PUBLIC SECTOR REFORM BILL 2009

Second Reading

Resumed from 25 November 2009.

MR J.C. KOBELKE (Balcatta) [5.46 pm]: I am not the opposition lead speaker on the Public Sector Reform Bill 2009. However, given that for a period I was the minister assisting with the public sector and given that I sought to reform the Public Sector Management Act, I have taken some interest in this area. I support the amendments that are contained in this bill.

There is need for reform. The Public Sector Management Act was passed in 1994 as a Court government response to problems that clearly needed to be addressed from the time of the Burke government. The legislation was more about playing politics than about getting the best structure for our public sector. Given the passage of time, some of its deficiencies have become more obvious. I regret that I was not able to get reforms through. One particular reform I wanted to bring in was a process that a public sector employee could enter into if he had been dealt with unfairly or harshly. In that process the then Public Sector Standards Commission would have investigated to determine whether there had been a breach of the code through, for example, an act of bullying. There is no way in which affected public servants can necessarily gain redress or have such wrongs righted, because they do not have access in a general sense to the Industrial Relations Commission or any other forum. I was keen to do something in that area. This bill does not address that issue. Hopefully when the government considers further reforms, it will look to make changes in that area.

There are a range of rigidities and complexities in the system that need to be simplified. To a small extent this bill addresses some of those issues. When in opposition, the member for Cottesloe said that he wanted to make changes in the public sector. There was a signalling of the reforms that he wanted to make, but they were not specific and were more about rhetoric than delivering. One has to acknowledge that before the election, the member for Cottesloe, as Leader of the Opposition, indicated that that was the way he wanted to move. Shortly after coming to government, he made changes that were, in part, in keeping with the undertakings he had suggested. The Department of the Premier and Cabinet released an issues paper. I am not sure how widely it consulted before releasing that paper. I am on the record as saying to the Premier that, given the many reviews of the Public Sector Management Act, the government needed to move forward with a reform agenda. I also said that the government had to consult to make sure it got the reforms right. Of course, the changes or reforms as they might euphemistically be called by the government of the day are something that it will determine. The reforms of this government are very different from what I saw as the priorities. However, that is its responsibility. The issues paper canvassed a wide range of issues that were well beyond what is contained in the bill before the house. Some of the issues are quite controversial. For instance, page 12 of the issues paper reads —

> Amend the PSM Act and Redeployment and Redundancy Regulations to provide for PSC to approve compulsory retrenchment …

We are opposed to the sacking of public servants. If the government goes down that road, it will undermine the very good work done by the public sector, particularly in periods of very strong economic activity when it is difficult to retain people in the public sector. The government needs to look at the quality of employment contracts and the protection it provides. That is not to say that we do not have management issues in some agencies. Performance management needs to be addressed. That particular point within the issues paper is one that causes great concern. We will debate that another day, because that matter is not contained in this bill.

As I indicated, it is very important that public servants have the opportunity to seek redress when they have been injured because of a decision, because currently the avenues available to them are very limited and they do not always provide a form of redress.

On coming to government, the Premier found himself with a Department of the Premier and Cabinet, which had delegated powers, and the Public Sector Standards Commission. The Premier decided to appoint the Director General of the Department of the Premier and Cabinet to a new position, which had the title the Public Sector Commissioner. We then had a Public Sector Commission and a Public Sector Standards Commissioner. Prior to the election, the Premier indicated that he would move to a revamped Public Sector Commission. A lot of good arguments could be made for that. I will not go into those, but it is a case that has merit. However, when the member for Cottesloe became Premier, he ended up with a Department of the Premier and Cabinet, which lost most of its responsibility for the public sector, and a Public Sector Commissioner who sat alongside and in some areas overlapped the role of the Public Sector Standards Commissioner. The Premier decided that, despite what

he had said before the election, that was how the government was moving forward. The Public Accounts Committee looked into a number of matters involved in those changes. It suggested that such changes were not smart and that the Premier was complicating the situation by having a Public Sector Commissioner and a Public Sector Standards Commissioner. Recommendation 2 of the committee's report reads —

> That the Government make the necessary amendments to the *Public Sector Management Act 1994* to:
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> - establish the Public Sector Commissioner as an independent officer of the Parliament with appointment and dismissal provisions similar to the office of Auditor General;
> - amalgamate the offices of Public Sector Standards Commissioner and Public Sector Commissioner;
> - establish in statute a Public Sector Board, with an advisory function to the Public Sector Commission; and
> - update and simplify the *Public Sector Management Act 1994* based on its consideration of the reviews already completed of the Act.

Clearly, the recommendations outlined in the first and second dot points are included in this bill. The issue of a public sector board is a very good one, and I am not saying that just because I am Chairman of the Public Accounts Committee. Of course, this government got itself in a bind, because what should have been an appropriate and proper review of the reduction in the number of boards and committees has become a bit of a holy grail. While the government will set up extra departments, it has shown a very strong reluctance to ensure that boards and committees perform a very good role.

This state's public sector is so complex and it is working with and is in touch with so many different organisations and sectors within the community. Therefore, having an advisory board—not the older Public Sector Commission Board that had the ability to determine issues—that draws from academia, industry and the private sector would help with the many and complex issues that need to be handled and resolved to advance the role of the public sector.

Another reason for the amalgamation of the two positions, as is provided for in the bill in a move away from the model that was in place at the commencement of this term of government, is that the Public Sector Standards Commissioner is recognised in statute as having certain protections pertaining to appointment and dismissal. Whereas when the Premier set up the position of Public Sector Commissioner, it was really just a fancy name for a director general. That director general was appointed and held that position at the grace of the Premier, as the minister responsible for the public sector, and does not have the protections that are afforded to the Public Sector Standards Commissioner, who is an independent officer of the Parliament. This bill seeks to address that issue by amalgamating the positions of Public Sector Commissioner and Public Sector Standards Commissioner; therefore, the protection provisions will apply to the Public Sector Commissioner.

If members consider the Premier's rhetoric, they will find a problem because his rhetoric and the reality seem to clash head-on. In many cases they just do not match. One of the problems is for this government to acknowledge that change is needed in this area and that what the bill is proposing is, on the whole, going in the right direction. However, the rhetoric that the Premier attaches to it is quite often totally at odds with the reality. The Premier says one thing, but what he does is very different.

I refer members to the Premier's second reading speech in which he states —

> … the government pledged to "restore the independence of the public sector."

The opposition cannot see any evidence of that. In a moment I will illustrate how it has undermined the independence of the public sector. Further in his second reading speech the Premier stated —

> The Public Sector Reform Bill 2009 underpins the Public Sector Commissioner's capacity to operate as an independent statutory body with general responsibility for management and administration of the public sector.

The opposition hopes that is the case, but it will ascertain whether that is the truth after this legislation is implemented. Towards the end of the Premier's second reading speech, he stated —

> This government was elected on a platform of honesty and integrity.

These are very fine words, but let us look at the reality. The situation has been the appointment of the current director general of the Department of the Premier and Cabinet. From the outset I will say that that person is a very competent man. However, the difficulty is that what the Premier has said about him does not match the

reality. The way in which Mr Conran was appointed as the director general of the Department of the Premier and Cabinet caused grave disquiet within the wider community and, clearly, within the public sector. His was a political appointment contrived through the existing system. Recommendation 4 of the Public Accounts Committee states —

> The *Public Sector Management Act 1994* should be amended to provide the Minister for Public Sector Management, when appointing a Chief Executive Officer, the option of merit selection or direct appointment. In the case of direct appointment, the appointee's tenure should be limited to the term of government and the decision published in the *Government Gazette*.

The committee's recommendation indicated that the government got its way and it got a political appointment with a very competent person. In my view the government breached the act to get there. It said that through a legal technicality it did not. We will debate that in consideration in detail.

Under the current arrangements when there is a vacancy at a senior level, such as a director general, the process is run by the Public Sector Standards Commissioner. The Public Sector Standards Commissioner advertises, may use talent scouts and establish a panel to make recommendations. That panel considers the applicants and might then short-list them and interview those people on the short list and then, through the Public Sector Standards Commissioner, provides recommendations to the Premier, who is the minister responsible for the Public Sector Management Act. The panel might recommend one, two or three people as suitable appointees. It could even recommend people in order of priority. It would then be open to the Premier, as the minister responsible, to take the recommendation to cabinet for it to authorise the appointment of that director general. The situation then is that if the person the Premier or the minister wants is not included on the recommended list, difficulties in how that can be overturned in order to make another appointment arise. It can be done under the Public Sector Management Act, but the Premier or the responsible minister would cop a fair bit of political flak for appointing a person whose name was not on the recommended list. The recommendation from the Public Accounts Committee that I just read to the house is that the government should be able to take that risk up-front. If it decides, as this Premier did, that it wanted a sharp political edge to the appointment and, therefore, appointed somebody who was competent and political to drive its agenda through the department, the government of the day should be able to do that. That is what the Public Accounts Committee's report recommended.

Two issues arise from that. Firstly, it is an up-front political appointment and is not distorting the process for normal appointment in order for the government or the minister to get what they want. They say up-front what they want and cop the political flak. They must put forward their arguments. Secondly, it is a term-of-government appointment. The problem with the distorted way in which Mr Conran was appointed is that he holds that position for the term of his contract, irrespective of which party is in government or, if it is still a Liberal–National government, whether the government's leadership changes. For example, the Premier might decide to go to his farm in Toodyay and another Premier is appointed. The new Premier is stuck with that person, because he has a contract of employment and is not a term-of-government appointment.

The Public Accounts Committee's recommendations have been taken up in this bill. The second reading speech states —

> Another recommendation of the Public Accounts Committee, which will be implemented by this bill, was to provide capacity for the appointment of chief executive officers by the government of the day, but with such appointments limited to the term of the government. While it is expected that, in most cases, a normal selection and appointment process will proceed, the minister responsible for public sector management will be empowered to require the commissioner to appoint a person nominated by the minister. Such a requirement must be made transparently and accountably.

It gives committees heart to know that when they do the work and make recommendations, the government sees merit in them. I acknowledge that the government has considered the Public Accounts Committee's report. It has not accepted all its recommendations. For example, it does not accept the committee's recommendation to appoint an advisory committee, and that is fair enough. It gives committees heart when some of their recommendations are taken up by the government. The Public Accounts Committee's recommendations were driven by what happened with the appointment of Mr Conran. I will go over that, because it comes down to what I said about trying to judge what this government is trying to do. It comes down to the mismatch between the Premier's rhetoric and what, in reality, happens. The Conran appointment is a classic example of the Premier saying one thing and the outcome being very different.

Sitting suspended from 6.00 to 7.00 pm

[Member's time extended.]

Mr J.C. KOBELKE: Before the dinner break, I was talking about the difference between the rhetoric of the Premier and the reality. As we judge what is in the Public Sector Reform Bill, which in large part makes good changes, we need to try to decipher the intent and what will really happen as opposed to what the Premier talks about. One aspect that I think needs to be addressed but is not adequately addressed in this bill is the method of appointment of directors general and senior public servants. That is a clear example of the Premier saying one thing when the reality is quite different. In the appointment of Mr Conran, the Premier's statements do not fit in with the statement he made in his second reading speech. In the second reading speech, he said that the government was elected on a platform of honesty and integrity. That might be true; he may feel that the government was elected on that platform, but it is not something that it holds very near and dear to its heart. In talking about the appointment of Mr Conran, the Premier is reported in *Hansard* of 6 November 2008 as referring to Mr Conran as a long-term public servant who had extensive experience in the office of the Prime Minister. The second part is correct; he worked for John Howard. But he was not a public servant; he was a political appointment by the Howard Liberal government. If we need any proof of that, I will refer to the book *So Greek: Confessions of a Conservative Leftie* by Niki Savva in which many references are made to Mr Conran, because he was clearly a key political operative for the Howard government. At page 204 it states —

> Brian Loughnane —

He was the national secretary of the Liberal Party —

> organised a strategic-planning session for the next election at Liberal Party headquarters about six weeks after the leadership debacle. Peter Conran and I went, but no-one from the prime minister's main office was invited to attend.

Back when there was this big controversy between Costello and Howard, the Liberal Party hierarchy got Peter Conran to help with it. It was not even anyone else from the Premier's office, because Peter Conran headed up the cabinet office as a political appointment. Page 271 of the same book states —

> As head of the Cabinet Policy Unit, then later as chief of policy formulation at campaign headquarters, the talented Conran had had a difficult time of it, but always remained incredibly cheerful.

Mr Conran headed up the policy formulation unit for the Liberal Party at its campaign headquarters. The Premier, in espousing him for and getting him into the job, said that he was a long-term public servant. He was a political operative, but the Premier did not want to speak the truth.

Let us look at how the Premier rorted the system to get Mr Conran into the position of director general. We recall, regrettably, that the state election was held on 6 September 2008. Mr Conran spoke to the Premier twice around 10 or 11 September, within a week of the election. Between 6 and 21 September, the Liberal Party paid for Mr Conran to fly to Western Australia to give advice on the structure of government and things that the government was hoping to do. On 18 September, an article appeared in *The West Australian* announcing that approaches were believed to have been made to former Howard government policy director Peter Conran for a move west. On 23 September 2008, the government was sworn in, and on that day Mr Conran flew from Canberra to Perth. That flight was funded by the government; it wanted him here and it did not have to use Liberal Party money to do so because it was then the government. On 24 September, the very next day, a contract was awarded to "Concept Economics Pty Ltd (Peter Conran)" under the ministerial contracts for service engagement process for the provision of advice to the incoming government on the Council of Australian Governments administration and general policy issues. That is what we were told that contract was about. Mr Conran was a political operative in the Howard government. It lost government. The Barnett government came to power in Western Australia and Peter Conran was brought over by the Liberal Party before it was sworn into government. As soon as it was sworn into government, he was brought back to Western Australia at government expense and was given a contract, through his company Concept Economics, to work for the Premier. He provided advice from 30 September to 1 October, as the COAG meeting was coming up. It is also mentioned that he did some work for the government a bit into October. The Liberal Party wanted to slot this political operative in to head the Department of the Premier and Cabinet, the senior department in the Western Australian government. It then went through a charade of saying that it was going to go through a proper process of appointment. It had already sent out the message. Which senior public servants would apply for this position when it was being reported in the media that he was working for the Premier on a contract? People knew he was the man. Who would blot their copybook by trying to get this job as the Director General of the Department of the Premier and Cabinet when they knew that this man had been picked by the Premier, and the Premier had made comments to that effect so that he was known to be the chosen one? Through changes that were made to the process, the committee that was to recommend the appointment included Barry MacKinnon and Peter Browne, a former senior public servant with the education department and for some years the chief of staff to

Hon Norman Moore, and clearly a Liberal Party person and well connected to the Liberal Party. Two of the three people on the selection panel were clearly going to do the bidding of the Premier and make sure that Mr Conran got through.

Again, the Premier's suggestion that honesty and integrity means something to him is shown to be totally at odds with the facts of the case. In setting up the Public Sector Management Act in 1994, the Court government wanted to stop the parachuting of people into senior jobs whereby they were brought in as consultants and, while they were consultants, they applied for a permanent job and, Bob's your uncle, the government got its mates in there and the public service was stacked with political appointments. That is what this government did, yet it talks about honesty and integrity and the independence of the public sector. The reality is very different. Section 73 of the Public Sector Management Act makes it very clear that a person who is employed as a ministerial officer, not a permanent public servant, cannot apply or be appointed to such a permanent position. It is not allowed under section 73 of the act. At the time that Mr Conran made his application, he was still under contract through Concept Economics to work for the Premier. But the advice was that there was a legal loophole. Because Mr Conran was employed through a corporate entity, Concept Economics, he was not caught by section 73. The Court government, in seeking to protect against this parachuting, did not have adequate legislation to deal with the issue. The bill before us provides an opportunity to address that issue when we get to consideration in detail so that we can put in some further protection to make sure that that does not happen.

I have already commented that other amendments mean that it will be possible for a government in the future, on passage of this legislation, to make a political appointment, but it will do it upfront in a proper, honest and transparent way, rather than what we saw with the appointment of Mr Conran. In respect of what he says and what is the truth, the Premier is developing a bit of a track record for saying things that sound good and then doing something quite different. A classic example occurred over the past week or two when the Premier made a comment that federal government people were sneaking around regional Western Australia looking for a place to house asylum seekers without even talking to the government. Then, lo and behold, what do we find? We find that the Premier has written to Senator Evans, the Minister for Immigration and Citizenship, and pointed out some sites in Western Australia that he might like to have a look at.

Mr C.J. Barnett: After they were caught out sneaking around.

Mr J.C. KOBELKE: The Premier's letter was dated 28 May. They were asked to speak to Mr Conran again.

Mr C.J. Barnett: No. I will tell you the sequence.

Mr J.C. KOBELKE: I am glad that the Premier is trying to interject on me, because this is what he does all the time. He says one thing and when he is caught out, he scurries to try to change the truth, to say things other than the fact. As I have already pointed out with the appointment of Mr Conran, he tried to cover it up as a permanent, long-term public servant appointment when he worked in government, but it was a political appointment.

Similarly, with his accusations that the commonwealth people were not talking to him or his department, we find that almost a month ago he had actually written a letter giving them advice and telling them who they should speak to, and they spoke to Mr Conran to pursue that matter. Just a few days ago we had the Premier saying something that was not true. At that stage he had already written to them and they had made a contract, yet he made a statement to try to say that they were just sneaking around and that they needed to talk to the government, knowing that they had spoken to his director general Mr Conran and that he had written to them about the issue. I think that Mr Joe Spagnolo actually got it right when he drew that comparison with Sergeant Schultz in *Hogan's Heroes*, who had all those nefarious, corrupt things that were outside the rules happening around him. Everyone could see them, but what would Sergeant Schultz say? He would say, "I hear nothing; I see nothing; I know nothing." That is what we had with this Premier. He simply tries to say things that are not true. He tries to put a complexion on things that is good political spin, but it is wrong, false and dishonest. We have had it time after time after time.

This reform bill for the Public Sector Management Act—even the word "reform" is taking the language a little far—is an amending bill that does a number of minor things. As I have already indicated, if the Premier and the government are to embark on major reform of the Public Sector Management Act, it is not with this bill, despite the name. But the amendments are positive and ones that we think will actually assist, particularly in helping the government to do what it wants to do with the Public Sector Commissioner in a workable way. The current model of simply delegating powers and having a director general renamed does not provide independence at all. The independence will be seen in what is delivered, not by the rhetoric of this Premier, who has a track record of saying one thing and doing exactly the opposite.

MR E.S. RIPPER (Belmont — Leader of the Opposition) [7.13 pm]: Labor supports this legislation. We believe that there are possibilities and necessities for changes to the Public Sector Management Act. We have a number of amendments to move to the legislation. In constructing those amendments, we have consulted extensively with the Civil Service Association. We do note that the Premier has suggested his own government amendments to the legislation and some of them are similar to the amendments that Labor had been considering putting forward.

On this side of the house Labor supports the public sector. We believe in the public sector; we believe in its role; we believe in its importance. We have confidence in the capacity of the public sector. Moreover, we have confidence in the capacity of the public sector to improve and to meet the challenges of the future. The challenges of the future, should Labor be returned after 2013, will be significant. Labor will have a significant agenda to implement after 2013. We will need a high-performance, high-morale public sector to implement that agenda. We will rely on that high-performance, high-morale public sector in order to deliver the agenda that we will take to the people in 2013. To reach its full potential, the public sector needs central leadership; it needs central management; it needs central accountability. What has been lacking in the public sector is someone who has the power, and responsibility and accountability for the overall management of the public sector, in particular for the overall management of the senior executive service. A public sector divided into separate agencies with too little coordination of those agencies, too little succession planning for the future, too little management of the SES, too little accountability for the overall performance of the SES, or diverted or fragmented accountability, is not a public sector that can perform to the highest level that would be justified by the talents of the people in that sector.

We support the role of Public Sector Commissioner, which the Premier has outlined. In fact, one of our earliest statements in opposition was to say positively that we supported one of the new changes announced by the Premier in his new role. We support the establishment of the Public Sector Commissioner because we believe the public sector needs that overall leadership and management. Just as importantly, we believe that the government and the public have to have someone who can be held accountable for the overall performance of the public sector. If the public sector is to perform to its full potential, it is not enough to have a Public Sector Commissioner. It is also important to invest in professional development. It is important to invest in strengthening the management capacity at all levels of the public sector. It is important to engage in succession planning. We have an ageing workforce in the public sector. We have an ageing workforce in many parts of our economy, but I think the challenges created by an ageing workforce are greater in the public sector than they are in the rest of the economy. There is a strong requirement for succession planning in the public sector with a very large proportion of public sector workers entitled to retire in the next five to 10 years. There is definitely a need for planning for replacement of prospective chief executive officers so that they get the relevant experience that will enable them to contest for those positions and then to perform successfully in them. There is a role for leadership of existing CEOs. Prior to the creation of the Public Sector Commissioner, we had a situation in which each of the CEOs was employed by the minister responsible for public sector management, which in effect made that minister responsible for the direct management of those CEOs. This situation was complicated by the role of individual ministers in dealing with those CEOs and the role of the Department of the Premier and Cabinet in providing advice to the minister responsible for public sector management. I think the creation of the Public Sector Commissioner role does give more capacity for the management of CEOs in their roles as well as for the implementation of succession planning. Any government that is serious about public sector performance and improving that performance must apply resources to the challenges and the changes to the institutional arrangements. Institutional arrangements have to change. That is why we support the creation of the Public Sector Commissioner.

