

INDUSTRIAL RELATIONS (EQUAL REMUNERATION) AMENDMENT BILL 2011

Second Reading

Resumed from 20 October 2011.

HON SIMON O'BRIEN (South Metropolitan — Minister for Finance) [10.05 am]: The Industrial Relations (Equal Remuneration) Amendment Bill 2011 was introduced into this place late last year and I have taken the opportunity to look at a number of the issues contained therein. I know that a number of members have a keen interest in this matter. The bill raises a number of issues that may or may not be immediately apparent upon viewing the second reading speech of the member who introduced the bill. The capacity to deal with equal remuneration issues already exists in the state industrial relations system, and that is important to note. The Industrial Relations Act provides an avenue for taking an equal remuneration case to the WA Industrial Relations Commission and the commission has the power to issue orders to ensure equal remuneration under awards. The first point I want to make is that the bill before us now does not address a clear gap in the current arrangements; it is an attempt to modify this part of the industrial relations system. No doubt there are arguments that would be put forward for doing that, but I want to make it clear to members at the outset that this bill, which purports to address an important issue, does not have the role of filling a vacuum because there is already a substantial amount of legislation in place. Indeed, these provisions have been in place for a number of years and yet no application for an equal remuneration case has yet been made.

Hon Alison Xamon's bill seeks to broadly align the state Industrial Relations Act with the pay equity provisions of the federal Fair Work Act. The prescriptive provisions of the federal act are not needed here in Western Australia because our commissioner has broader conciliation and arbitration powers to deal with all types of industrial matters. The bill also seeks to grant individual employees the right to take pay equity issues to the Industrial Relations Commission. I want to make it quite clear that members should view this provision, which might be seen by the proponent as an empowering provision, with great caution. For individual employees, bringing claims is not the most efficient way to deal with equal remuneration issues; such a process could potentially result in equity orders being granted to individuals without addressing what the mover has pointed out is an issue affecting groups of workers over time. Cases of individual discrimination based on gender, of course, should be dealt with through the Equal Opportunity Commission or resolved at the workplace level. The pursuit of pay equity is a worthwhile objective and the government invests in resources to educate and promote workplace strategies to improve gender equity. These include the pay equity unit and the flexibility literature produced by the labour relations division of the Department of Commerce.

The Western Australian government has demonstrated, and continues to demonstrate, concern about wages in the community sector, but we have done more than talk about it; we have acted. The Western Australian government was the first in Australia to provide additional funding to ensure the ongoing sustainability of community sector organisations and their workforce. In a landmark decision, this Liberal-National government provided an additional \$600 million over four years from July 2011, to ensure that the services provided by the community sector were sustainable. That funding will provide an average 25 per cent price increase to eligible contracts by July next year, and the first part of that funding is already flowing. Indeed, since July last year nearly 500 organisations that receive government funding under contract have received 15 per cent additional funding. It is expected that most of the funding will be used to increase the salaries of the many workers in that sector. Indeed, the community sector often makes legitimate claims highlighting what is often described as pay inequity. This government's actions have been not to talk about it or provide other avenues for tribunals, courts or commissions to receive applications—we have already seen that quite often these applications do not arrive; no, this government has sought to provide direct action and cold, hard cash to ensure that pay issues can be addressed so that the community sector continues to be viable.

That action will also give a lot of community sector organisations the ability to deal with the Fair Work Australia decision. Workers in these organisations in Western Australia are already seeing the benefits of the state government's decision, rather than having to wait for the gradual rollout of the Fair Work Australia decision. Not only was our action right, timely—in fact ahead of time—and thoroughly proper, but also it was real rather than illusory, and provided real pay benefits rather than a framework for future litigation or arbitration. I am advised that the preliminary Treasury analysis indicates that community sector organisations and their workers will be around \$1 billion better off between now and when the Fair Work Australia decision is fully rolled out in 2020 than they would have been if the government had waited and taken the commonwealth government's approach. This government is proud of that, but, pertinent to today, our actions demonstrate that we recognise that there are disparities in income between sectors and that we are taking concrete steps to address those disparities, and will continue to do so.

I do not know the intent of the sponsor of the Industrial Relations (Equal Remuneration) Amendment Bill 2011—I will not imply an intent—but it seems to me that this bill and the commentary around it has been

presented as a gender pay equity issue, and therefore we should support the bill that Hon Alison Xamon proposes on the basis of supporting gender pay equity. I do not know that this is a gender equity issue; I think this is an industrial relations issue. I think we can point to a range of occupational groups that generally have low-paid workers and are not necessarily occupations dominated by female employees. Certainly in the community sectors I have referred to—aged care and disabled care—a whole range of occupations are, numerically, overwhelmingly occupied by female employees, and they tend to be, historically, lower paid occupations. That relates to the gender pay gap that I think Minister McSweeney referred to when she publicly commented on a report in the last day or two.

Hon Robyn McSweeney: The 2012 “Women’s Report Card”.

Hon SIMON O’BRIEN: Okay.

The minister, and indeed the government, takes those issues seriously, but I remind members that there are other traditionally low-paid occupations in a range of sectors where perhaps the reverse is true, such as forestry—I am sure that is an industry dear to Hon Alison Xamon’s heart —

Hon Alison Xamon: Sustainable forestry—absolutely.

