

Mr Paul Papalia; Speaker; Ms Margaret Quirk; Acting Speaker; Ms Janine Freeman; Mrs Michelle Roberts; Mr Chris Tallentire; Dr Tony Buti; Mr Dean Nalder; Mr Bill Johnston; Mr Paul Miles; Ms Andrea Mitchell; Ms Rita Saffioti; Mr Colin Barnett; Mr John Day

WORKFORCE REFORM BILL 2013

Second Reading

Resumed from an earlier stage of the sitting.

MR P. PAPALIA (Warnbro) [2.45 pm]: I have had my train of thought interrupted a little in the last couple of hours. Nevertheless, I think I can recall that ultimately the reason the opposition is opposing the Workforce Reform Bill 2013 is its inherent dishonesty and unfairness. It is clear that the government and, in particular, the minister delivering this bill to the house, the Premier himself, were dishonest to the public of Western Australia and very dishonest to the public sector workers in this state prior to the election. But that dishonesty was also continued post —

Withdrawal of Remark

The SPEAKER: Member, you made an accusation that a member was dishonest.

Mr P. PAPALIA: I withdraw that.

The SPEAKER: Thank you.

Debate Resumed

Mr P. PAPALIA: The Liberal Party conducted itself in an incredibly dishonest fashion prior to the election and then continued that dishonesty immediately after the election. We know that before the election the Premier was asked in this place about the security of the employment of public sector workers, and he said —

I make it very clear that there are no cuts, proposed or planned, for staffing within the public sector—none at all, and that was made very clear by the Treasurer —

That was the Premier's statement in this place on 27 September 2012. Post the election—not that very long ago—on 6 August 2013, when he was asked similar questions, he said —

Public servants are secure in their employment unless they put up their hand for a voluntary—I stress “voluntary”—redundancy. I compare that with the situation in the private sector. We have seen the mining industry come off a peak, and in the mining and mining services sector, several thousand jobs have gone. Industry is not in recession, but it has certainly contracted. We are seeing people in the private sector who have been told their pay is frozen or cut, and many, many people have been told they do not have a job. I say to the public servants and those in the gallery that you do have a job, and unless you choose voluntary redundancy, your employment and your wage level is protected.

[Member's time extended.]

Mr P. PAPALIA: It is clear from the second reading speech delivered by the Premier that those words delivered on 6 August 2013 are no longer applicable; they have been abandoned. The government has decided that it wants the power to restrict a large segment of the public sector employment workforce to consumer price index wage increases.

Ms S.F. McGurk: When it feels like it.

Mr P. PAPALIA: Well, a large sector, and also not restrict another component of the same workforce, so there is direct inequity, unfairness —

Mr C.J. Barnett: No, there's not.

Mr P. PAPALIA: There is. The government has done that in a number of ways: firstly, by having a senior public servant negotiate during the caretaker mode an arrangement with one part of the public sector workforce, the nurses, that does not comply with this new legislation; secondly, by applying an arbitrary starting date for the wages policy, which meant that some other workers were able to be provided with wage increases that exceed the provisions of this legislation, such as the doctors and others; and, thirdly, by also ensuring that the people who work in the Premier's own office are not restrained in any way—their pay increases do not reflect in any way the wages policy of the government. That is clearly what has happened with wages. The other inequity is the intent of this legislation to enable the government to force people out of their jobs—to sack people without recourse. No matter how many times the Premier suggests people can appeal to the Industrial Relations Commission we know from his second reading speech that that will be a pointless exercise.

Mr C.J. Barnett: It is an exhaustive process.

Mr P. PAPALIA: It is an exhaustive process that will result in the same outcome.

Mr Paul Papalia; Speaker; Ms Margaret Quirk; Acting Speaker; Ms Janine Freeman; Mrs Michelle Roberts; Mr Chris Tallentire; Dr Tony Buti; Mr Dean Nalder; Mr Bill Johnston; Mr Paul Miles; Ms Andrea Mitchell; Ms Rita Saffioti; Mr Colin Barnett; Mr John Day

Mr C.J. Barnett: Unlike the Gallop government.

The SPEAKER: Premier!

Mr P. PAPALIA: The Gallop government employed the 1994 act that was introduced by the member for Cottesloe during Richard Court's government. The Gallop government did nothing outside the provisions in the current legislation.

Mr C.J. Barnett: The Gallop government got rid of 59 public servants. Don't you remember that?

The SPEAKER: Members!

