arrangements, but that eminently sensible suggestion was obviously rejected by government. Ms Newby went on to say —

> You have to have cause with dismissal, while involuntary severance has nothing to do with your actions.

This comes back to that earlier point I made. We all know that if somebody conducts themselves in their workplace in particular ways, there are criteria that can lead to summary dismissal, be it misconduct, abandonment of employment or abusing management—there is a whole range. They are just a couple of examples. It may be ongoing lateness to work—a range of things come to mind. Those things can be within the control of the individual worker—that is, how they manage their own behaviour and how they engage with their employer to resolve those issues. Most workplaces have some sort of dispute management process to deal with that. But in this case with involuntary redundancy, the worker has no say in it. Someone could just be the wrong person in the wrong place at the wrong time. It might be something outside their control, such as funding being pulled for their position, the department being shut down, the job being axed or a decision being made that that task is not needed anymore. They might get paid out, but they have no right of reply, no recall and no opportunity to argue the case as to why they should be kept in a job. That is the unfairness of it. There is a real lack of insight into how to manage these processes better. It comes back to the comments made in these documents by, I think, the Australian Services Union, that it is a real indication that this government does not know how to manage its people. Those are basic employment practices. This is like a shortcut; if they cannot fix the problem, move them out. It smacks of unfairness and imbalance. It is interesting. I am sure that committee

members will make further comments on these issues. The Department of Commerce said that it was not consulted on certain things and that it did make recommendations about transitional arrangements.

I am just going to look at what was said by the Department of Treasury, because there were also some very interesting comments made. Mr Barnes, the Deputy Under Treasurer, provided evidence on Wednesday, 12 February. He was also asked a similar question about the Western Australian Industrial Relations Commission and the issue around involuntary redundancies. The question was —

> Can you provide us with the document that first started this policy development?

The Department of Commerce had already said that there had been a discussion with Treasury. Treasury was asked whether it had the document that kicked off the whole process. Mr Barnes replied —

> I am afraid I cannot. Treasury was not involved in that particular aspect of the bill or that particular aspect of the policy development.

That goes to the very heart of who came up with the idea and where it came from. There must be a document floating around somewhere; there must be something in writing that brought the whole thing on. I do not know whether this whole thing bubbled along with one of Premier Barnett's famous thought bubbles. We all know that he has these grand ideas without a lot of detail that people are then expected to act on. I do not know whether that is where it evolved from, but it is fairly evident from the transcript of this hearing with Mr Barnes that a lot of his responses were, "No." Two key agencies are involved in these sorts of processes for wage negotiations. I imagine that Treasury keeps a bit of a hawkish eye on how these matters proceed, but we really have to ask where this idea popped up from, how it was managed and who had responsibility for bringing it all together. I will leave that to some of my colleagues to flesh out.

As we go through the other transcripts with the Public Sector Commission and the Department of the Premier and Cabinet and also some evidence from Maria Saraceni, who is a barrister who I understand was brought in to give some advice to the committee on certain issues, we find that there was a lot of discussion about other aspects of the bill that we probably have not canvassed as broadly that deal with issues around the commissioner's instructions—how they occur, their management and the fact that the Parliament will not have an oversight opportunity for those. That is an issue I might touch on in a bit more detail when we work through the committee stage, because there is a lot of meat to deal with on that.

A substantial amount of work has gone into this legislation in the inquiry process. From this report we can see that the committee took on board a number of the comments made in the submissions. I will go through some relevant parts of this very good report from the Standing Committee on Legislation. This bill was referred to the legislation committee on 11 December, which I think was during our last sitting week last year. The committee had the capacity, on this occasion, to inquire into the policy behind the bill, which is very important. The first page of the committee report quotes Hon Nick Goiran, who actually moved the referral. He raised two issues in his referral, which are quoted in this report. First —

> *Western Australia is apparently the last jurisdiction in this nation to introduce this mechanism of involuntary severance as a measure of last resort. It seems to me that if that is indeed the case, the chamber would benefit from knowing what the experience has been in those other states and to what extent there have been any difficulties*;

And second —

> *… it strikes me as odd that there has been a suggestion that the committee would be consulted, because my understanding of the workings of that committee is that it works in a necessarily reactive fashion rather than participating in some consultative fashion in the drafting of the regulations.*

The report goes on to talk about the number of hearings that were held, submissions received and stakeholders contacted. There was a very broad range of submissions.

I know that we in this chamber have, in recent times, had a number of opportunities to refer bills to committees and we have had some interesting debate in this place about the value of inquiry into bills and issues. We have had some excellent pieces of work come back into this chamber that have helped to better educate us about the detail of bills or matters of importance to our communities. It is very useful to have the capacity for committees that are able to work together. This twenty-second report of the Standing Committee on Legislation is an excellent example of a committee made up of a diverse range of members across the political spectrum that is able to work together and deliver a report with some unanimous outcomes. It is not always the case, but with an issue like this, it is quite significant. One would expect that given those different views, it may not have been so easy to get to that point.

In its report the committee refers to the value and purpose of a committee inquiry. At paragraph 1.10 it states —

> The Committee notes that scrutiny of Bills should be viewed as a quality-assurance process, as much as being a core function of the machinery of a sovereign Parliament. Despite the tensions that must exist in a healthy democracy between the Legislature and the Executive, at the end of the day, if legislation is passed by the Parliament, it needs to be clear; workable; as free as possible of unintended consequences; and, not result in unreasonable administrative burdens being created. The Committee notes that this is actually in the interests of all parties. This is quite apart from the basic tenet of democracy, namely; that the people who are bound by laws that are made, have a right to participate in how those laws are made.

That is an excellent statement from this committee and I am surprised we have not seen that set of words used before in a report. It hits the nail on the head and I hope that in the future, whenever a referral motion is before this house, that part of the report is quoted. If we ever get back to the local government bill and the referral, I look forward to referring back to this part of the report and the value and importance of the reasons to refer matters to a parliamentary committee.

The committee report has set the scene with that introduction. It goes on —

> The Committee notes that guidelines provided by the Public Sector Commission attempt to clarify the practical issues faced by public sector witnesses before Parliamentary Committees. The Committee also notes that the Legislative Council has provided its own advice to such witnesses. An important point of difference between these documents relates to claims of public interest immunity in response to Committee requests for information. At item 5.7 of the Public Sector Commission Circular, it makes it clear that such claims can only be made with the express consent of the relevant Minister.

The report then provides the Legislative Council guidelines. Obviously, there was an issue or a concern at certain points of inquiry about the type of information that was being provided, or perhaps the constraints public servants may have felt when giving information. I know that the committee made quite a detailed, unanimous decision to amend the bill to try to resolve that matter. They have asked for some feedback on that particular issue.