Hon SIMON O’BRIEN: — and horticulture. There is a whole range of other occupations in which there is, perhaps, a gender imbalance, and there may be a heavy weighting of male employees, traditionally, who may also be very low paid. So I do not think this bill is about correcting a gender inequity; I see it largely as an industrial relations issue.

The government is not inclined to support the bill before the house for a number of reasons. Primarily, it is because we believe we already have the legislative and administrative machinery in place to deal with equal remuneration cases through our own Industrial Relations Commission—yet not only has our commission not been run off its feet with applications, I understand there have not been any. So I do not think there is a basis to create a whole new industrial relations legal format when the current arrangements clearly are in place and are not even being used even by those who think that they may be necessary. I do not think a case can be made for a further level of industrial relations law overlaying what we already have. We do not believe it is necessary for us to ape the commonwealth Fair Work Act in this respect because we have superior arrangements, in our limited jurisdiction, already at our disposal.

As I think Victorian Premier Baillieu said in relation to another matter of commonwealth-state relations recently, “Why would we get rid of our perfectly good system to go for a lesser system?” The other matter that has occurred to me—I am not raising this as a point of order with you, Mr President, because I think the value in the bill the member has introduced is that it raises a number of issues for public airing and debate, and that is fine—is whether this bill could be seriously entertained by the Parliament, because I think it would require some additional expense by the state due to the increased administration of a new system. I have already said that I do not know that the existing system is being overtaxed when it comes to equal remuneration cases but, quite clearly, there would be an agenda here to use the provisions of this bill, if enacted, to bring on some quite vigorous pay cases based on the principle of equal remuneration as set out in this bill. Whether the bill will be able to leap that hurdle by being introduced in this house I do not know, but I do not want to make an issue of it. I raise it because, of course, the other thing that is lacking in this bill, which would not be lacking in, say, a government bill, is rigorous examination of the costs and impacts of it. One of the disciplines that has been introduced and upheld by this government is that bills introduced by government have to go through a process of regulatory impact statement by a regulatory gatekeeping unit based in Treasury to assess the impact on all stakeholders of the provisions contained in proposed legislation. Quite clearly, that has not happened here; it is not a government bill. But it does mean that members are flying in the dark when they contemplate what these provisions could mean. I do not want to be alarmist and say that this legislation would result in a grave adverse impact, because I do not know that. I do not think the exercise has been complete and I do not know what the results would be but I do know, from trying to discover that information, that not only had a range of stakeholders not been consulted about this proposal, the stakeholders did not even know of the bill’s existence.

The bill does not enjoy government support for a range of reasons. Firstly, we believe that we have existing arrangements in our own legislation that are superior to those sought to be tacked on. We do not know the impacts, or, indeed, whether there would be adverse impacts that might even damage the interests of those the bill seeks to support. Finally, all the necessary work about the administrative machinery and its cost has obviously not been done. So we must withhold our support for this bill at this time. In doing so, I restate that the government has a concern for gender equity, but in saying that, I note that this is not really what this bill is about; this is an industrial relations bill. In relation to pay equity and providing ways for sectors with traditionally low-paid workers to increase their remuneration, we have already taken decisive action, backed up

by hundreds of millions of dollars, to provide the pay boost that hardworking employees—the example I gave was the community sector—genuinely deserve for the care they bring to their roles.

I am aware that other members want to speak on this bill. Hon Linda Savage has asked me questions over time about pay equity matters, so I will listen with interest to her contribution. I am interested, indeed, to hear the opposition's position on this bill. I will be listening very, very carefully, and I thank the mover of this second reading debate for the opportunity to point out some of the things the government has been doing in this area. But, regrettably, we cannot support the bill at this time.

HON LINDA SAVAGE (East Metropolitan) [10.25 am]: In speaking to the Industrial Relations (Equal Remuneration) Amendment Bill 2011 introduced by Hon Alison Xamon, the opposition welcomes the opportunity to contribute to this debate about pay equity. The opposition supports this bill in principle because no doubt legislative reform can play an important role in the push for equality and fairness in remuneration for women. This bill seeks to amend the Industrial Relations Act 1979 to allow the Western Australian Industrial Relations Commission to hear pay equity cases and make enforceable equal remuneration orders so that employees to whom the order will apply can receive equal remuneration for work of equal value. The bill also changes one of the principal objects of the act to ensure there is equal remuneration rather than just work to promote it, and to include reference to equal remuneration for men and/or women employees for work of equal or comparable value rather than of just equal value.

I will later respond to what Hon Simon O'Brien has said, although I note that, notwithstanding his view that we already have adequate provisions within the Industrial Relations Act and superior arrangements, the reality is that the gender pay gap in Western Australia is the highest in the country, and that is something I think reflects the problem we face. Whilst Hon Simon O'Brien may feel that what is in place is adequate, perhaps he would like to support a case to the Industrial Relations Commission to prove the capacity of what is in place. In practice we have the highest gender divide in Australia.

Hon Simon O'Brien: Why do you think that is?

