

I Brett Clements hereby request that the above bill be reconsidered.

The language used in this bill is in fact directing the W.A.I.R.C on how to do the current state governments bidding and is in fact an attempt at reducing the rights of all public sector unions, the employees and the W.A.I.R.C.

**Sect 26 Commission to act according to equity and good conscience**

(1) In the exercise of its jurisdiction under this Act the Commission —

- (a) shall act according to equity, good conscience, and the substantial merits of the case without regard to technicalities or legal forms; and

(ref Industrial Relations Act 1979)

It then goes on to say: **shall not be bound by any rules of evidence.....**

When you consider the revisions to the above section by removing the Sect (1) (a) shows the control this government is trying gain over the Unions and Workers.

This one paragraph is to be replaced by the following and it will show how unfair it is designed to be :-

(1) In the exercise of its jurisdiction under this Act the Commission —

~~(a) — shall act according to equity, good conscience, and the substantial merits of the case without regard to technicalities or legal forms; and~~

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

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- (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 2000 section 11(1);

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

- (iii) any submissions made to the

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23 Commission on behalf of the State  
24 government;  
25 (c) the financial position of the public sector entity.

(ref Workplace Reform Bill 2013 WRB2013205)  
(ref Workplace Reform Bill 2013 WRB2013205)

(2B) In subsection (2A) —

27 public sector decision means any of the following —

28 (a) an order made under section 42G that will be  
29 included in an agreement that will extend to  
30 and bind a public sector entity or its employing  
authority (as defined in the Public Sector  
2 Management Act 1994 section 5);

3 (b) an enterprise order that will extend to and bind  
4 a public sector entity or its employing authority  
5 (as defined in the Public Sector Management  
6 Act 1994 section 5);

7 (c) if the matters set out in subsection (2A)(a), (b)  
8 and (c) are relevant to the decision, any other  
9 decision that will extend to and bind a public  
10 sector entity or its employing authority (as  
11 defined in the Public Sector Management  
12 Act 1994 section 5);

13 public sector entity means either of the following —

14 (a) a public sector body as defined in the Public  
15 Sector Management Act 1994 section 3(1);

16 (b) an entity that is —  
17 (i) mentioned in the Public Sector  
18 Management Act 1994 Schedule 1; and  
19 (ii) prescribed by regulations made by the  
20 Governor;

21 Public Sector Wages Policy Statement means —

22 (a) the Public Sector Wages Policy Statement 2014  
23 issued by the State government that applies to  
24 industrial agreements expiring after  
25 1 November 2013; or

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- 26 (b) if any Public Sector Wages Policy Statement is  
27 issued in substitution for that statement, the  
28 later statement.  
29 (2C) The matters the Commission is required to take into  
30 consideration under subsection (2A) are in addition to any matter  
it is required to take into consideration under subsection (1)(d).

(ref Workplace Reform Bill 2013 WRB2013205)

- (2D) Subsection (2A) —  
2 (a) does not apply in relation to —  
3 (i) an order made under section 42G in  
4 respect of an agreement proposed to be  
5 made in substitution for an industrial  
6 agreement that specifies a nominal  
7 expiry date that is earlier than  
8 1 November 2013; or  
9 (ii) an enterprise order made in substitution  
10 for an enterprise order that provides for  
11 an expiry day that is earlier than  
12 1 November 2013;  
13 but  
14 (b) except as provided in paragraph (a), applies in  
15 relation to any public sector decision in respect  
16 of a matter arising before, on or after the  
17 commencement of the Workforce Reform  
18 Act 2013 section 4.  
19 (2E) Subsections (1)(d) and (2A) do not apply when the  
20 Commission is exercising its jurisdiction under  
21 section 50A.

**(42G. Parties may agree to Commission making orders as to terms of agreement**

- (1) This section applies where —  
(a) negotiating parties have reached agreement on some, but not all, of the  
provisions of a proposed agreement; and

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- (b) an application is made to the Commission for registration of the agreement as an industrial agreement, the agreement to include any further provisions specified by an order referred to in subsection (2); and
- (c) an application is made to the Commission by the negotiating parties for an order as to specified matters on which agreement has not been reached.

(ref Industrial Relations Act 1979)

- (2) When registering the agreement, the Commission may order that the agreement include provisions specified by the Commission.
- (3) An order referred to in subsection (2) may only be made in relation to matters specified by the negotiating parties in an application referred to in subsection (1)(c).
- (4) In deciding the terms of an order the Commission may have regard to any matter it considers relevant.
- (5) When an order referred to in subsection (2) is made, the provisions specified by the Commission are, by force of this section, included in the agreement registered by the Commission.
- (6) Despite section 49, no appeal lies from an order referred to in subsection (2).)