I turn now to proposed new section 21A. That proposed new section details the general functions of the commissioner. Two of those functions are to promote the overall efficiency and effectiveness of the public sector; and to plan for the future management and operation of the public sector. It is for the purpose of fulfilling those types of functions that we particularly support the establishment of the position of Public Sector Commissioner.

The government has chosen to sell the creation of the position of Public Sector Commissioner on the basis that it is meeting a pledge to restore the independence of the public sector. Frankly, I disagree with both the arguments that the government has put in support of the creation of that position. I disagree with the assertion that the previous government had somehow politicised the public sector. I also disagree with the assertion that the previous government had somehow undermined the independence of the public sector. That is not the way the previous government operated. It may have been convenient for the then opposition to make those sorts of allegations. It may have been convenient for the now Premier to pretend during the election campaign that that

was the case. It may even be convenient now for the government, for the purpose of selling its agenda, to try to create that impression. I was at the centre of the previous government. I did not see the so-called politicisation of the public sector. I did not see people trying to undermine the independence of the public sector. What I saw was a government that behaved in a way that was not substantially different from the way its predecessor government—of which the now Premier was a senior minister—had behaved with regard to the independence of the public sector. So I do not accept that argument.

Mr R.F. Johnson: Are you saying "independent"?

Mr E.S. RIPPER: I am saying "independent".

Mr R.F. Johnson: Okay. What about Yvonne Henderson? You appointed her.

Mr E.S. RIPPER: She was appointed through public sector processes.

Mr C.J. Barnett: So too was Peter Conran.

Mr E.S. RIPPER: Just because a person has a political identity or a political history does not mean that person is prevented from being employed in the public sector.

Mr C.J. Barnett: So why did you object to Peter Conran?

Mr E.S. RIPPER: I will come to Peter Conran. The chief objection is this. The now Premier brought Peter Conran over to this state as a ministerial adviser. He brought him over as a political adviser in the election campaign.

Mr C.J. Barnett: No.

Mr E.S. RIPPER: He worked for the now Premier during the election campaign. He worked for the now Premier on policy documents. The now Premier then had him in his office as an adviser. The now Premier then parachuted him out of his office and into the public sector. The Premier was not allowed to do that. The only reason he got away with that was that Peter Conran was employed by the now Premier as a company, not an individual. Had he been employed directly—that is, as an individual—by the now Premier as an adviser in the Premier's office, which is the function that he was performing, he would not have been allowed to apply for any public sector vacancy. So there is a difference between the assertion that was made by the Leader of the House with regard to the appointment of Yvonne Henderson and the argument that the Premier has just advanced with regard to the appointment of Peter Conran. We let ourselves down in politics if we say that no person who has ever been involved in political activity can ever be appointed to the public sector without some allegation being made that the independence of the public sector has been compromised. So I disagree with the first leg of the Premier's argument, which is that the previous government had undermined the independence of the public sector, and that the previous government had politicised the public sector.

I also disagree with the other leg of the Premier's argument, which is that the new government has somehow been exemplary in supporting the independence of the public sector. The new government has appointed as chief executive officers whomever it likes. The government might say, "Well, we are the government. We can do that." My colleague the member for Balcatta has spoken about the appointment of Peter Conran as Director General of the Department of the Premier and Cabinet. I must say that Mr Conran is a person of substance. Mr Conran is a very capable bureaucrat. But Mr Conran is also a bureaucrat who has, I think, in his bureaucratic career worked exclusively for Liberal governments.

Mr C.J. Barnett: He worked for Geoff Gallop!

Mr E.S. RIPPER: Very briefly.

Mr C.J. Barnett: For a day, I think—very briefly.

Mr R.F. Johnson: He had had enough!

Mr C.J. Barnett: It was too much for him!

Mr E.S. RIPPER: I do remember Mr Conran from those days.

Several members interjected.

The SPEAKER: Thank you, members!

Mr E.S. RIPPER: Before Mr Conran left the employment of the Gallop government—I think he ended up working for the Howard government—he gave me a most informative briefing on the question of native title. I did not agree with every conclusion or argument or every assertion that he advanced in that briefing, but I took

extensive notes and I found it a useful briefing. Mr Conran is a public servant, or bureaucrat, of substance. But he has worked only for Liberal governments, despite those few days when he worked for the Gallop government before he left. He worked very closely with Prime Minister John Howard, and he also worked during election campaigns at Liberal Party headquarters in a liaison role. He came back to Western Australia to help the Liberal opposition in the election—and good luck to him, and good luck to the Liberal opposition at that time.

Mr C.J. Barnett: You are just wrong now. I stand to be corrected, because he may have been playing a role that I was not aware of, but Conran was employed to advise the now government on the transition to government. To the best of my knowledge, he played no role at all in the election campaign, unless he played a role that I was unaware of.

Mr E.S. RIPPER: At what stage was he employed by the now Premier?

Mr C.J. Barnett: As we started to form government.

Mr E.S. RIPPER: So the Premier is saying it was not during the election.

Mr C.J. Barnett Not to the best of my knowledge. I do not know if he had any contact with any candidate or whatever, but to the best of my knowledge he played no role in the election campaign.

Mr E.S. RIPPER: I am prepared to go back and check the information on that. But I think the key point here is that he began his employment with the government as a political appointee, as a ministerial adviser.

Mr C.J. Barnett: As an adviser on the transition to government.

Mr E.S. RIPPER: Yes. Under the Public Sector Management Act, a person cannot move from a position as ministerial adviser to a substantive public sector position. A person who is a section 68 appointment—which is the section under which all ministerial advisers are appointed—is prohibited from applying for a position in the public sector. A person who is a term-of-government employee—which is what Mr Conran would have been had he not been a company—is prevented from even applying, let alone being appointed, to the position of director general. But because there was a loophole—because Mr Conran came in as a company or a consultant, and not as a direct employee—he was able to apply for that position.

Mr C.J. Barnett: You are right to suggest that there is, if you like, a loophole. But there is nothing particularly sinister about that. His appointment went through a formal process, which was examined by a parliamentary committee and was vindicated as a formal process. I make no secret of the fact that I am very happy that Peter Conran took on that position. He went through a formal advertising and application assessment process.

Mr E.S. RIPPER: What I object to is the Premier characterising the previous government as politicising the public service, when one of his first acts upon coming into office was to arrange for the appointment of Peter Conran as director general of his department—arguably the most senior position in the public sector—but then maintaining that he is good on the independence of the public sector and that he is good on preventing the politicisation of the public sector, and that his Labor predecessors were suspect on that issue. It is hypocrisy of the highest order to run that line.

Mr C.J. Barnett: I understand your point. But former Premier Alan Carpenter made the point before he left that the position of head of the Department of the Premier and Cabinet should probably be at the discretion of the Premier and the government of the day, but not other positions in the public service. He made a fair point. The Prime Minister appointed Terry Moran to run the Department of the Prime Minister and Cabinet. That was a personal appointment, as has been the practice in federal politics for a long time.

Mr E.S. RIPPER: I can see an argument for a very senior bureaucratic figure, such as the head of the Department of the Premier and Cabinet, acting as a bureaucratic warrior for the government's policy agenda. What I cannot see is accepting that argument, and then the Premier claiming that he is all for independence in the public sector and that the previous mob were suspect. It just does not hang together. The Premier cannot hold both points of view simultaneously.

Let us move on from Peter Conran, because other cases have arisen in which the government has made decisions that are not consistent with its position on the independence of the public sector. Let us go to the former director general of the Department of Water, Kim Taylor. His removal from that position showed that in this government the minister's personal attitude to the director general is the determining factor in that director general's longevity in the position. We had a strange position in which the Public Sector Commissioner announced that the minister had announced that the director general would no longer be occupying the position. It was a strange situation because the independent Public Sector Commissioner's announcement referred to another announcement, which had not actually occurred. The only announcement that had been made was the

announcement by the independent Public Sector Commissioner. I think there is an actual position here that is different from the technical position. Technically, the Public Sector Commissioner is the only person who can remove a director general. Actually, the Public Sector Commissioner probably has no choice if a minister tells a director general, "I cannot work with you; the relationship between us has broken down." What choice does the independent Public Sector Commissioner actually have when that happens with this government? The Kim Taylor case shows that the commissioner does not have a choice. That then takes us to the actual position. The director general knows that it is not a case of giving frank and fearless advice to the minister and being protected by the Public Sector Commissioner; it is a matter of having the minister's confidence or not having the minister's confidence, and if for any reason a director general does not have the minister's confidence, he or she is gone. That Kim Taylor case undermines the Premier's claim to being strongly supportive of the independence of the public sector.

The other case that I want to refer to is the appointment of the director general of the Department of Regional Development. I believe that cabinet made an appointment when the commissioner had recommended another applicant, and the person who was appointed, Mr Paul Rosair, was working in the minister's office. The applicant who was working in the minister's office got the cabinet decision for the job, when the process had recommended the appointment of another applicant. If the Premier wishes, he can refute that, but that is the advice that has come to me from people who claim to know the situation inside the public service. I cite those three cases—the appointment of Peter Conran, the dismissal of Kim Taylor and appointment of Paul Rosair—as counter-evidence to the government's claim that it is strongly supportive of the independence of the public sector and that it is different from previous administrations in that regard.

I now move onto a related issue—that is, provisions for the independence of the commissioner of the Public Sector Commission. A lot of what state governments do is the delivery of services. A lot of what state governments do is administration. State governments are held accountable for their policy positions and for their philosophies and values, and they are also held very strongly accountable for the performance of the administration on their watch. So much of what state governments do is service delivery; so much of what state governments do is administration. Governments at a state level need to be accountable for the quality of the administration and for the quality of the service delivery; however, accountability requires power. It is very hard to hold a minister accountable if the minister says, "I do not have the power to intervene and change that circumstance." If we have a section of the public service that is performing poorly because of poor leadership and the government wants to change the leadership of that section of the public sector, the government can say, under this arrangement for the independence of the Public Sector Commissioner, that it does not have the power to procure that change; therefore, it cannot be held accountable.

I see a problem here. I see a tension between the idea of the independence of the Public Sector Commissioner—a laudable idea—and the requirement for parliamentary accountability. The Burt Commission on Accountability way back in the late 1980s and early 1990s dealt with exactly this issue. The Burt commission recommended that every government agency should be subject in the final analysis to ministerial direction so that ministers could, in the end, be held accountable before Parliament for the performance of that government agency. There is nothing more frustrating for the public or for members of Parliament to come in here and complain about an issue, and then have the minister say, "I cannot direct. Members know that the law provides that the Public Sector Commissioner is independent. As minister, I cannot shift that person. That is a decision of the independent Public Sector Commissioner."

Let me give members an example in a related issue to the matter I am talking about. Members might recall that when facing the possibility of disciplinary action, a person left the employment of WA Police and secured a senior position in Fire and Emergency Services. I think that the public regarded that move and the consequent avoidance of disciplinary action as being unacceptable. However, that was something that technically speaking the government did not have power over. The government could not direct that that appointment be suspended or terminated. The government could not direct that that appointment not be made. Here we were in Parliament with the opposition saying that this was unacceptable, this was wrong and that this should not have been allowed to happen, and the minister said, in effect, that the opposition cannot hold the minister accountable because he does not have the legal power to intervene and direct that the situation be different. In the end, that is unacceptable. In the final analysis, there has to be capacity for the minister to issue a direction to the Public Sector Commissioner, because, in the end, the government is accountable to Parliament for the way in which the public sector performs. If something goes wrong in the public sector, and if there is an obvious injustice or an obvious breach of propriety, and the Public Sector Commissioner does nothing about it, there has to be a last resort power for the government to make a direction to the Public Sector Commissioner to have that matter fixed. Otherwise, we cannot in this place hold the government accountable for what is happening in the public sector.

No-one will be in a position to hold the public sector accountable for some of the management decisions that are made. When we have 100 000 people working in the public sector, people will make mistakes and people will do the wrong thing. There is a need in the end for someone to be accountable for that, and the accountability should be to Parliament. It should not be between an independent officer and perhaps the media; it should be through the minister to Parliament. How can we have an independent Public Sector Commissioner with accountability to Parliament when there is tension between those issues? We should be thinking about the sort of arrangement that applies in government trading enterprises. The idea that the government should direct the Public Sector Commissioner should be a matter of last resort. If the government does direct the Public Sector Commissioner, the direction should have to be in writing, and it should have to be tabled in Parliament and be published in the annual report of the Public Sector Commissioner. One might want to take it further. If the board of a government trading enterprise believes that the direction is to act in an uncommercial way, it can give its reasons for not thinking the direction should be complied with, and the relevant minister must then seek the concurrence of the Treasurer before the direction can be made final and a requirement placed on the government trading enterprise. He could take it further and say that if the Public Sector Commissioner does not want to accept the direction of the government, he can provide reasons to the government for why the direction should not be accepted. The government should have to then confirm the direction. Perhaps the whole correspondence—the government's two directions and the Public Sector Commissioner's reasons—should be presented to the Parliament in an annual report. The opposition has not moved amendments on these matters. I simply raise them in the debate. It will be interesting to get the Premier's response. Although it is good to have an independent Public Sector Commissioner, who is responsible for the management of the public sector and for planning for the future of the public sector and who can be held accountable—it is good to have a single point of accountability for the performance of the public sector—we lose parliamentary accountability if we are not able to question a minister or demand that a minister intervene when something blatantly wrong has been done in the public sector.

I now move on to a second area in which the legislation embarks on reform, and that is on the issue of disciplinary processes. There is no doubt that our disciplinary processes now in the public sector are protracted and convoluted. It takes a very, very long period for a disciplinary matter to be resolved. I think that is bad for the people concerned and for their workplace colleagues.

Mr C.J. Barnett: It can be more damaging than the alleged misdemeanour.

Mr E.S. RIPPER: It can be. A person can be in limbo for an extended period. Those of us who, as members of Parliament, have dealt with people in these circumstances will surely note the psychological damage done to people when they have been engaged in a long-running dispute and are unable to move on. There are also issues for people's workplace colleagues. On a lot of occasions the disciplinary action is because of complaints from workplace colleagues. Complaints can be made of harassment or of bullying. If those complaints are not resolved for a long period, the people who feel themselves to be victims of the action complained about suffer further because there is no resolution. Perhaps they have to continue to see that person in the building or work for that person for a long period. There have been cases in which people have complained of bullying or harassment and the disciplinary action has been so prolonged that the person has been re-victimised by forced continued association with the person complained about.

Mr C.J. Barnett: Certain sectors within public employment—obviously teachers, nurses and maybe police officers—are very vulnerable to mischievous and vexatious complaints. When I was education minister, a number of complaints were made by teachers that destroyed people's lives and careers but were then found to be frivolous.

Mr E.S. RIPPER: The current process can, if we like, further victimise people on a variety of levels. For a person against whom a vexatious complaint is made, it might take a year or two years before that matter is resolved. On the other hand a victim might make a legitimate complaint and not see any redress while the perpetrator continues in public sector employment and perhaps even in the same unit for a very long time before the matter is resolved. I think there is a need for reform of our disciplinary processes. If that reform occurs, it will be of advantage to a variety of levels. As we go about reform, we do not want to throw out the baby with the bathwater. We must ensure that there is always fairness in our disciplinary processes. Of course, there must also be prompt resolution.

The opposition will move some amendments during this process to try to add the right element of fairness to the overall balance. I will run briefly through the amendments we will move. They cover the following issues: the definition of merit criteria for appointment, relevant commissioner's instructions and requirement for the commissioner to consult with stakeholders before developing commissioner's instructions. There is a provision in this legislation for public service powers to be delegated to people outside the public sector. That was a matter of some concern to us as we reflected on that. The opposition can see some circumstances in which it might be

pragmatic and convenient to delegate powers to a person outside the public sector. For example, in the case of a natural disaster or emergency situation, it might be that the powers of the Director of Energy Safety should be delegated to a military officer who has been designated to be responsible for dealing with the disaster in a particular area. It might be that the powers need to be delegated to, say, the Commissioner of Police. We can see some reason for this general power to be delegated outside the public sector. We can also see the possibility that what the government is talking about here is delegating powers outside the public sector to allow for privatisation. We do not support delegation of powers outside the public sector to allow for wholesale privatisation. We will move an amendment to specify the purposes for which this delegation can occur and to say that there ought to be a time limit on any such delegation. We want this power to be available but not for misuse. We also think that any person with delegated authority should be bound by the Public Sector Management Act. We do not want to see the delegation of authority to someone outside the public sector being a device by which public sector standards of one sort or another can be undermined or ignored.

With regard to the disciplinary inquiries, we will move an amendment to suggest that an employee must be given written details of all allegations. We will also move an amendment to ensure that all evidence available must be considered when a disciplinary matter is being investigated. We have a set of amendments that allow for dealing with issues such as the one I spoke about briefly—that is, when a person subject to disciplinary action in WA Police was later appointed to the Fire and Emergency Services Authority and was therefore freed from the disciplinary action. This legislation provides amendments to allow for disciplinary action against a former employee in those sorts of circumstances. I think the case for that is strong and we do not oppose that. Equally though, we do not want to see minor issues that are 10 years old dogging a person in new employment. We think there ought to be a public interest test before disciplinary action is taken against an employee in new employment.

Mr C.J. Barnett interjected.

Mr E.S. RIPPER: In serious cases the public interest test will be met. But, basically, we are saying that the Public Sector Commissioner should look at whether pursuing disciplinary action when a person has moved from one agency to another is in the public interest. It is not in the public interest for people to avoid disciplinary action by moving from agency to agency. Equally, it is not in the public interest to years later follow up someone who has moved to a new agency for a minor transgression in a former agency.

We are concerned about two other areas, including the salaries, entitlements and hours of employees forced into redeployment. We think that that should not be used as a device to cut salaries, wages and conditions. We will move an amendment to protect the entitlements, salaries and hours of employees forced into re-deployment.

Finally, section 99 of Public Sector Management Act 1994 restricts the matters that can be included in an industrial agreement. The opposition thinks that there should be a capacity for the government and the union to include additional matters in an industrial agreement. It is an agreement, and the government can have the final say if it does not want certain things in the agreement, but I think we should allow flexibility so that the government and union can include matters in an industrial agreement.

I have run through the sorts of issues that will be covered by the opposition's proposed amendments. We have discussed our proposed amendments extensively with the representatives of employees in the public sector—namely, the Civil Service Association. We worked up our amendments in those discussions with the CSA, but they are the Labor Party's amendments and it takes responsibility for them. The amendments do not include everything that the CSA wanted, but I think that the discussions have resulted in a very positive set of amendments.

We have confidence in the public sector, and on this side of the house we support the public sector. We know that our agenda can only be implemented in conjunction with the public sector. In my role as a minister in the previous government, the support of the public servants who worked with me was absolutely vital to the implementation of the agendas for which I was responsible. I was very pleased to have public servants working in my ministerial office, and I had a system in which there was a rotation of public servants from Treasury through my office. Those people were all extremely competent and extremely professional and I learned lot from them. My office and my work benefited very significantly from the public servants seconded into my office. I regarded my entire experience of working with the public sector as a huge learning experience. I learnt a lot from the public servants with whom I worked and for whom I was responsible, and I sought to engage them in dialogue, conversations and debate to improve my understanding. There were many, many improvements to our policy, and the implementation of it, through ministers, including myself, accepting advice from the very competent public servants who reported to us. This side of the house also had confidence in the capacity of the public sector to improve to meet new challenges in the future.

We will not give up on the public sector; we will not say it is all too hard and we have to privatise. We will not to do that. We will support the public sector, and if we are in power we will invest in the public sector. We will ensure that the public sector has competitive salaries so that it can win the war for talent to get the people it needs. We will invest in professional development so that public sector management will be strengthened. We will work with, and invest in, the public sector to obtain the high-performance, high-morale public sector that we will need to implement our agenda. We are opposed to any wholesale plan to privatise government services. We do not think that is the way forward. If there is any doubt about the capacity of the public sector to deliver, the way forward is to invest in the public sector to strengthen it and make it capable of fully delivering our complex future agendas.

I conclude by saying that we support public sector reform, but we are wary of the government's overall agenda. This piece of legislation, as the member for Balcatta observed, is relatively modest. We can support this legislation, albeit we will move amendments in an effort to improve it. We will be working closely with the representatives of public servants—the CSA—as the government's full reform agenda is unveiled. We are wary of what that full agenda might entail, and it may be that there will be fiercer debates in this place on subsequent public sector legislation if the full reform agenda of the government turns out to be what we fear it might be. In the meantime, this legislation contains some good proposals and we can support this legislation. We hope the government will see fit to adopt some of the amendments that we will put forward.

[Interruption from the gallery.]

MR R.H. COOK (Kwinana — Deputy Leader of the Opposition) [7.55 pm]: I wonder if the applause was for the previous speaker or in anticipation of the next speaker!

Mr E.S. Ripper: I'm sure it was for you!

Mr M. McGowan: Sit down now!

Mr E.S. Ripper: While you're ahead!

Mr R.H. COOK: I rise to make some brief comments in relation to the Public Sector Reform Bill 2009. The Leader of the Opposition has said that Labor will support this bill, although we have a number of amendments that we believe will strengthen the bill; however, it is also fair to say that we are wary and cautious supporters of legislation. We want to make sure that not only this bill but also subsequent bills for the reform of the public sector do not in any way weaken the capacity of the public sector into the future. To paraphrase "Nugget" Coombs, we believe that governments are obligated to positively intervene in the economies of society to ensure that the standards of the people living in that society are raised. Governments are also obligated to become involved in the life of the community to ensure that the services they receive from the public sector are of a standard worthy of that community, and that those services are delivered in fair and equitable manner. The capacity of the government to deliver those things really depends upon having a strong public sector that is able to meet the challenges of the community at the time.