Mr P. PAPALIA: The Premier is the one, through you, Mr Speaker, who is seeking to change the situation so that he can reduce opportunities for people to appeal. Ultimately, it will not matter if they appeal because the Premier will be compelling the Industrial Relations Commission to take into account the factors in his second reading speech—considerations the commission has not had to previously take into account. That is the government's applicable public sector wages policy statement, which we know was released in a government circular and states —

The Government of Western Australia requires that increases in wages and associated conditions for all industrial agreements be capped at the projected growth in the Perth Consumer Price Index, as published from time to time by the Department of Treasury.

The Industrial Relations Commission must take that into account and the financial position and fiscal strategy of the state into account. We know the financial position is far worse than it was before the Premier came to office. We know, sadly, that since taking office the Premier has lost the AAA credit rating, has massively blown out expenditure and made all manner of commitments he cannot afford. The public sector employees will pay for it, as will our schoolchildren, people in our hospitals and any other people in Western Australia who might be relying upon high-quality public services provided by our public sector community, which will be reduced when the Premier starts sacking people. He will be capable of doing that under this legislation.

Mr C.J. Barnett: We are not; we can't sack people on the basis of this.

Mr P. PAPALIA: He can. No amount of denial on the Premier's behalf can remove the fact that he is changing the rules so that he can sack people. That is the truth.

Mr C.J. Barnett: It's not a right to be able to sack people.

Mr P. PAPALIA: What is it? What is the justification —

Mr C.J. Barnett: Read the bill.

Mr P. PAPALIA: — for involuntary redundancy? Is the Premier suggesting that involuntary redundancy is not the same as sacking people? Am I getting caught in the Premier's semantic spider web? I know the Premier gets picky about words when we say something across the chamber and use language that is a bit more blunt than what the Premier might employ. We are a little less Orwellian in nature; we are a little more succinct, direct and honest. That occurs a lot. I am saying involuntary redundancy is sacking people and the Premier is saying it is not.

Mr C.J. Barnett: Read the bill; do your homework.

Mr P. PAPALIA: That is the point, is it not? The Premier will avoid saying that involuntary redundancy equals sacking people and therefore what we are suggesting is not right.

Mr C.J. Barnett: This bill does not, as you suggest, give the government or an employer in the public sector an arbitrary right to sack people.

Mr P. PAPALIA: Does involuntary redundancy not mean people can be sacked arbitrarily?

Mr C.J. Barnett: It's not arbitrary.

Ms L.L. Baker interjected.

The SPEAKER: Hold it a minute. We are now having a debate across the chamber. People are interjecting. Please direct your comments through the Chair.

Mr P. PAPALIA: Thank you, Mr Speaker. Through you, Mr Speaker, if the Premier imposes involuntary redundancy on someone and they have to follow a process that, ultimately, will not give them any recourse, is that not arbitrarily sacking them?

Mr C.J. Barnett: Not in my view.

Mr Paul Papalia; Speaker; Ms Margaret Quirk; Acting Speaker; Ms Janine Freeman; Mrs Michelle Roberts; Mr Chris Tallentire; Dr Tony Buti; Mr Dean Nalder; Mr Bill Johnston; Mr Paul Miles; Ms Andrea Mitchell; Ms Rita Saffioti; Mr Colin Barnett; Mr John Day

Mr P. PAPALIA: What is it?

Mr C.J. Barnett: It's your speech; carry on. You need to understand something about employing and managing people.

Mr P. PAPALIA: It is an interesting situation, Premier.

Ms M.M. Quirk: He has managed a few men in his time.

Mr C.J. Barnett: So have I.

Mr P. PAPALIA: I do not mind if the Premier wants to adopt a philosophical stance akin to that of the Treasurer and suggest that large numbers of the public sector are somehow a burden on the state. I do not mind if the Premier claims that legions of public servants are not doing their job and the Premier cannot get rid of them because of the current legislation. If he wants to do that, that is fine but he should say it. He should not introduce legislation that reflects that strategy and deny he is doing that, because that is dishonest. If that is what he wants to do, he should be up-front and have the courage to stand by what he is doing and to reveal his intent to the public. When he tries to hide behind semantics and suggest that arbitrarily sacking someone does not equal involuntary redundancy, that is bizarre and shows a lack of courage.

Mr C.J. Barnett: It is what the legislation does. The legislation does not permit arbitrary sacking of public servants.

Mr P. PAPALIA: Through you, Mr Speaker, does the legislation allow involuntary redundancy?

Mr C.J. Barnett: Yes, it does.

Ms S.F. McGurk: You can't challenge the nature of the redundancy.

Mr C.J. Barnett: You can go to the commission.

Mr P. PAPALIA: If a person is offered entitlements and made involuntarily redundant, they cannot challenge it, can they?

Mr C.J. Barnett: You can go to the commission.

