PUBLIC SECTOR REFORM BILL 2009

Consideration in Detail

Resumed from an earlier stage of the sitting.

Clause 57: Section 99 amended —

Debate was interrupted after the clause had been partly considered.

Mr V.A. CATANIA: I will finalise my remarks on clause 57 and the deletion of section 99. I believe that this amendment is necessary to ensure that the public sector has an even playing field with the private sector. I am sure that all members on both sides of the house agree with that. I would like the Premier to support this amendment also.

Mr C.J. BARNETT: I will perhaps give the Labor opposition the opportunity to make its comments, and then I will respond to both the member for North West and the opposition.

Mr M. McGowan: I wouldn't mind hearing from you. Something might be generated.

Mr C.J. BARNETT: Okay. As I understand it, the intent of this proposed amendment is to give the Western Australian Industrial Relations Commission some jurisdiction over disciplinary issues within the public service, and general industrial issues. Therefore, I guess the way it would go is that if a public servant feels in someway aggrieved, rather than relying solely on the existing mechanism within the public service under the Public Sector Commission, the intent of this amendment is to allow that public servant to take his or her grievance or dispute to the Western Australian Industrial Relations Commission. I do not have an objection to that. However, I make the observation that it sets up two jurisdictions. One is now within the Public Sector Commission, where I think public sector issues should be dealt with, particularly regarding standards of conduct and disciplinary issues. If that goes across to the Industrial Relations Commission, we will get arguably another set of decisions and different criteria, and we will have two sets of rules. Therefore, I have a concern about that in a practical sense. I also repeat the comment I made earlier that public servants have special conditions, special entitlements and, indeed, special security. That is a reflection of the role they take as public servants. They need to have the security of permanency and they need to have protection from any undue outside influence. That is why I believe that any disciplinary issue is better dealt with by the Public Sector Commission.

If we allow, as this amendment would purport to do, public sector issues, whether they are disciplinary or other matters coming under an industrial agreement, to go from the jurisdiction of the Public Service Commissioner into the Industrial Relations Commission, we are moving in a sense, to some extent, greater or less, public servants out of the protection of the Public Sector Commission system and into the wild and less predictable world of the Western Australian Industrial Relations Commission. That potentially opens them up to a jurisdiction in which involuntary redundancy is a feature. Involuntary redundancy is not a feature of the public sector. There might be an argument about that at some stage, but at the moment it is not. Therefore, this would move public servants from a lot of the protection they have under the current arrangements into a wider and perhaps less understood world, more akin to the private sector. Therefore, when members ask, "Why don't public servants have the same rights to go to the Industrial Relations Commission as any other employee?" it is, in a sense, because they are public servants. They have a protected set of conditions and protected disciplinary processes within the public service. If we move them out of that and allow them to have access to a wider Industrial Relations Commission, they risk that protection.

I have to say as a person that I would have grave doubts about the interests of public servants in going down this path. It may on the surface sound appealing to allow them to have the right to access the Industrial Relations Commission on a whole range of industrial or disciplinary issues, but it moves them out of the protective zone that public servants are currently in. That may lead to all sorts of unforeseen consequences in the future. That is the matter of principle.

The other point I make is that the advice that I received late this afternoon is that this amendment and basically repealing section 99 will not have any effect. If we wanted to give public servants access to the Industrial Relations Commission, there would need to be a series of amendments to the Western Australian Industrial Relations Commission Act. Changing the Public Sector Management Act will not give rights of access to the Industrial Relations Commission, simply because the WA Industrial Relations Commission Act prohibits the commission dealing with public servants. Therefore, amending the Public Sector Management Act, without at the same time amending the Western Australian Industrial Relations Commission Act, does not allow public servants to be covered. I can agree to this amendment, and maybe it is a chink in the wall if people want to pursue this line of rights of public servants, but it will have no effect, because although it would free up public

servants under the Public Sector Management Act to access the Western Australian Industrial Relations Commission, unless there are major changes to the Western Australian Industrial Relations Commission Act, the commission is barred from dealing with public servants. I can agree, but I do not think it is an effective mechanism.

Mr M. McGowan: Are you going to agree?

Mr C.J. BARNETT: I can, but it is not actually going to do anything.

Dr J.M. WOOLLARD: I would like to hear more from the Premier.

Mr E.S. RIPPER: I would like to hear more of the Premier's explanation.

Mr C.J. BARNETT: If I am correctly reading the member for North West and members opposite, the purpose of this amendment is to remove what is seen as a barrier in the Public Sector Management Act to public servants taking industrial matters, including disciplinary matters, to the Western Australian Industrial Relations Commission. The argument, essentially, is: why should they be denied the rights of other workers? I can accept that. I think that is a fair position of policy, so I am not disputing that. The point I make is, firstly, that if they move across on issues—one or more—they move from the protective domain of the public service, which is there to protect and preserve unique conditions quite appropriately applying to public servants. If they move into the private sector jurisdiction, a wider range of issues apply—for example, involuntary redundancy. Therefore, I think there are some potentially unforeseen downsides for public servants. I cannot foretell that; I am just saying there is a risk. However, the more substantive point is the one I have just made; that is, changing the Public Sector Management Act to, on the surface, give public servants access to the Western Australian Industrial Relations Commission is fine, and therefore I can agree to this amendment, but I make the observation, on advice, that it will achieve nothing. Unless we change the Western Australian Industrial Relations Act, it will have no effect because that act prohibits the Western Australian Industrial Relations Commission from dealing with public sector issues, particularly on disciplinary matters. I can agree to the amendment, and perhaps the point will be made if the Parliament agrees to it, but I make the observation that that will not have any material effect. I am prepared to provide a copy of the advice I have been given on that matter to members of the house. That is how the government sees it.