A strong public sector does a number of things. Firstly, it provides standard of services, standards for the delivery of those services, and standards of the sort of things that people in the community take for granted, be it law and order, health, education, housing, and so forth. A strong public sector also means that there is the capacity to deliver those services. If the public service has been whittled down over a period of time, there will be a lack of capacity to respond to the challenges that a government may face. The government may jettison large chunks of the public sector in the name of one political agenda or another, but it is losing the capacity to respond to the challenges of the future.

At the federal level I am reminded of the debate around the abolition of the Aboriginal and Torres Strait Islander Commission. The abolition of ATSIC was widely heralded by people on all sides of politics as a reform that needed to be made. It was only after the abolition and deconstruction of that department that we saw the impact of losing that capacity and that knowledge within the public sector in terms of the government's capacity to respond to issues confronting the Aboriginal community. I think that was writ large in the Northern Territory intervention, when the government reached beyond its usual utility and brought in the armed forces and other areas of government to try to respond to the huge challenge at that time.

A robust public sector also brings accountability to those services. It means that services provided for the public's sake by the government—such as, particularly, hospitals—are delivered in such a manner that the government remains accountable so that the community at large has the capacity to control and monitor how those services are delivered. When governments dismantle public sectors, when they outsource, when they privatise and when they contract out, they lose that capacity to undertake and hold a public service to account so that it is delivered in a manner that reaches the expectations of the electorate. The opposition is therefore

concerned about some aspects of the Public Sector Reform Bill, and the Leader of the Opposition has said that we will be looking at amendments to this bill.

From my point of view, I am concerned about the privatisation of health services in Western Australia. I am concerned particularly about the way that privatisation will impact on the standards of health services in this state, about the impact it will have on the capacity of staff who work in these hospitals, and about the level of accountability that the privatisation of health services will have for our public sector. For instance, we know that the privatisation of health services drives down standards. We saw this in the 1990s when the last Liberal government sought to privatise health services. At Sir Charles Gairdner Hospital, which privatised orderly services, we saw chaos break out across that hospital as the government sought to drive down the cost of services by reducing the number of staff. This sort of privatisation has an impact on the standards that can be achieved in the department. In particular it has an impact upon staff who work in that area; it has an impact on the way they work in their work environment; and it has an overall impact on the integration of hospital services across the different departments, which are undermined because parts of the hospital work to a contract rather than to a standard. In particular this has a gross impact on the staff who work in this area.

For instance, when cleaning services were privatised at Royal Perth Hospital in the 1990s, a number of staff who had worked for many years at that hospital and were familiar with the systems there were either taken out of the hospital altogether or found themselves working to a particularly tight contract in the way that hospital worked. For instance, there was found to be a de-skilling of the overall workforce and a loss of capacity of the hospital to respond to the challenges it confronted. In the case of Royal Perth Hospital in the 1990s, that loss of capacity resulted in infection outbreaks. As the public sector was diminished in that hospital, infection rates rose; and there was an impact in that regard. Obviously the increase in infection rates was a great concern to the hospital. But it was its lack of capacity to respond to that issue that was of greatest concern, because the staff who were then contracted to the outsourced contractor at that time could not respond to the challenge of the outbreak of infection, and did not respond to that outbreak of infection. The government was forced to bring in cleaners from other areas and spend large amounts of money—I think about $2.7 million at the time—to respond to that breakdown of standards and cohesiveness in relation to how the hospital worked. There was therefore not only a lowering of standards, but also a lack of capacity in the hospital to respond to it.

The other thing we lose when we privatise these services and diminish the public sector is the capacity to hold these institutions to account. The public loses the capacity to rein in that privatised institution to ensure that the services it delivers meet the public's expectations. We are seeing that in large part with the goings on at Peel Health Campus at the moment where there has been an outbreak of a poisonous atmosphere between hospital staff and the administration—the private sector operator. The public sector is totally powerless to respond to that. We therefore lose the capacity to hold the private sector accountable for public services.

Clause 34 of the Public Sector Reform Bill proposes a new section 33 of the Public Sector Management Act to replace the current section 33. In this clause, the government gives a chief executive officer or chief employee the capacity to extend the delegation of their powers to any person, rather than limit the delegation of those powers to someone in their department or organisation. This is a particular concern as it relates to the health sector, as it has the potential to expand the current privatisation process utilising this proposed new section 33. It means that a chief executive officer can delegate his or her powers to any person and not have that person limited by the Public Sector Management Act.

I think in particular of how this might apply to Swan District Hospital and the new Midland hospital. A number of staff members who currently work at Swan District Hospital have said to me that they do not want to work for a private sector operator at the new Midland hospital. It is my view that the changes to the act represented in this clause mean that they may be forced to do so or lose the salary and entitlements they have under the act as it presently stands. The way it would work is something like this: The Director General of the Department of Health would delegate the authority for hospital operations to a private sector partner—a private entity. As long as the current staff at Swan District Hospital are offered 80 per cent of their current salary or entitlements, they will be forced to transfer to the new Midland hospital. Under the current provisions of the redeployment regulations of the Public Sector Management Act, my understanding is that they would need to transfer over to the new hospital as long as they were offered upwards of 80 per cent of their current salary and entitlements, or face disciplinary action under the act.

My view is that no staff should be made to work in a privatised institution or lose their salary and entitlements. It is my view, under this proposed new section 34 of the act, that this is precisely what the act will entitle the government to do. Clause 34, therefore, needs to be amended to prevent a CEO from delegating any power or duty to anyone unless it is in keeping with the Public Sector Management Act. We want to ensure that staff who

currently work in the public sector system retain their salary and entitlements and remain part of our great state labour workforce. We want to ensure, first, that they are delivered some justice in their workplace, and, secondly, that the state maintains the capacity to deliver public services to people in our public hospitals.

As I said at the beginning of my speech, I believe that the public sector has a very important role to play in our society. I totally subscribe to the idea that governments have an obligation to positively intervene in the economy to raise the standards of all Western Australians. I believe that having a strong public sector is important for maintaining standards in our community not only of public services, but also for maintaining the standards of public services in other sectors of our community. We need to maintain that capacity within our public sector. The processes of privatisation of the public sector wreak havoc in terms of the overall capacity of governments not only to deliver services now, but also to be able to respond to challenges of the future.

What we hear, of course, from time to time from the government's rhetoric is that it likes to quarantine particular areas of the public service for privatisation. A favourite picking of the current Minister for Health is to target low-paid workers inside the hospital system. I am not quite sure why low-paid workers should be so attractive in terms of privatisation, but I strongly suspect that it has something to do with wanting to pay them even less. They get offered the lowest pay rises and they get screwed down all in the name of what the health minister would regard as his proud privatisation campaign. That decimates the workforce in terms of not only those particular workers but also the middle and upper management of these organisations who see their workforce decimated. They see a government that is not interested in developing the public sector workforce, particularly in hospitals. They must be asking the questions of themselves: What is my future in this organisation? What is my future if the government does not value the institution in which I am working? What is my future if the government does not value the workers with whom I am working? Should I stay and try to develop my career and my potential as a manager within the public sector or should I look elsewhere? Should I look elsewhere because perhaps there will be more and greater opportunities to extend myself as a manager and a professional? If people in the middle and upper management of these organisations see areas of their whole workforce picked off as part of some sort of privatisation auction, they will ask themselves the question: should I hang around? That will have a significant impact on our public sector capacity. The employees will essentially vote with their feet, not necessarily the employees who have to transfer to the private sector because they need the job, but those who are now in their careers tossing up the idea of whether to try to become a high-level public servant or to cut their losses now and transfer to some other sector of the community in which the workforce is actually valued.

The Labor opposition is supporting the Public Sector Reform Bill 2009 with reservations and with amendments, which the Leader of the Opposition has already outlined. We remain wary of the government's overall public sector reform agenda. We will provide strong examination and focus on future bills to ensure that they do not undermine standards in our community, do not undermine the capacity of our public service and, in particular, that they do not undermine the accountability that the community deserves in the delivery of public services.

MR C.J. TALLENTIRE (Gosnells) [8.12 pm]: I rise to speak to the Public Sector Reform Bill 2009 and begin by saying how exciting and personally fulfilling my time in the public service was. I joined the public service in 1999 and entered the Department of Environmental Protection. I was lucky enough to have colleagues who were of a motivation and a commitment to their task that was exemplary. In the time that I spent in the public service I learnt an enormous amount. It was an opportunity to benefit from the wisdom of people who had great scientific knowledge in the area of environmental protection and who also had a great public service ethic. They were people who believe that we must have a strong public service to deliver the level of environmental protection that our community in Western Australia expects and requires. Therefore, it is with that background that I come to the consideration of this legislation.

There are a number of areas in which I have concerns. I have concerns about the direction in which the Barnett government wants to take our public service. Naturally, there are opportunities for reform. There is nothing about our human society that cannot be improved in some ways. Our public service is consistent with that; there will always be ways that we can make our structures better and ensure that we deliver a better standard of public service to the Western Australian community. I think that some of the recommendations of the Public Accounts Committee "Report of the Inquiry into the Implications of the New Structure and Functions of the Department of the Premier and Cabinet and the Public Sector Commission" that was tabled in 2009 have been picked up. The recommendations provide some good directions on how we can improve our public service. Indeed, one of the recommendations, as has already been mentioned in this debate, was for the amalgamation of the Public Sector Standards Commissioner and the Public Sector Commissioner. That amalgamation is part of this legislation, so I acknowledge that that is an extremely strong point. I also noticed that the committee made recommendations about merit selection and the need to ensure that there is an option for merit selection or direct appointment for chief executive officers in the public service. I think that gets to this issue of politicisation. We need

transparency. If someone is going to be appointed directly to a position, that needs to be done in a highly transparent manner. Their terms of tenure do need to be consistent with what is, after all, a political appointment.

I have just touched on the issue of politicisation of the public service. My experience was that there was a very strong desire for the public service to be as apolitical as possible. I noticed when I was in the public service that many of my colleagues were almost scared to reveal their political affiliations and were perhaps even more wary of being engaged in community activities outside of their work if those community activities were somehow related to their core activity, their employment, in the public service. Therefore, I think that is an issue that needs to be explored further; that is, we need a strong public service that is not frightened of people losing jobs or promotional opportunities because of their personal views. Those views need to be respected for what they are; they are the actual core beliefs of people—the passion that they can bring to their jobs. We need to nurture that passion and ensure that we have a public service that enables people to work within their passions. Of course, there will ultimately be constraints on what they can deliver because the ultimate job of a public servant is to administer a piece of legislation, or to deliver services that are required by various pieces of statute. That is understood but we must never hamper or constrain that passion that so many people seek to bring to their jobs, so we must not develop a public service that is in some ways abused and fearful of revealing what its true calibre is.

I must say from personal experience that I think back in the late 1990s there were the signs of that fearfulness coming into place. We have to remember that it was the John Howard era and at the state level Richard Court was our Premier. I know that I actually stuck my head up on one occasion and was quoted in *The West Australian* because I was running for a position as the president of the Curtin Alumni and I said that if elected, I would seek to have the chairman of Wesfarmers replaced as Chancellor of Curtin University because he was a man who was making profit from the logging of old-growth forests. That was my campaign platform and the journalist who was interviewing me asked where my present employment was. Naturally, I reported that I was working for the Department of Environmental Protection at the time. As a result of that I was not necessarily reprimanded because I think fortunately my chief executive officer at the time, Dr Bryan Jenkins, and my director at the time, Dr Paul Vogel, and other people whom I reported to, like Kim Taylor, had that sense of enlightenment that enabled them to see that having staff who had passion and commitment was more important than worrying about some note that came down from the minister's office asking what was going on, that there was somebody in the department who actually dared to contest the Court government's position on old-growth forest logging. I am very thankful that I was able to serve in the public service under people of the calibre of Paul Vogel and Kim Taylor. Those people have moved on in their careers. Paul Vogel is now director of the Environmental Protection Authority. Until recently, Kim Taylor was the Director General of the Department of Water. I say "until recently" because, as has now become apparent, advice to the Minister for Water led to his dismissal. That advice came from a man who I believe was formerly responsible for sex shops. He is now the chief of staff for the Minister for Water. His advice was that he did not like the director general, and so one could say that Kim Taylor was sacked because of the advice of a former sex shop owner. I think that is a very sad state of affairs.

Mr M.P. Murray: Tell us what those objects were that were reported in the paper!

The ACTING SPEAKER: Members!

Mr C.J. TALLENTIRE: It seems that the Minister for Water's chief of staff was formerly engaged in providing a rent-a-willie service or something of that sort. It was extremely odd.

Mr M.P. Murray: Do you think that had something to do with water?

Mr C.J. TALLENTIRE: Perhaps the best we could say is that he has a small business background, but it is not necessarily a background that would be conducive to providing the sort of advice that is needed in a portfolio as important as water.

I touched on the issue of disciplinary procedures. I note that the Public Sector Reform Bill contains some new definitions. Indeed, clause 4(2) seeks to define "improvement action". There are various elements to an improvement action. There is the counselling aspect and the training and development aspect and, as paragraph (c) of that definition states —

> issuing a warning to the employee that certain conduct is unacceptable or that the employee's performance is not satisfactory;

I think the nature of that improvement action needs to be well understood by members of Parliament, because we need to know how that process is going to work. We need to be sure in situations, such as the one I outlined that I found myself in when I simply made some public comment. It had become apparent that I was working for the

then Department of Environmental Protection. The minister said that she was not very happy about one of her officers being reported in the paper in that way. We need to ensure that people who want to express their views are allowed to do so and that the place of their employment is not an impediment to their doing that.

Mr C.J. Barnett: It depends whether the person purports to represent the organisation. I gather that you didn't; you represented your view.

Mr C.J. TALLENTIRE: That is right, Premier. That is the distinction we need to make, and it is probably one that the Premier understands perfectly well. We need to ensure that the people who will refer to these reforms are clear about that as well. That is why I doubt that there is clarity.

That leads me to my next point—delegation and the different levels of delegation. I understand that much of the effort to provide for delegation is to allow a public servant working in one agency to be delegated responsibility to work on the provisions of an act that is the responsibility of another agency. I think there would be many examples of that across the whole public sector. That will facilitate things. For example, there would be greater capacity for officers at the Department of Fisheries to use the provisions of the Department of Environment and Conservation's Wildlife Conservation Act. Those officers could use those provisions more effectively with a delegation. I also understand that this provision for delegation could relate to various disciplinary procedures. Clause 34 of the bill seeks to replace section 33 of the Public Sector Management Act. The proposed new section reads —

> (1) Subject to any other written law, a chief executive officer or chief employee may delegate any power or duty of the chief executive officer or chief employee under another provision of this Act to any person.

There is an amendment to that provision in the Premier's name, but the amendment does not go far enough to reassure me that the person who will be responsible for the delegation in the future would necessarily be of a standing in the agency to deliver on the sorts of standards that we would expect. The amendment to proposed section 33(1) will change only the reference to the phrase "to any person" and refine that a bit to include a public service officer, any other employee, or a person who is appointed, employed or holds office in an entity that is listed in schedule 1 column 2. I have looked at that schedule and it is very broad. Basically, any form of responsibility can be delegated to anyone in the public service; that is how I read it. When I say "public service", I mean that in the broadest possible sense, because the people listed in the schedule to whom responsibility could be delegated could work at organisations as diverse as the Pilbara Development Commission, the Public Transport Authority, the Rottnest Island Authority, the Rural Business Development Corporation, the State Supply Commission, Swan TAFE, or the Agriculture Protection Board. People from any agency that falls under the Public Sector Management Act could be delegated the responsibility of directing staff in other agencies. We need greater clarity on that point.

I have discussed how we have seen a degree of politicisation in the public service and how that could be managed so long as there is transparency. There must be clarity. We need a public service that enables people to give frank and fearless advice but that does not temper their passionate commitment to whatever area of the public service they work in. I would like to use one more example from my time in the public service, and it relates to the issue of secondments. I was aware that people were being seconded from the public service to industry. That happened with great frequency. People in the environmental agency were seconded to industry, and that was said to be very good because it enabled industry to understand the sorts of regulations that were in place and the detail of those regulations and to be able to realise the government's expectation for an agency to meet those standards. Secondments to industry worked well. What I was concerned about at the time—I think it continues to this day—was the relative absence of secondments to non-government organisations. Often officers in the public service realise that it could be good for their professional development to take their expertise to and work in the NGO sector for a while and to then bring that experience back to the public service so that there is a good flow of knowledge from people who go back and forth between sectors. My experience was that there was a great hesitancy to allow that kind of movement to the non-government sector. Again, from personal experience, prior to moving to the Conservation Council, I sought to make that move as a secondment just to see whether that organisation would suit me and how I would find it as a workplace. But at the time it was deemed by the then chief executive officer of the agency that that was not to be permitted. I understand that that decision was made by a person who had the old idea that the public sector could be corrupted by people in the non-government organisation sector and in the community sector who were passionate about certain issues, and that the public sector needs to maintain its impartiality. So we had a complete contradiction there, because public servants were allowed to go on secondment to industry, but they were not allowed to go on secondment to the community sector.

[Member's time extended.]

Mr C.J. TALLENTIRE: The reforms presented in this legislation are useful in many cases. The suggestions put forward by the CPSU/CSA are extremely valuable. I appreciated getting advice and briefings from the CPSU/CSA. The notes that the CPSU/CSA made with regard to disciplinary action are particularly important. We need to ensure that when disciplinary action is taken against employees, the public interest test is met. We also need to ensure that employees are properly aware of any allegations that are made against them and that there is not an atmosphere of innuendo that may harm people's reputations. Employees should be given notice in writing and given a reasonable opportunity to respond. That is a good standard in any workplace. We should ensure that all those standards are met.

I will conclude my remarks at this point. As other speakers on our side have outlined, this legislation clearly provides an opportunity to ensure that our public service functions better, is a more enjoyable workplace, and provides careers that are as rewarding and fulfilling as possible. I hope that we can also, through our powers in this Parliament, ensure that public servants are given the level of remuneration that they deserve. Public servants are often tempted or poached away by industry. But those people who stay in the public service often do so because they are dedicated to their task in their agency. We should recognise that by rewarding those people appropriately. As the Leader of the Opposition has said, we are supporting this legislation. I am proud to do that. But it is important that the amendments that we put forward are properly considered, and that when public sector legislation comes to this house in the future, it is prepared in the spirit that I have outlined.

MR M. McGOWAN (Rockingham) [8.33 pm]: I want to make a few remarks about the Public Sector Reform Bill. I will not be speaking for long, but I do need to express my views about what the government is proposing in this bill. Central to this bill is the Premier's often repeated claim that he wants to restore the independence of the public sector. The Liberal Party said that in its election documents. The Premier is nodding. I have heard the Premier say that a number of times since the election. However, there are two fundamental things that undermine that statement that we need to understand. The Premier said in his second reading speech that this bill will —

> provide capacity for the appointment of chief executive officers by the government of the day, but with such appointments limited to the term of the government.

The Premier has said that he wants to restore the independence of the public sector so that the public sector will carry out government policy and provide fearless and frank advice. However, how can he reconcile that statement with the fact that chief executive officers will be appointed for the term of the government? That is the system that exists in the United States. When a new government comes into office in the United States, I think across the states, and even at the national level, huge numbers of public sector employees lose their employment.

Dr M.D. Nahan: No.

Mr M. McGOWAN: Huge numbers of public sector employees lose their employment. I think that at the national level in the United States, the number is in the thousands.

Dr M.D. Nahan: They have term-of-government employees and they have permanent public servants. The latter stay from one government to the next. It is the term-of-government people who go.

Mr M. McGOWAN: I think the member is agreeing with me.

Dr M.D. Nahan: No, I am not.

Mr M. McGOWAN: Of course, at a state level in this country, and at a national level in this country, we have some term-of-government employees within ministers' offices, and within the Prime Minister's offices. But at a state level in this state, and, as I understand it, in the other states, it has always been the case that we have a permanent head of the relevant government agency, and that person stays there across governments. I can give the member numerous examples of where that has happened. However, under this legislation, there will be a turning of the public sector to the American model, under which the chief executive officer of the relevant government department will lose his or her job at a change of government. That is what the legislation says. That is what the Premier said. This legislation will provide the government with that capacity. As a former minister, and as a parliamentary secretary to the former Premier, I observed public sector heads—they endured across governments. When Richard Court ceased to be Premier and Geoff Gallop became Premier, public sector heads who had worked their way through the public sector—very professional people—endured across governments. We see that with Malcolm Wauchope.

Mr C.J. Barnett: What about Eiszele? What about Bansemer?

Mr R.F. Johnson: What about Schapper? You got rid of all those people!

Mr M. McGOWAN: David Eiszele was not a public servant. We see that with Malcolm Wauchope—people across major government agencies endure across governments. What this legislation will do is cement the American system.

Dr M.D. Nahan: No.

Mr M. McGOWAN: It will. The member for Riverton can shake his head all he likes. He does not understand, because he has not read the second reading speech. I will quote again what the Premier said in his second reading speech —

> … provide capacity for the appointment of chief executive officers by the government of the day, but with such appointments limited to the term of the government.

That is, when this government loses office at the next election, those people who were appointed in this manner will be gone. When a future government loses office, those people who were appointed in this manner will be gone. That is the system. That is the American system of government. That is not the system of government that we inherited from Westminster. It is not. But that is what the government is bringing in here. That is the first point of contention that I have with this legislation. The government is moving away from the Westminster British tradition, in which there are permanent heads of public sector agencies, to the American system. When George Bush lost office, thousands of people lost their jobs, and Barack Obama brought in his own people. That goes back throughout history. When Democrat or Republican Party governments form office, a lot of people lose their jobs, because they are heads of agencies that are associated with that former Republican or Democrat government. That is what the Premier is proposing in this legislation. I think that is irrefutable.