(ref Industrial Relations Act 1979)

By reading the bill on it's own it looks to the average person that it is nothing to be concerned with *however*, when you start to read the bill alongside the various acts it becomes extremely clear that the current state government definitely asserting authority over the W.A.I.R.C. and this will leave the worker nowhere to go and resolve disputes. This document is extremely bias toward the employer. This is very apparent when a very simple clause such as sect 26 1(a) is removed and sect 2 is inserted.

This is a direct attack on the public sector workers and in particular the states lowest paid workers rights to a fair wage increase and if this bill goes through it will open the door for a new kind of **workchoices**.

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## 80E. Jurisdiction of Arbitrator

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

(ref Industrial Relations Act 1994)

(ref Workplace Reform Bill 2013 WRB2013205)

### 23 5. Section 80E amended

24 Delete section 80E(7) and insert:

## 80E. Jurisdiction of Arbitrator

~~(7) Notwithstanding subsections (1) and (6), an Arbitrator does not have jurisdiction to enquire into or deal with, or refer to the Commission in Court Session or the Full Bench, any matter in respect of which a procedure referred to in section 97(1)(a) of the *Public Sector Management Act 1994* is, or may be, prescribed under that Act.~~

- 25 (7) Despite subsections (1) and (6), an Arbitrator does not  
26 have jurisdiction to enquire into or deal with, or refer to  
27 the Commission in Court Session or the Full Bench the  
28 following —  
29  
30 (a) any matter in respect of which a decision is, or  
31 may be, made under regulations referred to in  
32 the Public Sector Management Act 1994  
33 section 94 or 95A;  
  
1 (b) any matter in respect of which a procedure  
2 referred to in the Public Sector Management  
3 Act 1994 section 97(1)(a) is, or may be,  
4 prescribed under that Act.  
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6      6.      Section 80I amended

7                      In section 80I(3) delete “section 94 of the Public Sector  
8                      Management Act 1994.” and insert:

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10                    the Public Sector Management Act 1994 section 94 or 95A.

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12      7.      Section 80R amended

13                    After section 80R(3) insert:

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15                    (4)    Despite subsections (1) and (3), the Board does not  
16                    have jurisdiction to enquire into or deal with, or refer to  
17                    the Commission in Court Session or the Full Bench the  
18                    following —

19                              (a)    any matter in respect of which a decision is, or  
20                              may be, made under regulations referred to in  
21                              the Public Sector Management Act 1994  
22                              section 94 or 95A;

23                              (b)    any matter in respect of which a procedure  
24                              referred to in the Public Sector Management  
25                              Act 1994 section 97(1)(a) is, or may be,  
26                              prescribed under that Act.

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(ref Workplace Reform Bill 2013 WRB2013205)

(ref Industrial Relations Act 1994)

**94.      Regulations concerning redeployment and redundancy**

(1)    The Governor may under section 108 make regulations prescribing  
arrangements for —

- (a)    redeployment and retraining; and
- (b)    redundancy,

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for employees who are surplus to the requirements of any department or organisation, or whose offices, posts or positions have been abolished, and specifying which parts of the Public Sector must comply with those regulations.

- (2) Without limiting the generality of subsection (1), regulations referred to in that subsection may provide for —
- (a) the situation in which the whole or any part of —
    - (i) the undertaking of a department or organisation is, or is to be, sold or otherwise disposed of to; or

(ref Industrial Relations Act 1994)

- (ii) the production or provision of goods or services or both by a department or organisation is, or is to be, replaced by the production or provision of goods or services or both by,

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

- (b) an employee referred to in paragraph (a) who —
    - (i) refuses the offer of a suitable office, post or position, to be directed by his or her employing authority to accept that offer; or
    - (ii) hinders or obstructs the process by which an employee is selected for the making of an offer of a suitable office, post or position, to be directed by his or her employing authority to refrain from that hindrance or obstruction;
- and
- (c) the terms and conditions (including remuneration) which are to apply to an employee who accepts an offer referred to in paragraph (a); and
  - (d) the terms and conditions (including remuneration) which are to apply to an employee who is dismissed under section 82A(3)(a), 88(a) or 89(1).

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(3) Without limiting the generality of subsection (1), regulations referred to in that subsection may provide for the following —

- (a) the registration of an employee (in this subsection called a **registered employee**) who is surplus to the requirements of a department or organisation, or whose office, post or position has been abolished, and who cannot be transferred within the department or organisation;
- (b) the maximum period for which a registered employee may be registered;
- (c) the circumstances in which the Commissioner may direct —
  - (i) a registered employee to accept redeployment between one department or organisation and another; and
  - (ii) the employing authority of a department or organisation to accept a registered employee directed under regulations made under this paragraph to accept redeployment to the department

or organisation, and that employing authority shall comply with that direction;

(ref Industrial Relations Act 1994)