Mr P. PAPALIA: That is the truth of the matter; that is, as long as people are given their entitlements, being made redundant involuntarily is it—end of game.

Mr C.J. Barnett: After a long and exhaustive process.

Mr P. PAPALIA: A long and exhaustive process that involves the employee lodging a complaint with the Industrial Relations Commission that it is not fair and the commission having the authority to ignore the employee because that is what the legislation says it must do. How long does the Premier expect the process will be?

Mr C.J. Barnett: You'll have the opportunity to ask me questions in question time.

The SPEAKER: I was just going to suggest that, member for Warnbro! I think you should make your speech and ask these questions in consideration in detail.

Mr P. PAPALIA: Thank you, Mr Speaker. It is good advice and I am sure plenty of members on this side will look forward to questioning the Premier on the detail of this legislation and its implications. If we cut through all the fluffy words and deceptive nature of some of the language employed by the government, it is very much becoming standard operating procedure, as we have seen in education. We have student-centred education, which means cutting services to children in our schools. We see it here with this legislation whereby involuntary redundancy somehow does not mean someone will lose their job, as long as they are given their entitlements, when they want to keep their job.

Mr C.J. Barnett: They are your words, not mine.

The SPEAKER: Premier!

Mr P. PAPALIA: It is transparent. The legislation has been set up so that in some areas public sector workers can be forced to accept a reduced option for increasing their wage package to deal with the massive cost increases the Premier has imposed on them. It has been set up so that some workers will be forced to go into the private sector as the Premier privatises essential public services. There are other ones we have not even contemplated yet. I suspect the Premier is contemplating adding community services to the corrective services portfolio. I understand that if this legislation is passed, a whole lot of public sector workers in that workforce will be given one option; namely, to work for the Premier's mates in Serco. That is very transparent.

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Mr C.J. Barnett: I don't have any mates in Serco.

Mr P. PAPALIA: How often are their representatives in the Premier's office?

The SPEAKER: Member for Warnbro!

Mr C.J. Barnett: I don't even know Serco.

Mr P. PAPALIA: How often is Paul Everingham in the Premier's office?

Mr C.J. Barnett: I don't think they've ever visited my office.

The SPEAKER: Member, I have asked you to make your speech through the Chair. If you want to ask questions, do so during consideration in detail.

Mr P. PAPALIA: The truth is that the Premier is establishing a framework that will enable him to privatise services and shift public sector workers involuntarily to the private sector on reduced conditions and in circumstances that they do not —

Mr C.J. Barnett: Fanciful.

Point of Order

Ms M.M. QUIRK: The Premier is a Greek chorus over there and is making it very hard for the member for Warnbro to obey your instructions.

The SPEAKER: Premier, the member for Warnbro has three minutes.

Debate Resumed

Mr P. PAPALIA: That is the truth. The Premier says there is no intention to sack people or even threaten them. That will be the employees' choice. Staff at Fremantle and Midland hospitals are examples; they will be given the option of accepting the Premier's ultimatum to lose their entitlements and work in the private world as opposed to the public sector, or they can just poke off. That is what the legislation enables the government to do. If that is not the case, I look forward to the explanation the Premier will provide in his response to the second reading debate and to his explanation during consideration in detail. There is nothing to suggest that what I have said is not accurate. There is nothing in the Premier's very short second reading speech that would lead me to suspect that we may not be right in our assumptions or suspicions. It appears very clear that the Liberal Party deceived the people of Western Australia prior to the election and deceived the public sector workforce post the election on 6 August.

Mr C.J. Barnett interjected.

Point of Order

Ms M.M. QUIRK: The Premier just has no impulse control.

The ACTING SPEAKER (Ms L.L. Baker): I do not think that is a point of order.

Ms M.M. QUIRK: The point of order is that the Premier was instructed to listen in silence after repeated interjections; he has lasted a minute.

The ACTING SPEAKER: Thank you, member. I think the Speaker made that quite clear previously.

Debate Resumed

Mr P. PAPALIA: In the end, the legislation that the Premier has introduced is dishonest. He is breaking promises to do it. It is unfair and inequitable. It is inequitable within the public sector and it is inequitable when we compare public sector employees with the private sector. There is no justification for this legislation, other than to facilitate the Premier's agenda of privatisation and to break the commitments made prior to the election.