The second point I want to make is that the Premier has said that he wants to restore the independence of the public sector. What the Premier has done is a very tricky manoeuvre. I know Mal Wauchope. I regard him as a person of some integrity. He is a person who has worked his way to that position through the public sector over 30 or 40 years. He held the position of director general of the Department of the Premier and Cabinet for the eight years of the former government, and for one or two years of the government before that. He has now moved into another job—the position of Public Sector Commissioner. That is the way the Premier has dealt with Mr Wauchope—a friend of the Premier's from school, I think the Premier once said. Mr Wauchope is a man who rose through the public sector, got to that position, and was retained by the former government after Richard Court's government lost office. He was retained in the role of head of the public sector. What the Premier then did was come up with a very tricky manoeuvre. The Premier moved Mr Wauchope to the position of Public Sector Commissioner. He then said that he is restoring the integrity of the public sector, because he has put that person into that position. He then put that very political employee into the agency that has the actual grunt—the Department of the Premier and Cabinet. The Department of the Premier and Cabinet has 500, 600 or 700 employees. The Office of the Public Sector Commissioner has 50 or 100.

Mr C.J. Barnett: The member for Rockingham knows that the majority are electorate officers.

Mr M. McGOWAN: I will go into that in a minute. The Premier has 91 people in the policy office in the Department of the Premier and Cabinet. That is a massive policy office; it is much bigger than the Labor government's policy office. There are 91 full-time employees now working within the policy office. The actual number of people who support the Premier in roles formerly carried out by the Government Media Office has increased by 0.6 FTE from when the last government was in office, up to 42. The agency with grunt is the Department of the Premier and Cabinet, which has all these employees. I accept that a number are located in electorate offices, but the department has hundreds upon hundreds of employees and the Premier has put in his man appointed by the public sector standards commissioner at the recommendation of Barry MacKinnon and Peter Browne—those two very independent gentlemen! The Premier has the grunt part of that arrangement and he has covered it with subterfuge by saying that he has a completely independent public sector because the Public Sector Commissioner is responsible for enforcing standards. To my mind, the Premier has politicised the public sector far more than it ever was, because he has removed the independent person and put him in charge of the much smaller agency that is carrying out largely the role of the former public sector standards commissioner—admittedly with an enhanced pay packet and job description—and he has put the very political operative in charge of the Department of the Premier and Cabinet. We saw during estimates that he was a very political operative; it was plain. The Premier laughed when he was referring to "us" and "you". The Premier is laughing again; he thinks it is funny! It was so obvious he was political. He was sitting next to the Premier saying, "When you were in government, you did it this way", and "When we are in government, we do it this way"! He was saying it in front of members of this place, and the Premier is now saying that he is independent. Come on! I have never seen such a brazen display. It was obscene in its brazenness! The Premier has him running the agency with grunt and he has moved Mal Wauchope over to the other agency. That is the Premier's

subterfuge. The Premier's manoeuvre is plain to anyone who has experience in government. It is very clever and only someone with 20 or so years in Parliament could have conceived of that one—a person with experience around the place who has been in and out of government and been kicked around the Parliament sometimes and kicked others around the Parliament at other times. The Premier has worked this out over the years.

Mr C.J. Barnett: Very Machiavellian!

Mr M. McGOWAN: The Premier is very Machiavellian. Behind that warm exterior lies a very Machiavellian character. I have been meaning to say this for a while: who else but a Machiavellian character could, upon assuming the premiership, have his photo taken running on Cottesloe Beach, as though they do that all the time, and carry it off! The Premier and I both know that he does not run up and down Cottesloe Beach all the time.

Mr C.J. Barnett: No; I do not.

Mr M. McGOWAN: When I saw that photograph of the Premier running on Cottesloe Beach, I thought bloody hell, when are they going to catch up with him! The Premier is out there getting his photo taken running up and down Cottesloe Beach as though he does it all the time!

Mr C.J. Barnett: I walk most mornings and I occasionally jump into a little trot—not for long!

Mr M. McGOWAN: And I believe that the Premier walks! As the Premier has told me before, the dogs love going for a walk with him. Last year during 4 July celebrations we both made speeches. The Premier told the story of walking around with his two Labradors in the morning.

Mr C.J. Barnett: I do. I did this morning.

Mr M. McGOWAN: I believe that the Premier walks the Labradors. I do not believe that the Premier walks them very far, and I certainly do not believe that he runs up and down Cottesloe Beach

Mr C.J. Barnett: I do when I am chasing them on a Sunday afternoon.

Mr T.K. Waldron interjected.

Mr M. McGOWAN: I have heard that the Premier was a footballer and a cricketer.

Mr C.J. Barnett: Not a cricketer—a tennis player.

Mr M. McGOWAN: The Minister for Sport and Recreation was misleading the house. I thought the minister said "the wicket" so I misinterpreted what he said. In any event, I do believe that the Premier was a footballer.

Let us go back to the Machiavellian nature of what the Premier has done—it is very clever and it has fooled everyone; not everyone, but it has certainly fooled the rest of the state. The opposition knows what the Premier is up to. The Premier has fooled the press that he is creating an independent public sector with a Public Sector Commissioner who, essentially, as far as I can tell, has largely the same roles as the public sector standards commissioner, whose role he will subsume—that is, appointing and providing advice to ministers on the appointment of heads of government agencies, and doing reports, which is an important role as well. The Premier has given him responsibility for that report that will be presented later this week. The Premier has given him this nebulous role that is hard to define of leadership of the public sector. What that actually means I am still at a loss. Having been a minister, I know that each public sector agency has its leaders. Sharyn O'Neill was one of the leaders in my agencies. I appointed her as leader for education and training. I appointed Kieran McNamara as head of Department of Environment and Conservation, moving over from the Department of Conservation and Land Management. Most public sector workers would regard the leader of their place in the public sector as the head of their department; they do not look to someone else, to some relatively obscure person as their leader. If I went out and met a park ranger in the North West of the state, I would find that Kieran McNamara was his leader. If I went to see a police officer, I would find that his or her leader is the Commissioner of Police. A teacher's leader is Sharyn O'Neill. The Premier came up with this term "leadership" —

Mr C.J. Barnett: The senior executive service might see it a little differently, if the member thinks about it.

Mr M. McGOWAN: Is the Premier saying that they see they have a leader in the Public Sector Commissioner?

Mr C.J. Barnett: That they look for broad leadership across the public sector—or, many of them would.

Mr M. McGOWAN: It is an ill-defined term and role.

Mr C.J. Barnett: Better a public servant does that rather than a politician.

Mr M. McGOWAN: The Premier has succeeded in moving a person who was independent out of the role of running the Department of the Premier and Cabinet and putting his own man in—someone who was appointed on the recommendation of Barry MacKinnon and Peter Browne.

Mr C.J. Barnett: Two very good people.

Mr M. McGOWAN: They are very good Liberals. I know Barry MacKinnon; he is a very nice man. I think he may have been a good Premier had he been given the chance. I do not know Peter Browne. I may have met him, but I do not know him. He was a long-term public servant and now has various other roles. But he is also a former vice-president of the Liberal Party. Those two individuals undertook that role and the Premier got the man he wanted. The Premier is looking like he swallowed something! In any event, for the Premier to say that somehow he has depoliticised the public sector, after he has made this appointment, does not bear any scrutiny.

I did want to touch on the other issues, and we had the debate recently on the removal of Kim Taylor. Perhaps the Premier can advise of any further developments in that regard in his response. I think it would be worthwhile if the Premier did that. I thought Mr Taylor was a very good man and someone who deserved better treatment than he received from this government. As I outlined to the house before, his father was a former Labor Deputy Premier. When the Premier does not give any valid reason for why Mr Taylor lost his position, and he says that he is restoring the independence and integrity of the public sector, it makes me wonder why a person of Mr Taylor's capability and qualities—who, as far as I know, has showed no political affiliation whatsoever—would lose his position in the way that he did. We had some debate about Peter Flett, Again I met Dr Flett, and he seemed to be a very capable gentleman. I thought he was treated abominably and appallingly badly by this government in the way that he was forced from his position. The Premier keeps referring to Yvonne Henderson as an example of a political appointee. I note that last week the Attorney General appointed Ron Birmingham as a judge. He is an eminent QC and adviser to the Liberal Party; he was a constitutional adviser or something of that nature.

Mr C.J. Barnett: He had an association with the Liberal Party years ago. He simply worked at the bar.

Mr M. McGOWAN: Good luck to him. He will probably make a very good judge; he is a QC and so forth. I am not saying the Premier should never appoint someone who has a political affiliation. All I am saying is that the manoeuvre the Premier undertook with this agency and the Department of the Premier and Cabinet was a clear construct to increase the control by the Premier over the public sector as opposed to the independence once exhibited when Mal Wauchope was in the position. It is obvious. I have set up the argument again. I do not want to go through the running along Cottesloe Beach scenario and all that sort of stuff. The argument concerning Mal Wauchope's move to a role that the Premier described as having more leadership, when he has put his own man into the grunt position, is clear. He should not run the argument that somehow he is depoliticising the public sector when he undertakes that sort of move and gives Mr Conran an agency with greater resources. I have some information provided through the estimates committee hearings that shows that the policy division within the Department of the Premier and Cabinet has 91 staff members. There is list after list. A couple of group 3s are running the place plus four or so group 2s and three class 1s. They go all the way down from level 8 to level 2. The Premier should not say that he does not have significant resourcing within the department for Mr Conran to work with.

[Member's time extended.]

Mr M. McGOWAN: I refer to the Premier's second reading speech in which he refers to splitting departments. I do not particularly see the relevance to this debate, but he created new government agencies by splitting a number of agencies. Personally, in some cases I think he has created more bureaucracy and less delivery. I referred to the former Department of Education and Training before—one that I am familiar with. The Premier will know better than anyone that education and training were brought together because training and education became seamless. Kids at school go to TAFE and TAFE colleges teach at schools. They are often on the same campus. There is a lot of seamlessness between those agencies. In his speech the Premier says —

> ... to improve effectiveness of service delivery ...

The Labor government merged those two agencies with the deputy director general responsible for the training component so that they could work together. With students in years 11 and 12 undertaking what was essentially vocational education and training, a single administrative agency was running the show. However, the Premier has split them, and the principal achievement, as far as I can tell, is twofold: firstly, they need a new set of offices in Welshpool or Osborne Park or somewhere so that a number of new government offices are now required that were not required before.

Mr C.J. Barnett: They will come together in one office.

Mr M. McGOWAN: In education and training? As the Premier knows, training was formerly in East Perth. Can the Premier not see that by splitting them, more expense is involved?

Mr C.J. Barnett: They will be moving out of the city to lower-cost metropolitan accommodation in Osborne Park.

Mr M. McGOWAN: How can it be lower cost if they are currently in a building in East Perth?

Mr C.J. Barnett: Because we are getting rid of a lot of tenancies in the city.

Mr M. McGOWAN: As far as I am aware, the building in East Perth is not a tenancy.

Mr C.J. Barnett: There were something like—I can't remember—40 or 50 tenancies in the CBD, and we are gradually consolidating and moving people out into lower-cost, more suitable accommodation.

Mr M. McGOWAN: Will the Premier listen to me for a moment? Training is in "Silver City", which the Premier will have been to a dozen times, as have I. If training is moved out of there, he will hardly put a set of coffee shops or a construction company or something in there; he will not save money. How can he? Is he saying that somehow we will lease out that space? As always happens with these things, the space will be filled by the people from education. Therefore, rather than one set of offices, there will be two sets of offices. That is surely what will happen. As far as I can recall—the opposition leader might correct me—it is not leased space. That space was originally designed as a shopping centre. It was purchased by the state government in about 1983 and education was housed there. That is why it has funny escalators. If training is moved out, the government will be obtaining additional space that it does not need.

The second issue with that split is that, as far as I can tell, the major reform agenda has been to rename each of the colleges. There are now these bizarre polytechnics and institutes around the place. For anyone who deals with families who want their kids to be in training, TAFE is a recognised symbol. Everyone knows what it is. No-one will know what the West Coast Institute or Eastern Suburbs Polytechnic is. "Polytechnic" is a 1960s British term, as far as I can tell. For the life of me, I do not know why Swan TAFE has been called the Eastern Suburbs Polytechnic. It is the most bizarre nomenclature reform I have ever seen, and I suspect the Premier did not even know about it; otherwise, I cannot imagine that he would have approved it.

Lastly, I thank the people in the gallery for sitting through this long and tedious debate. It was certainly not in my case tedious, nor in the case of the Leader of the Opposition. Actually, only opposition members have spoken, so it has not been tedious at all! But it will become tedious when the Premier takes the floor and advises us of his exploits running up and down Cottesloe Beach. I want to let people know that we are talking about public sector reform. We heard the other day that gardeners in the pubic sector will be getting a pay rise over three years of 8.5 per cent or thereabouts. I have a copy of the salary of the Premier's new chief of staff—the fellow who runs the Premier's office of 18 or 19 people—which is $345 000 a year, an increase of about $130 000 on what his predecessor was paid of about $200 000.

Mr C.J. Barnett: Are you having a go at my chief of staff again?

Mr M. McGOWAN: I have never met the man, but I have seen him on telly.

Mr C.J. Barnett: With the BHP–Rio deal, he just paid for his salary for the next 100 years.

Mr M. McGOWAN: I thought the Premier was responsible for that. Obviously, the Premier had no role.

Mr C.J. Barnett: I did not spend hours and hours on the detailed negotiations.

Mr M. McGOWAN: Is the Premier saying that his predecessor, Deidre Willmott, could not have done that?

Mr C.J. Barnett: I did not say that at all; I am saying that he did an outstanding job, along with others, in bringing that negotiation to an end.

Mr M. McGOWAN: That has been going on since Deidre Willmott was the Premier's chief of staff, but she was paid only about $200 000 and the new chief of staff is paid $345 000. I say to the members of the public sector in the gallery that that is how the Premier treats his staff. We heard what the gardeners' deal is.

Mr C.J. Barnett: What do you mean by how I treat my staff?

Mr M. McGOWAN: The Premier is paying his staff member $345 000 a year.

Mr C.J. Barnett: I would think he is very happy with his salary.

Mr M. McGOWAN: That is the point I am making. The Premier treats his staff very well, but, as I was saying, the gardeners at Cooloongup Primary School who are earning $32 000 a year will get an 8.7 per cent pay rise.

Mr J.H.D. Day: What about the former director general of health?

Mr M. McGOWAN: What does the present director general earn—that is, the one who was not sacked? That is the way the Premier treats his own staff. I must congratulate him—he treats his own staff very well; it is everyone else who has a problem.

MS L.L. BAKER (Maylands) [8.58 pm]: This Public Sector Reform Bill is very important. I would like to make a contribution to this debate and speak strongly in favour of the role of public servants and the value they bring to our state in the delivery of policy and programs across Western Australia. I am not sure how many other members in the house have been public servants, but there are a few of us. I went from a position with the private sector to one with the community sector and then with the public sector. That was back in the days when I was very young, and I worked for several years under a chief executive officer who I can remember had absolute enthusiasm and passion. He was probably the epitome of a mentor and what good leadership was in the public sector. I hope that the Public Sector Reform Bill 2009 will attract to, and develop in, the public sector the same kind of people. Some members may even remember Mike Cross from when he was in the public sector; he has, unfortunately, since passed away. He said something fairly early on in the piece that changed my fairly naive opinions: he asked me a question about the role of the public service, and I—somewhat naively—said that it was to serve the public. He said, "Well, actually, Lisa, it's more about delivering the government of the day's policies." The link for me between my original quite naive views about the role of the public service and where this bill takes us is the movement away from that frank and honest portrayal of what the right path of action is. I hope this bill will, in some way, try to return some independence to the role of the public sector. If it can do that, then I applaud it.

Members have heard the Leader of the Opposition describe our concerns about some aspects of this bill, and I will just outline, quite quickly, a few of my own. Firstly, I spent, most recently, a long time in the community sector, and I argued long and hard with the previous Labor government—of which I am now a member in opposition—about wage parity between the public sector and the community sector, about the drift that the community sector had, and the difficulties that the community sector had in keeping staff because they would always go to what they thought were highly paid jobs in the public service. I see the potential for a bizarre situation whereby the Premier has made commitments and underlined his enthusiasm for privatising services—outsourcing human services in particular—to the community sector because, in the words of the Economic Audit Committee, they are much more effective at delivering some things and can do so using other resources in the community such as volunteers.

I see a very grave danger in that the government is trying to deliver a whole bunch of services on the cheap, and, in doing so, it is undercutting public servants and doing the dirty on the community sector. I am, again, very cautious about this, because if the government intends to outsource a number of human services to the community sector, and also use secondment arrangements or redeployment arrangements to try to encourage people who perhaps have been displaced from their public sector jobs into the community sector, there must be wage parity clauses wrapped up in that arrangement otherwise everybody will be driven down to the bottom level of poverty. I know both sides of the house are aware of this, but there are workers in the community sector who live in poverty while working full time, but we do not seem to be able to change that. That is just not a situation that should be allowed to happen in our country with its rich economy. If this bill is an attempt by the government to force people into lower-paid positions, then that is abhorrent and must be stopped.

The government has contracts in place at the moment with wage parity clauses written into them, such as the Serco contract for the management of Acacia Prison. That arrangement covers the outsourcing of what used to be a central government service—the management of prisons—to the private sector, and if it was fine for the government to write wage parity clauses into that contract, then it should be fine for the government to write wage parity clauses into the proposed new secondment arrangements and any other contracting it does with the community sector. We know the difference in wages is, on average, 30 per cent between a job in the public sector and the same job and type of work in the community sector. I do not think it is at all fair to expect public servants to take that cut. I fear that that is what is being suggested.

I would also really like some explanation from the Premier about how the proposed arrangements for merit selection will ensure a better balance in gender equity in the public service. It is not at all clear to me how it will be ensured that political appointments—I am not naive; I understand that the government probably wants to put in place CEOs who can deliver best on its policy agendas—will be true to the principles of gender equity, and how that will be written into this policy. I am sure that the drafters of this legislation and the people behind it who have come from the commission and know the Public Sector Management Act have thought about that, and I would welcome some clarification about how that will be done.

In some respects this legislation has a bit of a negative focus. I would have preferred to have seen a much greater emphasis on rewarding good performance than what appears to be a fairly punitive focus on how to bring disciplinary action, how to shrink the warning processes and discipline processes from the current three levels to one level, and how to take away employers' rights and their ability to protect themselves from an unfair claim. I have seen that happen myself as a public servant. How do workers protect themselves from that? That is the subject of one of the amendments that the Leader of the Opposition mentioned, which deals with disciplinary matters under divisions, which states that an employing authority —

> must give the employee written details of the specific allegations and afford the employee a reasonable opportunity to submit an explanation to the employing authority; …

That is one of the suggested opposition amendments, and I think it is absolutely essential that that kind of clause be inserted for the fair and just running of the public service.

This bill proposes that the Public Sector Management Act be amended to allow for the dismissal of all public servants on four weeks' notice, not just those who work for the State Emergency Service. If that happens, what will be the incentive to become a public servant? That amendment will mean that not only are public servants on the same conditions as someone in the private sector but also they are on a significantly lesser amount of money for doing the work and they will not even have the security that we have come to equate with a public sector position. If the government wants the passion and joy that a good work environment has, and if it wants public servants to be enthusiastic and deliver brilliant outcomes, then it should not undermine the very reason why some of them are driven to seek out public sector positions—namely, the security they offer. That is a good thing. Security is a really good thing and we should be encouraging people to stay in the public sector because of the security it offers in return for good performance.

It also concerns me that we should not be rewarding good outcomes with unendurable and often very long hours of work. I would have liked to have seen—if not in this version of amendments then certainly in the next version of amendments—a bit of flexibility in the public sector and the public service amendments to focus on outcomes delivered from work. I know public servants who deliver four or five times the level of outcomes defined in their job description just because they love what they are doing and they work really, really hard. They are very good at doing their jobs. They should be rewarded for this. We should have a positive slant on the public service, not the kind of punitive drafting we have in this bill.

I am also interested to see how we can work more intelligently around regional staffing strategies. I do not foresee that the drafting of this bill will give us an awful lot of joy in attracting and retaining staff to regional positions. I know that we have problems with housing and other issues in regional positions, but I would really like some explanation as to how the public sector reforms can be put in place to encourage regional staffing, and a stronger and better quality and standard of regional public service in general.

I suppose the opposition would aim to develop a public service that is a preferred employer—the first choice as an employer. We will only get that if the public service has good conditions, good wages, secure employment and good professional development—in fact, the very best practice that any employer can offer. We cannot get that by undermining conditions, by bringing in very punitive measures, by undermining the security of staff in their positions, and by not, on balance, rewarding good performance and great outcomes like those I have seen delivered by many public servants whom I have been privileged to work alongside.

Another point is the agency performance measurement techniques that are being used. Generally speaking, an agency's performance measurements are not all that good for measuring social dividends or social outcomes. It would indeed be a great step forward if public servants were more attuned to how the work they were doing was actually delivering on the health and wellbeing of Western Australians rather than just on the economic bottom line or on the three per cent efficiency dividend.