Mr C.J. Tallentire: My understanding is that disciplinary matters already go to the Western Australian Industrial Relations Commission.

Mr C.J. BARNETT: I am advised that they go to the Public Service Appeal Board.

Mr C.J. Tallentire: Not to the Western Australian Industrial Relations Commission?

Mr C.J. BARNETT: I think there is an industrial relations commissioner on the board, but it is actually the Public Service Appeal Board. The Industrial Relations Act prohibits public service issues going to the commission. If the member wanted that to happen, which might be his policy position, he would have to bring in a separate bill to amend the Industrial Relations Act.

Dr J.M. WOOLLARD: The Premier has said that he has no objection to this amendment and that supporting this amendment without changes to the Industrial Relations Act will have no effect on the current situation. Following on from that, is the Premier able to give the member for North West an assurance? If this bill goes through this house now, it will not be reviewed by the upper house until after the winter recess, so the changes that will need to be made to the Industrial Relations Act could possibly be considered when this bill is introduced in the upper house. Is that a possibility?

Mr C.J. BARNETT: I would not do that. This is an amendment to the Public Sector Management Act, relating principally to the Public Sector Commissioner taking on the responsibilities of the Commissioner for Public Sector Standards; that is what the bill is about. If members want to bring about changes to the Western Australian Industrial Relations Act, they should by all means bring a private member's bill and debate it, but the government does not intend to do that. As I say, I can accept this amendment, but it will have no effect unless a different bill is brought in to deal with the Western Australian Industrial Relations Act. That is not something that the government intends to do, but if members of the house wish to do that, they can do so through a private member's bill.

Dr J.M. WOOLLARD: The Premier is saying that it will have no effect, but section 99 of the Public Sector Management Act states in part —

> **Matters that cannot be the subject of industrial agreements or employer–employee agreements**
>
> …

(a) any matters dealt with by a public sector standard or code of ethics, except —

(i) rates of remuneration;

(ii) leave;

(iii) hours of duty; and

(iv) such other matters as are described …

It goes on to explain those. If section 99 is deleted, what will happen to the matters that are currently within section 99 of the act?

Mr C.J. BARNETT: They would simply be dealt with by the Public Sector Commissioner, because they cannot be dealt with by the Industrial Relations Commission. If this amendment is passed by the house, I guess it will express a sentiment and there will be a policy component to it, but in a practical sense I do not believe it will make any material change. However, if the house wishes to make that amendment, it would open the door a little. If another piece of legislation were to be brought in to change the Industrial Relations Act, this side of it will have been done in advance. People may see merit in that, and I know that the union is advocating the amendment. If it sees that as progress towards that objective, I do not object to that, but again, the government does not propose to bring in amendments to the Industrial Relations Act to that effect. I am not objecting to the amendment.

Mr C.J. TALLENTIRE: My understanding from briefings with the union is that the Public Service Appeal Board is a constituent body of the Western Australian Industrial Relations Commission. Does that not mean that disciplinary matters go to this constituent board?

Mr C.J. BARNETT: Disciplinary matters can go to the Public Service Appeal Board, but it is not part of the Industrial Relations Commission. They have an affiliation of some sort, but it is a public sector organisation. We are talking about taking standards, codes of ethics and the like and giving it dual jurisdiction, including disciplinary issues. I happen to hold the view that that is better dealt with internally within the public sector, particularly under the auspices of the Public Sector Commissioner. The member may not agree with that, but I happen to think that it is better for public servants to be dealt with in that way. I would not want to see it moved into the Industrial Relations Commission; I think that would place at risk some of the protection and conditions that public servants have historically enjoyed for decades.

Mr E.S. RIPPER: The Labor Party supports this amendment; in fact, I intended to move on behalf of the Labor Party a somewhat similar amendment. I think we may have been talking at cross-purposes. Section 99 states —

Matters that cannot be the subject of industrial agreements or employer–employee agreements

(1) There are excluded from the operation of sections 41, 41A and 43 of the *Industrial Relations Act* 1979 —

A set of matters are then listed which are excluded from those sections of the Industrial Relations Act. If we then go to section 41 of the Industrial Relations Act, we see that section 41 relates to industrial agreements, while 41A relates to the registration of an industrial agreement, and section 43 relates to power to vary, renew or cancel industrial agreements. My understanding of what is being done here is that we are allowing matters that are currently excluded to be part of industrial agreements for unions, workers and employers in the public sector. The advice I have is that the deletion of section 99 of the Public Sector Management Act will remove the restrictions on the matters that can be included in an industrial agreement. It does not necessarily mean that these matters will then be included in an industrial agreement, because that can occur only when there is an agreement reached between the parties. I understand that the restriction has, in the past, forced the parties to include matters in the award rather than in an agreement. A consequential amendment that could arise from this amendment would lift the restrictions on the Western Australian Industrial Relations Commission's ability to consider the merit of decisions made on matters currently covered by public sector standards. This would require the deletion of section 80E(7) of the Industrial Relations Act and could only be moved if the subsequent relevant bill came before the house. To divide this into two, if we deleted section 99 of the Public Sector Management Act, it would pave the way, if agreement was reached between the government and the union, for a wider range of matters to be included in industrial agreements. It would also be one link in the changes required to give the Industrial Relations Commission more authority over public sector matters.

Mr C.J. Barnett: If that is the pathway you want to go down, you could argue that this is one step down that pathway, but could I also say that I don't think a government would want to include matters of codes of conduct, ethics and the like within industrial agreements.