I missed the first couple of pages so I may just go back and review them.

Hon Michael Mischin: They are not the ones that I pulled out are they?

Hon KATE DOUST: I hope you did not pull anything out of this report, minister. You are not supposed to see it before it is tabled. Remember that there is that little issue around privilege. If you want to confess, that is your business, but if you have touched my papers that is another issue. If you want to try it on, you do not worry me. I have dealt with bigger bullies than you, minister.

Getting back to the beginning of this executive summary, the committee refers to the evidence it received. It also states how the committee identified a range of issues in the drafting of part 2 of the bill. We will go through those in more detail. It states that there are both unanimous amendments and a range of minority amendments proposed. I must say, having looked at them, that they make absolutely good sense and I look forward to seeing how that is managed during the committee stage—when we eventually get to it. Paragraph 8 on the second page of the executive summary states —

> The Committee notes rights of appeal by affected public sector employees will be limited in the case of them being involuntarily terminated. This aspect of the Bill generated a significant amount of adverse comment from public sector employer representative organisations appearing before the Committee.

That has been very strongly reinforced through each of the presentations provided by the representative organisations.

The report goes on —

> A minority of the Committee has recommended that the clause providing for Part 6 of the PSM Act to extend to ‘an employee in a category prescribed by the regulations’ be deleted from the Bill. In the view of a minority of the Committee the potential for this provision to have very broad application in practice is not precluded by the text of the Bill. All the examples provided to the Committee appeared to a minority of the Committee to be adequately addressed by the categories identified at proposed new s94(1A)(a) and (b), together with other existing provisions under the PSM Act.

That is an issue that, really, we have not even had a discussion around yet. Quite frankly, a lot of these matters in the detail of the bill will be left until we get to Committee of the Whole House because there are a lot of things to be teased out about the language used in the bill.

Hon Simon O’Brien: When do you think we will get to committee?

Hon KATE DOUST: I do not know.

Hon Simon O'Brien: I am not speaking against the concept of infinity, but it is just that the term finishes on 23 May 2017 and I do not want your good speech to be interrupted by dissolution.

Hon KATE DOUST: Thank you for your assistance, Hon Simon O'Brien. The committee report then refers to evidence provided by the Department of Commerce. At paragraph 11, it states —

> … the Department of Commerce suggested, during the drafting of the Bill that transitional arrangements were needed in relation to altering existing industrial instruments, agreements and contracts. The Bill does not address this question. The Committee has requested that the Minister advise the Legislative Council on the Government's position relating to this issue.

That is something that we do need to hear about and I look forward to hearing that response before we go into the committee stage because that may very well influence the tone and the method of questions that we raise about the management of this issue. The report then refers to the absence of traditional provisions, which we have touched upon. A minority of the committee sees it as being —

> … potentially a breach of the common law principles relating to the alteration of employment conditions of public sector employees. This minority of the Committee recommends the Bill be amended to include transitional arrangements relating to altering existing industrial instruments, agreements and contracts.

The report then refers to the commissioner's instructions as well as section 95B(2)(a) of the bill, which is in the nature of a Henry VIII clause. There is a fairly extensive discussion about that in the report. The committee also recommends that a review of part 6 of the Public Sector Management Act occur at least every four years. The committee covered a lot of ground and made some very sensible comments and suggestions.

I now turn to the other issues in the twenty-second report of the Standing Committee on Legislation. I said earlier when I began my speech that there are four parts to this bill dealing with amendments to three other pieces of legislation, so on the surface of it, it is not onerous. However, when it is broken down it is actually quite complicated and has some interesting outcomes. The Standing Committee on Legislation made some very interesting comments at page 8 of its twenty-second report. I am sure the minister has read this. The committee refers to the skeletal nature of the bill. I want to read through this part of the report because the committee has done a very interesting piece of work. The house has discussed this matter and the minister has raised it himself from time to time. Point 5.1 states —

> Legislation can be described as '*skeletal*' where it covers major policy matters and principles in the barest terms, and leaves detailed, substantive matters, to be set out in regulations. These regulations are typically made by the Executive government, sometime after the legislation has been passed by the Parliament. Legislation that is skeletal in nature interferes with the generally accepted fundamental legislative principle that Parliament is the principal legislative body in the State; and, adversely impacts on the ability of Parliament to scrutinise Executive government. This has been documented in numerous publications and reports

The report goes on to state —

> The main issues that have been identified with skeletal legislation, are as follows:
>
> a) Regulations '*fill in the detail*' of the legislative framework, rather than having such detail clearly articulated in primary legislation.
>
> b) The scant detail set out in primary legislation gives Parliament inadequate information about what the regulations will eventually contain, thereby undermining the scrutiny function of the Parliament.
>
> c) Members of Parliament, as representatives of the people of Western Australia, are denied the ability to clarify, contest, challenge and defend the policy behind relevant legislation. This has an incalculable effect in diminishing Parliamentary sovereignty within the system of government.
>
> d) The empowering provisions contained within skeletal legislation can be so widely drafted, as to authorise regulations that will rarely, if ever, be capable of being characterised as '*beyond power*'. This can have the practical effect of negating any effective post-legislative scrutiny by the Joint Standing Committee on Delegated Legislation.[19]
>
> e) Regulations are usually only subject to parliamentary scrutiny after they have come into force. As such, the more substantive detail regulations contain, the greater potential for them to impact the rights of citizens, both before such legislative instruments have been scrutinised by

> Parliament, and without the policy behind such impacts being tested by the democratic representatives of the people.
>
> f) An increased incidence of '*Henry VIII*' clauses, authorising regulations that override the provisions of Acts and other primary legislation.

It then goes on at paragraph 5.3 —

> Arguments raised in support of skeletal legislation include:
>
> a) there being a total flexibility to cater for changing circumstances;
>
> b) avoiding parliamentary overload, given the sheer volume of legislation parliaments are asked to pass; and
>
> c) dealing with complex or novel subject matters which are perceived to be beyond the capacity of parliaments to deal with.

I am not sure what they are. The committee goes on at paragraph 5.4 —

> As will be discussed in this Report, the Committee is of the view that there are a number of features of this Bill that qualifies it as skeletal.

It was important to make that point because there has been a lot of discussion, more so in the evidence provided by the Public Sector Commission, the Department of the Premier and Cabinet and the Department of Commerce about regulations, and some in the evidence provided by unions. I know from the briefings that we have had that the regulations have not been written. We also know from having read through the transcripts that this has been a long-term thing. This whole process goes back beyond the public sector reform document of 2009 that I referred to. There has been some discussion on how those changes have been made, but the committee is absolutely right. This four-part bill does not provide a lot of detail about how it will operate on a day-to-day basis, but we are being told, "The regulations have been drafted". We do not know when that is going to happen. We do not know the detail. We all know the problems. We have seen this happen before. The committee is absolutely spot-on. By the time the regulations come in here, we would have moved on and there probably would not be the opportunity to go through and scrutinise those regulations in any detail.