Hon LINDA SAVAGE: There is no doubt in my mind that a strong legislative basis for equal remuneration can assist in addressing underlying causes of pay inequity. It can do that in two ways. The first is by providing specific equal remuneration provisions or, as in some states where equal remuneration principles have been proclaimed, by enabling parties to bring cases before the relevant industrial tribunal. The second method by which legislation can support pay equity is by integrating mainstream gender pay issues into the industrial framework. I am sure Hon Alison Xamon will agree that more than legislative change is needed and that, of course, there may be ways to enhance the legislative changes that she is proposing. But I think the starting point is whether there is acceptance that this is an issue. It is an issue that we have to find ways to address because, frankly, progress in this area has stalled.

I noted Hon Simon O'Brien's comments with regard to additional costs and cost implications. I must say that his comments were reminiscent of the transcripts and comments that I read at the time of the equal pay cases in Australia in 1969 and 1972.

I will talk in a moment about what I believe is at the heart of the gender pay gap. But when we are discussing this issue, we need to understand that women are coming from an extremely low base. This is not an issue just for low-paid women. The point needs to be made that this affects women in all pay categories and across many professions. For example, in 2012, the Australian Institute of Management compared the salaries of men and women executives doing exactly the same job and found that men were paid 10.2 per cent more than women. The recently released Australian graduate survey for 2011 shows that women are continuing to earn less than men upon graduating from university. In 2011, the median annual starting salary for male graduates in full-time work was \$52 000, while for women in the same categories it was \$50 000. The gender pay gap exists in many sectors, including in the professions. I do not need to tell any member here that women are also woefully under-represented at board level, particularly at publicly-listed companies. In fact, companies, and the Australian Institute of Company Directors, are working actively to find ways to ensure that more women are appointed to boards.

Obviously the appointment of women to senior positions and positions of power within this country is one thing, and there should be no difference in pay, but the gender pay gap that we are talking about today is particularly punitive and unjust for the lowest-paid workers. I think that Hon Alison Xamon, in the comments that she made in her second reading speech, very much had that group of employees in mind. We know that women are disproportionately employed in low-paid sectors. It is this low base from which these workers seek pay increases that reflects the systemic undervaluation of the female skills that are assumed to be inherent in those positions.

I now want to say a few words about the gender pay gap. It is not just about men and women earning the same amount of money, or about enabling women to hold the same positions as men hold, although that is part of it.

We know that women are increasingly taking on positions that previously they were denied the chance to take on. What we are talking about is redressing the undervaluation of jobs that have typically been done by women and that continue to be done by women. That includes jobs in the childcare and aged care sectors. The heart of the gender pay gap goes back to the failure, in my opinion, to recognise and value the work that women are doing in the home, day after day in this city, in raising children, looking after the elderly and contributing to households. That work has begun to be given some legal recognition only recently through the Family Law Act in property cases, and also only recently have we seen the paid parental leave scheme introduced at the commonwealth level. There has been a failure to recognise that work and the value that it adds to society and the crucial part that it plays. That has resulted in the perception in many of the professions and work situations that these inherent female skills do not need to be valued. This failure to recognise and value these skills is continuing to have far-reaching implications.

I am not alone in observing women around me who have spent considerable periods out of the workforce and have modified their working lives to take on unpaid work and the essential work that needs to be done in the home. These women are often involved in lower-paid work. Many of these women, particularly those in my age group, also have the additional concern that comes with going in and out of the workforce that they may not have sufficient superannuation to support themselves.

Hon Simon O'Brien made some comments about what the government has done in this area. One of the things that he referred to was the pay equity unit. He mentioned that I have asked some questions about that unit. The reason I have asked some questions about that unit is because I am interested in what is being done in this area. As I have said, notwithstanding Hon Simon O'Brien's belief that the mechanisms are in place, the reality is that things have stalled. I have asked some questions about the budget for the pay equity unit, which is in the Department of Commerce. I have previously in this place talked about the links that people have to go through on the website to get to the pay equity unit. I have looked back at some comments that were made in this Parliament before the last election. Based on that, I understand that in about 2007, not long after the pay equity unit was established, the budget for that unit was in the vicinity of \$400 000 a year. By 2010–11, the budget for the pay equity unit was \$94 630, with 1.4 FTE allocated specifically to that unit. That answer was provided to me on 17 August 2011. I asked the same question for 2011–12, and the answer was that the funding for the pay equity unit was \$99 744, with 1.4 FTE. That is an increase of about \$5 000 for that unit. I recently asked what funding there is for that unit for this year, but as yet that information is not available. So, in referring to the pay equity unit, I would respond to the minister by saying that he should consider the provision of adequate resourcing and staffing for that unit, and also the establishment of a senior person in that unit who will report directly to the minister to keep him abreast of the issue. That is something that could be usefully undertaken.