Mr E.S. RIPPER: I understood the Premier's remarks to bear mainly on the second issue—that is, are we giving the Western Australian Industrial Relations Commission authority over matters within the public sector? On the basis of the information and advice available to me, to do so would require an amendment to the Public Sector Management Act, which we are discussing now, and another amendment to the Industrial Relations Act, which is not before us. The further amendment could be made only at a subsequent stage when that bill or amending legislation for that bill was before the house. That is one issue. The other issue is that if we delete section 99, we will allow for a range of matters to be included in industrial agreements that have not previously been included. I seek the Premier's confirmation that there is in fact another leg to this issue if this amendment is carried; namely, the enhanced ability of the union and the employer to include a wider range of matters in industrial agreements.

Mr C.J. Barnett: It is possible but not intended, certainly by this government, to do that.

Mr E.S. RIPPER: It may not be intended by the government, but removal of this section will remove a restriction on negotiations between any government and the union. It may well be pragmatic for both the government and the union to agree that some measures related to those matters that are currently restricted be included in an industrial agreement.

Mr C.J. BARNETT: That summary by the Leader of the Opposition is accurate. I do not think it will be desirable to see issues such as codes of conduct and ethical issues included in an industrial agreement. Who knows? A future government, a future set of negotiators, may think it is desirable. The Leader of the Opposition is right: it could be done, but this government does not intend to do that.

Mr V.A. CATANIA: I thank the Premier for considering this amendment. I think it is vital, as I have stated many times before. I do not often agree with the Leader of the Opposition, but I agree with what he has said so far; that is, that the amendments to the Industrial Relations Act are needed to finalise the deletion of section 99. I give the Premier the heads-up that over the winter recess I will be looking at the Industrial Relations Act to see how I can bring in a private member's bill to complete this process. I thank the Premier for the support.

Mr C.J. Barnett: It is reluctant support.

Mr V.A. CATANIA: It is support, nonetheless. It is also good to see the opposition standing tall and supporting this amendment to make sure it is passed.

Mr E.S. RIPPER: What an unusual day! It seems to be a day on which I agree with both the member for North West and the Premier.

Mr C.J. Barnett: It won't last

Mr E.S. RIPPER: It will not last. I think it is a dangerous position for me to be in on the basis of past experience. I am reluctant to reach agreements with the Premier.

Mr C.J. Barnett: You can abandon your support for the clause if that will make you feel more comfortable.

Mr E.S. RIPPER: On this occasion, I support the amendment moved by the member for North West. I was going to move a similar amendment but he got to the notice paper first.

I want to deal with a couple of the Premier's comments. It is not necessarily the case that if the Industrial Relations Commission is given jurisdiction over public sector matters, issues such as permanency will necessarily be changed. That was perhaps a hypothetical scenario, which is not necessarily an outcome —

Mr C.J. Barnett: I was just saying that I see a risk.

Mr E.S. RIPPER: I suppose it is possible to construct an argument that there is a risk, but I do not think that should prevent public servants and the union from seeking to have these matters considered by the Industrial Relations Commission. Although there might be a risk, I am sure that can be dealt with should it ever emerge down the track. I do not find that a convincing argument. What I find most convincing about this is what it does immediately. Once this legislation goes through, it will immediately widen the matters that the union and the employer can discuss and negotiate and reach agreement on. I think that is a good thing. I support it primarily for the capacity it provides for enhanced negotiations.

The second leg of the argument relates to the Industrial Relations Commission, but to bring that to a conclusion will require another piece of legislation and another debate.

Mr M. McGOWAN: I would like to add my few cents' worth to this matter. I heard the argument the Premier made that if the Industrial Relations Commission is given a role, all sorts of other matters could be put in there, in particular the permanency arrangements of public servants. I thought it was an imaginative argument.

Mr C.J. Barnett: Thank you.

Mr M. McGOWAN: It was very imaginative. The Premier has a vivid imagination. To say that somehow he, as the employer, would have taken out of his hands whether someone had permanency—that is the natural conclusion to his argument—was imaginative.

Mr C.J. Barnett: No.

Mr M. McGOWAN: Full marks to the Premier. It was terrific that he could construct something like that to justify his position earlier. He has not lost his touch. It was an interesting argument, but I do not think it is true. I think the Premier will be able to decide whether someone is a permanent employee and whether that arrangement exists across the public sector without the Industrial Relations Commission entering into the matter. I think it is entirely within the Premier's capacity as the employer of the people in the public sector to do that. It would be an extremely unlikely outcome that somehow he would be forced to remove permanency from public sector workers simply because they were given rights to appeal to the Industrial Relations Commission.

The second point he raised was that the removal of this section will have no effect and that other legislation will need to be changed. He said he had received legal advice. We have not seen that advice. We have the Premier's word on what that advice may or may not mean. It would be nice if he were to bring us into his confidence and advise us whether it was written or verbal advice.

Mr C.J. Barnett: Sorry to interrupt. It is not legal advice as such; it is comment on the bill by thoughtful people. I am happy to make that available to members.

Mr M. McGOWAN: That would be interesting. It is on the table; it can be formally tabled if the Premier likes.

Mr C.J. Barnett: I will just give you a copy.

Mr M. McGOWAN: It would be good to receive a copy of that advice to back up what the Premier is saying. Following on from that, he then said, "I'm happy to support the clause."

Mr C.J. Barnett: Happy to tolerate it. It is reluctant support.

Mr M. McGOWAN: Again the Machiavellian nature comes through. The Premier is happy to support the deletion of the section because I think he is worried that he will lose a vote on this section because someone elected as a Labor member might vote with the party that got him elected.