- (d) the retraining of a registered employee and for the terms and conditions (including remuneration) which are to apply to the registered employee;
  - (e) the terms and conditions (including remuneration) which are to apply to a registered employee who, with the prior approval of the Commissioner, accepts voluntary severance by resigning his or her office, post or position;
  - (f) the terms and conditions (including remuneration) which are to apply to a registered employee who accepts an offer of a suitable office, post or position inside or outside the Public Sector, and those which are to apply to a registered employee who does not;
  - (g) the manner in which employing authorities are to notify the Commissioner of vacancies in offices, posts or positions within their departments or organisations, and the procedure to be followed before those vacancies can be filled.
- (4) A direction referred to in subsection (2)(b) or (3)(c)(i) is, if that direction is —
- (a) given to the employee concerned in accordance with the relevant regulations referred to in this section; and

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- (b) upheld by the Industrial Commission on a reference under section 95(3), or the period referred to in that section has expired without that direction having been so referred,

a lawful order for the purposes of section 80(a), but nothing in this subsection limits the meaning of *lawful order* in section 80(a).

- (5) Regulations referred to in subsection (1) cannot provide for an employee to be required to comply with a direction referred to in subsection (2)(b)(i) or (3)(c)(i) unless the employee is offered suitable employment within or outside the Public Sector.
- (6) For the purposes of this section, *suitable office, post or position* or *suitable employment* means an office, post or position or employment, as the case requires —
  - (a) which is suitable having regard to the respective responsibilities attached to it and to the office, post or position or employment occupied or held by the employee at the time when the relevant offer is made and to the experience, qualifications and competence of the employee; and
  - (b) which does not require the employee to change his or her place of residence; and
  - (c) which satisfies such other criteria as are prescribed

**95. Status of Part 6 etc. and references by aggrieved employees**

(a) this Part or regulations referred to in section 94 or both; and

**97. Commissioner's functions under Part 7**

- (1) The functions of the Commissioner under this Part are —
  - (a) to make recommendations to the Minister on the making, amendment or repeal of regulations prescribing procedures, whether by way of appeal, review, conciliation, arbitration, mediation or otherwise, for employees and other persons to obtain relief in respect of the breaching of public sector standards; and

(ref Industrial Relations Act 1994)

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**Section 80I amended**

7 In section 80I(3) delete “section 94 of the Public Sector  
8 Management Act 1994.” and insert:  
10 the Public Sector Management Act 1994 section 94 or 95A.

(ref Workplace Reform Bill 2013 WRB2013205)

**80I. Board’s jurisdiction**

(3) A Board does not have jurisdiction to hear and determine an appeal by a government officer from a decision made under regulations referred to in section ~~94 of the Public Sector Management Act 1994~~ the Public Sector Management Act 1994 section 94 or 95A.

(ref Industrial Relations Act 1979)

**Section 80R amended**

**80R. Board’s jurisdiction**

(3) Notwithstanding subsection (1) the Board may —

- (a) with the consent of the Chief Commissioner refer an industrial matter referred to in subsection (1) or any part of that industrial matter to the Commission in Court Session for hearing and determination by the Commission in Court Session; and
- (b) with the consent of the President refer to the Full Bench for hearing and determination by the Full Bench any question of law, including any question of interpretation of the rules of an organisation, arising in a matter before the Board,

and the Commission in Court Session or the Full Bench, as the case may be, may hear and determine the matter, or part thereof, or question, so referred.

(ref Industrial Relations Act 1979)

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(ref Workplace Reform Bill 2013 WRB2013205)

13 After section 80R(3) insert:

14

15 (4) Despite subsections (1) and (3), the Board does not  
16 have jurisdiction to enquire into or deal with, or refer to  
17 the Commission in Court Session or the Full Bench the  
18 following —

19 (a) any matter in respect of which a decision is, or  
20 may be, made under regulations referred to in  
21 the Public Sector Management Act 1994  
22 section 94 or 95A;

23 (b) any matter in respect of which a procedure  
24 referred to in the Public Sector Management  
25 Act 1994 section 97(1)(a) is, or may be,  
26 prescribed under that Act.

**97. Commissioner's functions under Part 7**

(1) The functions of the Commissioner under this Part are —

- (a) to make recommendations to the Minister on the making, amendment or repeal of regulations prescribing procedures, whether by way of appeal, review, conciliation, arbitration, mediation or otherwise, for employees and other persons to obtain relief in respect of the breaching of public sector standards; and

(ref Industrial Relations Act 1994)

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**Part 3 — Public Sector Management Act 1994 amended**  
**Act amended**

3            This Part amends the Public Sector Management Act 1994.

4            Section 22A amended

5            After section 22A(1)(f) insert:

**22A. Commissioner's instructions**

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

(f) dealing with suspected breaches of discipline, disciplinary matters and  
the taking of disciplinary action, under Part 5 Division 3;

(ref Workplace Reform Bill 2013 WRB2013205)

7(ga)       dealing with —

8                            (i) redeployment and redundancy of  
9                            employees; and