There is also the complication of the empowerment of the Public Sector Commissioner with these instructions. Whilst he can already issue instructions, as we are told, in an administrative form, there is a view that perhaps under this legislation, the capacity to issue these instructions will take on a greater emphasis and be of a different nature. We will not know what the instructions are. We will never see them. We will not know how they are being delivered or what the impacts are. They will just happen. This discussion has taken place here before. There is an evolution occurring and Parliaments are losing the capacity to scrutinise the detail of the documents and instruments around bills because things are being done differently. All the detail is not necessarily being found in the regulations. I think of the inquiry into the Surrogacy Bill 2008 and the very skeletal piece of legislation that did not have much detail in it at all. I think Hon Peter Collier may have been involved in that inquiry.

Hon Sally Talbot: It was the legislation committee, as well.

Hon KATE DOUST: Yes, it was the legislation committee. I also think that Hon Ken Baston might have been involved. At that time the committee discovered that there had been chief executive officer directions that nobody had been aware of. The CEO directions provided all the detail that should have been in the legislation about the mechanisms that should have been followed on the very narrow issue of surrogacy. The job of the committee was to try to shift those directions into the bill, to get that level of detail into the bill so that everyone knew what was going on.

The same issue arose again on the Gas Supply (Gas Quality Specifications) Bill 2009, not long after a change of government. That bill had been in the process of development for probably eight or nine years, or even longer. The issue was that there were notices. There were some regulations, but a lot of the proposed change could have been dealt with by way of notice. In that particular case, the Western Australian Parliament was excluded. In fact, I do not think even the minister responsible for that portfolio had a direct say in any changes that could have been put forward by other states on that particular issue. Members of Parliament have to be really cautious about how these things are handled so that they do not lose the capacity to cast their eyes over changes that can impact on their communities. They have to be vigilant about this seeping away, if you like, of the Parliament's capacity to have a say in the practical detail that enables legislation to work. It would be preferable to ensure that the information is, firstly, in the legislation, or, secondly, in the regulations. Quite frankly, I do not understand why members would allow things such as commissioner's instructions, notices or directions to be not properly and appropriately scrutinised by Parliament. I am very pleased that the committee has picked up on those issues and

has commented on them. I am sure that members of that committee will make some significant comments about this report.

Another issue that has been highlighted at page 12 of the report and was picked up by a couple of the unions is the matters that must be taken into account by the Western Australian Industrial Relations Commission. One of the matters concerns the financial position of a public sector entity. I thought about this matter particularly given the significant cuts across the public sector last year. I also referred to it last night. Funding to sections, departments and agencies have been slashed so badly that we do not know how people will sustain employment. Commerce is a very good example and we have seen sections and units of that workforce disappear; it is out of control. We also see it in education, health and a range of other areas as well. The worry is that depending upon the financial situation of government, around budget time there are probably a lot of very nervous public servants not knowing whether their department or agency will be appropriately funded that year. It could be seen as a very clever way of removing a problem because if a department is not funded or refunding arrangements for a grant or project are cut, what will be done about employment? We have to wonder whether that idea could be applied or utilised. I do not know what consideration the committee gave to that sort of issue, but it is a matter that was picked up in a number of the submissions made.

The committee report then goes back over evidence provided by the various departments and discusses these transitional arrangements. I have a table here on the current status of public sector agreements. I am quite happy to provide a copy of this table to members because I think it is a very useful tool. I might have to get it enlarged because even I am having difficulty reading it. It gives time frames in which each public sector agreement in WA starts and finishes. It might be of value to members to see which agreements are already impacted by the proposed changes and those areas that are about to negotiate a new agreement that will have automatically had the rug pulled out from under them. When I have finished my speech, I will be happy to table that document for members to look at.

The committee makes a range of comments in its report. It picks up on issues around matters canvassed by various unions. The report also looks at what has happened in New South Wales and Queensland. There are some comparisons between some states and obviously some issues in other states would have been worse. Page 16 of the report states —

> … the Committee is satisfied that the New South Wales mandatory approach was expressly rejected by a deliberate policy decision of Government. This policy decision was confirmed by the Department of Treasury in evidence before the Committee.

Obviously, whatever existed in the New South Wales model the matters that had to be taken account were a lot harsher than what had been provided for here.

There was a lot of discussion in the report about an employer's capacity to pay and there was some excellent evidence provided in the hearings by Maria Saraceni. On page 18 of the report she is quoted as saying —

> *I can see where the problem would arise—a concern, I guess, that the policy of the government, whichever government is in power at any time, might be dictating to the commission: this is what you have to do.*

She goes on —

> *… I would suggest that is not appropriate because already the commission needs to factor in whether the employer can afford to pay. Under 26(1)(d)(iii), it already needs to factor in the national economy and the economy of WA, so it is already factoring in all these factors.*

Repeatedly throughout all the submissions this one matter has been reinforced. I think it is a significant issue for the government and explanation is required about why the government has gone down this path in making this call. There are issues around the definitions of registrable employment and when it happens, and there are issues around the fairness for public sector employees being restricted in their access to the Western Australian Industrial Relations Commission.

As I said, there are about five recommendations from this committee to try to improve this legislation, and there are a number of minority recommendations as well. I have highlighted a range of things in this report, but I will not go through them all because I think I have covered most of the issues already. I am looking for the conclusions. At page 42 of the report the policy of the bill starts to be discussed. I know there were some difficulties for the committee because when this bill was referred we had not commenced any of the debate about the policy or thinking behind this legislation. The committee said that was a bit of a constraint for it because it did not really have an indication of where the legislation was going.

This part of the report discusses evidence provided to the committee by the Public Sector Commission about the number of people listed for redeployment. It said that 36 people on the list have been on it for between one and

four years, and nine people have been on it for over four years. Again, that comes back to the whole issue of how people are managed. We have to ask why these people were left in limbo for such an extended time without some sort of discussion or consultation occurring about why they had got to that point and why they could not be retrained, redeployed or managed in a different way rather than just being left in what could be called an exit lounge. I would think it would be a dreadful position for these people to be in to have to come to work every day for a number of years and not do anything.

Hon Stephen Dawson: The departure lounge.

Hon KATE DOUST: The departure lounge; I thought it was called the exit lounge.