Mr C.J. Barnett: I was persuaded by the argument

Mr E.S. Ripper: By the numbers.

Mr M. McGOWAN: Another member originally elected as a Labor member might vote with the party who got him elected to this place. Another member originally elected as a Green or an Independent, might vote with us. At the end of the day, the Premier's pragmatism is showing through rather than the sense of bonhomie that he is exhibiting—"I'm a good fellow; I'm happy to go along with all this." His pragmatism is coming through and he does not want tomorrow's headline that he got defeated in a vote knocking off anything that might be going on in Canberra. We see what is going on here. The Premier might want to dispute that, but once again, from the smile on his face, I can see the thought patterns going on.

Mr C.J. Barnett: I can assure you that if there were a difference of opinion worth fighting for, I would fight for it and go to votes. On the advice I have received, this is a relatively innocuous amendment; it does not make a great deal of difference.

Mr E.S. Ripper: The member for North West can go back and say, "I've got this great victory but the Premier described it as relatively innocuous."

Mr C.J. Barnett: I am sure you can use different terms to describe it.

Mr M. McGOWAN: I have watched the Premier in action for 13 years; I can see the pragmatism coming through.

Mr C.J. Barnett interjected.

Mr M. McGOWAN: I have watched him in action for 13 years.

Mr E.S. Ripper: It's the statesmanship; it's the leadership!

Mr M. McGOWAN: That is right—the great statesman! The luckiest man in Western Australia, as he was called today. Eight years bad luck; two years good luck. In any event, it is a pragmatic decision. It would be good if the Premier stood by his guns and was defeated on this vote, but obviously discretion is the better part of valour as far as he is concerned.

Mr C.J. TALLENTIRE: For the sake of accuracy, I would like some clarification on the issue of the Public Service Appeal Board and by which legislation it is covered. I understood in a previous answer the Premier said that it was not part of the WA Industrial Relations Commission, but I have had the opportunity to look at the Industrial Relations Act. Section 80H(1) refers to the Public Service Appeal Board and reads —

> For the purpose of an appeal under section 80I there shall be established, within and as part of the Commission, a board to be known as a Public Service Appeal Board.

That suggests to me that this body is definitely part of the Western Australian Industrial Relations Commission. That is contrary to the advice the Premier gave previously. I am concerned about the background information he has been given for his contribution to this point.

Mr C.J. BARNETT: I am advised that the Public Service Appeals Board used to operate under its own act but that it now operates under the Industrial Relations Act. It has been transferred across to the IR act. As an entity, it is not part of the Western Australian Industrial Relations Commission. It no longer has its own act. It is basically a constituent authority under the Industrial Relations Commission but it is not part of the commission.

Dr J.M. WOOLLARD: I am sure that many other members of this house have received emails from people in their electorates who work in the public sector. I have received one that says people who work in the public sector want allegations of disciplinary breaches to be provided to an employee in writing and for the employee to be provided with a reasonable opportunity to respond; to require disciplinary action against former employees to be subject to a public interest test; to remove the requirement to dismiss an employee for not accepting alternative employment with a private provider when the work of the department is outsourced; for wages and conditions to be maintained when jobs are outsourced or privatised; to ensure that public sector workers have the same rights as private sector employees to access the independent umpire—the Western Australian Industrial Relations Commission; to require that the delegation of CEOs' powers that occur within and between government agencies be subject to the same accountability standards of the public sector. These are the messages that I am sure all members have been receiving —

The ACTING SPEAKER (Mr P.B. Watson): Is the member talking about the amendment to section 99?

Dr J.M. WOOLLARD: These relate to section 99 because I believe that the powers will move from the Public Sector Commission to the Industrial Relations Commission. That is why people are sending members this type of material. Is the Premier saying that the deletion of section 99 will maintain the status quo? Will no changes be made to any of the various areas that people are concerned about unless amendments are made to the Industrial Relations Act? Can the Premier clarify that for me?

Mr C.J. BARNETT: This amendment relates only to matters included within an industrial agreement. Within the public sector context, it does not relate in any way to disciplinary issues. I know that material has been circulated to members of Parliament and the public, which is fine. The amendment to delete section 99 does not do what that circulated material promises; it simply does not do it. That is not a criticism; it is an observation. I hope that by advocating this, the union is not presenting to its members an outcome that is not realised by this action, because it is not realised by it. That is the simple fact.

Dr J.M. WOOLLARD: Would the changes about which members have been lobbied require an amendment to be made to the Industrial Relations Act?

Mr C.J. Barnett: That is correct.

The ACTING SPEAKER: The question is that clause 57 stand as printed.

Mr C.J. Barnett: That is not the right motion.

The ACTING SPEAKER: I have been advised that members have to vote on the clause first.

Mr C.J. Barnett: For clarification, is the Acting Speaker saying that we need to vote on the clause before we can vote to delete the clause?

The ACTING SPEAKER: To amend the clause, members have to vote against it. If members vote against the clause, they can introduce a new clause to replace it.

Mr E.S. RIPPER: I would like the Acting Speaker to give advice to the house that will enable the house to achieve the objective it seeks, which is the deletion of section 99 of the Public Sector Management Act.

The ACTING SPEAKER: That is what we are doing. If the Leader of the Opposition had just listened to me, he would have heard me say that members must vote against clause 57 and then the member for North West will move his new clause after clause 57 has been defeated.

Mr E.S. RIPPER: To clarify this for me, because it has been a long day, if we defeat clause 57, are we then in a position to move to delete section 99?