10                          (ii) termination of employment;

(g) any other matter in respect of which Commissioner's instructions are  
required or permitted under this Act;

(ref Industrial Relations Act 1994)

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(ref Workplace Reform Bill 2013 WRB2013205)

**Section 29 amended**

13 In section 29(1)(g) delete “appointment and deployment” and  
14 insert:

15

16 appointment, deployment and termination of employment

(1) Subject to this Act and to any other written law relating to his or her department or organisation, the functions of a chief executive officer or chief employee are to manage that department or organisation, and in particular —

(g) to manage and direct employees employed in that department or organisation and, without limiting the generality of this paragraph, to be responsible for the recruitment, selection, ~~“appointment and deployment”~~ “and termination of employment” of those employees; and

(ref Industrial Relations Act 1994)

(ref Workplace Reform Bill 2013 WRB2013205)

**Section 63 amended**

19 In section 63(1)(f) delete “section 79(3); or” and insert:

20

21 section 79(3) or under regulations referred to in section 95A; or

22

**63. Vacation of office of executive officer**

(1) The office of an executive officer becomes vacant if —

(f) the employment of the executive officer in the Public Sector is terminated under ~~“section 79(3); or”~~ section 79(3) or under regulations referred to in section 95A; or”

(ref Industrial Relations Act 1994)

ref Workplace Reform Bill 2013 WRB2013205)

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Section 67 amended

24 In section 67(d) delete “section 79(3); or” and insert:  
26 section 79(3) or under regulations referred to in section 95A; or  
27

67. Vacation of offices

- (d) the employment of that public service officer in the Public Sector is terminated under section 79(3); or or under regulations referred to in section 95A; or

(ref Industrial Relations Act 1994)

ref Workplace Reform Bill 2013 WRB2013205)

94. Regulations concerning redeployment and redundancy

Delete section 94(1) and insert:

Section 94 amended

2 Before section 94(1) insert:

3

4 (1A) In this section —

5 registered employee means an employee registered  
6 under arrangements prescribed under subsection (1);

7 registrable employee means —

8 (a) an employee who is surplus to the requirements  
9 of a department or organisation; or

10 (b) an employee whose office, post or position has  
11 been abolished; or

12 (c) an employee in a category prescribed by the  
13 regulations.

~~(1) The Governor may under section 108 make regulations prescribing  
arrangements for~~

~~(a) redeployment and retraining; and~~

~~(b) redundancy;~~

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- (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.
- (3) Without limiting the generality of subsection (1), regulations referred to in that  
subsection may provide for the following —
- ~~(a) — the registration of an employee (in this subsection called a **registered employee**) who is surplus to the requirements of a department or organisation, or whose office, post or position has been abolished, and who cannot be transferred within the department or organisation;~~
- (3) In section 94(3):
- (a) delete paragraph (a) and insert:
    - (a) the registration of a registrable employee who  
cannot be transferred within a department or  
organisation;
    - (b) after paragraph (b) insert:
  - (b) the maximum period for which a registered employee may be  
registered;
  - (ca) the revocation or suspension of registration of  
an employee;
  - (c) the circumstances in which the Commissioner may direct —
    - (c) in paragraph (f) delete “who does not;” and insert:

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- (f) the terms and conditions (including remuneration) which are to apply to a registered employee who accepts an offer of a suitable office, post or position inside or outside the Public Sector, and those which are to apply to a registered employee ~~who does not,~~ who does not.

(d) delete paragraph (g).

~~(g) the manner in which employing authorities are to notify the Commissioner of vacancies in offices, posts or positions within their departments or organisations, and the procedure to be followed before those vacancies can be filled.~~

- (4) A direction referred to in subsection (2)(b) or (3)(c)(i) is, if that direction is —

In section 94(4)(b) delete “section 95(3), or the period referred to in that section” and insert:

(b) upheld by the Industrial Commission on a reference under ~~section 95(3), or the period referred to in that section has expired without that direction having been so referred,~~ section 95(2), or the period referred to in section 95(3)

After section 94 insert:

(ref Industrial Relations Act 1994)

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95A. Termination of employment of registered employees

27 (1) In this section —

28 registered employee has the meaning given in  
29 section 94(1A)

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

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

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

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

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

18 95B. Inconsistent provisions, instruments and contracts

19 (1) In this section —

20 industrial instrument means an award, industrial  
21 agreement or order made under the Industrial Relations  
22 Act 1979, including a General Order made under  
23 section 50 of that Act, whether made before, on or after  
24 the commencement of the Workforce Reform Act 2013  
25 section 14.

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

29 (a) any other provision of this Act other than

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30 section 7, 8 or 9; and

31 (b) any industrial instrument.

(3) Regulations referred to in section 94 or 95A prevail, to  
2 the extent of any inconsistency, over the terms and  
3 conditions applying to an employee's employment  
4 under a contract of employment, whether entered into  
5 or renewed before, on or after the commencement of  
6 the Workforce Reform Act 2013 section 14.