I refer to clause 16 and the proposed amendment to section 20 of the Public Sector Management Act for the right of return of the Public Sector Commissioner—in the event of non-re-appointment—to employment in the public sector reflective of the commissioner's previous status. I hope that clause means that if the Public Sector Commissioner is still an employee of the public service when he or she takes on this new role, all the terms and conditions will be carried on while he or she is in that role. That is probably a technical detail, but I would be interested in some assurance about that. I am very pleased to see in this bill that part-time workers in the public service will be allowed to hold two part-time positions in different agencies. That is a fantastic thing. I am sure there are opportunities around that people would capitalise on if they could have two part-time positions in different departments. It appears that this bill has the capacity to allow that to happen.

I mentioned proposed new section 82A, which deals with disciplinary matters, and our proposed amendment that relates to having the opportunity to provide a written explanation.

My final point on this bill is, again, to ensure that redundancies and moves into other positions or opportunities to move from the redeployment list into other positions do not carry with them negative consequences for employees. Redundancy or the redeployment process has been a really crippling exercise for those people who have been through them. Voluntary redundancy is a separate issue, of course. Redundancy is a crippling exercise for a person put on the redeployment list and left to sit there without the right interventions and without good career transitioning. I have seen it many, many times with people who have been really fantastic at their work and, through no fault of their own, have found themselves stuck behind an office somewhere doing completely meaningless tasks. If this bill aims to suggest to someone that there is an opportunity to move into a lower paid job with fewer conditions, it will only exacerbate the destruction of that person's self-worth and pride. It is therefore incumbent on any bill to reform the public sector to make sure that those kinds of opportunities do not carry with them any financial disincentive or disincentive of any other nature.

I look forward to the following stages of this bill and to debating further some of the amendments to the legislation.

[Interruption from the gallery.]

The ACTING SPEAKER (Mr A.P. O'Gorman): Before the member for Cockburn starts his speech, I remind people in the gallery that they cannot participate in the debate and that clapping at the end of a speech is not permitted; I therefore ask that they desist from that, please.

MR F.M. LOGAN (Cockburn) [9.15 pm]: My contribution to the debate is as follows. In the second reading speech the Premier spoke on this Public Sector Reform Bill 2009, not at length, but relatively briefly. He talked about how this bill is in keeping with commitments made by the Liberal Party prior to the last election. He also talked about how this bill aims to restore independence, status and integrity to the public sector. I put it to the chamber and to the Premier that it does not do any of those things. It would be nice if it did, but in fact it does not do any of those things.

Effectively the bill deals with three things: firstly, the establishment, by way of legislation, of the role of the Public Sector Commissioner; secondly, it defines the powers of a CEO—the role of a CEO, how a CEO can be appointed and how a CEO can be removed; and thirdly, it deals with disciplinary provisions for public sector employees. Those are the three main points that this bill deals with. It does not deal with restoring the integrity, independence and status of public servants within the community and within the public sector itself. I wish it did.

The member for Rockingham raised the point earlier that in effect this bill undermines the independence of the public sector by turning the role of the CEO from one of a permanent public sector head into one that is appointed for the term of the government. There was a bit of argument across the chamber—I was watching on TV—as to whether or not that was the case. However, I remind the house that in clause 41 of the bill before the house, proposed new subsections (11) and (13A) of section 45 of the Public Sector Management Act make it very clear that that is exactly the intention of the government in terms of the ability of the minister to appoint a CEO. In proposed new subsection (13A) the term of the CEO is to expire on the day fixed for the return of the writ for the general election. It is therefore very clear in this clause that the appointment is for the term of the government. There is no argument about it. That, in itself, undermines the independence of the public sector.

I do not know why in Western Australia, and in other states as well, the public sector is not looked up to in the way it is in other countries. People who are employed in the public sector in France or in Japan have a very high status in society. They are looked up to. To get into the public sector, people have to pass certain high–standard public sector examinations, and to get into a management role or an executive role in the public sector in France and Japan, people must go to the right universities that will train people to carry out that role in the management of the public sector. The role of a public servant in the countries I have just referred to is one whereby those public servants have a clear enviable status within the community. Why can we not do that in Western Australia? Why can Western Australia not lead the way in elevating the role of public servants to one that is looked up to by other people in the community rather than one that is looked at as low-paid employment? That is what it is: low-paid employment in comparison with many other industries. I simply do not understand why we have this culture in Western Australia whereby we do not respect our public servants, regardless of what level they are. The Public Sector Reform Bill does nothing to improve that environment and create that culture. This bill does nothing to provide the independence claim that is being made by the Premier and it does nothing to enhance the status of public servants. When public servants are mentioned in the bill, it simply is in reference to how disciplinary action can be taken against those public servants. In my view, that action can be taken in a very

unfair way without due regard to natural justice and without access to the Western Australian Industrial Relations Commission.

If we look for examples to prove that what I have said is fact, we need look no further than the negotiations surrounding the cleaners and gardeners that were finalised recently at the Industrial Relations Commission. People who are employed by the state government in those roles of education assistants, cleaners or gardeners will have their wages increased from approximately $33 000 or $34 000 to about $36 000, depending on their length of service in the state. We know that means that a single parent who is employed in one of those positions will have to seek a hardship utilities grant to pay for their electricity and water bills. Therefore, we have the position whereby the Western Australian government is creating the working poor that it employs. The Western Australian government employs the working poor! It is one thing to say that this bill does nothing to enhance the status of public servants; it is another thing entirely to point out that current low–paid public servants, particularly level 1 workers, will, in certain circumstances, particularly if they are single parents, have to go to their own employer for a handout to pay some of their electricity bills and water bills following the recent increases in those two utility charges and tariffs. I find that absolutely disgraceful.

Another example I can give the house is when I was an assisting minister to the then Minister for Planning and Infrastructure, Alannah MacTiernan, and I was asked to look after the licensing department. One thing I discovered in the licensing department of the WA public sector is that virtually every single person who worked in licensing at the front counter—that is, where people go to do their driving tests and get their licences renewed at all the various outlets across Western Australia—was on level 1 of the public sector and they never, ever received an increase in their status or level in all the time that they worked there. Some people had been working in those same positions for nearly 30 years. These are the people who have to deal with all the complaints from customers about their licences. If we cast our minds back to when the major computer system went down in the licensing department, it was absolute chaos! The people who sorted out that chaos were the people on the counter in the licensing departments; they are the people who fixed it all because they had to do it manually. They are the ones who face the wrath of people who are upset about what has happened to their licences, who have not passed the test, whose licences have got lost or whatever and who are renewing their vehicle documentation. They are the ones who have to put up with the wrath of the general public and they had not received any recognition of their work in over 20 years. They were all on level 1. I found that just disgraceful. These are the people who actually reflect what the state government is. Most people do not have a great deal of interaction with the state government unless they go to agencies like the licensing department, and those poor people there who effectively reflect state government services are the ones who are paid the least. I was happy to be able to convince the then Treasurer, the now Leader of the Opposition, to change the position for those people; at least we had them lifted from level 1 to level 2 because of their length of service, their knowledge and their expertise in dealing with the general public. At least we got some increase for those poor people.

That is a reflection, I think a poor reflection, of the way in which public servants are treated by governments in Western Australia; they are not recognised for what they do. Most politicians only ever come into contact with public servants over the telephone through their electorate work or, if they are at the ministerial or parliamentary secretary level, at the very, very senior level. The general bulk of public servants do not come into contact with politicians at all; therefore, politicians have no idea what they do, how they are treated and what they are paid. That is the reality. That is the reality for me and I know it is the reality for everybody sitting in this chamber. It reflects poorly on us if we do not know the things that our own employees do and the way in which they are treated. It reflects very, very poorly on us.

The Public Sector Reform Bill 2009, as I said, deals with three things. It deals with the role of the Public Sector Commissioner. The government has been committed to the establishment of a Public Sector Commissioner since the election. The bill deals with the role of the chief executive officer. I have touched on the fact that I believe that the independence of the CEO has been undermined, rather than enhanced, by this bill because of the possible short-term nature of the period of service of the public sector CEO, as opposed to a permanent head of department. Also, there is nothing in the bill that would allow the CEO to actually contest his or her termination, apart from going back to the Public Sector Commissioner. There is nothing in this bill that allows for a terminated CEO to be able to go, for example, to the Western Australian Industrial Relations Commission. That is not accounted for in this bill. Where would a CEO who is terminated for whatever reason, if that person feels it is unfair, go to seek restitution? The reality is that he or she would have to engage in lawyers and it could only end up in court. That in itself creates a political problem for the government of the day if the issue of termination is dragged through a court of record and the public stoush that is engaged in as a result of that termination. That is why I think the bill is flawed; it does not include, over and above the appeal to the Public Sector

Commissioner, the ability for the CEO to seek restitution for unfair termination from an independent umpire such as the Western Australian Industrial Relations Commission.

The bill also does not deal with the ability for natural justice for employees under the disciplinary provisions. The member for Maylands touched on the fact that a disciplinary warning could be handed out or action could be taken, but there is nothing in the bill that says that it needs to be in writing. It should be in writing. That is simply a matter of fairness and natural justice. Of course, there is nothing in the bill that would allow a public sector employee to go to the Western Australian Industrial Relations Commission. Obviously, there are the public sector standards that people are employed under. At the moment, public sector employees cannot have those standards determined, conciliated or enforced by the Western Australian Industrial Relations Commission. I believe that they should have access to an independent umpire such as the Western Australian Industrial Relations Commission. It is available to other employees across Australia through the Australian Industrial Relations Commission. Of course, employees in Western Australia have access to the Western Australian Industrial Relations Commission if they do not work for a company that is covered by the Corporations (Western Australia) Act. Those institutions are available to all other employees, so why can they not be available to public servants? It would be only fair and equitable.

I want to touch on two other issues. Firstly, the member for Maylands touched on the issue of regional employment. Although I accept that this bill does not deal with the issue of regional employment, it is an issue that the Premier's government has to deal with. I put it to him that he has a problem now, and, if the economy expands in the way in which he expects, that problem will get bigger. It happened to me when I was minister for industry and resources. It was extremely difficult to get public servants to go to, for example, Kalgoorlie or the north west; people just did not want to go to those areas. It was not just the issue of housing and accommodation; there was no incentive for people to go to those areas even on a fly in, fly out arrangement similar to that for private sector employees. The end result of that was that the provisions of the Mining Act were not being enforced in a timely and appropriate manner. That was the reality. I put it to the Premier that the provisions of the Mining Act are still not being enforced because we simply cannot get people to work in regional centres.

Finally, the bill deals with the disciplinary provisions for public sector employees and the role of the CEO and the Public Sector Commissioner in applying those disciplinary provisions. The bill does not deal with—I am not sure whether the second phase of the reform will deal with this—the role of senior executives and their interaction with the private sector. For example, a public servant in Canada cannot take a cup of tea off the private sector. Public servants in Canada have to declare all their relationships with the private sector, particularly companies and senior management.

Mr C.J. Barnett: In America, they can barely get in the same lift in the building.

Mr F.M. LOGAN: Yes. In Western Australia—this is no reflection that anybody is doing anything wrong—the relationship between senior management in the public sector and business is, on many occasions, very close indeed. One need look only at the number of senior public servants who are invited to and rightly attend events such as the opera, the ballet, the Perth festival or the Leeuwin Estate festival. Significant numbers of public servants go to those events to enjoy themselves. I am sure that the Canadians, given the way that they deal with their public servants, would be shaking their heads in dismay and would be saying that the relationship between public servants and those companies is inappropriate and unethical and should not be encouraged. I do not want to undermine the freebies for those public servants, but they are freebies, and that relationship could be seen to be unethical and too close for an independent public sector. As I say, I do not believe there is anything untoward in that relationship; it is just a perception that such a close relationship should not occur. I am not sure whether the Premier will look at that in the second phase of the public sector reform, but I think it would be very brave and good of him if he did look at that matter.

MS A.R. MITCHELL (Kingsley) [9.35 pm]: I support the Public Sector Reform Bill. I wish to speak only briefly and mainly about only one or two sections of it. Many members will be aware that I also have had quite an extensive career in the public sector and have had many experiences within it. Of course, most of them were positive. The public sector is a very good place to work most of the time. But there are some areas within the public sector that need to be looked at. I am certainly pleased that this bill is before the house so that we can improve that situation to ensure that the public sector is highly thought of and that people can see that what goes on is very fair and very real. I also obviously received many emails from constituents who contacted me through the Community and Public Sector Union – Civil Service Association of WA, and I have been very pleased to respond because of my experience within the public sector. I feel that sometimes the standard email that has been sent has not been a true reflection of this bill or of what can occur within the sector.

I want to talk particularly about the amendments to the disciplinary process in the bill. It is unfortunate, but often that needs to be done within the public sector. My experience was in a very large government agency and also in quite a small agency. Both agencies put me in situations that were quite difficult to deal with under the current process. One could ask: "Why didn't I employ the right people in the first place?" Yes, that is always an issue. I certainly hope that that comes up in the second part of the public sector reform, because if the rules of employing people in the public sector are followed to the letter, that is not always the best way to do things. It certainly would not occur in any other area, so I hope that the employment of personnel under the process is improved by future amendments.

The disciplinary process is a three-stage process at the moment and we want to reduce it to a one-stage process. I can only applaud that move. A three-stage process is a very long process. It takes an inordinate amount of time and causes a lot of angst for both the employer and the employee. It is not something that people go into lightly and it is not something that people treat lightly. It is certainly something that needs to be handled with great care. It is very difficult in a small agency. That process is even worse in an agency with regional staff located outside the metropolitan area. I certainly support the intention to go to the single-stage process, again with full natural justice. Everything we did was in writing. It gave people a chance to respond. However, we must make sure that we do not extend this process and cause a great deal of problems for both parties—the agency, or the manager, and the employee. We certainly have a responsibility to make sure that these matters are dealt with fairly and quickly. We certainly have a responsibility to achieve the best outcome.

As I have said, if a disciplinary process is taking place in a small agency, there is nothing worse for the morale of the staff, and there is nothing worse for the agency, because the outcomes will definitely be reduced. A lot of time is spent on this process. Believe me, it is very frustrating for all concerned. I am certainly aware that some people would say that any reduction in the disciplinary process will disadvantage employees. I do not believe it will. Most people want the disciplinary process to be gone through in an appropriate and fair way, but to be sorted out as quickly as possible. The way in which the public sector has been going through the disciplinary process has been very convoluted. I also believe that within this process there should be flexibility. The principles need to be followed, definitely; however, one process does not fit all. Therefore, the flexibility that is presented through this reform bill is very important.

I also want to mention my concern that if a person in the public sector is going through a disciplinary process, but the person manages to get into another agency—which is often the tactic that is used—the employer of that person is unable to speak to that other agency, either during the disciplinary process or after the process, about the issues with that person. I found it very frustrating that I might have inherited a person who had been going through a disciplinary process, but I had not been told, or that I could not let another agency know that it was going to inherit a problem with a person who had come from my agency. Once again, that seems bizarre to me. Therefore, I believe that the ability to transfer information from one agency to another can only be a good thing. I am not saying it will be good for the person concerned, but somehow or other we need to put a stop to people being able to move from agency to agency and to get away with everything that they may have done. That used to cause many of my staff to get quite frustrated, because they could see that if people did not do the right thing, they could just go and get another job, and invariably they would get a promotion as well. So there was no penalty. It was very difficult. I found it very frustrating to front up to a meeting and see a person whom I had been dealing with in a disciplinary process sitting at the other side of the table and scoffing at me, because that person had been able to get away with it. I therefore see that transfer of information as an absolutely essential part of this process.

We want to be able to respect the public sector and hold it in high regard. However, from my experiences within the public sector, it has become a very processed-driven organisation. It is not prepared to really do the work. Perhaps the systems that we have put in place are not conducive to that. It is, as I have said, a process that is protective of the people within it. People in the public sector seek to protect themselves. They are not encouraged to speak up or put ideas forward, because they may get knocked down. They are not encouraged to create opportunities for the agency and for themselves. They are there to basically put a stop to most things. The way they do that is by writing reports, evaluating those reports and reviewing those reports, and then writing another report and starting the whole process again. So I do not believe that the outcomes in the public sector are as effective as they could be.

I think we all agree that we want to have an effective and productive public service. So at this point in time, we have a culture that needs to change. We need to change the processes that are currently in place in the public service, and the disciplinary process is one of those.

I agree that the security of employment in the public sector is something that should be respected and promoted. However, that should not mean that people in the public sector do not have to perform all that well. A lot of

people are sitting on the borderline of performance management. That makes it very difficult for the public sector to be as successful as it could be. I would like to see reform of the public sector. I believe there are some things that are a big selling point to employment in the public sector. I rate security as one of those. But I do not think it should be a case that a person who has a job in the public sector has a job for life and nothing can happen to that person. It is unfortunate that some people in the public sector work to that rule. If we can change that attitude, we will have a public sector that is performing well, and we will achieve a great deal from it.

I have to say that I probably disagree with the comments of the member for Maylands—now in the chair as Acting Speaker—about the gender equity process within the public sector. I for one want to earn a position in my own right and on my own merit. I certainly never want to be a token woman and make up part of a numbers game. But I do believe that there are many capable women who are doing a very good job within the public sector, and they will continue to do well as they move through it.

Finally, if we want a public sector of which we can be proud, we must support these amendments. If we do not support these amendments, the public sector will continue to be a source of amusement and frustration to many people both within it and outside of it.

MR V.A. CATANIA (North West) [9.45 pm]: I have had many meetings in my electorate office on the Public Sector Reform Bill. That has been the case particularly in Karratha, where there is a large number of public sector employees. Several of those meetings were with local employees, and several of those meetings were with the union, the CPSU/CSA. I would like to thank the secretary of that union, Toni Walkington, and also Jo Gaines and Steve Farrell, for giving me some education about this bill and how it will affect my electorate. As members will know, my electorate covers a very interesting part of Western Australia—Karratha. Karratha is currently doing extremely well economically, as it has in the past, because of the resources sector. However, that is putting a lot of pressure on the ability of government to locate government departments in this growth area, and to attract and retain staff and find housing for people so that it can maintain a good public sector workforce not only in Karratha but elsewhere in the Pilbara. Therefore, I am concerned that we get this bill right so that we can properly reflect and protect this very vital part of our fabric of government and ensure that we give the public sector all the tools that it needs to do its job and do it well.

I have been dealing with the union not only on this bill but also on district allowances. This is all part of the package that will assist in attracting and retaining the much-needed workforce, which sometimes can be very difficult to do in places such as Karratha. I am sure there are many members of the CPSU/CSA in the gallery. If those members are from the Pilbara or the Kimberley, they will be very pleased about the district allowances that the government has offered. I was a bit shocked to listen to the speeches of members of the opposition—actually, I was not shocked; it was no surprise to me—and to hear how they are championing the causes of the public sector union employees about various matters. It amazes me, when I look back to the eight years of the Labor government, that many of these reforms were never talked about. One reform that I believe should have been introduced on the first day the Gallop Labor government came into power was to make sure that public sector employees are provided with the same opportunity as private sector employees to have access to the Western Australian Industrial Relations Commission. When the Public Sector Management Act was enacted in 1994, it placed restrictions on the right of public sector employees and public sector unions to have matters considered by the Western Australian Industrial Relations Commission. These restrictions do not exist for private sector workers covered by the same legislation. The specific restrictions that apply to matters for individuals are any matter that is covered by public sector standards. Public sector standards cover matters such as redeployment, grievances, performance management, acting on secondment, transfers, and recruitment. The specific exclusion for the Western Australian Industrial Relations Commission to deal with these matters is found in section 80E of the Industrial Relations Act 1979.

The Industrial Relations Act was amended at the same time to support the establishment of the Public Sector Standards Commission. It meant that a breach of anything that was covered by the standard could be lodged only with the Public Sector Standards Commission as the Western Australian Industrial Relations Commission no longer had jurisdiction. However, the Public Sector Standards Commission could only find on provisional matters and could then only recommend that the employer change its processes in future. This is unlike the Western Australian Industrial Relations Commission, which has the power to hear the merits of the case and provide for a finding for that individual. The Public Sector Management Act 1994 was enacted prior to the Commission on Government. Recommendation 83 of the Commission on Government found that the Public Sector Management Act was flawed in that it does not provide for compliance by chief executive officers or chief employees with standards, codes of ethics and codes of conduct. It found that the Western Australian Industrial Relations Commission should be empowered to deal with employment related grievances and provide injunctive relief or direct administrative remedies as appropriate. The Fielding review of 1996 reinforced this

and described the standards and code of ethics in government as pointless because they could not be enforced. The introduction of public sector standards was also used to restrict the ability of the public sector unions and the government to include matters covered by public sector standards in industrial relations agreements. These provisions are contained in section 99 of the act. These restrictions on content in agreements do not apply to the private sector. The deletion of section 99 of the Public Sector Management Act removes the restrictions on the matters that can be in an industrial agreement. It does not mean, however, that these matters will then be included in an industrial agreement; this can only occur where agreement is reached between the parties.

Members will find on the notice paper an amendment in my name to delete section 99. By deleting section 99 of the Public Sector Management Act and the consequential amendments to the Industrial Relations Act 1979 to delete section 80E(7) both of these matters will be resolved and public sector employees will have the same rights as private sector employees to have their industrial matters dealt with by the Western Australian Industrial Relations Commission. That is an amendment that I wish to make to what I think is generally a very good Public Sector Reform Bill 2009.