The ACTING SPEAKER: No. The member for North West will then move his new clause. He will move to insert on page 37, after line 11, new clause 58.

Dr J.M. WOOLLARD: I thought that if we moved clause 57 —

The ACTING SPEAKER: The idea is to defeat the clause. If everyone votes against it, the clause will be deleted and the member for North West will propose another clause. Is the Premier happy with that?

Mr C.J. Barnett: That is fine.

Clause put and negatived.

New clause 58 —

Mr V.A. CATANIA: I move —

At page 37, after line 11, to insert —

58. Section 99 deleted.

Delete section 99.

New clause put and passed.

Clauses 59 to 65 put and passed.

Clause 66: Schedule 7 inserted —

Mr C.J. BARNETT: I move —

Page 41, lines 18 and 19 — To delete "entitled to hold office as Commissioner in accordance with Part 3A" and substitute —

to hold office as Commissioner subject to Part 3A Division 1

The effect of this amendment is simply to make it clear that the Public Sector Commissioner will continue on in that role.

Amendment put and passed.

Mr C.J. BARNETT: I move —

Page 43, line 17 — To delete "24I" and substitute —

24H

That simply corrects a typographical error.

Amendment put and passed.

Mr C.J. BARNETT: I move —

Page 46, after line 4 — To insert —

10A. General savings — Commissioner

(1) A thing done or omitted to be done by, to or in relation to the former Commissioner before the commencement day, whether under this Act or any other written law, has the same effect after the commencement day, to the extent that it has any force or significance after that day, as if it had been done or omitted by, to or in relation to the Commissioner.

(2) Subclause (1) does not apply if a contrary intention appears or the context otherwise requires.

This amendment requires that the previous actions of the Public Sector Standards Commission be preserved. Again, it is a continuity requirement.

Amendment put and passed.

Mr C.J. BARNETT: I move —

Page 46, line 9 — To delete "regulation" and substitute —

recommendation

The reason for this amendment is that it is the Governor who makes regulations and it is a recommendation to the Governor to make a regulation. It is about getting the terminology correct.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 67 to 88 put and passed.

Clause 89: Various references to "Minister for Public Sector Management" amended —

Mr C.J. BARNETT: I move —

Page 64, after line 9, in the Table — To insert in alphabetical order —

Royalties for Regions Act 2009	*s. 20*

The reason for this amendment is that at the time of drafting the Royalties for Regions Act had not been proclaimed. It has now, so it can be inserted in this table.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 90 to 92 put and passed.

New clause 93A —

Mr C.J. BARNETT: I move —

Page 74, after line 15 — To insert —

93. Section 22A amended

After section 22A(1) insert —

(2A) The Commissioner must issue instructions to ensure that, if a decision is made under section 81(1)(a) in respect of an employee, the employee is —

(a) notified in writing of the possible breach of discipline; and

(b) given a reasonable opportunity to respond.

This new clause is self-explanatory. It makes it clear under the instructions that on disciplinary matters the employee must be informed in writing and given time to respond. It is a normal justice feature.

Mr E.S. RIPPER: I intended to move an amendment to clause 96 which reads —

Page 82, after line 3 — To insert —

(a) 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; and

Can the Premier confirm on the basis of his advice that new clause 93A achieves the same effect as I would be seeking to do by moving that amendment?

Mr C.J. Barnett: Yes, I can.

Mr E.S. RIPPER: The Premier confirms that it does have the same effect. If his amendment proceeds there would be no need for me to move my amendment.

Mr C.J. Barnett: That is correct.

New clause put and passed.

Clause 93: Section 76 amended —

Mr E.S. RIPPER: I move —

Page 75, after line 17 — To insert —

(8) Disciplinary action against a former employee will only proceed where it is in the public interest. A decision to proceed will be made by the Commissioner in accordance with the relevant Commissioner's instruction on public interest.

The Labor opposition agrees with the provisions in the legislation that enable an employee shifting from one agency to another to be nevertheless subject to disciplinary action for events that occurred in the originating agency. There was a case involving a Mr Caporn. Mr Caporn resigned from Western Australia Police and took up a position with the Fire and Emergency Services Authority. Following misconduct findings by the Corruption and Crime Commission there was an inquiry underway at WA Police into whether disciplinary action was required.

Point of Order

Mr C.J. BARNETT: I have just been advised that maybe we should be dealing with new clause 93A. Perhaps we should deal with that first. The Leader of the Opposition is referring to a following clause.

The ACTING SPEAKER (Mr P.B. Watson): We are on the Leader of the Opposition's proposed amendment to clause 93.

Mr C.J. BARNETT: The point that has been made to me is that we have not dealt with my amendment yet.

The ACTING SPEAKER: Yes, we have. We agreed to the Premier's new clause.

Debate Resumed

Mr E.S. RIPPER: The police commissioner was unable to pursue further disciplinary action as Mr Caporn was no longer an employee of his agency. Then Public Sector Standards Commissioner Ruth Shean tabled a report in Parliament in May 2009 into the processes leading to the appointment of Mr Caporn to the position of executive director, community development, Fire and Emergency Services Authority. She was critical of the process. There was a lot of public criticism at the time of the circumstance in which Mr Caporn was able to avoid any further disciplinary action. People could not understand how a person could move from one position in the broader public sector to another position and cause the disciplinary action that was being undertaken against that person to go away by that move. It is only appropriate that, particularly for serious matters, the legislation be rectified to prevent that happening.