7

8 15. Section 95 replaced

9 Delete section 95 and insert:

**95. Status of Part 6 etc. and references by aggrieved employees**

~~(1) Subject to subsection (2), to the extent that there is an inconsistency  
between~~

~~(a) this Part or regulations referred to in section 94 or both; and~~

~~(b) any other provision of this Act other than section 7, 8 or 9, or an award  
or order under the *Industrial Relations Act 1979* (including a General  
Order made under section 50 of that Act);~~

~~this Part or those regulations or both, as the case requires, prevails or prevail.~~

~~(2) To the extent that there is an inconsistency between section 101 and this Part or  
regulations referred to in section 94 or both, section 101 prevails.~~

~~(3) Despite section 29 of the *Industrial Relations Act 1979*, an employee who is  
aggrieved by a decision made under regulations referred to in section 94 (other  
than a decision which is a lawful order by virtue of section 94(4)) may refer  
that decision within such period after the making of that decision as is  
prescribed to the Industrial Commission as if that decision were an industrial  
matter mentioned in section 29(1)(b) of that Act, and, subject to subsection (4),  
that Act applies to and in relation to that decision accordingly.~~

~~(4) In exercising its jurisdiction in relation to a decision referred to in  
subsection (3), the Industrial Commission shall confine itself to determining~~

~~(ref *Industrial Relations Act 1994*)~~

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(ref Industrial Relations Act 1994)  
ref Workplace Reform Bill 2013 WRB2013205)

95. Jurisdiction of Industrial Commission in relation to  
12 section 94 decision

(1) In this section —

section 94 decision means a decision made or purported to be made under regulations referred to in section 94 (other than a decision which is a lawful order by virtue of section 94(4)).

18 (2) A section 94 decision may be referred to the Industrial  
19 Commission —

20 (a) under the Industrial Relations Act 1979  
21 section 29(1)(a); or

(b) by an employee aggrieved by the decision,  
as if it were an industrial matter that could be so  
referred under that Act.

(3) A referral under subsection (2) must be made within the period after the making of the decision that is prescribed under section 108.

28 (4) The Industrial Relations Act 1979 applies to and in  
29 relation to a section 94 decision referred under  
30 subsection (2) as if the decision were an industrial

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ref Workplace Reform Bill 2013 WRB2013205)

- 1 matter referred to the Industrial Commission in  
2 accordance with that Act.
- 3 (5) In exercising its jurisdiction in relation to a decision  
4 referred under subsection (2), the Industrial  
5 Commission must confine itself to determining  
6 whether or not regulations referred to in section 94  
7 have been fairly and properly applied to or in relation  
8 to the employee concerned.
- 9 (6) The Industrial Commission does not have jurisdiction  
10 in respect of a section 94 decision if the employment of  
11 the employee concerned is terminated.

## Part 7 — Procedures for seeking relief in respect of breach of public sector standards

- 12 96A. Jurisdiction of Industrial Commission in relation to  
13 section 95A decision
- 14 (1) A decision made or purported to be made under  
15 regulations referred to in section 95A to terminate the  
16 employment of an employee or any matter, question or  
17 dispute relating to the decision is not an industrial  
18 matter for the purposes of the Industrial Relations  
19 Act 1979.
- 20 (2) Despite subsection (1), a decision made or purported to  
21 be made under regulations referred to in  
22 section 95A(2), other than a decision to terminate the  
23 employment of an employee, may be referred to the  
24 Industrial Commission —
- 25 (a) under the Industrial Relations Act 1979  
26 section 29(1)(a); or
- 27 (b) by an employee or former employee aggrieved  
28 by the decision,
- 29 as if it were an industrial matter that could be so  
30 referred under that Act.

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- 1 (3) A referral under subsection (2) must be made within  
2 the period after the making of the decision that is  
3 prescribed under section 108.
- 4 (4) The Industrial Relations Act 1979 applies to and in  
5 relation to a decision referred under subsection (2) as if  
6 the decision were an industrial matter referred to the  
7 Industrial Commission in accordance with that Act.
- 8 (5) In exercising its jurisdiction in relation to a decision  
9 referred under subsection (2), the Industrial  
10 Commission —
- 11 (a) must confine itself to determining whether or  
12 not the employee concerned has been allowed  
13 the benefits to which the employee is entitled  
14 under the regulations referred to in  
15 section 95A(2)(b); and
- 16 (b) does not have jurisdiction to exercise its powers  
17 under the Industrial Relations Act 1979  
18 section 23A.  
19

## 96. Application of Part 7

This Part does not apply to or in relation to procedures for employees and other persons to obtain relief in respect of the breaching of public sector standards established in respect of substandard performance or disciplinary matters.