I urge members opposite to look at the amendment and to appreciate the need to have a level playing field between the private and public sectors to ensure that it is easier to attract and retain public servants. We need a fair playing field, particularly with employment in the Pilbara, where it is already very difficult and has been traditionally difficult to attract public servants, and we must protect those people who provide that vital service. That is especially so for Karratha, which we are creating as a city in the Pilbara, and it is absolutely necessary to ensure that we keep our government agencies fully staffed with public sector employees in order to deliver a service that meets the community's expectations. I urge my former colleagues on my right to look at this amendment. As I said, I was a bit shocked when the CSA brought this to me and when I asked why the then Labor government had not moved this amendment, hands went up in the air. I urge my former colleagues to do whatever they have to do—go to their factional leaders to find out if they can support this amendment and if they are allowed to vote this way!

Mr M.P. Whitely: Come off it! Don't rat on us and start telling us how to behave! Where's my vomit bucket!

Mr V.A. CATANIA: When I moved across, I made sure I represented my electorate. I urge the member for Bassendean to support public sector employees by supporting this amendment that will ensure that they can have an even playing field with the private sector—even though members opposite may be told to vote another way.

MS J.M. FREEMAN (Nollamara) [10.04 pm]: I rise also to speak on the Public Sector Reform Bill 2009. I would like to take this opportunity in rising to commend the public servants with whom I have the opportunity to work, both in a professional capacity when I negotiated with them and when for a period of time I was a public servant, and also because my partner of 17 years is a proud public servant. I have learnt from him the valuable, enduring and principled attitude that a public servant's role is to serve the public and that they do it with pride throughout the state, not only at the grassroots but also the administrative level to keep the cogs of government running.

In saying that, I would like to address a couple of points that the member for Kingsley raised, in particular, her complaints about the procedural aspects of the public sector and all aspects of her belief that this bill will make those things better. In the short time I worked in the public sector prior to coming to this place—of course, once I gained preselection I resigned—I experienced my feelings about having so many forms to fill in and the process of things. It seemed to me that it was often to do with the lack of staff, and often the lack of administrative staff. The public sector has got rid of a lot of the workers who would do a lot of the clerical and review work—getting the tickets for trips and stuff like that. As a level 6 worker I found that I was doing things that made me wonder what the public would think if they knew I was doing this level of work and I am getting this amount of money, because the public sector does not have the support services it should.

Ms A.R. Mitchell: You would just be giving that paperwork to another level, so the paperwork is still there.

Ms J.M. FREEMAN: The paperwork comes from the fact that there are not people to do it. The people in senior positions want to have things that they can check; they do not necessarily check them, but they want to assure themselves that it has been done. It is a bit like the certificate that is currently signed off to say that fees and charges have been fixed—but the member for Kingsley should not get me started on that one! I want to go to the bill and not get into an argument about how I see the public sector operating at this point in time. I commend public servants for their good work.

I note the member for North West's amendment to remove section 99, and I agree wholeheartedly with him that that is an important aspect that is missing from the bill. It is interesting that the second reading speech refers to a number of reviews, including the Fielding and Whitehead reviews of which I have some knowledge. The

Fielding review made a recommendation to remove the prohibition on going to the Industrial Relations Commission and the Whitehead review recommended the removal of the public sector arbitrator, but with gateways. The member for North West put it to members that it had been the slackness of the previous government for not changing that. I point out to the member that that recommendation was not agreed to by the CPSU/CSA, because of the aspect of having to go through a number of hurdles and gateways before public sector employees could access the Western Australian Industrial Relations Commission. However, I agree with the member that it is inequitable that workers who are employed under the Public Sector Management Act do not have recourse to the Western Australian Industrial Relations Commission and most of the Industrial Relations Act and only to the public sector arbitrator. I have always thought that was inequitable. I say that because that is not something I had to deal with. Liquor, Hospitality and Miscellaneous Union employees in the public sector are not covered by the Public Sector Management Act. We worked very well with the public sector and the Western Australian Industrial Relations Commission. We negotiated and were able to settle disputes for workers employed in the public sector who were not covered by the Public Sector Standards Commission and the Public Sector Management Act. My understanding is that teachers are in the same situation and are not covered by the public sector arbitrator, but they have recourse to the Western Australian Industrial Relations Commission. Most Western Australian workers in the private sector are now covered by the federal industrial relations laws. The majority of the work undertaken by the Western Australian Industrial Relations Commission is now for public sector employees and a small number of employees, and companies that are not incorporated businesses. I would have thought it was a no-brainer, given there is that capacity, to now look at this amendment and say that this is a particularly realistic way of dealing with disputes in the commission. I also think it would be logical to give access to the commission if we want to change disciplinary procedures. Under the Public Sector Management Act disciplinary issues were procedurally dealt with in a very technical manner, and that is what the government now wants to amend. Public servants do not have recourse to the Industrial Relations Commission for unfair dismissal; they had to go to a public sector arbitrator's board, which is not something I am familiar with. I understand the public sector arbitrator is a much more cumbersome body. As the member for North West pointed out, it was unable to make the same sort of orders and resolutions for public sector workers such as for those who are not covered by the Public Sector Management Act. It seems to me that if the government wants to get rid of the technicalities and formalities, it is simply a matter of justice so that people can have recourse to effective resolution. If that is not the case, the disciplinary procedures in the act should remain because they give that protection.

I want to congratulate the government on bringing together the roles of the Public Sector Commissioner and the Public Sector Standards Commissioner because I think that is important. It seemed somewhat strange that the standards commissioner was standing outside the department. I would like some clarification—it is not in the act—about a number of agencies that were under the Public Sector Standards Commission, one of which was the Office of Equal Employment Opportunity. That had an important role in ensuring that, particularly people from non–English speaking and diverse backgrounds and people with disabilities, have access to employment in the public sector. It is also important that the Public Sector Commissioner has a greater role in the management—obviously the commissioner has always been involved in their appointment—of CEOs, but there needs to be a mentoring role. It seems to me that often in our public sector there is a sink or swim approach. As a former board member, I certainly saw that occur in one of the agencies that I worked with. The organisation as well as the CEO both suffered during a period of great change. Assistance to that particular CEO in the form of some mentoring through that quite large change was very limited. I put on record my view that a managing role is also a mentoring role.

I refer now to proposed section 8(3) and the amendment about merit. The member for Kingsley said the bill does not go to the appointment of workers and does not address the issue of appointment processes. However, indeed it does. It reads —

> a proper assessment of merit in a selection process must be carried out in accordance with the relevant Commissioner's instructions, if any, and does not always require a competitive assessment of merit.

It concerns me that without the requirement for competitive assessment of merit and for some sort of formal process an appointment could involve nepotism. Agencies could end up without the CEO having, I suppose, a critical voice to question some of the work being done. That can happen if a strongly competitive process is not followed, although I understand the necessity for leaving out that requirement. During the boom it was very difficult to recruit people. I understand those processes are very difficult. I also understand that has changed now and there are alternatives to fully addressing the selection criteria. It can be done just by letter; but there is still a transparent process, and that is the most important aspect. It is transparent; it can be judged and questioned so that we can assure the citizens of WA, who are served by public servants, that they are getting the best people for the job.

Comments were made earlier about women in the public sector. There are certainly a greater percentage of women in the public sector now than there were 20-odd years ago. But they are not in the upper echelons of the public sector. We still have that issue in the public sector of most women being employed, as I understand it, at level 4 and below. That goes to the concept of how merit works. There has been continuing discourse on how merit is measured among white male Anglo Saxon protestants. The way merit is measured has a huge impact on newly arrived Australians, including those from non–English speaking backgrounds. They are competing in, I suppose, an area that is full of assumptions about how we can demonstrate merit. Someone can sit on a non-government board without being paid for years and years but that will not be seen to be as meritorious as it would if that person were sitting on a paid board. Yet the person on the NGO board may have been more involved in management, in a more hands-on role and demonstrating greater skills than the paid board member, who simply reads papers once a month and makes a few strategic decisions. It is a concern that merit is not defined in this act.

In closing, I want to sound a word of caution about proposed section 33 and the capacity for the chief executive officer and employees to delegate powers. They seem to be extremely wide powers and, again, lacking in transparency. It seems to me that this proposed section has serious implications for governance. A decision could be made to delegate, for example, the operation of the family parenting centres for the Department of Communities to Centrelink or one of the very good non-government organisations. But the government will not go out in public and tell people that it is about to privatise this service; it just delegates it out and then uses the redeployment, redundancy and regulations in place for the public sector and tells those workers that the new job is paid pretty much the same—80 per cent of the equivalent—and they should take that job; otherwise, they will be subject to disciplinary action. There go their jobs; there goes their permanency; and there go many financial security aspects, and probably much of their mental health. That really concerns me. I want the government to clearly put on record the intention of proposed clause 33. Is it a backdoor way of privatising out soft services that do not bring in money? I doubt that that would be done with the Insurance Commission of Western Australia because the sale of that organisation could make a lot of money. I welcome clarification about that aspect.

MR J.J.M. BOWLER (Kalgoorlie) [10.11 pm]: Similar to the member for North West, I have been approached by public servants in my electorate of Kalgoorlie, as well as those from my neighbouring electorate of Roe. I have also attended briefings provided by Toni Walkington, Jo Gaines and Steve Farrell in Parliament House and in my electorate. In light of that, in general, the Public Sector Reform Bill 2009 is a good bill and one that I will be supporting. There will be, however, one aspect that I will not be supporting—similar, again, to the member for North West—and I will be supporting the member's proposed amendment; namely, the deletion of section 99. That amendment will, in effect, ensure that Western Australian public servants have the same rights as fellow Western Australians and access to an industrial relations system. That is something that I have always strongly believed in. While I was Minister for Employment Protection, former Prime Minister John Howard was pushing WorkChoices through. That was a time of turmoil, and for me it was also a time of learning because, although I had always been a member of the Australian Journalists' Association and my father was always in the union, I had never really closely followed union matters and affairs, and when I was thrown into the deep end as a minister, it was sink or swim. That was a time of turmoil and there was no doubt that John Howard made it very easy by going a bridge too far with so much of his WorkChoices system. In part, that system meant that Australian workers would not have access to a fair umpire. That is why I support the amendment proposed by the member for North West.

The good member also mentioned district allowances, and he stated that he wished that they be linked. I support the recent increases, but I appeal to the Premier, who is in the house, in saying that I believe that in the longer term, Mr Premier, we need a rationalisation of benefits and district allowances and other allowances that we pay our public servants in Western Australia. Public servants all represent the same people—the taxpayers of Western Australia—yet whether they are in the Pilbara or the Goldfields, or anywhere else in the state, each department has its own benefits or lack of benefits. A good example of this situation are the firemen in the Goldfields. For some reason they do not get a district allowance, which I know they are keen to have corrected, hopefully in the near future. It is ridiculous that we have people throughout our state representing the state government in various departments receiving different benefits. I urge the government to implement a long-term policy for the harmonisation of the various benefits that public servants receive in Western Australia, so that whether they are nurses, policemen or schoolteachers, when they go to the Pilbara, Esperance or Wyndham, they will know what they will receive and there will be no differentiation.

Once again, in general, I support this bill. It is a good one. Like the member for North West I believe that Western Australian public servants should have access to a fair umpire, the Industrial Relations Commission. Therefore, I will support the amendment he foreshadowed.

MS A.J.G. MacTIERNAN (Armadale) [10.15 pm]: I believe that the opposition's case on the Public Sector Reform Bill 2009 has been well put. However, I will make a couple of points because, like so many members, I have been approached by a considerable number of public servants from my electorate who are very concerned about their future in the public sector. I held a forum on this issue in my office and there were two issues that were of primary concern. First were concerns relating to allegations of breaches of discipline and that they be provided in writing and for employees to be given a reasonable opportunity to respond. I am pleased that there has been some agreement in respect of that matter and it will, I believe, be dealt with by way of amendments. The other key area of concern was the threat of privatisation. These public servants expressed concern that their position is made more vulnerable by this legislation. I accept that some of the proposed changes that would reduce the security of the public sector are not contained in this particular bill, but have been foreshadowed as possible future legislation. The opposition will move an amendment that would provide greater security for a public servant who finds that the function for which he or she is employed is privatised. Under the amendment, an employee could not be dismissed for not accepting alternative employment with a private provider where the work of the agency is outsourced, provided that the salary, hours and conditions are not less than that employee's substantive position. That certainly goes some way to addressing their concerns. I believe their concerns are more fundamental than that. Their concerns were, by and large, for people at the lower levels of the public sector and they were primarily concerned about those people who are occupying more junior positions. Their point was that people had entered the public service for the security. They were prepared to take lesser pay than was available in the private sector for equivalent positions or other positions that they could do. For them, the security attracted them to the public sector and encouraged them to stay in the public sector even during the boom. We always talk about this, but we must understand that during periods of great economic frenzies that we are subject to in Western Australia, being a commodities-based economy, we see a great difficulty in the public sector competing with the private sector for personnel. Indeed, it was my experience in the 16 or so agencies that I administered that one of the great attractors for people to remain within the public sector and to ignore the lure of the private sector was, in fact, obviously their commitment to the public contribution that they make in the public sector but, at a more practical level, it was the security of employment that was offered within the public sector. I recognise that this bill per se does not take away security of employment. However, this is an issue, particularly in Western Australia with our volatile economy, that we cannot afford to ignore. We must provide a framework that ensures we have an institutional memory in the public sector and conditions such that encourage people to remain in government. There is certainly a place for interchange between the public and private sectors. There are all sorts of creative things that we should be doing, but one thing that we do not want to do is churn through vast numbers of people in the public sector, because at the end of the day the efficiency and institutional memory lost will degrade the service.

I also believe that it is often very stupid to contract out work. It is one thing to engage in privatisation of commercial ventures, but to contract out services that fundamentally will be always government-funded services—as we seek to offload lower paid duties in community services to the non-government sector—very often provides only a short-term financial benefit. Over time, particularly in a time of high-labour demand, those short-term financial advantages will prove very illusory and we will have lost the capacity to control those services and have a proper alignment between public accountability and contractual accountability. The government may contract out services but it cannot contract out its political liability for those services. I often heard ministers in the previous Liberal government say, "Although it was a government service, I am not responsible because we've contracted that out." That is simply not accepted by the public, and nor should it be accepted by the public. If the government contracts out a government service, it is as responsible for that contracted-out service as it is for a service that is delivered by public sector employees.

I put on the record my support for the amendments in relation to discipline and my support for the opposition's proposed amendments in relation to some circumscribing of those provisions under which a person can be compelled to take a privatised position. As I say, we must always think very carefully about the need in the Westminster system for an able and stable public sector not only for accountability provisions, but also for the sheer scale of that task and the sheer responsibility that the government has to keep services going. The more control the government has over those services, I believe, the more the government can discharge its obligations.

On behalf of my constituents, I say that in any future reform agenda we must be careful not to further diminish the security of public sector employment.

MR C.J. BARNETT (Cottesloe — Premier) [10.24 pm] — in reply: I thank members for their contributions to the second reading debate on the Public Sector Reform Bill 2009. We have had a significant number of speakers and most aspects of this bill have been canvassed. I will make a few general comments before commenting on some of the statements made. The Public Sector Management Act was put in place in 1994 by the then Liberal–

National government. It is a somewhat remarkable fact that here we are 16 years later and the first serious attempt to amend and modernise the Public Sector Management Act again falls to a Liberal–National government. I know that the Labor Party, through listening to the speeches of members opposite, portrays itself as the champion of the public sector yet for eight years in government it did very little to reform and modernise a piece of legislation. It was a Liberal–National government that put in place a proper Public Sector Management Act and a Liberal–National government is now prepared, 16 years later, to come back again and try to modernise and improve that act.

I know that there will be disagreement over a number of aspects of the legislation, and I accept and acknowledge that. I assure members opposite that the intent of this government is to improve the public sector and to improve the working conditions, opportunities and standing of public servants. I know some members might be sceptical and say that is not the case but I will just mention some of what has been done in the past 18 months or so to make that point. One of the first decisions of this government was to give an immediate six per cent pay rise to teachers. We made a conscious decision that teachers deserved a pay rise but, perhaps more significantly, we wanted the salaries of teachers to be higher to attract talented young people to take up teaching as a career and for teachers to stay in that profession. It was a very conscious policy decision and one that has been effective. Also, we have acted to improve housing conditions for public servants working in country areas. We still have some way to go but we have made a significant investment to improve the quality and choice of accommodation. As some members also commented, we are in the process of significantly increasing district allowances for public servants working in the north of the state—in the Kimberley and the Pilbara—by $4 000 per year. This is not the end of the story but they are examples of what this government is trying to do to not only respect and value the public service but also improve the conditions and the standing of the public service.

In terms of changes that are more of a broader policy nature, it is true that we have made a number of structural changes in the public service. The objective is to give clear lines of responsibility and identity to different functions within government. Yes, we did separate transport from infrastructure or planning—a sensible move. There is now a clear understanding that there is a transport minister and a transport portfolio. There is clear responsibility for planning and those areas are no longer compromised. The member for Rockingham questioned the split of education and what was the Department of Education and Training into an education department and a training department. I acknowledge his arguments. There is an overlap between training functions and school education. If we talk to the people in the department, they will invariably say that training suffered under that arrangement. In education, particularly relating to children and duty of care issues, the schools and the children will always come first. I think it is appropriate that we have a minister dedicated to the school system and to the education of children and duty of care issues and another minister working collaboratively who has prime responsibility for training and workforce development and workforce-related issues. Similarly, in my view the former Department of Industry and Resources was a very convoluted department looking after major resource projects in the state while at the same time trying to handle small business or science and technology issues. There was a lack of identity in that. We made a number of structural changes and we do not intend to go any further. That has largely settled the structure.

Closer to the point of this bill, one of the early decisions of this government was to recognise there is an inherent conflict, in a sense. When a government is democratically elected, it comes with a policy agenda. It has a responsibility to the public to deliver what it promised, what it campaigned on and what it stands for. At the same time, we need to retain an independence of the public sector to give advice and to administer various programs, both new ones and ongoing programs. We took the decision therefore to split the Department of the Premier and Cabinet into a new Department of the Premier and Cabinet very much charged with driving the policy agenda of a democratically elected government but putting the issues of the public service under a public sector commissioner. Instead of having the minister for public sector management effectively being the head of the public service, that role was put in the hands of a senior public servant—in this case the Public Sector Commissioner, Malcolm Wauchope. I think that is desirable. I do not think that as the responsible minister I should effectively be the head of the public service at all. That is a serious conflict. That is a fundamental reform that is well placed.

We have also moved to try to streamline all management and accountability issues. Members on both sides of the house support the main intent of this bill; that is, to combine the role of the now Public Sector Commissioner with the previously established Commissioner for Public Sector Standards. That has happened in a de facto way but we need to get this legislation through well before the end of the year to confirm it as a permanent legislative change.

There were some issues raised previously that the Commissioner for Public Sector Standards reported independently to Parliament on a number of matters. If this bill is passed, the Public Sector Commissioner will

continue to report to Parliament independently on those matters. A senior public servant is quite capable of wearing those two hats—being the Public Sector Commissioner but, in certain areas, reporting independently. That is not a particularly difficult intellectual task to grasp.

We have done some other things that should be noted in this broad area of accountability. We established as a government a permanent and substantial freedom of information commissioner. That is something that did not happen under the previous government. We have also created an Office of the Environmental Protection Authority so there is not any conflict between the work of the EPA and the Department of Environment and Conservation, which previously had served the EPA. That is a very fundamental reform in maintaining environmental assessment integrity. It is an important reform. There are other changes to speak of.

This legislation is the first of what will be two or three further bills. It is a modest start to the reform process. I hope it is endorsed by both houses of Parliament and becomes law. Some of the broader issues that we face in the future are not only legislative but also relate to the management style of the public service. There is no doubt that we have lost a lot of talented people from the public service. I am not making a political comment in that. People come and go for various reasons. My observation, in coming back into government after eight years, is that the public service is somewhat diminished in terms of the calibre of people. One of the intents of this government is to not only retain talented people but to attract into the public service talented, younger people who are well qualified and who can become leaders in the public service. We are doing that quite consciously. A number of people have been recruited back into the public service and a number of new people have been recruited—yes, primarily into the Department of the Premier and Cabinet but not with a view that they will be there on a permanent basis. We are also scouting around through various agencies looking for talented people to bring them into the central agencies—whether it be Premier and Cabinet, Treasury or the Public Sector Commission itself—to give them central agency experience so they can go out and become CEOs in agencies. That will be a long-term process. The benefits of that approach will not be seen immediately but I think will be seen in subsequent governments over the years to come. That is important.

There are some strange anomalies in our public service. In the Western Australian public service we do not have a culture of people moving from agency to agency as frequently as they should. We do not have a culture of CEOs, senior public servants, moving from agency to agency as I think we should. This is an issue that the now head of the Department of the Premier and Cabinet, Peter Conran, raises with me frequently. He and the Public Sector Commissioner are working on this philosophy with senior CEOs within the system so that we have some movement within our public service. That can only be good for the individual and it can only be good for the departments concerned.

One of the other strange facets that again Peter Conran has brought to my attention is that if a public servant works in a ministerial office, it is generally seen as a stain on that public servant's record in this state. It is not the same at the commonwealth level. Indeed, he makes the observation that if we look at the most senior public servants in the Canberra bureaucracy, most of them have at some stage in their career worked within a ministerial office and most of them have worked in both a Labor and a Liberal ministerial office. It is seen as part of the development of the individual and, as members in this house would know, also gives that person an experience of what a minister does, what a minister has to cope with, a greater understanding of the legislative and parliamentary process, and, indeed, a greater understanding of broader community politics, public opinion and the role of the media and the interaction between the two. If we think about it, someone who will run a major public service department should have all those experiences. It is actually a healthy thing. I do not know how long it will take us to change that culture because if I look at employing someone, and I found that he worked for the Leader of the Opposition, I would probably raise my eyebrow and I am sure that he would do the same. But maybe over time we will get over that and get a maturity whereby we recognise that that is part of the development of a public servant and public servants can work in ministerial offices closely with ministers of alternative governments. Therefore, there is a way to go —

Mr E.S. Ripper: You do have people working relatively close to you who did work with us.