I said in my second reading speech that I am concerned that there may be cases in which the events, when put into perspective, are relatively minor and it would be in the public interest for the new agency to pursue disciplinary action on the basis of events that occurred in the primary agency. These historic events need to be looked at with a fresh and independent eye before permission is given for disciplinary action to be undertaken. To avoid harassment of people for decades of minor events, I suggest that an amendment like this would be of assistance.

Mr C.J. BARNETT: I do not disagree with the intent of this amendment, but my advice is that the public interest issue should be dealt with through the commissioner's instructions. That is where it would be properly dealt with. I acknowledge that the public interest is relevant to any decision to take a disciplinary action. Decisions to take a disciplinary action should remain the responsibility of the chief executive officer, as the former employer, rather than the Public Sector Commissioner. The role of the commissioner should be to guide and direct CEOs in that decision. I do not disagree with the intent or the spirit of this amendment, but I do not believe it should be in the act; it should be dealt with through the commissioner's instructions. They have not been published yet and we are happy to give the Leader of the Opposition a copy of them now, if he wants a copy.

Mr E.S. RIPPER: I was tempted to ask the Premier whether he could give an assurance to the house that this matter would be covered by the commissioner's instructions. However, given that the commissioner is independent, can the Premier actually give an assurance that a particular matter will be covered in commissioner's instructions or is that something that we have to approach the commissioner directly about?

Mr C.J. BARNETT: The commissioner has assured us that that will be the case, so I guess what I am saying is that it should be his instructions, his decision, rather than in the act, but it will be done. His draft instructions cover that point.

Mr E.S. Ripper: So can I just get it on the record? My understanding is that the commissioner has assured the government that there will be a commissioner's instruction that achieves the intent of this amendment.

Mr C.J. BARNETT: Yes, the Leader of the Opposition can. I have just been advised that the commissioner will not decide that; he will have the instruction but that will be a guideline to the CEOs as to how they should act and therefore the public interest will go through his guideline.

Mr E.S. Ripper: Will it be up to the CEO of the primary agency or the new agency to make a judgement on the public interest?

Mr C.J. BARNETT: On the original agency, I would think.

Mr E.S. Ripper: So the CEO of the original agency can decide that this is too minor, the person is gone anyway and that it is not in the public interest to pursue disciplinary action?

Mr C.J. BARNETT: That is correct.

Amendment put and negatived.

Clause put and passed.

Clauses 94 and 95 put and passed.

Clause 96: Section 81 replaced —

Mr E.S. RIPPER: I move —

Page 82, line 11 — To delete the full stop and insert —

; and

(d) must consider the evidence available.

This amendment serves simply to strengthen employee rights when facing a disciplinary action. It enhances procedural fairness. It is simply a requirement that in a disciplinary process, all the evidence must be considered. I think it is fairly unexceptional and I hope that the government will see fit to support it.

Mr C.J. BARNETT: Unexceptional as the amendment might be, the government does not support it. The view is that this amendment is not necessary. The rules of evidence do not apply to a disciplinary matter—that is, clause 96. Relevant evidence cannot be ignored; this is a rule of natural justice. I am advised that this amendment could have the undesirable and unintended effect of requiring that irrelevant material as evidence must be considered. Therefore, the government does not support this amendment because we believe it is unnecessary. The rules of natural justice will apply within the commissioner's instructions.

Mr E.S. RIPPER: Clause 96 will insert section 82A(1), which states —

In dealing with a disciplinary matter under this Division an employing authority —

(a) must proceed with as little formality and technicality as this Division, the Commissioner's instructions and the circumstances of the matter permit; and

(b) is not bound by the rules of evidence; and

(c) may, subject to this Division and the Commissioner's instructions, determine the procedure to be followed.

I said in my second reading contribution that I agree that the current disciplinary processes are convoluted, prolonged and disadvantage all parties to the events. However, in going to a streamlined flexible shorter process I do not think that we should throw the baby out with the bathwater. The proposed section states that the employing authority is not bound by the rules of evidence, so there is no requirement that the employer must consider the evidence available. I do not seek to apply the full rules of natural justice or the full court procedures to the dealings in a disciplinary matter, but I do think there should be some requirement that the employing authority must consider the evidence available, given all the other indicators, which tend towards little formality and technicality and more flexible procedures and so on. All the other signals are for informality and streamlined fast processes, so there ought to be something that says please consider the evidence available.

Mr C.J. BARNETT: Again, I make the point that the government does not support this amendment. It is seen to be unnecessary and could have the perverse effect of requiring irrelevant material to be treated as evidence and considered whether it has any merit or not. Therefore, we do not believe that this amendment adds to the bill.

Mr E.S. Ripper: Would "irrelevant material" fit the definition of "evidence"?

Mr C.J. BARNETT: The advice is that someone might argue that that is evidence.

Mr E.S. Ripper: I would have thought that evidence by definition had to be relevant material.

Mr C.J. BARNETT: It is seen as an unnecessary complication in the bill and, therefore, the government does not support this amendment, but we believe it is covered.

Mr C.J. TALLENTIRE: I seek further clarification on this point as well. I am thinking of circumstances in which perhaps it may not necessarily be a strict disciplinary matter but a matter whereby a performance review is in place. I think there is general encouragement for that sort of information, that process, to be documented, and I would have thought that it would actually add to the quality of the overall consideration if that evidence was presented and treated as evidence.

Mr C.J. BARNETT: Again, I just repeat: we do not consider this amendment to be necessary. The relevant evidence will be considered in any case in any proceedings. To require that an employing authority must consider the evidence available opens the door to a whole lot of irrelevant facts being brought in, and the commissioner or the CEO being required to consider all of those matters whether or not they are pertinent or important to the situation.