I am not sure how serious the government is about this issue. In preparing for today's debate, I had a look at the work that the government has done in the area of industrial relations, which is what the minister says is really at the heart of this bill. Members might recall the report "Review of the Western Australian Industrial Relations System" that was done by Mr Steven Amendola. I had a look at that report. That report was provided to the government in December 2009 and released by the Minister for Commerce in December 2010. I understand the cost of that report was \$850 000. At the time that report was released, the gender pay gap in Western Australia was 28 per cent. From what I have read, I understand that subsequently the government decided in July 2011 that it would not act on any of the 163 recommendations. Putting aside the costs of a report of that nature, which is now not going to be acted upon, let us see, on the basis of the terms of reference the review had, what interest the report took in women in this state, bearing in mind that the Western Australian industrial relations system applies to up to 30 per cent of WA employees. I had a look at the document and then did a search on the Amendola report. There is not a single mention of the word "gender". The only mention of the expression "pay equity" was made in reference to quoting recommendations from another report. There is no mention of the expressions "pay equality" or "pay gap". This report has been shelved but, having looked at it, it appears to me that when this report was commissioned, the particular position of women was not even considered as an issue that should receive attention.

Reference has been made to the Women's Report Card. I have previously asked—in fact, I asked last week; it must have been the day before the report card was released—when it would be released. The report uses figures that show that the gender pay gap in WA is 27.8 per cent. Although the most recent figures are slightly different from that, we will work on that figure. When we are talking about the gender pay gap, reference is often made—as I notice there was in the paper that reported on it—to the impact of the mining industry on the gender pay gap. Although I am not saying that it does not have any effect at all, there is some misconception about the effect of the mining industry on the gender pay gap. Depending on what figures we look at, the mining industry accounts for perhaps five per cent, or maybe up to nine per cent, of employment in Western Australia. In fact, interestingly, the gender pay gap in the mining industry is less than the gender pay gap in Western Australia more generally. Even though the mining sector is relatively small, it can, of course, contribute in some way and

have flow-on effects in other industries. However, when we analyse the sectors with the largest pay gaps between males and females, it is other sectors that contribute to it, and I have previously mentioned those. They are financial services, aged care and health services. Based on the Australia Bureau of Statistics average weekly earnings in, for example, August 2011, the sectors with the highest gender gaps—higher than mining—were finance; insurance services; health care and social assistance; professional and technical services; and rental, hiring and real estate services.

Coincidentally, at the beginning of this week I attended a forum that had been organised by the Western Australian Council of Social Service. WACOSS called for a meeting to speak to interested organisations and individuals in preparation for its pre-budget submission on women's issues. It was held on Monday morning at City West Lotteries House. When I got there, it was said that because such short notice had been given, the expectation was that 12 to 15 people might attend. In fact, there were over 50 women and a couple of men, which was indicative of the interest in the broader issues facing women. It was chaired by Ann Deanus from Women's Health and Family Services. One of the most important issues discussed was: why have women's issues fallen off the agenda? Some of the comments that have been made may reflect why that is the case; namely, this is not seen as a serious issue by government. As I said, if we look at the Amendola report and how the government funds the pay equity unit, we would not think that pay equity and the wider issues that, as Hon Simon O'Brien says, rightly encompass industrial relations issues—he has characterised this bill as an industrial relations issue—and women's issues, including the gender pay gap, are receiving the attention that they might.

As I understand it, the bill introduced by Hon Alison Xamon reflects amendments which were made to legislation in Queensland and which have been used with some success. As I said, the opposition supports this bill in principle. However, any way that we can further enhance the capacity of people to exercise their legal rights and to put their case is something that should be entertained. My only caveat on that, of course, would be that all the cases, including the case that Hon Simon O'Brien puts, which is that there is already adequate capacity under the Industrial Relations Act, rely on the fact that the people who would take a case have both the expertise and the means to do so.

I would like to make reference to the remuneration principle, which has been shown to be a tool to assist in addressing pay equity through the wage-fixing process. The establishment of an equal remuneration principle in New South Wales and Queensland, which followed pay equity inquiries by their respective Industrial Relations Commissions, has led to successful claims made by librarians, childcare workers, dental assistants and community service workers in those states, and has provided a mechanism that has enabled them to achieve pay increases and to show why they may be warranted. As I said, as a Parliament, knowing what the gender pay gap is, and knowing that we have a group of low-paid women whose capacity to provide for their future is affected by the rate of pay that they get, we should all be open to any legislative or other way forward that can enhance the possibility that, where it is warranted, professions and workplaces that have been traditionally undervalued are valued.

I look forward to hearing further comments from other members of this chamber, because this is clearly a very, very important issue. I think I have said previously that I am old enough to recall being a teenager when the cases of 1969 and 1972 occurred. I was actually at school in 1972. I remember that my own mother, who had been a schoolteacher, had to resign when she married.

Hon Simon O'Brien: My aunt likewise, and then they kept her on doing it for nothing down in Boddington after she quit.

Hon LINDA SAVAGE: At the time, it was considered that women would get married and resign. As I said, I urge members to read what is in the media and learn what happened when Mary Gaudron took the 1972 case. I urge members to read the vitriol that was expressed and the arguments against equal pay. We have come a considerable way since then, but we have not overcome the traditional undervaluing of certain areas of work. Traditionally, they have been overwhelmingly the areas in which women work. The movement of men into those areas does not undermine the historic undervaluing of women reflected in the level of pay. As I said earlier, the gender pay gap affects women working at all levels and in all types of jobs. Certainly, I have seen data on roles in the legal profession and in business and management. That is why I think that this bill should be supported in principle. Legislative reform is part of the way to address this.