I know people who have been in that situation and they literally come to work to sit at a desk in an empty office day in, day out. I would have thought that if an employer had skilled people, it would want them to be productive. This issue comes back to poor management. There are human resources departments in each area and questions have to be asked about why they were not doing their job. It is basic industrial relations. We would not see this happening in the private sector. In the private sector people would be sat down and asked what else they could do, what their options could be and what could be done to keep them gainfully employed. I would have thought it would have been to their advantage. We have had that number of people sitting there for so long and now we have a piece of legislation that sounds as if it is geared up just to deal with that small group of people. We have to ask: Why did the government not go down a different path? Why did it not stick to its commitment to the Western Australian people and say there would be no redundancies? It would not change the system and nobody would lose their job. Instead, we have this piece of legislation that will radically change the way the public sector deals with the commission and the way the commission has to deal with taking into account state government wages policy and fiscal arrangements. Why did the government not go down another path? We have to ask the question about why the government did not do its job. Why did it not look to the Public Sector Management Act as it already exists and as it was crafted by Richard Court? The second reading speech he made in 1994 for that legislation outlines how these issues could be managed. We are of the view that most of the mechanisms that the government says it needs to alter to manage this small group of people already give that possibility. The bigger question is about management. The processes and individuals could have been better managed, and given that we are looking at a broad spectrum of work across the sector, I find it hard to believe that this group of people could not have been retrained in some capacity to do other work in a different part of the public sector.

I encourage members to go through this report. The committee has pulled together some good views. On page 46 there is a detailed discussion of the issue of registrable employees and registered employees and the issue of drafting. It states —

> ***Registrable employee*** *means —*
>
> *a) an employee who is surplus to the requirements of a department or organisation; or*
>
> *b) an employee whose office, post or position has been abolished; or*
>
> *c) an employee in a category prescribed by the regulations.*

That is an interesting question. During the hearings I think we asked what categories will be set down in regulations. I do not think we were given an appropriate answer. I certainly hope that when we get to that part of the bill, the minister, more likely in Committee of the Whole than in his reply, will be able to give us an articulate response as to what that really means. This is part of the concern that has been canvassed by some of the unions about this bill being potentially the start of a much broader set of changes in the future. We would potentially see the set of words in paragraph (c) being adopted. I do not know whether the minister is able to do it when he gets to his reply, but I certainly hope that by the time we get to the Committee of the Whole, he might be able to provide us with a list of those categories that will be set out in the regulations.

Page 51 of the committee's report starts its conversation about Henry VIII clauses. Paragraph 7.55 states —

> First, the Committee believes that proposed PSM Act s95B(2)(a) constitutes a Henry VIII clause, because it effectively delivers the power to amend the application of primary law to an Executive agency by means of subsidiary legislative instruments. This is inconsistent with an important generally accepted fundamental legislative principle, namely: '*Does the Bill allow or authorise the amendment of an Act only by another Act*?'

Over the years this chamber has taken a very strong view about Henry VIII clauses in legislation. The committee had a detailed discussion about this. As other members rise to their feet, they will pick up on this issue and talk about the commissioner's instructions that have become an interesting aspect of the committee's inquiries. I attended some of the hearings, I think on the last Friday, part of which ended up being held in private because I had to sit outside for a while. I had no idea who was there, but obviously the commissioner was taken back in. I

think the committee has teased out these issues and was obviously very concerned about the direction in which this was going. I certainly look forward to hearing the views of members on this issue around Henry VIII clauses. There was a unanimous recommendation to delete those words from the bill, as we would expect.

On page 55, the committee asks —

> **Will the Bill achieve the Government's stated policy intention?**

The report states —

> 7.70 The Committee notes that the provisions in Part 3 of the Bill, amending Part 6 of the PSM Act, as drafted, is capable of either a very narrow or very broad application in practice.
>
> 7.71 The Committee notes that, based on a fair reading of the statements made by the Minister and the Public Sector Commission, the amendments relating to involuntary termination are intended to be used as a last resort, and only after the existing redundancy, retraining and redeployment systems have been exhausted. According to these sources, this can reasonably be expected to affect a small number of public sector employees.

The committee has not told the Premier that because he thinks it could be 100 to 200, as we know from the quote from the media. It continues —

> If this is indeed the scale of the involuntary terminations instigated under the proposed legislation, the assurances of Government will have been realised.
>
> 7.72 However, a minority of the Committee remains concerned about the import, if any, of the statement made in evidence by the Deputy Under Treasurer that '*if the redeployment system was made more effective, then there would be more people on the list—how many more, I have no idea.*'

That is just that door opening. Questions need to be answered about that. The report then goes on to refer to the review of the act. In the conclusion, the committee states —

> … the Committee has identified a number of issues relating to the drafting of the Bill. It is hoped that the Government and the Public Sector Commission, will respond to the concerns of the Committee during the Second Reading debate.

It goes on to talk about the policy issues. It is a very detailed and well thought through committee report. It canvasses a number of concerns and puts forward a range of solutions for this government to tidy up its legislation.

I want to put on the record the information that I have been provided by the president of the Western Australian Police Union, Mr George Tilbury, after he read the report. This was provided to me yesterday. He stated —

- WAPU submitted that our Members are unique in terms of their employment arrangements, for example:
    - Oath of Office effectively puts them at the community's disposal 24/7, which is expected and potentially a ground for discipline if they fail to respond to a situation.
    - Cannot refuse dangerous work when directed, contrary to all other public sector employees under the OHS Act.
    - Are not covered by a statutory worker's compensation scheme.
    - Cannot withdraw their labour.
- The IR Act provisions exclude our Members from accessing the WAIRC for a range of employment related matters, whereas all other public sector workers have that access.
- The Committee appear to have misunderstood our submission. Comments outlined at 6.32 are not an entirely accurate reflection of our submission. Relevantly, we do not seek for our members to be brought within the ambit of the PSM Act.
- Committee appear to have glossed over our submission in relation to the WAIRC and its (proposed) compulsion to consider Wages Policy in its decisions. We say this as the Committee, in response to our full submissions, refer to legal advice provided to the Committee, to give comfort, that currently the WAIRC ought to (and does) act appropriately by considering a range of economic factors in coming to its conclusions, and the inclusion of a wages policy in that process will not be any different to today's processes and considerations.

- WAPU's submission sought one of two alternate outcomes. Firstly, for the reasons of clearly identified legislated uniqueness (IR Act, OHS Act & Workers Compensation Act provisions) that recognition ought to extend to exclusion from the arbitrary Wages Policy.
    - The understood rationale for the aforementioned legislated considerations is to allow the employer (the COP) —

That is, the Commissioner of Police —

    - to exercise his discretion in the direction, discipline and removal of his Constables.
    - A practical and logical extension of that discretion could be to allow him to avail his discretion in relation to remuneration and employment conditions and not be bound by an arbitrary policy.
- In the alternative, which also was not mentioned in the Committee's report, was for our Members to be granted access to the WAIRC for the same range of matters as all other public sector workers. Our recommendation was for the applicable exclusionary provision of the IR Act, at Schedule 3 clause 2(3) to be deleted.
- WAPU stands by its submissions that binding our Members by an arbitrary Wages Policy whilst oppressing them through limited access to an independent arbiter, and denying them safety and compensation protections, is unacceptable and untenable.
- In addition, we would point out that Police Officers have a two year probation period during which they can be removed, without right of appeal. PSM Act appointments have a probationary period of no more than 6 months (Public Service Award clause 8).