Amendment put and negatived.

Clause put and passed.

Clause 97: Section 82 replaced —

Mr C.J. BARNETT: I move —

Page 83, line 28 — To delete "81(1)(b),".

This amendment simply corrects a mistake in the drafting.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 98 to 104 put and passed.

New clause —

Mr E.S. RIPPER: I move —

Page 89, after line 27 — To insert —

105. Section 94 amended

In section 94(2)(c) insert after "paragraph (a)" —

subject to the proviso that such an offer shall be at salary, hours and conditions not less than those applicable to that employee's substantive position

Section 94 is headed "Regulations concerning redeployment and redundancy". It states in part —

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

(a) redeployment and retraining; and

(b) redundancy,

for employees who are surplus to the requirements of any department or organisation …

It goes on to say in subsection (2)—I am paraphrasing—that the regulations referred to in subsection (1) may provide for the situation in which the whole or any part of a department or organisation is to be sold or otherwise disposed of. This section is about the possibility of not only redeployment and redundancy within the public sector, but also the end of public sector employment as a result of privatisation.

The amendment to section 94(2)(c) refers to the terms and conditions, including remuneration, which are to apply to an employee who accepts an offer referred to in paragraph (a) of subsection (2). I think that is an offer of redeployment and retraining. Redundancy or privatisation should not be used as a means to cut people's salaries and conditions. Protection should be provided for people's salaries and conditions. It is bad enough for employees to face the dislocation of employment as a result of redundancy. It is bad enough for employees to be caught up in a privatisation. However, it is much worse for those employees to find that, as a result of that situation, their wages and conditions will be cut. The purpose of this amendment is to guarantee the entitlements and salaries of employees who are forced into redeployment. We want to ensure that privatisation cannot be used to cut the wages and conditions of employees.

Mr C.J. BARNETT: The government does not support this amendment. I do not think it is practical. If a function within the public sector was privatised or contracted out, the public sector employees involved would

normally be offered some choices. One choice might be a redundancy package. One choice might be redeployment elsewhere in the public sector. One choice might be to go into the privatised operation and become a private sector employee. If we take two of the privatisations that have occurred in this state—Alinta and the Dampier to Bunbury pipeline—from my recollection, transitional arrangements were put in place for those privatisations. Despite all the fears, those privatisations actually worked fairly smoothly. A significant number of people took redundancy packages. Some people went across to the private sector quite happily and ultimately ended up with a different set of pay and conditions. Some of those conditions probably improved, and others might not have improved. But generally there was a transition period during which the employees' conditions were protected, or payments were attached to it. But that was negotiated. I think it must be a case-by-case situation. To try to dictate through the Public Sector Management Act that the pay and conditions of people who move from government employment into private sector employment, albeit through a privatisation, must remain the same for the long term I do not think is reasonable or realistic. From my direct experience and observations, those privatisations have been handled pretty well, so long as the employees are treated with respect and given options. Many employees take the option of redundancy quite happily. Others—usually determined by age—move into the private sector and pursue a career, and the transitional arrangement will look after them. That is negotiated with the employees, and with their union representative, if that is relevant, between the seller—the government—and the buyer. From my observations, that has worked well. In fact, some people who have moved across have done very, very well out of it and are very happy to have done so and have generally found that their conditions have improved in the private sector.

Mr C.J. TALLENTIRE: I support this amendment. I believe it bolsters what the Premier is putting across. We often hear when some dramatic change is made to institutional arrangements that no employees will be worse off. This amendment will underpin that statement and ensure that it becomes a reality. If we are likely to hear the kind of rhetoric that people will be forced to move, but their transitional arrangements will be such that they will not be worse off, let us underpin that with a section in the legislation that bolsters what the Premier has been saying.

Mr C.J. BARNETT: My recollection and experience of the Alinta privatisation is that the majority of employees moved across to the private ownership. They very quickly found that they certainly had different conditions of employment and different shift arrangements. This amendment requires that hours stay the same. That is not realistic. But having maintained, obviously, as the then energy minister a relationship with the now privatised Alinta, and having dealt with the people who were formerly within government employ, I know that most of those people now have share options and all sorts of bonuses and benefits. They are doing extremely well and are earning far more than they would have earned in public sector employment. But the point is that I do not believe it is in any sense realistic to try to dictate in a Public Sector Management Act what the long-term or permanent conditions of employment must be for a person who is moving with an entity, through privatisation, into the private sector. If a person chooses to go with that entity, government through this legislation cannot expect to dictate the salary, hours and conditions of that person. It is a nice sentiment and one that is taken into account in the process of privatisation. It is invariably part of the privatisation agreement. But we need to bear in mind that most privatisations require state legislation, so an agreement act would need to be brought into Parliament for such a privatisation. That is one of the issues that would come up at that time. We cannot dictate that in this legislation. Indeed, the current arrangements have been in place since the Public Sector Management Act came into being, and where there has been privatisation or contracting out of services, that has worked, I think, well.

