

President: K BROWN

Secretary: J WELCH

Ref: Inquiry into the Workforce Reform Bill 2013 **WA Prison Officers' Union**

17th January 2014

Hon Robyn McSweeney MLC
Chair
Standing Committee on Legislation Committee
Legislative Council
Parliament House
Perth WA 6000



Dear Ms Mc Sweeney,

Re: Western Australian Prison Officers Union submission on Workforce Reform Bill 2013

The Western Australian Prison Officers Union (WAPOU) is the industrial trade union that represents 2, 210 Prison Officers state wide in both public and private prisons.

As we are an affiliate of UnionsWA, we would like to confirm our endorsement of the submission made by UnionsWA to the Committee in relation to the Workforce Reform Bill 2013 (WR Bill) as a whole on behalf of its affiliates. In this submission we submit our concerns in relation to the key amendments that will impact on the working conditions and employment rights of Prison Officers in this state.

Key amendments of concern to the Industrial Relations Act 1979

Proposed clause 4: amendment to Section 26 of the IR Act

S 26 (2A) In making a public sector decision the Commission must take into consideration the following-

- (a) Any Public Sector Wages Policy Statement that is applicable in relation to negotiations with the public sector entity;*
- (b) The financial position and fiscal strategy of the state as set out in the following-*
 - i. The most recent government financial strategy statement released under the government financial responsibility act 200 section 11 (1)*
 - ii. The most recent government financial projections statement released under the government financial responsibility act 200 section 12(1);*

- i. *Any submissions made to the commission behalf of the state government;*
- (b) *The financial position of the public sector entity.*

WAPOU have grave concerns in relation to the above amendments. It is clear that, contrary to the WR Bill's accompanying explanatory memorandum that the intent is not to create a more enhanced and flexible employment arrangement, but rather to considerably undermine the principles of good, genuine industrial negotiation between parties. It is effectively legislating an extraordinary right for the Government to force the Western Australian Industrial Relations Commission (WAIRC) to consider the Government's policy position of the day as a primary matter.

It is WAPOU's experience that The Public Sector Wages Policy is already considered by the WAIRC as it forms part of the Government's and therefore the relevant Department's offer to it or indeed any union party. The proposed amendments have the potential to stifle genuine negotiations for a real wage increase and effectively gives the Department an unfair bargaining advantage.

Key amendments of concern to the Public Sector Management Act 1994 (PSM Act)

Proposed clause amended Part 3 Section 9 text:

22A. Commissioner's Instructions

- (1) *The Commissioner may issue written instructions concerning the following-*
 - (a) *The management and administration of public sector bodies;*
 - (b) *The management and administration of the Senior Executive Service;*
 - (c) *Human resources management, including the disposition of employees under section 22B ;*
 - (d) *Official conduct;*
 - (e) *The taking of improvement action;*
 - (f) *Dealing with suspected breaches of discipline, disciplinary matters and the taking of disciplinary action under Part 5 Division 3;*
 - (ga) *dealing with-*
 - (i) *The redeployment and redundancy of employees; and*
 - (ii) *termination of employment;*
 - (g) *Any other matter in respect of which Commissioner's instructions are required or permitted under this Act;*
 - (h) *Any other matter in connection with the functions of a chief executive officer or chief employee are to manage that department or organisation and in particular*

...

29. Functions of CEOs and chief employees

(g) To manage and direct employees in that Department or organisation and, without limiting the generality of this paragraph, to be responsible for the recruitment, selection, appointment, deployment and termination of employment of those employees.

The above amendment provides the Public Sector Commissioner with broad powers concerning 'any other matter' in connection with the Commissions functions. This potential power, in conjunction with the proposed Section 29 concerns WAPOU as it potentially provides heads of public sector agencies, or specifically the Commissioner of the Department of Corrective Services with further and excessive powers to redeploy, terminate or make redundant.