Once I took the view that if we had more women in positions of power—judges, members of Parliament et cetera—we could pull other women along with us. I must say that my view on that has changed somewhat. I am now of the view that really a push from the bottom up will provide the momentum to overcome the failure to translate into women's increased equal participation in the workforce. Women are not represented in greater numbers in certain areas of the workforce, particularly on boards of publicly listed companies, nor do they receive remuneration comparable to what men receive; and they are not the majority in better paid employment.

With those comments, I look forward to hearing from other members of Parliament on this very important issue. I have welcomed the opportunity to comment on this bill.

HON SUE ELLERY (South Metropolitan — Leader of the Opposition) [10.52 am]: I also welcome the opportunity to make some comments on the Industrial Relations (Equal Remuneration) Amendment Bill 2011. Hon Linda Savage made our position clear when she said that we support the bill in principle. We couch it in those terms because legislation by itself will not address the gender pay gap and the starkness of the Western Australian figures on the gender pay gap. Some of the things that the legislative outcome could generate could be done by the government as a significant public sector employer without needing to rely on legislation to compel it to do those things. We do not see this piece of legislation as a silver bullet. We do not see that a single instrument, whether government policy or a piece of legislation giving additional powers to the Industrial Relations Commission, of itself will provide the final solution.

It is a timely debate for us to have because yesterday the government released the “Department for Communities: 2012 Women’s Report Card”. By way of an aside, I note that the article in yesterday’s *The West Australian* referred to the “Women’s Report Card” as a document that comes out every four years. That is not the case. It was coming out every two years. It might have been three years since the last one, but it was an initiative started by the previous government and the reports originally came out every two years. The report card tells us that economic independence for women is one of the key goals that this government has set to achieve. The report also addresses the gender pay gap. At page 19 the report states —

The gender pay gap refers to the difference in average full time earnings of men and women and is considered a key indicator of equity between men and women. The gender pay gap is caused by a number of factors —

I think that is an important thing to note in the first place, because it is easy to assume that the fact that the numbers in WA are starkly different from and worse than the rest of the nation is due entirely to the mining and resources sector in WA. That is certainly a contributing factor.

Hon Norman Moore: It is a significant one.

Hon SUE ELLERY: It is a contributing factor, but it is not the sole reason. I welcome the Leader of the House’s contribution to the debate, but this is my contribution. The government’s own report states that the gender pay gap is caused by a number of factors. It does not identify the mining and resources sector as a factor. This is the government’s own report, which was released yesterday. It does not indicate that the mining and resources sector is a greater or lesser contributor to the gender pay gap than anything else. The report goes on to state —

The gender pay gap is caused by a number of factors including less women in senior management positions, limited access to quality part time work which would enable women to combine work with caring responsibilities, and a highly sex segregated workforce which historically pays more for work in a male dominated industry than comparable work in a female dominated industry. The gender pay gap for full time employees in Western Australia is increasing. In 2011, Western Australian women received 72% of men’s average weekly earnings, a gender pay gap of 28%. Nationally, women received 82% of the men’s earnings (a gap of 18%) ...

I want to talk about the report’s reference to the highly sex-segregated workforce. We know that the resource sector employs about two per cent of workers nationally, but about 11 per cent in WA. Nevertheless, 11 per cent is not the majority of the workforce in Western Australia. If we encouraged more women into those mining and resource industries and they progressed all the way through for the life of their careers in those industries, the gender pay gap would be impacted. However, what is pulling down the gender pay gap is the lack of value that we place on the work done by women in those industries that are dominated by women. They are generally referred to as the caring industries and include the areas of health, education, disabilities and aged care. The wage levels in those industries and the fact that those industries are dominated by women has a significant impact on the gender pay gap. That is why I made the point when I began my comments that as a public sector employer the government has a range of leaders, if we like, in its capacity to influence that.

Although the state government as a public sector employer does not employ people directly involved in aged care, it certainly employs people directly involved in the other areas of the industry that are dominated by women. The two biggest employing agencies in government are health and education. What is the make-up of the workforce in those two? It is predominantly women. If we look at the lower paid categories of work in those industries, we see that people in schools who are paid the least are the cleaners and the education assistants. The people paid the least in hospitals are the cleaners, the patient care assistants and the people working in the kitchens. What is the gender make-up of those workforces? It is predominantly women. That is the main driver of the gender pay gap. There is no question that the mining and resources industry plays its part, but it is

not the major driver. Indeed, the government's own report released just yesterday did not identify it as the major driver.

The government has a number of levers available to it in its capacity as a public sector employer. The most obvious one is wages and remuneration. That is the issue that the amendment to the Industrial Relations Act that is before us in this bill today seeks to address. It seeks to give the Industrial Relations Commission the power to hear matters relating to equal pay cases. However, as an employer itself, the government does not have to sit and wait for the Industrial Relations Commission to determine what it should be paying those people it employs; the government can make those decisions itself. In fact, the government does make those decisions in the bargaining process that it enters into every couple of years for the wages and salaries of its staff. That is the major lever that the state government, of whatever colour, uses to influence those wages at the bottom end of the spectrum within the public sector. If the government takes the view that it will take some steps to address those wages, it sets the market, if you like, and is seen to be a leader in those industries that others will follow. If those in the private sector delivering those services in health and education want to keep their staff they will need to match the wages offered in the public sector. It is not a simple, straightforward matter from our point of view and there is not one single issue that will deliver an outcome. We know that by itself this bill is not the whole solution, and there may well be a better way to amend the legislation than that which has been put before us today. Nevertheless, in principle the opposition supports this legislation, but we think there are a range of other measures that could be put in place to address the gender pay gap.