Some comments are made by the police union in response —

Hon Donna Faragher: Will you table that?

Hon KATE DOUST: I am happy to provide a copy of that.

Having made those few comments about this bill, I know that many other members from both sides will also make comments over the next day. I think it is really important to be able to put forward the views of the various industrial organisations that represent the vast bulk of the public sector. As we know, they are quite diverse in nature and skill. They have outlined a range of concerns about this legislation, talking about the fact that they do not feel that some of this change is necessary because it is already in place in amendments to the Industrial Relations Act 1979. They have grave concerns about the fact that public servants who are made redundant on an involuntary basis will be denied access to the WA Industrial Relations Commission. They talk about the lack of fairness and balance for that group of workers, compared with workers in the private sector. They are concerned that this will create different tiers of workers within the public sector: those who are able, because of the nature of their skills and employment, to negotiate above and beyond the government wages policy, and those on low incomes, who know before they even walk through the door that they will be denied the opportunity to negotiate. The unions have made it very clear that they are concerned that the government will be able to unilaterally change agreements that are already in place. They are also concerned that there will be no capacity in the future for good faith bargaining. That is a significant concern for the opposition as well.

I am glad that this bill was able to go to a committee, because that has enabled us to become aware of a range of issues about how this bill was developed, and also of the total lack of communication on this bill, not just with the representative bodies, but also across the government departments that one would normally expect to participate in the drafting of this type of bill.

Hon Peter Collier: See how accommodating we can be!

Hon KATE DOUST: What—that the government did not consult with its own departments?

Hon Peter Collier: No, that we sent it to a committee.

Hon KATE DOUST: It would be really good if the government did a bit more of that.

Hon Peter Collier: As I have said to you, just come and see me, any time. We have great communication.

Hon KATE DOUST: We all know that there was a bit of horsetrading. What was the bill that the government wanted to get through? What was the bill that the government did that horsetrading on?

Hon Sue Ellery: I cannot even remember now. What was it?

Hon KATE DOUST: I know. It was the Synergy–Verve bill. We know how desperate the government was to get that bill through. That is the only reason it agreed to this bill being sent to a committee. So let us be honest

about it. If that agreement had not been struck, we might still be talking about the Synergy–Verve bill today. There is a lot to talk about in that bill. However, because the government was desperate to get that bill through, it did a bit of old-fashioned horsetrading and sent this bill to a committee. That was fine. It was over the Christmas break, and a lot of effort was made by the committee members to give up their valuable recreation and rest time after a busy year, and they have done a great job.

Hon Peter Collier: Would it hurt to every now and again say thank you? That would be nice!

Hon KATE DOUST: Why—because the government did a bit of horsetrading? It is because the government did its job; and there should be more of it.

Hon Peter Collier: Just for once, be nice!

Hon KATE DOUST: I am being nice. This is as nice as the Leader of the House is going to get!

There are a whole range of bills that we deal with that could be sent to a committee and dealt with in an expeditious way.

Hon Simon O'Brien: Oh, yes!

Hon KATE DOUST: There is. We have seen that happen with uniform legislation, and we have seen that happen with this bill.

Hon Helen Morton: Are all of your members going to speak for their full time on this bill?

Hon KATE DOUST: I do not know. It is up to the members.

Hon Helen Morton: How nice you are!

Hon KATE DOUST: This is an important change that will be occurring in the public sector, and it is important that we put all the respective views on the record. I know that if members opposite were sitting on this side of the chamber, they would do whatever they could to put all the views on the record. We have made it very clear that we oppose this bill, and of course we will do everything we can to educate members in this chamber as to why they should not support this bill. I am actually going to conclude —

Hon Helen Morton: No!

Hon KATE DOUST: If the minister says that, I might not! There is a lot more that I can talk about. If the minister wants to encourage me, I am happy to facilitate that. I can be very nice about those things. In fact, I have a lot of other notes that I have not picked up on. There are issues in this bill that I have not canvassed in the detail that I probably should have, and those are matters that my colleagues might want to talk about. I look forward to going into committee on this bill, because we will be able to break down those issues. As Hon Paul Llewellyn used to say, we will be able to "unpack" these issues.

Hon Simon O'Brien: Drill down!

Hon KATE DOUST: Drill down, pack or unpack; it was something to do with luggage. There is a fair bit of baggage in this bill, so we look forward to doing that.

This bill will be a significant change in the way public sector workers are treated. They will be treated in a different way from workers in the private sector. They will be denied the opportunity that is given to other workers to look after themselves in their employment.

To conclude, at long last, the reasons we oppose this bill are very simple and very clear. I have gone through the submissions and have looked at the work that has been done by the committee. I must say that the unions did something that this government did not do. They consulted with their members. If members look through the submissions, they will see the direct feedback from the people in the public sector about how they perceive the outcomes of this legislation. The unions did the right thing. They consulted and made their submissions based on that consultation. This government did not consult, and we now have a very skeletal—I use that word because that is how the committee has framed it—piece of legislation. We intend to spend a fair bit of time in committee going through the detail of the bill to try to work out where this will go.

I will now go through the reasons that we will not be supporting this bill. This bill is unfair and discriminatory towards people in the public sector. It is based on a series of broken promises. There is a range of inconsistencies between these laws and the public statements made by the government. These laws are based on a lie. These laws are based on promises made by the Premier and the government that have been reneged upon. People need to be very clear about that. This is part and parcel of the 51 broken promises by this government. We have had a discussion today about integrity. That is a serious issue that this government needs to grapple with. The government's integrity in the community is dwindling. The government is perceived as not being honest in its

dealings with the community and with its workers. The government needs to shape up—otherwise the community is going to ship it out.

Madam Deputy President, I seek leave to table a document. It is an analysis of WA public sector agreements.

Leave granted. [See paper 1288.]

Hon KATE DOUST: I will provide Hon Donna Faragher with a copy of the document that she has requested.