Mr C.J. BARNETT: Yes, I know and vice versa, but perhaps we are the exceptions.

I will briefly comment on some of the points made by members. The member for Balcatta made comments relating to the delegated powers from the minister. Again, that is the point of making the Public Sector Commissioner the effective head of the public service, not the minister. I think that is desirable and I think the member agrees with that.

There was quite a lot of comment made about the appointment of Peter Conran as head of the Department of the Premier and Cabinet. I take on board the sentiment behind those comments. There is no doubt that I am very pleased; I wanted Peter Conran to be the head of Premier and Cabinet. As I said before by way of interjection, and the former Premier Alan Carpenter also made this point, maybe a Premier should have the right to choose the head of Premier and Cabinet—the person that the Premier will work closely with to implement his or her agenda. Maybe that is the exceptional position in terms of permanency in a position within the public service. The point was made: why was Peter Conran not appointed as a term-of-government employee? That was actually considered, I can say. However, under the current arrangements, had he been a term-of-government employee heading up Premier and Cabinet, he would not have had the full authority of a chief executive officer. That was the limitation and maybe that is something that can be corrected. There were limitations on that. The response to that situation is reflected in the Public Sector Reform Bill, I guess, in the sense that it will empower a government or Premier to appoint full CEO powers to run an agency but it would be limited to the term of government. That is something that is unlikely to be widely used, but could be used for example in a role like Premier and Cabinet or if there was a particular need in the state economy to appoint someone to head an agency to take on a particular task. For example, if there was a need, say, there had been some emergency or disaster in the state, we may well say, "We've got this person and we need to put them in that job for two years to handle the natural disaster and its consequences." Members could imagine a situation like that. In a health epidemic, we might make a conscious decision to put someone in charge if we had a serious situation. Therefore, this provision is intended to accommodate that type of situation, rather than be a general power.

The Leader of the Opposition indicated his support for the Public Sector Reform Bill 2009, and I thank him for that. He spoke of capacity within the public service. I agree; we do need to build capacity and we need to build the status of a public service career for the good of this community. There are issues of age profile; the public service is ageing and, therefore, we need to attract young people and retain them in the service. We had an argument about who was the most independent, Labor or Liberal, and I guess we will never agree on that. Governments will always get conflicts from time to time between individual public servants and ministers. I think we live in a very vibrant demanding economic situation. All sorts of policy clashes can occur but I think we have a good public service in this state, and I will do all that I can as Premier to ensure that public servants are treated with respect, and if there is a clash of personalities, policy or approach, that the public servant is not in any way materially disadvantaged.

The disciplinary process is another matter that was raised. Again, this bill attempts to modernise the disciplinary process. A number of members made comments about that matter. If someone transgresses in some way, a disciplinary process needs to be brought into account. As members on both sides of the house have commented, often they are drawn-out affairs; they go on and on. The mere process is probably worse than the transgression or the potential penalty. We have also seen the issue, which others have referred to in other contexts, of what might be seen to be normal disciplinary processes dragged into the Corruption and Crime Commission and gain a level of public and media interest that is perhaps unwarranted. Again, that is another area of full reform that we will be entering into as a government; that is, the role of the CCC will be more related to organised crime, and there will be a balancing out of the matters that should go to the CCC—presumably, criminal or serious corruption issues—and the matters that are more of a disciplinary nature and should be dealt with by the Public Sector Commissioner. That is not addressed in this bill, but that is another area of policy that is being examined.

Members, including the member for Gosnells and the member for Kwinana, talked about the virtues of being a public servant, and I endorse that. The member for Maylands talked about gender equity issues. Yes, today about two-thirds of the public service are women, but only about one-quarter or so hold senior executive positions. There is an imbalance in that area. A number of members, including the member for Cockburn, talked about the situation of lowly paid employees within the public service. I acknowledge that. Cleaners, gardeners and others are some of the more lowly paid workers within our community. I hope that over time we can see the real level of their wages increase. That is something that I would support. I cannot do it instantly; there is a proper process. We certainly want our public servants to be fairly paid.

The member for Kingsley spoke about disciplinary issues. The member for North West and other members raised the issue of conditions for public servants in remote parts of the state. In particular, the member for North West raised the issue of access to the Western Australian Industrial Relations Commission; indeed, the member for Kalgoorlie, the member for Nollamara and others also commented on that issue. From the comments and exchanges from across the house, what seems to be an important issue today did not seem to be such an important issue for the Labor Party in its eight years in government. I do not know why it did not act on that if it is now such a key issue.

The member for Armadale raised some issues about security of employment and contracting out. Quite a few comments were also made about privatisation, which is one of those philosophical issues that we will always disagree on; it is one of the points of difference. However, privatisation in its strictest sense is the selling of a government asset. Contracting out, arrangements with private providers and the like involve engaging with the private sector, but that is not strictly privatisation. The previous Liberal–National government privatised assets; there is no doubt about that. Members opposite talk about privatising hospitals, as they are inclined to do, but they know very well that under their administration, services in hospitals were often delivered by private entities and organisations, yet they did not call that privatising hospitals. I think they do themselves a disservice, if I may say so. They underestimate the level of understanding of the Western Australian public. They know that when members opposite talk about privatising Fiona Stanley Hospital, they are being misled. They see straight through that. The public of Western Australia deserve to be treated with a bit more respect for their understanding of and intelligence on issues like that. If they disagree with services being provided by private contractors, they should make that point. But please do not tell people that the agenda is to privatise Fiona Stanley Hospital when they know that is absolutely false. They do themselves no credit, and they discredit the people of Western Australia by patronising them in that way.

I thank members for their comments. There are a number of government amendments to this bill. One of the more substantive points raised was access to the Western Australian Industrial Relations Commission, and I will make a couple of comments about that. I am prepared to look at that issue. I do not know that I want to look at it quite in the context of this bill, but I urge members to give that some careful consideration. If we give senior public servants—basically, I am talking about CEOs—access to the Western Australian Industrial Relations Commission, there will be two areas of jurisdiction. There will be the existing public sector disciplinary and appeal processes under the Public Sector Commission, and there will be the system under the Western Australian Industrial Relations Commission. That will mean that there will be a dual system. That may not be a desirable long-term outcome, because we could get forum shopping, and we could get inconsistent decisions from one jurisdiction against the other. People may ask, "Why do public servants not have the same rights as private sector employees?" That sounds simple and credible to the extent that it goes. However, private sector employees do not have the protection of permanency, and nor do they have the protection of all the arrangements, including the Public Sector Commission itself, within the public sector. They do not have that. So, if we give public sector employees the right to go to the Western Australian Industrial Relations Commission, we need to be very conscious of what public sector employees might lose. For example, if matters are allowed to be dealt with under the Western Australian Industrial Relations Commission, inadvertently the door would be opened to involuntary redundancies. That could well happen. That could be the sort of determination that comes out of that. So it is not a simple one-way street. I would, therefore, urge members to be very, very careful and think about the arguments. I am not dismissing that the government might even accept such an amendment. I am just saying that when we have a system of permanency and protection and, if we like, in-house public sector measures for dealing with a range of issues—a system that I think works well and fairly—and if we simply adopt the slogan line that public servants should have the same rights as private sector employees, we will move a section of public servants away from the protection of the public sector system and we will expose them to the same conditions as the private sector. That is the path that we will head down if we do that. I would think that public servants would want members of the opposition, and me and everyone else in this chamber to think very carefully about whether that is that path we want to go down. I am not predicting the outcome. I am not taking a strident view either way. I am just saying it opens that door and leads us into another realm—the realm of the private sector—that does not provide the degree of job security and protection that the public sector provides. If we go across jurisdictions, we move into another world. Therefore, I think that needs to be thought through very carefully.

I thank member for their comments. I am sure many more comments will be made as we go through the consideration in detail stage.

Question put and passed.

Bill read a second time.

Leave denied to proceed forthwith to third reading.

Consideration in Detail

Clauses 1 to 3 put and passed.

Clause 4: Section 3 amended —

Mr E.S. RIPPER: I move —

Page 4, after line 4 – To insert –

merit criteria, in relation to a person, means –

(a) the extent to which the person has abilities, aptitude, skills, qualifications, knowledge, experience and personal qualities relevant to the carrying out of the duties in question; and

(b) if relevant, the way in which the person carried out any previous employment or occupational duties and the extent to which the person has potential for development;

The reason for our moving this amendment is that the legislation contemplates that not every appointment will be made by competitive selection. In our view, if the legislation is to proceed with that particular provision, there needs to be amendment to strengthen the philosophy of merit selection. We therefore suggest that this particular definition of merit criteria be inserted into the definitions section of the legislation in order to fortify the value of promotion or appointment on merit that should otherwise apply within the public sector. It is not a sure-fire way of guaranteeing that merit will always be the basis of selection, but it does help to fortify the value of merit selection and it does help to fortify the requirement in the legislation, despite the lack of competitive process in certain circumstances, for appointments to be made on merit.

Mr C.J. BARNETT: I am advised that obviously "merit" is undefined in the Public Sector Management Act, as the Leader of the Opposition has said. The government intends that that should stay the case. If I could make the point, merit is undefined in all statutes governing the public sector throughout Australia, so merit is not defined here or in any other jurisdiction. That is done to leave a general interpretation of the word and give it its ordinary meaning. Merit is essentially understood, so it is deliberately not defined, and it is not thought to add to it. I do not really see that there is a necessity to add a definition of merit. Merit is there. The Public Sector Commissioner can issue from time to time guidelines as to how merit might be measured or interpreted, so we do not support putting a definition of merit in the bill. I think that it can constrain unnecessarily the operation of the legislation.

Ms J.M. FREEMAN: The Premier talked about merit not being defined in any act anywhere but that guidelines are issued by the Public Sector Commissioner and others. I am interested to know, just because it is nowhere else, what the implications would be, as the Premier sees it, to put in what seems to be quite an acceptable and extensive definition that goes to all the issues that give a commonsense definition of merit, which goes to skills, qualifications, knowledge, experience and personal qualities. There does not seem to be anything here that limits the capacity for merit; in fact, what it is trying to do is to ensure all those areas of merit are considered.

Mr C.J. BARNETT: I think the point is that it does not add much. Merit is generally understood. To add a definition is just considered to not add to the bill or the operation of the bill. A situation might arise that does not seem to suit the definition, and someone might be seen on different criteria to be meritorious compared with someone else. The advice I am getting is that it just does not add anything to the bill. There is no point in doing it. Quite deliberately jurisdictions have avoided putting in a definition of merit, simply because it constrains the operation of the public sector act and administration itself.

Mr E.S. RIPPER: Under clause 9, it is proposed to insert new section 8(3), which states —

> For the purposes of this Act a proper assessment of merit in a selection process must be carried out in accordance with the relevant Commissioner's instructions, if any, and does not always require a competitive assessment of merit.

I wonder whether there will be a definition of merit in the commissioner's instructions, because this clause definitely says to me that there will be commissioner's instructions relating to the assessment of merit in the selection process. One would think that that might actually deal with what constitutes "merit" in the selection process. While the Premier is saying that defining merit does not add anything to the legislation, it may be that the commission will, in effect, be defining merit in the commissioner's instructions.

Mr C.J. BARNETT: The commissioner might define merit in different circumstances and, indeed, the way in which merit is defined in the area over time. If we are looking at a scientific or technical situation, there might be a quite different approach to merit than there would be in a social policy area. To try to define it in the act would neither add to nor constrain the commissioner's flexibility in running the public service. I do not think anything is lost by not having a definition, but if we were to include a definition it could result in a loss in the future.

Ms J.M. FREEMAN: The Premier says it does not add, but I am not entirely sure how it detracts. It seems to me to add a sense of transparency. The Premier has said that there can be different criteria for "merit" depending

on different jobs. Is it not the purpose of the Public Sector Reform Bill to provide that certainty and efficiency? If the government is able to change the definition of merit on the basis of its wishes in appointments to the public service, is that not putting the cart before the horse? A lack of transparency leads to situations in which the propriety of such appointments could be questioned.

Mr C.J. BARNETT: The definitions in clause 4 are definitions for things that already exist, such as codes of ethics, the commissioner, improvement actions, public sector notices, public sector standards and special inquirers. They are quite specific definitions for the elements that make up this act. To include a concept such as "merit" will not add anything and is in any case out of the context of this definitional area. There are all sorts of qualities that could be included; we could include "aspiration" or "ethical standards". We have picked out the word "merit"; it is a broad term.

Ms J.M. Freeman: That would come under personal qualities, wouldn't it?

Mr C.J. BARNETT: It might, and we might have very different views. The point I am making is that the other definitions are quite specific; they are not nebulous concepts like "merit". The commissioner has the ability to provide guidelines and instructions and to vary them over time and for different situations.

Ms J.M. Freeman: It's actually not a definition of merit, though; it's a definition of merit criteria.

Mr C.J. BARNETT: I guess we are going to disagree. The government just does not consider it necessary.

Amendment put and a division taken with the following result —

Ayes (23)

Ms L.L. Baker	Mr J.C. Kobelke	Mr P. Papalia	Mr A.J. Waddell
Ms A.S. Carles	Mr F.M. Logan	Mr J.R. Quigley	Mr P.B. Watson
Mr R.H. Cook	Ms A.J.G. MacTiernan	Mr E.S. Ripper	Mr M.P. Whitely
Ms J.M. Freeman	Mr M. McGowan	Mrs M.H. Roberts	Mr B.S. Wyatt
Mr J.N. Hyde	Mr M.P. Murray	Mr T.G. Stephens	Mr D.A. Templeman *(Teller)*
Mr W.J. Johnston	Mr A.P. O'Gorman	Mr C.J. Tallentire	

Noes (26)

Mr P. Abetz	Mr M.J. Cowper	Mr R.F. Johnson	Mr D.T. Redman
Mr F.A. Alban	Mr J.H.D. Day	Mr A. Krsticevic	Mr A.J. Simpson
Mr C.J. Barnett	Mr J.M. Francis	Mr W.R. Marmion	Mr M.W. Sutherland
Mr I.C. Blayney	Mr B.J. Grylls	Mr P.T. Miles	Mr T.K. Waldron
Mr J.J.M. Bowler	Mrs L.M. Harvey	Ms A.R. Mitchell	Mr J.E. McGrath *(Teller)*
Mr T.R. Buswell	Mr A.P. Jacob	Dr M.D. Nahan	
Mr V.A. Catania	Dr G.G. Jacobs	Mr C.C. Porter	

Pairs

Mr I.M. Britza	Mrs C.A. Martin
Dr E. Constable	Mr P.C. Tinley
Dr K.D. Hames	Ms R. Saffioti
Mr G.M. Castrilli	Ms M.M. Quirk

Amendment thus negatived.

Clause put and passed.

Clauses 5 to 8 put and passed.

Clause 9: Section 8 amended —

Mr C.J. BARNETT: I move —

Page 5, line 14 – To delete "instructions, if any," and substitute —

instructions

The "if any" is superfluous, and taking that away makes it clear that an instruction may be required.

The SPEAKER: Members, I have been informed that two members wish to move an amendment to clause 9. I intend to put a test vote to members on clause 9 and put the question to members that the words "To delete 'instructions'" be the test vote. If that is successful, we will then move to the rest of the Premier's amendment. If it is unsuccessful, the Leader of the Opposition can move his amendment.

Point of Order

Mr E.S. RIPPER: I think the Premier's amendment accomplishes what my amendment was intended to do. Therefore, it may be simpler for the chamber in dealing with the matter if I simply withdraw my amendment.

The SPEAKER: The Leader of the Opposition does not need to withdraw it, but I thank him for that advice.

Debate Resumed

Amendment put and passed.

The SPEAKER: There is a further amendment in the name of the Leader of the Opposition.

Mr E.S. RIPPER: There is and it has been circulated. I move —

Page 5, after line 15 — To insert —

(4) A Commissioner's instruction in relation to this section will provide for —

(a) the process by which selection under the merit criteria will be undertaken for a stated type of appointment or secondment, providing for a streamlined process where appropriate; and

(b) the circumstances under which a competitive assessment of merit is not required.

The opposition is of the opinion that an amendment that gives a little bit more detail about what the commissioner is required to put in instructions for this area of policy is important. The reason is that the legislation is establishing the idea that a competitive selection process will not be applied for every appointment on merit. Naturally that is alarming to people who think that there could be the possibility of patronage, nepotism or favouritism in appointments. While people can understand that there might be some occasions on which it is appropriate to make an appointment quickly, they would want to see proper accountability and proper process set up around this particular option lest it be abused at some stage in the future. If we have this sort of appointment option, nobody can absolutely guarantee or rule out that there will not be favouritism or patronage, but by establishing some more process around the whole idea through the commissioner's instructions and doing that by having in the legislation a requirement for the commissioner's instructions to cover these sorts of matters is one way in which to fortify the process.

Mr C.J. BARNETT: This amendment has now become irrelevant in the sense that the chamber did not adopt the criteria in the previous amendment moved by the Leader of the Opposition. Therefore, it makes this amendment also redundant.

Mr J.C. KOBELKE: This amendment goes to section 8 of the Public Sector Management Act. We need to consider this amendment in the context of the importance of section 8 of that act. It is quite fundamental to any fair and proper process in the whole act. Section 8 is headed "General principles of human resource management" and states —

(1) The principles of human resource management that are to be observed in and in relation to the Public Sector are that —

(a) all selection processes are to be directed towards, and based on, a proper assessment of merit and equity;

Already the Premier does not want to allow the opposition to include a definition of "merit" in the legislation. The issue of equity is perhaps a bit clearer. But the amendment that we have just made to proposed new section 8 of the act now reads —

(3) For the purposes of this Act a proper assessment of merit in a selection process must be carried out in accordance with the relevant Commissioner's instructions and does not always require a competitive assessment of merit.

The Premier is suggesting that we do not need the amendment moved by the Leader of the Opposition because it is tied only to the definition of merit. That is an argument we have had; let us move on.

Paragraphs (a) and (b) of the Leader of the Opposition's amendment would ensure that we would not need to use a competitive assessment of merit. I see this as a major problem because, coming back to section 8(1)(a) of the act, which I have just read, all selection processes are to be "directed towards, and based on, a proper assessment of merit and equity". I would think in most cases, if we are to deliver on that equity, we need to use comparative merit. Otherwise, where is the equity if we say, "On merit, both person A and person B could probably do the job, but person A is far superior"? Where is the equity if the competitive element is not brought into merit? I think there is a requirement in this amendment moved by the Leader of the Opposition that —

(4) A Commissioner's instruction in relation to this section will provide for –

(a) the process by which selection under the merit criteria will be undertaken for a stated type of appointment or secondment, providing for a streamlined process where appropriate; and

(b) the circumstances under which a competitive assessment of merit is not required.

I suggest to the Premier that the introduction now of no requirement for a competitive assessment of merit must be clearly laid out. I think that is what this amendment delivers on. Although it may not take up the broader issue of merit, we need to make sure that the commissioner's instructions make it absolutely clear where the competitive assessment of merit will need to be applied and whether there are special circumstances in which a merit selection will be potentially used. The involvement of merit is required under section 8(1)(a). But it is possible that if it is not clearly set out, no requirement for a competitive assessment means that equity goes out the window. In equity I would judge that if a person is clearly superior on a competitive merit basis, equity would require that person to get the nod for the job or the secondment. That is another argument I wish to suggest to the Premier for why he should accept this amendment moved by the Leader of the Opposition.

Mr C.J. BARNETT: I understand the point the member opposite is making. But, as I said previously, given that the house decided not to insert a merit criterion, I do not believe this amendment serves any purpose; in fact, it would create an inconsistency in the Public Sector Management Act. The government therefore does not support the amendment.

Mr C.J. TALLENTIRE: I rise to support this amendment because I can well envisage situations in which people engaged in selection, appointment, transfer, secondment, reclassification, consideration of remuneration, redeployment, redundancy or whatever would benefit from the additional guidance that would come from having the commissioner's instructions; and then the additional detail that would come from the additional amendment moved by the Leader of the Opposition. I therefore think this amendment would be very useful to people who would be engaged in the various processes required by human resources management. I counter the Premier's point that this amendment is at a different level from the previous amendment. I do not think the fact that we did not agree to the amendment previously put forward is relevant in this case. We are talking about an operational level of instruction that is required for good human resource management in agencies in which often people who may be external to the agency will benefit from that additional guidance, and it will encourage them to know the range of their responsibilities. Those commissioner's instructions will give them that direction and assist them in making their decisions. Guidance of this kind is very useful in making sure the process works properly.

Mr E.S. RIPPER: I feel like the Premier is trying to catch me in a catch 22 situation. Firstly, he argues that a definition of merit criteria is not necessary in the legislation. Having won that point, he then argues that my amendment cannot be accepted because there is no definition of merit criteria. That is an unfair way of arguing. If he is right that we do not need to define merit criteria, my amendment can stand, even though there is not a definition. If we do need to define merit criteria, my original amendment that we just divided on and lost should have been carried.

I return to the point that it is the idea that there might be a merit appointment not based on competitive processes that causes the desire for further rigour in the commissioner's instructions. Notwithstanding the Premier's argument about merit criteria now not being defined by virtue of his previous advocacy, I still think the amendment can work on its own.