### Section 101 amended

- 21 (1) In section 101 delete “Subject to section 23A(4) of the  
22 Industrial Relations Act 1979, the maximum compensation” and  
23 insert:  
24
- 25 (1) The maximum amount of compensation  
26
- 27 (2) At the end of section 101 insert:

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**101. Restriction on compensation for early termination of employment**

(1) ~~Subject to section 23A(4) of the *Industrial Relations Act 1979*, the maximum compensation~~ The maximum amount of compensation

payable under this Act or any other written law in respect of the termination of the employment of an employee in the Public Sector by —

- (a) the employing authority of a department or organisation; or
- (b) the employee,

is an amount equal to the amount of the remuneration to which the employee is entitled for the period of one year ending immediately before the day on which that employment is terminated.

(2) Subsection (1) does not apply in relation to compensation payable under —

- (a) the Industrial Relations Act 1979 section 23A(6); or
- (b) regulations referred to in section 94 or 95A if those regulations provide for a higher amount of compensation.

Schedule 5 amended

- 6 In Schedule 5 clause 13(4) delete “section 94,” and insert:
- 8 sections 94 and 95A,

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## Schedule 5 — General transitional provisions

### 13. Senior Executive Service (repealed Act s. 35)

(4) A person who becomes by virtue of subclause (3) an executive officer retains, despite any provision of this Act but subject to Part 6 and regulations referred to in section ~~94~~, 94 and 95A, his or her terms and conditions of service as if the repealed Act had not been repealed, and sections 52, 56 and 57 do not apply to him or her, until the person is —

- (a) in the case of a chief executive officer, reappointed to the office that he or she was holding when this clause commenced or appointed to another office of chief executive officer or to the performance of other functions in the Senior Executive Service; or
- (b) in the case of a senior executive officer, reappointed to the office that he or she was holding when this clause commenced or appointed to another office, or to the performance of other functions, in the Senior Executive Service,

and enters into a contract of employment under Division 2 of Part 3.

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ref Workplace Reform Bill 2013 WRB2013205

**Part 4 — Salaries and Allowances Act 1975 amended**

2 18. Act amended

3 This Part amends the Salaries and Allowances Act 1975.

4 19. Section 10A inserted

5 After section 10 insert:

**10. Method of inquiry by Tribunal**

- (1) In the performance of the functions of the Tribunal —
  - (a) the Tribunal may inform itself in such manner as it thinks fit;
  - (b) the Tribunal may receive written or oral statements;
  - (c) the Tribunal is not required to conduct any proceeding in a formal manner; and
  - (d) the Tribunal is not bound by the rules of evidence.
- (2) For the purposes of the exercise and performance of its powers and functions under this Act, the Tribunal has all the powers, rights and privileges that are specified in the *Royal Commissions Act 1968*, as appertaining to a Royal Commission and the provisions of that Act have effect as if they were enacted in this Act and in terms made applicable to the Tribunal.
- (3) The Minister may, if he thinks fit, appoint a person or persons to assist the Tribunal in an inquiry.
- (4) Without limiting the provisions of subsection (3) the Minister shall —
  - (a) appoint a person nominated from time to time in writing by the President of the Legislative Council and the Speaker of the Legislative Assembly to assist the Tribunal in an inquiry in so far as it relates to the remuneration of Ministers of the Crown, a Parliamentary Secretary appointed under section 44A(1) of the *Constitution Acts Amendment Act 1899*, the Parliamentary Secretary of the Cabinet and officers and members of the Parliament;

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- (b) appoint a person nominated from time to time in writing by the Public Sector Commissioner to assist the Tribunal in an inquiry in so far as it relates to the remuneration to be paid or provided to the officers and persons referred to in section 6(1)(d) and (e); and
- (c) appoint a person nominated from time to time in writing by the chief executive officer of the department principally assisting the Minister in the administration of the *Local Government Act 1995* to assist the Tribunal in an inquiry in so far as it relates to —
  - (i) the remuneration to be paid or provided to chief executive officers of local governments referred to in section 7A; or

(ref Industrial Relations Act 1994)

- (ii) the fees, expenses and allowances to be paid to elected council members referred to in section 7B.

- 7           10A.   Tribunal to have regard to government financial
- 8                   matters
- 9           (1)   In this section —
- 10                   Public Sector Wages Policy Statement means —
- 11                   (a)   the Public Sector Wages Policy Statement 2014
- 12                           issued by the State government that applies to
- 13                           industrial agreements expiring after

(ref Workplace Reform Bill 2013 WRB2013205)

- 14                           1 November 2013; or
- 15                   (b)   if any Public Sector Wages Policy Statement is
- 16                           issued in substitution for that statement, the
- 17                           later statement.
- 18           (2)   In making a determination under section 6(1)(a), (ab),
- 19                   (d) or (e) the Tribunal must take into consideration the
- 20                   following —
- 21                   (a)   any Public Sector Wages Policy Statement,
- 22                           irrespective of whether or not the statement

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- 23 applies to a person or office in respect of whom  
24 or which the determination is made;
- 25 (b) the financial position and fiscal strategy of the  
26 State as set out in the following —
- 27 (i) the most recent Government Financial  
28 Strategy Statement released under the  
29 Government Financial Responsibility  
30 Act 2000 section 11(1):
- 2 (ii) the most recent Government Financial  
3 Projections Statement released under the  
4 Government Financial Responsibility  
5 Act 2000 section 12(1);
- 6 (iii) any submissions made to the Tribunal  
7 on behalf of the State government.