HON SALLY TALBOT (South West) [3.38 pm]: I am very envious that Hon Kate Doust was able to give such a lengthy analysis of the Workforce Reform Bill 2013 and all the material that surrounds it. This bill, perhaps more than any other piece of legislation that has come into this place since the Liberal–National government took office in 2008, is thoroughly deserving of the detailed scrutiny that this place is preparing to give to it. This is a short bill. It is only 16 pages long and it has only four parts. Two of those parts are the working guts of the bill. However, as Hon Kate Doust has said, this bill is an embodiment of the untruths that this government has been telling the electorate ever since it embarked upon its self-proclaimed path of public sector reform in 2008. What is even more serious regarding the business focus of this upper house—this house of review—is that the policy and effect of this bill are deeply flawed.

If I had only five minutes to speak on this bill, I could summarise what is wrong with it. I think members would find that if they just looked at the supplementary notice paper, which, as members will all be aware, contains a number of not just majority recommendations, but unanimous recommendations by the committee for substantial amendments to this bill. Not one part of the bill should go through this chamber unamended because every part of this bill is deeply flawed. The evidence of the extent of those flaws will not be presented to this chamber only by people on this side of the house. The evidence, as I have just said, is in the unanimous recommendations of the committee, on which one could quite fairly claim every political party in this chamber was represented, given that Hon Lynn MacLaren, a member of the committee, stepped back from this inquiry and gave her seat on the committee to Hon Amber-Jade Sanderson.

Hon Donna Faragher interjected.

Hon SALLY TALBOT: I am sure that Hon Lynn MacLaren will have something to say about the effect of this bill. Nonetheless, every party, except perhaps the Shooters and Fishers Party, was represented. There was a member of the National Party, two members of the Liberal Party and two members of the Labor opposition. There are a series of unanimous recommendations, but there is also, as Hon Kate Doust —

Hon Simon O'Brien interjected.

Hon SALLY TALBOT: I realise that members of the government are gradually waking up to the fact that there is absolutely no point in interjecting on a member who stands in this place with unlimited time, as Hon Kate Doust has just done. I cannot express the mystification on this side of the house as to why members on the other side would engage in such lengthy interjections on somebody who has an unlimited amount of time. I have only a limited amount of time, so I will not take interjections.

Several members interjected.

Hon SALLY TALBOT: Members of the Liberal Party are clearly very rattled by the very rocky start that this piece of legislation has had in this place due to the very substantive points made in the committee report on this bill. I will not take interjections, because I have only a limited amount of time.

If government members want more evidence than that given in the unanimous committee recommendations for substantive amendments to every section of this bill, I ask them to go to the submissions referred to in some detail by Hon Kate Doust. They are all on the committee website. There were very few documents that the committee determined to keep private in the final instance, so there is a wealth of material on the committee website. The committee received some quite excellent, outstanding submissions.

I want to pay tribute to some of the people who put so much work into preparing what I think is a very good example of a final committee report that plays a very constructive role in enabling this place to carry out its proper function of scrutinising the legislation that comes before us. I pay tribute to all the people who made submissions to the committee. I particularly want to note the contribution of the people who attended public hearings. As Hon Kate Doust pointed out, these hearings took place when most of Western Australia was on holiday. I want to pay tribute to the people from the unions and employer advocacy groups who took the trouble to make submissions and then come along and present to the committee. The presentations to the committee were of a uniformly high standard. The committee heard from United Voice, UnionsWA, the Community and Public Sector Union–Civil Service Association, the State School Teachers' Union of WA, the WA Police Union of Workers, the United Firefighters Union of Western Australia, the Western Australia Prison Officers Union, the Health Services Union of Western Australia, the Australian Services Union and expert witness

Ms Maria Saraceni, who helped us get our heads around some of the technical points made during the hearings. I thank all those people.

I found the presentation given by Toni Walkington of the CPSU–CSA particularly enlightening. I know that this is the bread-and-butter stuff of the major public sector union, but I have to say that Ms Walkington not only went through the motions of presenting the case on behalf of the many thousands of public sector workers that that union represents; she really gave us an extremely thorough account of everything that is wrong with the bill, not only critiquing what the government was trying to do—I have a bit more to say about that in a moment—but also in pointing out and making very clear to the committee how these provisions would actually interfere with what is actually a pretty good system that we have at the moment. That is something I want to go into in a bit of detail. I want to ask a question, which for me is not a rhetorical question: What exactly does the government think is broken? What exactly is the government trying to fix with this piece of legislation? I began to understand very clearly, after listening to Toni Walkington, that the system we are currently working with is not broken and that the measures that the government is attempting to put in place with this bill will actually interfere with the relatively smooth workings of that system. I think that is a very serious situation that the government is attempting to bring about. I look forward to hearing members of the government and the National Party stand up and talk about how they see the new provisions working in practice. What do they think is broken? What might function less well if these measures are ever passed into law?

I must say quickly, in passing, that I was particularly impressed—I mention this to draw it to the attention of honourable members, who perhaps want a snapshot without reading through dozens of hours of evidence given to the committee—by the transcript of Ms Walkington's hearing and also the evidence given by Lea Anderson of the United Firefighters Union. Those two pieces of evidence and the UnionsWA submission give a very comprehensive and succinct account of the problems with this bill.

It would be remiss of me not to thank the staff of the committee who worked at a pretty antisocial time of the year. I think the number of hours the committee put into preparing this report took us all a little bit by surprise. That was partly to do with the committee's determination to peel away the onion skins and get to the heart of what the bill is dealing with, but I think it was also because we started out with a very clear and, I think it is fair to say, bipartisan agreement that we all hold certain principles very dear to our hearts working in this chamber. That is where I will kick off. I see no need to repeat anything that Hon Kate Doust has said; I am sure that members who follow me in this debate will raise their own particular issues relating to their electorates and their constituents in relation to the bill. But I draw honourable members' attention to page 61 of the report of the Standing Committee on Legislation on the Workforce Reform Bill 2013, where appendix 2 sets out the fundamental legislative principles against which we ought to be measuring and weighing legislation that is brought before us—the bills that come before this house.

In the limited time that I have I do not want to spend too much time on this point, but I point out to honourable members that there are 16 fundamental legislative principles enumerated on page 61 of the report. These are not controversial. There is nothing dreamt up by the committee. These are the fundamental legislative principles that we are all committed to work to in this place. I put it to honourable members that of those 16 fundamental legislative principles, this bill contravenes at least seven. That, I think it is fair to say, was our unifying principle in our approach to critiquing this bill. The first three of the seven fundamental legislative principles that this bill contravenes, as referred to in the report, are —

1. Are rights, freedoms or obligations, dependent on administrative power only if sufficiently defined and subject to appropriate review?
2. Is the Bill consistent with principles of natural justice?
3. Does the Bill allow the delegation of administrative power only in appropriate cases and to appropriate persons?