Ms A.J.G. MacTIERNAN: I think the Premier is not acknowledging some of the impacts that might occur from privatisation—or contracting out, as the Premier made the distinction last night. A person who is a senior engineer or a senior bureaucrat or a legal officer may well be in a position during a privatisation to negotiate wonderful things such as share options. But a person who is working in the licensing centre in the Department of Transport and finds that those services are to be contracted out is not going to have anywhere near that same opportunity of bargaining. This amendment does not say that the privatised entity must offer the same conditions. It says that an employee cannot be forced into redeployment under threat of being dismissed under the Public Sector Management Act. Of course we cannot guarantee forever and a day what the employment conditions are going to be in a contracted-out or privatised entity. But we certainly can provide that, unless what is on offer, at least for an initial period, is the same as what that employee enjoys currently, the employee will not be compelled under the threat of dismissal to go with that entity. That is the issue. I want to stress a comment that I made yesterday during the second reading debate. Many, many people in the public sector, particularly those in the straight administrative–clerical stream, have chosen to go into the public service and have been prepared to take sometimes a more modest return, because they are seeking security of employment and a secure career pathway. If the government makes a decision that a particular entity or service is to be outsourced or privatised, that is within the government's province—although I would sometimes debate the logic and the

economic benefit of the contracting out. This is about the circumstances under which employees' rights under the Public Sector Management Act are changed. I would like the Premier to address this. We are not trying to control what the privatised entity offers. We are trying to control the circumstances of the dismissal of employees who are not offered the conditions they currently enjoy when that entity is privatised.

Mr C.J. BARNETT: In the case of a privatisation the reality is that people are offered redundancy packages and they are invariably generous. From my experience and observation, a large number of people will take those redundancy packages and others will move across. These sorts of transition payments have always been generous and it has always worked well. I do not think we need to go down this level of prescription and put this sort of constraint on the current government or any future government that might make a decision to privatise services. I do not think it adds anything at all to the Public Sector Management Act.

Mr E.S. RIPPER: This might be seen as an issue of not much moment, but I refer the Premier to the AlintaGas privatisation. When I became Minister for Energy there was still one employee in the Office of Energy who stood steadfast and refused to move out of the public sector. He was with the Office of Energy for four years or so while I was Minister for Energy. The AlintaGas privatisation was one thing; it was a government trading enterprise going into a relatively well-paid oil and gas sector. It is another thing when the government is thinking about outsourcing services to the non-government welfare sector. The non-government welfare sector tells us that their salaries are 30 per cent lower than salaries in the public sector. In fact, they argue that they need another $198 million a year from the Liberal–National government in order to get parity. When the Premier has an Economic Audit Committee recommendation that more of these services be transferred out of the public sector into the not-for-profit sector and we have that wage disparity in the not-for-profit sector, the Premier can see why people are concerned about the prospect of privatisation being used to cut their wages and conditions. It may be that the Premier would not want the conditions in the new organisation to be exactly in lockstep with the conditions in the public sector; it may be that it would be better to have some sort of overall no-disadvantage test or something like that. However, if we have nothing and the Premier has the agenda as canvassed by the Economic Audit Committee to privatise to the not-for-profit sector, the Premier will see why people are concerned and are looking for more protection. Perhaps the Premier ought to take the opportunity in this debate to outline whether people, in his view, should have any fears about being shifted out of human service roles in the public sector into the not-for-profit sector and being asked to do that work for lower wages.

Mr C.J. BARNETT: That would not happen. The Leader of the Opposition talked about an example like Alinta, which is clearly a privatisation—a whole entity basically sold. If the Leader of the Opposition is looking at the human services area in the not-for-profit sector, what the economic audit is recommending and what this government is adopting as a policy direction is that over time we will see human services delivered more by non-government organisations. We are not contemplating, as such, taking a function within government and moving it over. We are gradually over time shifting the balance. We will see a progressive increase in funding going to non-government organisations to provide services and, by implication, a relative decline in funding in the government area. That will happen over time. Some people in the public service may well want to move across and take up opportunities, and others will not. There will be a gradual change, and it will be managed properly. We are not going to try to privatise human services as such; we are going to progressively shift the balance because we believe it will provide better services. There is an issue of a wage disparity, and one of the first tasks of the partnership between the non-government sector and the government is to look at that disparity issue. It is easy to say why that disparity is there, and ask the non-government organisations whether there is really a reason, and whether there is a real wage difference. Probably there is, but why did it get there? The employees are not government employees. I recognise that if there is a proper understanding and explanation of that disparity, as government in the future contracts out services, it will try and build into those contracts the ability to raise wages in the non-government sector. I recognise that needs to be part of that arrangement, but the government is not talking about taking a whole bunch of people who are providing a service and privatising them and what they do; it will be a transitional thing rather than a holistic move such as in the Alinta transaction.

New clause put and a division taken with the following result —

Ayes (22)

Ms L.L. Baker	Ms A.J.G. MacTiernan	Mr E.S. Ripper	Mr P.B. Watson
Ms A.S. Carles	Mr M. McGowan	Mrs M.H. Roberts	Mr M.P. Whitely
Mr J.N. Hyde	Mr M.P. Murray	Ms R. Saffioti	Mr B.S. Wyatt
Mr W.J. Johnston	Mr P. Papalia	Mr T.G. Stephens	Mr D.A. Templeman *(Teller)*
Mr J.C. Kobelke	Mr J.R. Quigley	Mr C.J. Tallentire	
Mr F.M. Logan	Ms M.M. Quirk	Mr A.J. Waddell	

Noes (26)

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

Pairs

Mr P.C. Tinley	Mr I.M. Britza
Mrs C.A. Martin	Dr E. Constable
Ms J.M. Freeman	Mr A. Krsticevic
Mr R.H. Cook	Dr K.D. Hames

New clause thus negatived.

Clauses 105 and 106 put and passed.

Clause 107: Schedule 8 inserted —

Mr C.J. BARNETT: I move —

Page 91, line 30 — To delete “regulation” and substitute —

recommendation

This is the same issue that we dealt with previously under another clause. It is simply that government must recommend to the Governor, and it is the Governor who regulates.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 108 and 109 put and passed.

Title put and passed.