By Brett Clements

January 10, 2014

I Brett Clements of Friendly Way, Marangaroo, WA 6064 do hereby offer this as a submission for changes to Workplace Reform Bill wrb 2013205.

This bill as it stands would be the start of Western Australia's version of workchoices. This bill has had changes that reflect bias toward certain arbitrary bodies/groups such as unions in particular WA public sector unions.

All sections and clauses have been cross referenced and new clauses added so that not only does the WAIRC Commissioner seem to have had their power's reduced so that they can no longer offer a fair deal, I understand that according to the way it is written the commissioner will no longer be able to intervene in industrial matters and in fact it seems as though just with these powers alone being removed the government is seeking to reduce the powers of the commissioner, unions and "boards" or as I read this "negotiating committee's".

Before the next bill is offered before parliament all stake holders should form a reference group to work out the far reaching implications of these changes. Some of which are listed:

- Self interests – reduce the commissioners powers, which gives parliament more power to remove our right to take industrial action.
- Reduced options for negotiations, take it or leave it style of governing
- If the commissioner is able to intervene the government wages policy must apply so if, a group commenced bargaining today for an increase of 3.75% p.a but halfway through the new forecast comes out, the worker has to take the lesser value.
- Little or no right of appeal for unfair dismissal
- Permanency no longer means anything, if you are surplus you will be sacked without reasonable redundancy.
- A minor breach of the code of conduct can mean loss of employment.

These reforms serve to send us back to the early 20<sup>th</sup> century, where power hungry politicians could wield their authority over those of us that need to work for a living. This bill *will*, unite West Australians and in fact this is already being discussed and support building on the East coast.

In order to boost morale and confidence in an already shaky work environment, Please do not pursue this bill for any reason.

Brett Clements

By Brett Clements

January 10, 2014

By Brett Clements



**29. Who may refer industrial matters to Commission**

- (1) An industrial matter may be referred to the Commission —
- (a) in any case, by —
    - (i) an employer with a sufficient interest in the industrial matter; or
    - (ii) an organisation in which persons to whom the industrial matter relates are eligible to be enrolled as members or an association that represents such an organisation; or
    - (iii) the Minister;
- and

(ref Industrial Relations Act 1979)

**94. Regulations concerning redeployment and redundancy**

- (4) A direction referred to in subsection (2)(b) or (3)(c)(i) is, if that direction is —
- (a) given to the employee concerned in accordance with the relevant regulations referred to in this section; and
  - (b) upheld by the Industrial Commission on a reference under section 95(3), or the period referred to in that section has expired without that direction having been so referred,

a lawful order for the purposes of section 80(a), but nothing in this subsection limits the meaning of *lawful order* in section 80(a).

**80. Breaches of discipline, defined**

By Brett Clements

An employee who —

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

(ref Industrial Relations Act 1994)

## 108. Regulations

- (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act, and, in particular, for —

- (a) amending Schedule 1 or 2; or
- (b) managing the Public Sector or any part thereof; or
- (c) amending or supplementing, with effect from a time which is not earlier than the commencement of this section, the transitional provisions set out in Schedule 5 or 6 for the purpose of providing an effective and efficient transition from the operation of the repealed Act or from the circumstances of ministerial staff before the commencement of Part 4, as the case requires, to the operation of this Act; or
- (d) prescribing public service holidays; or
- (e) matters in respect of which the Governor is empowered by other provisions of this Act to make regulations under this section.

- (2A) The regulations may make provision for or with respect to any matter for which the Commissioner's instructions can provide.

- (2B) A reference in this Act to a Commissioner's instruction is taken to include a reference to a regulation referred to in subsection (2A).

- (2) To the extent that regulations made under subsection (1) are inconsistent with a Commissioner's instruction, public sector standard, code of ethics or code of conduct, those regulations prevail.