I will go into those three principles in more detail, but clearly the problem with trying to apply those three principles to this bill is, as Hon Kate Doust said and as the committee devoted some considerable time to analysing, that this is skeletal legislation. There has been a lot of talk in this place about the dangers and perils of skeletal legislation, most recently by Hon Michael Mischin, the Attorney General, who has carriage of this bill and who has a deep objection to skeletal legislation. I look forward very much to hearing from him in this debate. There was a lot of bandying around the chamber of the word "hypocritical" during the opening stages of this debate. I look forward to hearing Hon Michael Mischin talk about how he can possibly reconcile his deep, abiding and professional objection to skeletal legislation with the bill under consideration today. The bill not only essentially refers all its powers to regulation, but also sets up that regulating power in such a way that the authority of the Joint Standing Committee on Delegated Legislation, on which we depend to weed out unacceptable characteristics of delegated legislation, will be so diminished that it will never be able to operate on the regulations that will be associated with this bill once it becomes an act. There is not one example that the

committee could find of a power conferred by regulation that is deemed to be beyond the power of the act, simply because the bill is silent on what the content of those powers will be.

There is an even more sinister implication to this point about skeletal legislation deferring power to the regulations, and that is contained in words in part 3 of this bill, particularly clauses 13 and 14, which the committee believes puts us in danger of setting up a new type of commissioner's instruction that will be able to override not just regulations, but also the Public Sector Management Act itself. The contravention of that basic principle about nothing being able to override the act is so deeply offensive to legislators in this place that it is one of the reasons the committee was able to come up with these unanimous recommendations for amendment.

The fourth FLP that is contravened by this bill is number 11, which reads —

> Is the Bill unambiguous and drafted in a sufficiently clear and precise way?

Clearly the answer to that question is no, particularly when we read part 2 of the bill. All the witnesses from the various departments from whom we took evidence, who have had some involvement with the drafting or carriage of the bill while it is going through Parliament and who will have responsibility for implementing the measures contained in the bill, agreed with the committee in questioning that the terms of the bill are not well defined. That, I put it to honourable members, takes us to a very important point of principle. I ask every member of this chamber to ask themselves the following question and listen very hard to the answer they give themselves: is it ever acceptable for us as members of Parliament and for us as legislators to consider legislation that contains terms that are, it seems by design, ill-defined—that is, terms that are, it seems, deliberately made ambiguous and drafted in a way that cannot be possibly described as clear and precise? Can it ever be acceptable in those circumstances to say, "It doesn't matter. We know that this is heading for court. We know that the way we have written this bill means that it is eminently appellable. We will let the courts sort it out"? I asked myself that question about a quarter of the way into this inquiry. I came up with a very clear answer for myself—that is, no, it can never be acceptable for anybody in this chamber to come to the conclusion that it is okay to deal with terms that are not well defined because the courts will sort it out. That is not what we were elected to do. It is not part of our job to defer that responsibility to the courts. If we as a house get ourselves in the position of dealing with legislation framed in those terms and being content to say, "We will let the courts sort that out", then I put it to honourable members that we will be in very serious dereliction of our duty and indeed will undermine the fundamental principles of our democracy, which are clearly premised on the separation of powers. I leave that as a question for honourable members to ponder in their own time.

I go on to the other three principles—FLPs—that I believe are contravened by this bill. They are principles 12, 13 and 14, and read —

> 12. Does the Bill allow the delegation of legislative power only in appropriate cases and to appropriate persons?
>
> 13. Does the Bill sufficiently subject the exercise of a proposed delegated legislative power (instrument) to the scrutiny of the Legislative Council?
>
> 14. Does the Bill allow or authorise the amendment of an Act only by another Act?

The answer to that last question is clearly no. The committee has unanimously agreed that there is a Henry VIII clause in this bill, so we will be moving an amendment to remove that Henry VIII clause.

I want to address FLPs 12 and 13 by using as a segue to the rest of my comments the fact that yesterday in this place during consideration of committee reports we had a quite extensive debate on the Joint Standing Committee on the Corruption and Crime Commission's report on the CCC's interaction with the state's integrity coordinating group. During that debate the issue was taken up about the fact that the integrity coordination group does not actually exist. There is no legislation establishing such a group. However, we know that one of the members of that group is the Public Sector Commissioner. The Public Sector Commissioner obviously realises that he is in a position of extraordinary power. He has extraordinary power in anybody's terms and by any measurement. He certainly has extraordinary power when we compare the role and standing of the Public Sector Commissioner with other commissioners who serve the government and Parliament.

This report from the standing committee, which of course stemmed from some comments made by a member of the judiciary about the creation of these kinds of groups without any official conferred power, led the Public Sector Commissioner to make a couple of comments that were reported in an article in *The West Australian*. I understand that the comments were made in an address given by the commissioner at a forum at the University of Western Australia earlier this year. In the report about institutionalised conflicts of interest, the commissioner acknowledged that his position is very powerful. He noted that he makes the rules of the game. I do not like these sporting analogies but, unfortunately, this is the analogy the commissioner used. It is no reflection on him; it is a very common fault, I think, that we need to address. The articles states —

> He said he made the rules of the game, coached, umpired, played and disciplined those who broke the rules.

That is by the commissioner's own admission. This was very much in the committee's mind when we started to peel away the onion skin to try to get to the heart of the issues that are causing concern with this bill—that is, the extraordinary powers that are conferred on the Public Sector Commission and the commissioner over and above anything that they currently have. This is particularly in the form of the commissioner's instructions, about which I will have a little more to say in a moment.

I will lead in to those comments by noting that we are essentially looking at just two parts of the bill—that is, what is covered in parts 2 and 3. Part 2 covers the three new statutory considerations that are supposed to be added to the long list of statutory considerations that already exist for the Industrial Relations Commission to consider. There are two recommendations in relation to these amendments under part 2—that is, these three new statutory considerations. I certainly support the unanimous committee amendment, which is an attempt, and I think a pretty comprehensive one—certainly there was considerable energy and effort put in by every committee member—to get this right. It is an attempt to address the unintended consequences of using vague terms in part 2 of the bill. It is also an attempt to try to clarify for the commission exactly what the government's intent is, because herein lies the problem with the bill.

I will talk about the problem with the bill as I see it from this side of the house as a member of the Labor opposition. The problem is that the bill as set out at the moment does not actually service what I assume to be the policy objectives of the government. I assume that the policy objective of the government, which is not a policy objective that I would share, is to rein in the options that can be considered or the range of responses that can be made by the Industrial Relations Commission in a claim for improved pay and conditions by public sector employees. The first new statutory consideration is the government's wages policy, which will have to be considered by the IRC. The second is the financial position of the state of Western Australia and the third is the financial position of the public sector entity or agency that is the party to the negotiations about pay and conditions. One would assume, and this was certainly borne out by Treasury evidence, that what the government wants to do is to constrain its wages bill. That was made very clear in the evidence we heard from Treasury. I will not quote that evidence because members can go to the transcript of the public hearing. I know that several members were also there in person to hear what Mr Barnes said in his evidence to the committee—I think he was the Deputy Under Treasurer at that stage. It is very clear that the major problem, as Treasury sees it and presumably as the government sees it, is what they call a blowout in the public sector wages bill. Forty per cent of recurrent expenditure goes on wages in the public sector and clearly that is upsetting the Treasury boffins.