It is interesting to see what this government is doing to address the gender pay gap, and I asked some questions in the estimates process when the department appeared before the Standing Committee on Estimates and Financial Operations. It was not clear to me that a whole lot was being done within the Office of Women's Interests to pursue either policy or research on other options. I am pleased that it continues to be a matter that is measured in the Women's Report Card, because that is something that is being done internationally and certainly there are countries around the world that are trying to measure this as well. Measurement is the first step in identifying the extent of the problem, but if all we do is measure the fact that our gender pay gap is getting worse that does not seem to be a very sensible thing to do. Nothing will change unless we tweak our policies in a variety of other ways. Amending the Industrial Relations Act to give the commission the power to hear equal pay cases will not have a direct consequence for government such as that suggested by Hon Simon O'Brien, who raised the question about whether or not the bill should have been initiated in this place because there was possibly a money component. I think that is flat out spurious. All the bill does is seek to give the power to the Industrial Relations Commission to hear a case. The outcome of that case is not determined by this piece of legislation at all, so there is no money consequence that would prohibit a bill like this being considered by the Legislative Council. It is one trigger, but we think there are others; in fact, there may well be other changes we could make to the legislation, but for the purpose of this debate we are happy to support the bill in principle.

HON ED DERMER (North Metropolitan) [11.04 am]: It was interesting to listen to the debate this morning. I come away much better informed for having listened to my colleagues, Hon Linda Savage and Hon Sue Ellery, and I congratulate Hon Alison Xamon for taking the initiative to introduce the bill in the first place. I am reminded of a debate that occurred at an earlier time, specifically on 27 February 2008 in this chamber, and the very insightful contribution made at the time by Hon Helen Morton. I will quote at length from *Hansard*, if you will indulge me, Mr Deputy President. The speech reads —

HON HELEN MORTON (East Metropolitan) [9.54 pm]: The natural tendency for those unfamiliar with the cumulative effect of financial inequity faced by women is mostly to assume that the problem with gender pay inequity is exaggerated. They also assume that the effects are imagined and that the impact on Western Australian society, culture and economy is minimal. Believe me, this is not imagined and those impacts are real. No longer do the majority of women fall under the protective umbrella of men. They are expected to stand on their own, whether by choice, by divorce or by the death of a partner. They do this while still experiencing the impact of the aggregate effect of multiple inequity issues that have such an enormous impact on them. Women become financially disadvantaged through the many choices that they make throughout their lives. They mostly care for children, their elderly relatives or disabled family members, and must make choices about wages, careers, part-time jobs, jobs close to home and other sorts of work-life balance issues. In this process, women accumulate fewer assets, and have less ability to borrow money to acquire assets. The vast majority of single parents are women, and many are on welfare. The lack of affordable housing has a disparate impact on women. Women are three times more likely than men to live in poverty during retirement, and have only about one-third of the superannuation accumulated by men. It is no wonder that, until the economic status of women is equal to that of men, women are unable to claim equality in education, health care, employment prospects, personal safety and financial security.

I appreciate the house's indulgence so I could read that fairly extensive quote. It was an insightful contribution made to the house on 27 February 2008 by Hon Helen Morton, because it is a very good analysis to show why this remains a very important issue this deep into the twenty-first century, where the arguments about equal pay for equal hours of work for the same task remind me of an earlier time, as referred to by Hon Linda Savage.

I am very pleased that Hon Helen Morton is now in the state cabinet and able to act on the concerns that she articulated in the house on 27 February 2008. I am similarly very surprised that the government does not appear to be inclined to support this bill, which I think would be a very positive step towards dealing with many of the concerns so clearly articulated by Hon Helen Morton on 27 February 2008. That remains a puzzle to me, and I hope that government members will reconsider. I hope that the inclusion of someone with the clear insight of Hon Helen Morton, as demonstrated in her speech on 27 February 2008, will be listened to in the cabinet and real advances will follow.

That is my optimistic perspective on this important issue. I also am afraid that I have reasons to be less optimistic. The Department for Communities' report titled "2012 Women's Report Card" includes a very interesting graph. It is printed on page 21 of the report under the title "Gender pay gap (WA and Australia)", and it shows that since 2000, the beginning of this century—in fact, the beginning of this millennium—WA has continued to have a significantly greater gender pay gap than Australia overall. When I look at 2008, I see that the gender pay gap for Australia overall is 15.9 per cent—this is the percentage pay gap between females and males—and for 2008 the percentage pay gap between females and males for Western Australia was 26.4 per cent. Unfortunately for Australia overall, rather than being reduced, the gender pay gap has increased to 17.5 per cent. Most disturbingly, the gender pay gap for Western Australia has increased to 27.8 per cent. The figures I am referring to are for 2011 as the 2012 figures are obviously yet to be completed. The 2011 figures are naturally the most recently available.