Ms J.M. FREEMAN: Having heard what the Premier has said, I concur with my colleagues. If he is saying that merit criteria is not needed, can he put on the record what criteria will establish such instructions and how he will go about that? How will it be scrutinised for such things as rigour and procedural justice? Will it be in regulations, is it simply something that the commissioner can decide to put out for different departments in different places, or will it be a general instruction for the public sector as a whole?

Mr C.J. BARNETT: I remind members that the whole purpose of this exercise is to ensure that the Public Sector Commissioner is independent. He is required to issue instructions and he will be independent in doing it. If he has criteria to get consistency over time, he will develop those criteria and he will issue the instructions. For us to dictate that would compromise his independence in that role from the start. I understand what the member is saying, but by trying to put criteria in place, we take away from him what we are trying to protect, and that is the independence of the commissioner.

Mr J.C. KOBELKE: I want to ask a short question to see whether I can get some clarity. The amendment before us is a new subsection (4). The Premier has already added a new subsection (3) to section 8. Subsection (3) will allow for a situation where the selection process does not require a competitive assessment of merit. Can the Premier explain in what circumstances it is likely that there will be such a selection process where the assessment of merit is not competitive?

Mr C.J. BARNETT: I am advised that that would apply if we had a highly technical area in which a limited number of experts would be capable of working. It would be a fairly unique situation. It might be a scientific or environmental process where technical competence is needed to understand a particular plant variety and therefore we do not need an assessment of merit. It is a limited application but it caters for areas of high technical and specific knowledge.

Mr J.C. KOBELKE: I do not understand what the Premier is saying so I will give him another opportunity to explain it. If he is after people with a particular technical background—for instance, in the Department of Water he may want someone with specific water science knowledge for a project on the Swan River, which is highly specialised and complex—surely that knowledge would be in the criteria for the position and the most competent person with the greatest merit would be picked. I am not sure how a highly technical position is not one in which the Premier would be looking at competitive assessment of merit. I do not find the Premier's explanation adequate. I thought perhaps he had a range of people of varying merit applying but perhaps the agency had no Indigenous people or no-one with disabilities. Because of his overall policy, the Premier is saying that he is going to move outside competitive merit. If a certain person can do the job and there are 50 people in an agency and only one woman, if the applicant is a woman and she is very competent and can do the job, because there is no competitive assessment of merit, the agency would say it is fair to appoint a woman. That might be a basis upon which we would move away from a non-competitive assessment. But on a highly technical issue, the Premier might explain that to me as I do not get how we would not be able to use assessment of merit —

Mr C.J. Barnett: In a technical or science area, say, there may only be one person who has the competence. There is no competitive process—there is only one person capable and available to do it. It allows for that situation.

Mr J.C. KOBELKE: That person is competitive in a field of one—they win!

Mr C.J. Barnett: It is a bit superfluous—a competition between yourself! There is only one person who is capable of performing a specific task. I know from my own experience that those situations do arise—there is only one person capable of assessing something.

Mr J.C. KOBELKE: The section the Premier has there says that the selection process can be carried out in such a way that a competitive assessment of merit is not required. I will use the example of a person applying for a specialist scientific officer position. If two people apply, the person who has the greatest merit will be appointed. If only one person applies, that is the only person who can be appointed. I do not see why the second part of proposed section 8(3) needs to state that it does not require a competitive assessment of merit. I am trying to be clear on that because that goes directly to the amendment before us. The Premier might like to explain again why we need the second part of proposed subsection (3) to allow for non-competitive assessment of merit.

Mr C.J. BARNETT: As clearly as I can make myself understood, if there is a particular technical or scientific task and there is only one person capable of doing it, there seems to be little point in demanding some competitive process even if it is a competitive process of one. It is superfluous. That is a situation that can arise in particular areas. Only one person might have knowledge of a particular mangrove species or whatever it might be, but if that person is engaged to do a task, then that is it. There is no requirement to have a competitive process when the reality is that there is no other person who could possibly do it. It allows for that contingency instead of setting up a process that will be redundant or superfluous.

Mr J.C. Kobelke: Is the Premier saying that that section in which a competitive assessment of merit is not required is specifically designed for cases where there is a single applicant?

Mr C.J. BARNETT: That is my advice, yes.

Ms J.M. FREEMAN: Given the Premier's comments, can he clarify for me whether the commissioner's instruction will be a public document, and whether it will be circulated and gazetted, so that we can be assured that the circumstances of the competitive assessment of merit is not required and is clear in the instructions in the manner that he has outlined?

Mr C.J. BARNETT: The short answer is that the instructions will be public documents. They will be publicly available. I do not think there is a requirement they be gazetted as such—that is a different process—but they will be publicly available.

Ms J.M. Freeman: On the internet?

Mr C.J. BARNETT: I imagine that is the way it will be done, yes.

Amendment put and negatived.

Clause, as amended, put and passed.

Clauses 10 to 18 put and passed.

Clause 19: Section 21 amended —

Mr C.J. BARNETT: I move —

Page 9, after line 1 — To insert —

(2A) Delete section 21(4).

Mr E.S. Ripper: Perhaps you might explain what you're doing!

Mr C.J. BARNETT: I am just trying to work out how to explain that!

My next amendment will refer to another clause that has a compulsory consultation requirement. That amendment to clause 20 will create a consultation requirement, so this amendment removes something that is superfluous. I have been advised that there was apparently what was described as a small consultation requirement in the act, so this amendment removes that and the following amendment will put in a more substantive consultation requirement. Therefore, this amendment takes away the minor requirement, the existing one, so it can be replaced by a more substantive requirement.

Mr E.S. RIPPER: Looking at it, I can see the consultation requirement being removed relates to the commissioner's role in establishing a public sector standard or code of ethics, and the consultation requirement to be inserted deals with any issuing, amending or revoking of a commissioner's instruction. Given that the code of ethics or standard will be established by a commissioner's instruction, I guess the consultation process to be inserted covers a wider category of matters other than a code of ethics or standards.

I am interested, Mr Speaker, in the processes of the house because I have an amendment to clause 20 that deals with consultation, which overlaps but is not inconsistent with the government's own amendment. My amendment will insert —

(5) The Commissioner shall consult widely with relevant stakeholders prior to issuing a Commissioner's instruction, including, but not limited to —

(a) employing authorities; and

(b) organisations within the meaning of the *Industrial Relations Act 1979*.

I am interested to know—I suppose I am taking a point of order, almost, in the middle of my remarks—how the house will handle the potential overlap between my amendment to clause 20 and the Premier's amendment to clause 20 because I want to pursue the argument that organisations within the meaning of the Industrial Relations Act 1979 ought to be consulted by the commissioner before he or she makes an instruction. The Premier's proposed consultation process will leave it up to the commissioner to decide who it is desirable and practical to consult. Perhaps, if I could have your indulgence to treat that as a point of order and seek your advice, Mr Speaker.

Mr C.J. Barnett: I suggest that before we try to deal with that, we actually deal with the amendment to clause 19, which will insert a new section to delete the existing section. Once we get that out of the way, we can move on to clause 20, which is your point.

Mr E.S. Ripper: Yes, maybe we should debate it clause by clause.

The SPEAKER: That is what we need to do, Leader of the Opposition.

Mr J.C. KOBELKE: The Premier said that this amendment will delete section 21(4) because it will be replaced in a more fulsome form elsewhere. Can the Premier tell me where that will be?

Mr C.J. BARNETT: Clause 20—the next amendments.

Mr E.S. Ripper: The next amendment on the notice paper.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 20: Sections 22A to 22G inserted —

The SPEAKER: I will take the Leader of the Opposition's point now because it really is up to the house as to how we might proceed with this process. Members, I note that the Leader of the Opposition's amendment to clause 20 occurs after line 10 and the Premier's somewhat similar amendment occurs after line 12.

Mr E.S. Ripper: Therefore, mine has precedence in debate!

The SPEAKER: In a numerical sense, it does, so we could progress that way.

Mr E.S. Ripper: Brilliant drafting!

Mr R.F. Johnson: There is no rule that says that it has to happen that way.

The SPEAKER: There is no rule in this process; it is with the indulgence of the house. Leader of the Opposition, you need to move your amendment, if you wish to do so.

Mr E.S. RIPPER: I move —

Page 11, after line 10 — To insert —

(5) The Commissioner shall consult widely with relevant stakeholders prior to issuing a Commissioner's instruction, including, but not limited to —

(a) employing authorities; and

(b) organisations within the meaning of the *Industrial Relations Act 1979*.

My amendment will accomplish what the Premier's amendment, which he no doubt will seek to move shortly, intends to do, but it will accomplish something more by directing the commissioner to consult with employing authorities and organisations within the meaning of the Industrial Relations Act 1979. It is appropriate that we recognise in this legislation that there is an organisation that represents workers in the public sector, and that organisation should be consulted on commissioner's instructions. Of course the organisation should be consulted. I expect that most commissioners, because they will be independent, will consult with unions in the public sector before issuing commissioner's instructions. But there is no guarantee that any commissioner will necessarily do that. It would certainly be the policy of a Labor government that the commissioner ought to do that. But the Labor government will have to amend the legislation if this amendment is not carried if the commissioner does not see fit to consult with unions on commissioner's instructions. I am not sure how the Premier regards the necessity of consultation with unions, but I put to the Premier the argument that the amendment that I have moved will accomplish his desire for commissioner's consultation and take it a step further by including unions and employing authorities as people who need to be consulted on commissioner's instructions.

Mr C.J. BARNETT: I do not have any objection to the commissioner consulting with unions. It is the case that the commissioner already does, and will continue to, consult with unions and, indeed, other organisations on issuing instructions. Although the Leader of the Opposition seems to have a particular intent to identify unions that must be consulted, the amendment appearing in my name is a more general application; it is less prescriptive. It contains the phrase "consult such persons", which I am advised includes individuals and organisations. I repeat: it is usual practice for the commissioner in this area to discuss and consult with unions. What I am saying is that I do not disagree. I expect and hope that the commissioner will continue that practice of always consulting the relevant groups and employee organisations. Clearly, there is a relevant group in almost all circumstances. Although I do not disagree with the sentiment, I think that the Leader of the Opposition's amendment is prescriptive and goes in a particular direction that is unnecessary. Therefore, I do not support the Leader of the Opposition's wording, but I support the wording of the amendment that appears in my name. It is a more general application and therefore is more suitable. It is also consistent with the language used in the Public Sector Management Act.

Amendment put and negatived.

Mr C.J. BARNETT: I move —

Page 11, after line 12 — To insert —

(6A) The Commissioner must, before issuing, amending or revoking a Commissioner's instruction, consult such persons as the Commissioner considers it desirable and practicable to consult.

I do not think this amendment requires any further explanation. It is basically different wording of an amendment with the same intent.

Amendment put and passed.

Mr J.C. KOBELKE: I have a question about an amendment to proposed new section 22C, "Reports to Ministers". It states —

> The Commissioner may report from time to time to the Minister responsible for a public sector body on the compliance or non-compliance by the public sector body and employees in the public sector body with —
>
> (a) the principles set out in sections 8(1)(a), (b) and (c) …

Section 8(1) of the Public Sector Management Act states in paragraph (a) that all selection processes are to be directed towards, and based on, a proper assessment of merit and equity. Therefore, the commissioner can report on that assessment of merit and equity. Paragraph (b) states that no power with regard to human resource management is to be exercised on the basis of nepotism or patronage. Therefore, the commissioner can report to the minister on any examples of nepotism or patronage—or the lack thereof, hopefully. Paragraph (c) states that employees are to be treated fairly and consistently and are not to be subjected to arbitrary or capricious administrative acts. Therefore, again, the commissioner can report on that. However, paragraphs (d) and (e) of section 8(1) are not included in proposed new section 22C. Why should we not also allow the commissioner to report, as stated in paragraph (d), on whether there has been unlawful discrimination against employees or persons seeking employment in the public sector on a ground referred to in the Equal Opportunity Act; or, as stated in paragraph (e), on whether employees are provided with safe and healthy working conditions in accordance with the Occupational Safety and Health Act? I know that those statutes are covered by other organisations or agencies, but why should we not allow the commissioner to report also to the Premier on those matters?

Mr C.J. BARNETT: The short answer is that equal opportunity matters are dealt with by the Equal Opportunity Commissioner and the legislation underpinning that, and occupational safety and health matters are dealt with by WorkSafe and the legislation underpinning that. If those matters were to be included in this legislation, the Equal Opportunity Commissioner could have two different jurisdictions to work under, and safety issues could come to two different places—either this place or WorkSafe. I do not think that would be a desirable outcome. Those matters have not been included for the specific reason that we want equal opportunity matters to go to the Equal Opportunity Commissioner, and we want safety and health issues to go to WorkSafe, rather than to the Public Sector Commissioner.

Mr J.C. KOBELKE: I think the Premier is missing an opportunity to achieve what I thought was a key objective of his supposed reform agenda; that is, to have a person, in the form of the Public Sector Commissioner, who will take key responsibility for the public sector and deal with the big issues and drive that reform process and improvements in the public sector. That person will not be taking over the role of the Equal Opportunity Commission or WorkSafe; clearly those agencies will still do their jobs. Proposed section 22C states that the commissioner may report from time to time to the minister on certain issues. If the commissioner is to have an overview, guidance and development role for the public sector, I do not know why this proposed section cannot also state that from time to time, if there is an issue with equal opportunity or with occupational safety and health, the commissioner responsible for the public sector will be authorised, when the commissioner thinks appropriate, to report those matters to the minister. The Premier should not simply say that even though another agency may have done a report that is crucial to the public sector, the Public Sector Commissioner should not drive that, because that report has come from another agency.

Mr C.J. BARNETT: If we were to agree to what the member for Balcatta is suggesting, the Public Sector Commissioner could, presumably, conduct an inquiry into occupational safety and health issues. I think that would be duplicating the role of WorkSafe and would be quite inappropriate. We could also get conflicting decisions if two agencies of government were to inquire into the same matter.

The issue that I think is probably more interesting is equal opportunity. That issue is separately administered through the Equal Opportunity Commissioner. Do not read anything into this, but to me that is an issue that would be better tied into the Public Sector Commission, because it is similar to many of the other public sector issues that may arise. I see workplace safety as a fundamental area of WorkSafe's responsibilities, because it requires separate expertise. Equal opportunity issues are more akin to the other matters that the Public Sector Commission deals with. However, because there is an Equal Opportunity Commissioner, it will not be included within the jurisdiction of the Public Sector Commissioner under proposed new section 22C.

Clause, as amended, put and passed.

Clauses 21 to 33 put and passed.

Clause 34: Section 33 replaced —

Mr E.S. RIPPER: I move —

Page 25, line 23 — To delete "delegate" and insert —

, in an extreme or emergency situation, delegate, for a defined time,

The proposed new section at clause 34 allows the chief executive officer or chief employee to "delegate any power duty of the chief executive officer or chief employee under another provision of this Act to any person". The Premier has some amendments on the notice paper to further restrict the delegations to other people, to basically people in the public sector or, with the approval of the commissioner, to any other person. Nevertheless, even with the Premier's amendments, we will still have the capacity for powers to be delegated to someone outside the public sector. As I said during the second reading debate, I can see that there might be circumstances in which that would be convenient. It might be convenient for the coordination of multiple agency responses, including commonwealth government agencies, to some sort of natural disaster or other circumstances affecting Western Australia. The management of that overall natural disaster and the coordination of all the agencies involved might actually benefit from the capacity for an officer in the Western Australian public sector to delegate his or her powers to someone in the commonwealth public service, for example.

As I said during the second reading debate, I also see the potential for some danger here. It is natural, given the government's statements about privatisation, to form the view that the government may wish to delegate some statutory powers to people outside the public sector in order to facilitate a privatisation objective. Even if the government is talking only about outsourcing services to non-government organisations in the welfare sector, it may well be that the government may choose to support that outsourcing or privatisation with a delegation of statutory powers to a person in a non-government organisation and not in the public sector. I do not support the use of delegated powers for that particular purpose. Consequently, I would like to see an amendment that will restrict the delegation potential to the urgent, unusual and extreme circumstances for which I can see that it might have positive relevance.

Mr C.J. BARNETT: I consider that what is proposed by the Leader of the Opposition is simply too restrictive; that is, the requirement that in the first place it must be an extreme or emergency situation. Although one can understand that powers may be delegated in an extreme or emergency situation, they may also be delegated in more routine circumstances. It may not necessarily be to a public servant. For example, the Commissioner of Police may want to delegate powers to a deputy commissioner and the deputy commissioner is not going to be a public servant.

Ms J.M. Freeman: Is the police commissioner covered by the Public Sector Management Act?

Mr C.J. BARNETT: It has been explained to me that he is the CEO of the department and also the police force, as it were. If he were restricted in this way, it would prevent him from delegating responsibility to his deputy police commissioner. He would have to find the most senior public servant. That may not be appropriate. The other examples would include delegating powers to perhaps a military person, perhaps to a commonwealth bureaucrat or to a state public servant or to one from another jurisdiction.

What the Leader of the Opposition wants to put in place is unnecessarily restrictive criteria. They might just be delegating routine responsibilities to guide programs, employees and the like. It does not need to be only in an emergency situation. It could be a relatively minor responsibility for an extended, ongoing role. It should not be restricted in time.

Mr E.S. RIPPER: I can see that the government is shaping up to defeat this amendment. Will the Premier put on the record the purposes for which it is intended that this delegation power be used? Specifically, will the Premier put it on the record that he does not intend to use this delegation power to accompany outsourcing or privatisation of public sector activities?

Mr C.J. BARNETT: It is certainly not intended for that purpose, and I am struggling to think of a circumstance in which it could apply. It would be basically as I said—to delegate some powers to other people in authority, perhaps from an agency across to a police officer, federal police officer, public servant or military officer covering another jurisdiction. There is certainly no intention at all to delegate these powers or responsibilities to, say, someone who has a contract to provide outsourced services to a government entity. I would not have thought of the convoluted, Machiavellian scheme that the Leader of the Opposition has come up with; I feel disappointed in myself that I did not think of it, but he did!

Mr E.S. RIPPER: Just to educate the Premier about our insight into the deeper, darker sides of his character, here is a scenario: he may decide, in pursuit of his agenda, to outsource activities to the non-government welfare sector. He may be wanting to outsource some responsibilities for children who are wards of the state. The Director General of the Department for Child Protection has certain powers in respect of wards of the state, and

the Premier might seek to have the director general delegate some of those powers to the chief executive officer of Parkerville Children and Youth Care Inc, or some other non-government organisation. While they are fine organisations, I do not agree with the delegation of statutory powers for child protection to organisations outside the public sector. When we are dealing with such extraordinary state powers, they ought to be exercised within the public sector. That is the type of scenario that is giving us cause for concern.

Mr C.J. BARNETT: It is a more realistic scenario, as the Leader of the Opposition says, for someone in the child protection area to delegate powers to the CEO of a non-government organisation that provides child protection services. I am advised that the Leader of the Opposition is right; that would be possible under this clause, given the way that it is worded, but it is certainly not what is intended. Even if it were possible, it would in any case require the approval of the Public Sector Commissioner to do so. It would technically be possible, but it is certainly not the government's intention to do so.

Mr C.J. TALLENTIRE: Given the potential for these powers to be delegated to anyone, albeit only with the commissioner's approval, what mechanisms are in place to ensure that there is accountability for the actions and decisions of the people to whom such powers are delegated?

Mr C.J. BARNETT: If the member looks at the following amendment that appears in my name, he will see that, in a sense, a criterion is in place that delegation under this section can occur only if the commissioner is satisfied that the delegation is necessary or convenient. A lot of criteria are basically laid down, so there is a standard; it is not something that can be done willy–nilly. The commissioner would have to agree with the decision and he would have to be satisfied on those grounds. Although I can see that the Leader of the Opposition's scenario is technically possible, it is not the government's intent and I do not imagine it happening.

Mr J.C. KOBELKE: I am very concerned that we are giving powers that could be used in a very wide and sweeping way, when the Premier cannot make a case for why we really need them; at least, I do not think he has. The current section 33, which this clause is to abolish, is quite restrictive in that the chief executive officer or chief employee can really only delegate those powers to someone within their own agency. What is being done with this amendment is allowing for delegation not only outside the agency but also to any person. That is an incredibly broad ability for chief executive officers to delegate their powers. Can the Premier provide any examples of a government coming unstuck or there having been a major problem that could not be addressed because the delegation could not be outside the given agency? These issues arise from time to time and ways are found around them. What will be the difficulty in using those methods? Someone could be seconded into a department or there could be a memorandum of understanding between agencies on how powers will be used so that different agencies can cooperate with each other. A whole range of different mechanisms could be used, but can the Premier provide some examples of the government having run into problems by not being able to delegate powers or use some other device such that we now need a clause that allows delegation to go outside the agency and to any Tom, Dick or Harry regardless? The Premier can give assurances that he does not expect it will be used in that broad way or that there will be all sorts of caveats around it, but the government is asking us to agree to a change that will allow the delegation to anyone. I know the Premier has a later amendment that is more definitive about some categories, but the end of that amendment still refers to "or any other person" approved by the commissioner. Can I have some examples of difficulties that have been run into in the past that mean that we absolutely need this power?

Mr C.J. BARNETT: I think the opposition raises a fair point and I understand where the member is coming from. I will again state that there is no intent to use this in any wide way, but I recognise that the clause, as it is drafted, could open the door to misuse, and I think that is a fair point. Overnight, before we resume this debate, I undertake to have a careful look at that to see whether we can tighten it in some way and to answer the member's question by providing the sorts of examples of where it may be used. I think the member has raised a legitimate issue and I do not want to open the door for something that is not intended.

Debate adjourned, on motion by **Mr R.F. Johnson (Leader of the House)**.

House adjourned at 11.53 pm

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