The problem the government has created for itself is that what it has done in part 2 will not service that objective. I felt it was incumbent on me as a member of the committee to look at that policy to see whether there was a way the committee could improve that clause so that we were not in the position in which, as legislators, we were saying, "It doesn't matter that this is vague and ill-defined; we're happy for the courts to sort it out." I can also count, so I recognised that the government has the numbers both on the committee and in the house. The most obvious way to do that is to refer the IRC back to the budget papers, but as Treasury pointed out to us, that also really does not go far enough. Mr Barnes made the quite extraordinary admission that when he had taken a quick look at the bill over breakfast that morning, he realised that there had been a drafting oversight and that the bill had omitted to include reference to the *Government Mid-year Financial Projections Statement* as being one of the documents that the commission must, in a statutory sense, have reference to in making its determinations. What we have done with the majority amendment is try to tighten that clause of the bill so that it is less of a picnic for lawyers and to make it clearer to the Industrial Relations Commission what it has to consider. It would also put the onus for doing that work in presenting a submission to the commission, which can be readily contemplated by the commission exercising its power, back on the government agency that is the employer party to the negotiations.

I am very pleased to support that majority unanimous recommendation of the committee that part 2 should be amended to make the list of statutory considerations far more specific than in the original draft of the bill that was presented to the house. I do, however, feel very strongly that it is actually the minority recommendation that should be adopted by the house, which would simply delete clause 4. The reason I want to make that argument is not difficult to articulate. I simply refer honourable members to section 26(1)(d) of the Industrial Relations Act, which contains a long list of things that the commission must already consider. They include the state of the national economy, the state of the economy of Western Australia, and the capacity of employers as a whole or of an individual employer to pay wages, salaries, allowances or other remuneration and to bear the cost of improved or additional conditions of employment. I will not go on. There are seven statutory considerations that the commission must take into account. I cannot see why paragraphs (ii) and (iii) are not duplicated in the provisions of this bill. The state of the economy of Western Australia is the first of those and the second is the capacity of

employers as a whole or of an individual employer to pay wages, salaries, allowances or other remuneration. Those items are clearly already in the act.

I put to honourable members that clause 4 of the bill is simply a piece of cheap and transparent grandstanding by this government. The government wants to stand up and beat its hairy chest about the fact that it is strong and forceful and will rein in the public sector wages bill. The measures it has put in clause 4 of this bill simply will not do that. If we accept the unanimous recommendation for amendment by the committee, we would at least spend less time in the Supreme Court than we would if clause 4 went through unamended. The way to make sure that the government is given a platform to effectively argue for wage constraint is clearly to use the existing provisions of clause 26 of the IR act and to make sure that the submissions that are presented to the commission on behalf of the public sector agencies that are the employers are robust and cite the appropriate evidence that backs up the claim for wage constraint—in other words, that the public sector negotiators do their job. It is all there. All the government is doing by bringing in clauses that contain terms such as those in clause 4 is to muddy those waters in an attempt to do a hairy-chested bit of strutting around the stage to try to show that it will be strong on wage restraint. It simply will not work, and will make a system that is currently working quite well work with far less effectiveness.

I will just move on to the second range of measures contained in part 3 of the bill—the involuntary termination provisions. Again I refer to the many hours of deliberation the committee spent trying to peel away the onion skins of rhetoric, waffle and hairy-chestedness of the Liberal–National government. When a skeletal piece of legislation is dressed up with all this waffle and commentary, nobody can be held accountable for it; nobody can be called to bear witness to certain statements about the way that the bill will operate in reality and practice. All the committee had was a lot of fluff around some core provisions, so it was incumbent on the committee to get to the core of those provisions. That is where committee members hit another brick wall of either a deliberate prevarication or simply a number of different understandings about how the provisions of the bill would operate. Those honourable members who have taken the trouble to go through some of the witness accounts, or who indeed sat in on some of the hearings, will know that from moment to moment the committee was swinging wildly between the extremes of the two accounts of what the bill was supposed to do. Basically, it boiled down to this: are the provisions about involuntary redundancy supposed to be applied in a narrow or a broad sense? I can find honourable members a long list of evidence for both those propositions. I again put to honourable members: do they really think that they are serving with integrity in their role as legislators if they happily sit here and contemplate a bill that can be read in two diametrically opposed ways? I have asked myself that question and I have come to the conclusion that I cannot see that as fulfilling the role of a member of Parliament with any kind of integrity. That is why I think that my second explanation is probably the more accurate one—that there are genuinely different understandings among government members about whether this bill is supposed to have a narrow or a broad application.

There is another way of expressing that, and it is referred to in the committee report. We heard evidence—Hon Kate Doust referred to this in her remarks on the bill—that there are currently 76 people on a redeployment list. Remember that the Public Sector Management Act contains provisions, and I will draw honourable members' attention to the precise sections in case anyone wants to go home and spend the weekend brushing up on the legislation that is clearly going to take many hours of this house's time to contemplate. Part 6 of the Public Sector Management Act 1994 is entitled "Redeployment and redundancy of employees". Part 6 of the PSM act contains provision for compulsory redundancies. It is not complicated. If a person is a public sector employee and their job no longer exists or they are no longer able to do that job, they can be compulsorily retrenched. They can be made redundant against their will under the existing provisions of the PSM act. There is no question about that. It is here in black and white and it was referred to again and again in evidence by not only union and employer representatives, but also the agents of the public sector, the employers themselves. They already have these provisions.

Let us go back to my suggestion that there may be a way of genuinely interpreting these measures in the bill as having a narrow application, or having a remedial effect on the existing provisions. There are 76 people on the redeployment list. Of those 76 people, 36 have been there less than one year. The actual average time that anyone is on the list is extraordinarily short; it is about a month. Thirty-one people have been there for between one and four years and nine have been there for more than four years. That is a remarkably small number of employees who end up in that category. Hon Kate Doust asked what it must be like to be one of those nine people turning up for work every day without a job to do. It must be terrible. It must be absolutely soul destroying, and I agree that we need some measures.

Debate interrupted, pursuant to standing orders.

[Continued on page 1189.]

Sitting suspended from 4.15 to 4.30 pm