I am puzzled as to why the government is inclined to not support this very worthy bill that we are considering. I am looking forward to seeing a raft of positive initiatives come from the Barnett government to address this issue, which was so clearly and articulately described in its various aspects by Hon Helen Morton on 27 February 2008. I look further down the *Hansard* record of Hon Helen Morton's contribution to the debate where she said —

The worsening pay gap is unique to Western Australia, and to a lesser degree in South Australia, where the gap is still just over half of that in Western Australia. It is no good blaming the mining industry. The gender pay gap in the mining industry in Western Australia is 24 per cent—less than the statewide gap. Improved equity in the mining industry is helping to reduce the statewide gap.

Obviously this was a matter to which Hon Helen Morton had applied her mind and that she had researched quite thoroughly back in February 2008, including a thorough consideration of the important part of the mining industry in Western Australia's economy. I am hoping that that drive and initiative will continue to have an effect in the cabinet in which Hon Helen Morton now serves. Hon Helen Morton went on to ask two very important questions at the conclusion of her contribution —

First, by what date does the government intend to reduce the gender pay gap in Western Australia to at least the national average? Second, what specific initiatives will be used to achieve this within a specified time frame?

These were questions asked by Hon Helen Morton in this chamber during the term of the then Carpenter-led government on 27 February 2008. I am going to work on the assumption that Hon Helen Morton is continuing to ask such questions inside the cabinet room.

Hon Norman Moore: What was the answer that was given?

Hon ED DERMER: I do not have the other pages of the *Hansard*, Hon Norman Moore.

Hon Norman Moore: The answer would have been interesting in the context of the debate we are having.

Hon ED DERMER: I am sure it was interesting. I am sure it was very considered and sensible at the time. I am looking forward to hearing the answers to those questions, as I assume those questions are being asked inside the Barnett cabinet, and seeing them brought to fruition with real initiatives. In the meantime, while we are waiting very patiently, because the government has been here since a little later in 2008, the initiative has been raised by other members in this chamber. We fully recognise the merits of this initiative and are enthusiastic to support it. I am hoping—it is important to live in hope; it is good for the soul and the spirits and helps encourage us to keep working each day—having read Hon Helen Morton's comments from 27 February 2008, that we will see positive initiatives arise from the Barnett government. Certainly if they do not arise there is an opportunity for the people of Western Australia to choose a different set of ministers in March next year, but I am and

remain hopeful that the insider, Hon Helen Morton, will have a positive influence on the Barnett cabinet on this matter.

HON ALISON XAMON (East Metropolitan) [11.14 am] — in reply: I rise to respond to the contributions that have been made to this debate. First, I thank the Australian Labor Party for its support and those members who spoke in support of the Industrial Relations (Equal Remuneration) Amendment Bill 2011. I agree with quite a few really important points made by ALP members. One of the comments that I particularly agree with is the suggestion that this proposed legislation is not the silver bullet to address pay equity issues within this state. That is absolutely true. I have never claimed this. This bill is potentially one avenue in which to address a really concerning pay equity gap, particularly in Western Australia. We also need to recognise that, regardless of arguments about the role of the mining boom, even without the mining boom, we would still have a significant pay equity gap in Western Australia. This issue will not go away. It has been an issue for a long time now. We will have to address it at some point in the future. The Greens (WA) have various avenues available in Parliament to try to address these sorts of issues, and obviously legislative reform is one of them. That is why it was proposed to look at legislative change in this agenda to try to contribute towards addressing the pay equity gap.

I will remind members of my background so they understand why I introduced this bill. I am an industrial lawyer. I worked within the union movement for many years. For four years I was a women's officer dealing with issues of equity, including issues of pay equity. I introduced this bill with quite a degree of background knowledge in the nature of pay equity issues within this state and also the sorts of tools that can be utilised in order to attempt to address issues of pay inequity. In that regard, I need to respond to the contribution of the Minister for Finance because I feel that the information he has been given is incorrect. In particular, the main argument that was put forward is that capacity already exists within the Western Australian Industrial Relations Act to hear equal remuneration cases within Western Australia. This argument has been put forward by the Chamber of Commerce and Industry of Western Australia for many years. As far as I am aware, it is the only operator within the industrial relations spectrum, apart from the government, that has been trying to argue that pay equity provisions within legislation are not required because they ostensibly can already be heard. As someone who has been in a union and who has worked with others within unions and who has looked to try to develop pay equity cases, we have been firmly of the view that in order to proceed, it was not possible within existing industrial relations legislation and therefore legislative change was absolutely necessary.

This goes some way to explaining one of the other points brought up by Hon Simon O'Brien. He implied that this legislation is not necessary because, to date, nobody has taken advantage of the provisions within the Western Australian Industrial Relations Act that he claims are available in order to bring an equal remuneration case. The reason it has never been brought forward is because it is not possible. What we have found in other jurisdictions, both state and federal, is that when equal remuneration principles and the capacity to bring a case are put forward, they are utilised. I would like to assure this government that if this was put forward, I am aware that particular unions would be very keen to utilise these provisions. It is absolutely a falsehood to try to claim that they are currently available. I will go so far as to say that, even though the line has been put consistently by the CCI and the Barnett government that these provisions are already available, I would bet my bottom dollar that if the unions were to proceed with bringing forward a case, the government and the CCI would be the first to appear before the Western Australian Industrial Relations Commission and claim that there is no basis on which that case could be heard because we do not have the authority under the state commission to hear these cases. I think it is highly disingenuous to say that these sorts of cases can be brought, because they absolutely cannot be, which is why no application has ever been made.