Proposed clauses 13 and 14 amending Section 94, inserting sections 95A and 95B

Proposed the amended text:

94 (1) The Governor may under section 108 make regulations prescribing arrangements for registrable employees in relation to —

(a) redeployment and retraining; and

(b) redundancy.

(2A) Regulations referred to in subsection (1) —

(a) must specify which parts of the Public Sector must comply with the regulations; and

(b) may require specified matters to be dealt with or determined in accordance with the Commissioner's instructions.

...

95A. Termination of employment of registered employees

(1) In this section — registered employee has the meaning given in section 94(1A).

(2) The Governor may under section 108 make regulations providing for the following —

(a) the termination of employment of a registered employee, whether registered before, on or after the commencement of the Workforce Reform Act 2013 section 14;

(b) the terms and conditions (including remuneration) which are to apply to a registered employee whose employment is terminated under the regulations.

(3) If the employment of a registered employee is terminated under regulations referred to in subsection (2), the contract of employment of the employee is terminated.

(4) Regulations referred to in subsection (2) may require specified matters to be dealt with in accordance with the Commissioner's instructions.

95B. Inconsistent provisions, instruments and contracts

(1) In this section — industrial instrument means an award, industrial agreement or order made under the Industrial Relations Act 1979, including a General Order made under section 50 of that Act, whether made before, on or after the commencement of the Workforce Reform Act 2013 section 14.

(2) The provisions of this Part and regulations referred to in sections 94 and 95A prevail, to the extent of any inconsistency, over —

*(a) any other provision of this Act other than section 7, 8 or 9;
and*

(b) any industrial instrument.

Prison Officers who are employed by the Minister for Corrective Services under Section 13 of the Prisons Act 1981 are employed to the Prison Service generally and not to any particular prison (*Prison Regulations 1982 Part II Section 3 (3)*). Currently, Prison Officers who have been displaced due to closure or any other form of displacement applicable have been redeployed under the *Department of Corrective Services Prison Officers' Enterprise Agreement 2013 Section 142.1 (b)*

The above proposed amendment would potentially remove ability for Officers to utilise the Prison Officers EBA Section 142.1 (b) provisions in being able to be redeployed to another Prison in a fair and reasonable manner as a result of the proposed insertion of 95 B by virtue of the fact that the amendment is proposed to apply retrospectively to Agreements and Industrial Instalments.

WAPOU are also concerned by the power of the proposed Section 94 as there is no guarantee of consultation in relation to the planned regulations to deal with the provision of redeployment and redundancy. Furthermore, the nature of 'specific matters' currently undefined in 94 (2A)(b) and its extent at this point in time is concerning as we do not know the extent of which this provision will be applied.

As clearly stated within the submission made by UnionsWA, we are also deeply concerned by the lack of fairness in relation to clause 15 which is to replace Section

95 and insert Section 96. It is a clear removal of the right to challenge, appeal decisions and in effect removing unfair dismissal rights. It clearly limits the WAIRC's ability to review the Department's decisions in relation to redeployment and redundancy.

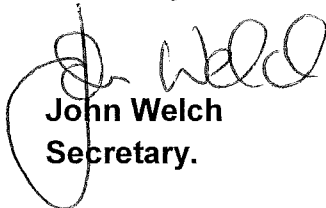
Conclusion

The proposed Workforce Reform Bill as it currently stands poses a grave concern to WAPOU. It is clearly an attack not just on the working conditions of Officers employed by this state but also more broadly, the rights of public sector workers in this State.

WAPOU believe that this Bill should not be passed. It would appear that these changes are an attempt to slash the public service under the guise of 'flexibility'. The Government should be genuine about its pre-election promise to the public service of no cuts, no jobs loss and no forced redundancies.

WAPOU would like the opportunity to speak to and give evidence about the content of the Workforce Reform Bill directly to the standing committee. Please contact me on 08 9272 3222 to discuss the matters further.

Sincerely,



John Welch
Secretary.