(ref Industrial Relations Act 1994)

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ref Workplace Reform Bill 2013 WRB2013205)

**23A. Unfair dismissal claims, Commission's powers on**

- (1) The Commission may make an order under this section if the Commission determines that the dismissal of an employee was harsh, oppressive or unfair.
- (2) In determining whether the dismissal of an employee was harsh, oppressive or unfair the Commission shall have regard to whether the employee —
  - (a) at the time of the dismissal, was employed for a period of probation agreed between the employer and employee in writing or otherwise; and
  - (b) had been so employed for a period of less than 3 months.
- (3) The Commission may order the employer to reinstate the employee to the employee's former position on conditions at least as favourable as the conditions on which the employee was employed immediately before dismissal.
- (4) If the Commission considers that reinstatement would be impracticable, the Commission may order the employer to re-employ the employee in another position that the Commission considers —
  - (a) the employer has available; and
  - (b) is suitable.

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- (5) The Commission may, in addition to making an order under subsection (3) or (4), make either or both of the following orders —
- (a) an order it considers necessary to maintain the continuity of the employee's employment;
  - (b) an order to the employer to pay to the employee the remuneration lost, or likely to have been lost, by the employee because of the dismissal.
- (6) If, and only if, the Commission considers reinstatement or re-employment would be impracticable, the Commission may, subject to subsections (7) and (8), order the employer to pay to the employee an amount of compensation for loss or injury caused by the dismissal.
- (7) In deciding an amount of compensation for the purposes of making an order under subsection (6), the Commission is to have regard to —
- (a) the efforts (if any) of the employer and employee to mitigate the loss suffered by the employee as a result of the dismissal; and
  - (b) any redress the employee has obtained under another enactment where the evidence necessary to establish the claim for that redress is also the evidence necessary to establish the claim before the Commission; and
  - (c) any other matter that the Commission considers relevant.
- (8) The amount ordered to be paid under subsection (6) is not to exceed 6 months' remuneration of the employee.
- (9) For the purposes of subsection (8) the Commission may calculate the amount on the basis of an average rate received by the employee during any relevant period of employment.
- (10) For the avoidance of doubt, an order under subsection (6) may permit the employer concerned to pay the compensation required in instalments specified in the order.
- (11) An order under this section may require that it be complied with within a specified time.

(ref Industrial Relations Act 1994

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s. 18

- (12) The Commission may make any ancillary or incidental order that the Commission thinks necessary for giving effect to any order made under this section.

ref Workplace Reform Bill 2013 WRB2013205

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## 23A. Unfair dismissal claims, Commission's powers on

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(ref Industrial Relations Act 1979)

## 101. Restriction on compensation for early termination of employment

Subject to section 23A(4) of the *Industrial Relations Act 1979*, the maximum compensation payable under this Act or any other written law in respect of the termination of the employment of an employee in the Public Sector by —

- (a) the employing authority of a department or organisation; or
- (b) the employee,

is an amount equal to the amount of the remuneration to which the employee is entitled for the period of one year ending immediately before the day on which that employment is terminated.

(ref Industrial Relations Act 1994)

ref Workplace Reform Bill 2013 WRB2013205

## 17. Schedule 5 amended

6 In Schedule 5 clause 13(4) delete “section 94,” and insert:

7

8 sections 94 and 95A,

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ref Workplace Reform Bill 2013 WRB2013205

## Part 4 — Salaries and Allowances Act 1975 amended

2 18. Act amended

3 This Part amends the Salaries and Allowances Act 1975.

4 19. Section 10A inserted

5 After section 10 insert:

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7 10A. Tribunal to have regard to government financial  
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ref Workplace Reform Bill 2013 WRB2013205

14 1 November 2013; or

15 (b) if any Public Sector Wages Policy Statement is  
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18 (2) In making a determination under section 6(1)(a), (ab),  
19 (d) or (e) the Tribunal must take into consideration the  
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21 (a) any Public Sector Wages Policy Statement,  
22 irrespective of whether or not the statement  
23 applies to a person or office in respect of whom  
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- 
- 26 State as set out in the following —
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- 7 on behalf of the State government.

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## 10. Method of inquiry by Tribunal

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  - (a) appoint a person nominated from time to time in writing by the President of the Legislative Council and the Speaker of the Legislative Assembly to assist the Tribunal in an inquiry in so far as it relates to the remuneration of Ministers of the Crown, a Parliamentary Secretary appointed under section 44A(1) of the *Constitution Acts Amendment Act 1899*, the Parliamentary Secretary of the Cabinet and officers and members of the Parliament;
  - (b) appoint a person nominated from time to time in writing by the Public Sector Commissioner to assist the Tribunal in an inquiry in so far as it relates to the remuneration to be paid or provided to the officers and persons referred to in section 6(1)(d) and (e); and
  - (c) appoint a person nominated from time to time in writing by the chief executive officer of the department principally assisting the Minister in the administration of the *Local Government Act 1995* to assist the Tribunal in an inquiry in so far as it relates to —
    - (i) the remuneration to be paid or provided to chief executive officers of local governments referred to in section 7A; or

(ref Industrial Relations Act 1994

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- (ii) the fees, expenses and allowances to be paid to elected council members referred to in section 7B.

By Brett Clements

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# Workforce Reform Bill 2013 submission

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