I also want to point out that apart from actually enabling cases to be heard, the Industrial Relations (Equal Remuneration) Amendment Bill 2011 introduces some pretty important safeguards such as ensuring that simultaneous cases cannot be heard in other jurisdictions. It will also extend the scope so that the Commissioner for Equal Opportunity can direct a case to be heard. For the commissioner to bring forward cases is quite significant because they are costly and take time and require resources. Unions have been doing that on behalf of their members, but an important part of this legislation is the ability to extend the scope of who can do that.

I also wanted to pick up on another furphy put forward by the Minister for Finance, which was the suggestion that this legislation would affect individuals. Pay equity cases do not work that way; they affect base awards. I am not quite sure where the minister is getting his information from but it is pretty disappointing, and all of this stuff is highly misleading.

I recognise that this government provided a \$600 million injection into some sectors within the Western Australian workforce, and it was welcomed by many people. But I want to point out that in no way could it be said to cover all industries that would potentially be eligible to apply for an equal remuneration case to be heard. On that basis, there is no way the government can say the injection of those funds excuses the inability of certain

industries to mount these cases. This is about addressing issues of pay equity around work of equal and comparable value. There also seems to be a sad lack of understanding about why this is a gender issue; pay equity is about addressing, primarily, inequities between occupations dominated by women and those dominated by men. It is a gendered industrial relations issue, which in itself is a pay equity issue, so to talk about the two as though they are inconsistent is, I think, very strange.

I also want to pick up on the spurious argument that questioned the validity of introducing this bill into this place on the ground that it will create an additional expense. Firstly, all bills introduced by the Greens (WA) have an eye cast over them by the Clerk of the Legislative Council. From experience, provisions that will potentially be a problem tend to get picked up pretty quickly, and so people can be fairly assured that before a bill has been read into this place it has been subject to some of that analysis. But in any event I do not understand how it could be argued that it would result in additional costs if the government is already claiming that these cases can be heard by the Industrial Relations Commission. The government cannot have it both ways; it is either opening up the scope, in which case the government is acknowledging that we do not have that ability now, or it is not, in which case no additional expense will be incurred. The government cannot have it both ways. In any event, all this bill will do is enable a case to be heard; it will not move beyond that. In which direction the Industrial Relations Commission decides to go, should a case actually be heard, is really up to it.

I also pick up on the suggestion that stakeholders have not been consulted on this legislation; that is just not true. This bill has been endorsed by UnionsWA and a number of key unions that will potentially be affected by these provisions, in particular the Australian Services Union. It has been endorsed by Community Employers WA, which is really keen to see some dramatic changes in this area, and has received the support of the Western Australian Council of Social Service. The Law Society of Western Australia is aware of this legislation, as is the Chamber of Commerce and Industry of Western Australia. I am curious about which other stakeholders apparently need to know about this legislation, but I can assure the government that it has actually been brought to the attention of, and received support from, a number of organisations.

The pay equity gap within Western Australia is unacceptably high. This legislation is a way to address the inequity in some small measure. The opportunity has now been lost. I suspect that if a union decides to proceed with a pay equity case through the state industrial relations system, on the basis of undertakings given by this government and the Chamber of Commerce and Industry of Western Australia that it is able to do so under existing legislation, we will see opposition by this government and the CCI on the basis that there is no jurisdiction to hear the case. That remains to be seen.

In the meantime, there remains great uncertainty about the way in which pay equity cases can be brought. I think that is highly unfortunate. It is a missed opportunity. Although this bill looks as though it will not succeed in this instance, this issue will not go away. It is an issue that the Greens (WA) will continue to bring to the attention of this Parliament and to the attention of the public for it to be addressed.

Question put and a division taken, the Deputy Chair (Hon Col Holt) casting his vote with the noes, with the following result —

Ayes (10)

Hon Helen Bullock
Hon Robin Chapple
Hon Sue Ellery

Hon Lynn MacLaren
Hon Ljiljanna Ravlich
Hon Linda Savage

Hon Sally Talbot
Hon Giz Watson
Hon Alison Xamon

Hon Ed Dermer (*Teller*)

Noes (15)

Hon Peter Collier
Hon Mia Davies
Hon Phil Edman
Hon Brian Ellis

Hon Donna Faragher
Hon Philip Gardiner
Hon Nick Goiran
Hon Nigel Hallett

Hon Alyssa Hayden
Hon Col Holt
Hon Robyn McSweeney
Hon Michael Mischin

Hon Norman Moore
Hon Simon O'Brien
Hon Ken Baston (*Teller*)

Pairs

Hon Adele Farina
Hon Kate Doust
Hon Matt Benson-Lidholm
Hon Jon Ford
Hon Ken Travers

Hon Jim Chown
Hon Liz Behjat
Hon Wendy Duncan
Hon Helen Morton
Hon Max Trenorden

Question thus negatived.

Bill defeated.