MS J.M. FREEMAN (Mirrabooka) [3.01 pm]: I also rise to speak on the Workforce Reform Bill 2013. As has been put to this house and as the government understands, WA Labor opposes the bill, and three reasons for our opposition have been outlined. The laws are unfair and discriminatory against people who work in the public sector versus those who work in the private sector; the laws are not in accordance with the government's commitments to the people prior to the election, and in my view, the government therefore does not have the agreement of the people who voted it into power; and the laws are inconsistent with the undertaking the government made when making agreements with its employees. It now seeks to use the heavy hand of legislation to override its face-to-face commitment to workers in the enterprise bargaining process, a process by which workers understood that their employer agreed that they would not be forcibly dismissed or made redundant through the redundancy process. This bill will not only enable government to deny workers the capacity to argue

Extract from Hansard

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Mr Paul Papalia; Speaker; Ms Margaret Quirk; Acting Speaker; Ms Janine Freeman; Mrs Michelle Roberts; Mr Chris Tallentire; Dr Tony Buti; Mr Dean Nalder; Mr Bill Johnston; Mr Paul Miles; Ms Andrea Mitchell; Ms Rita Saffioti; Mr Colin Barnett; Mr John Day

that their redundancy was unfair, harsh and constructed to unfairly dismiss them; it will also insert proposed section 95B into the Public Sector Management Act, a provision that overrides enterprise bargaining agreements relating to redundancy, redeployment and retraining—agreements entered into in good faith.

We oppose the bill because it is an attack on semiskilled and unskilled workers in the public sector; it does not target the fat cats, which the member for Churchlands claims would make this legislation good market-based labour economics. The member for Churchlands put on record comments about supernumeraries—he did not use that word, but that is what he was talking about. He gave the numbers of people currently in the redeployment pool, by which he meant supernumeraries surplus to a position they previously held. He intimated that they were floating somewhat in the flotsam and jetsam of the public sector and not being useful. He intimated that he would not even like to be in that situation; he would like to know he was useful. In many cases what he said could not be further from the truth. He gave numbers that indicated that there was a core number that had grown. He did not give the turnover of those numbers. Although I cannot dispute that the number has grown to the 70 people I recall him putting on record, those 70 would have come about because of the abolishment of positions, and that abolishment of positions came about because of cuts to services. It is not the case that these people are no longer capable of giving good service to the public sector; their positions, through no fault of their own, have been made redundant, but they can still give service to the public sector.

For example, the library officer at Bungaree Primary School is a supernumerary. He is there on the redeployment list and he has effectively been used to enable the library to open for the whole week, which benefits children's education. This is not someone surplus to requirements. This situation arose just because there were not enough resources to ensure that the library could stay open with one permanent position, and that is because the government has made cuts. Another example is a psychiatrist at the fostering and adoptions section in the Department for Child Protection and Family Support, who is also a supernumerary. That is again someone of great benefit and service to our community, working in one of the most important areas of our community. The reality is that needed jobs are being cut, and because of the mismanagement of our public sector by the ministers of state, positions are being abolished and our public sector is at risk of losing valuable supernumerary workers to deliver services. This legislation is not about those people; it is about the government delivering a budget bottom line because now, after years of profligate spending, it is suddenly trying to tighten its belt, and our public servants are paying.

One of the other speakers, the member for Joondalup, like the member for Churchlands, talked about labour market economics and the capacity to set wages around the consumer price index, and this bill legislates that the commission has to take consideration of that. If labour market economics were the argument for this bill, we would not restrict workers to negotiations on CPI; the wage price index would certainly be taken into account. WPI looks at the movements of wages in Western Australia, not the movement of goods and services. Alternatively, the Western Australian Council of Social Service reports on a living wage, and the costs of the community could be looked at. CPI is a distortive and distorted indicator because it takes into account items of purchase such as colour televisions or fridges. Although it might now be cheaper to buy a flat screen television—CPI would reflect that—it is more expensive to pay rent, buy food or to pay for education. Because CPI is an across-the-board indicator, it averages out those price areas. This is the argument that WACOSS has put for some time. If we want to look at something that comes from the Australian Bureau of Statistics, WPI is far more accurate and can go to the public sector wage index. That seems a much fairer way to do things if the government wants take a market economics-based argument.

The idea that the member for Joondalup put forward was that unions push wages higher and that is why there needs to be a restriction on wages, linked to CPI. This idea that somehow nasty unions push wages higher and that we are being confronted with this because there have been so many wage increases over the years is just contrary to the facts. Those facts were very well illustrated in what happened during the attacks on the union movement during the period of workplace agreements and the WorkChoices legislation. During this time, wages in the mining sector inflated wages throughout Western Australia because individual agreements made employers compete for skilled workers instead of developing them. Instead of training and developing workers, employers started poaching each other's workers. This short-termism and poaching from the construction industry and other areas by the mining industry happened because there was that lack of collectivism in workplaces with inflated wages. This period also saw workers moving very quickly between jobs because they were being poached. Mining industry employers poached each other's employees as well as construction workers and workers from other industries. Employees who had no commitment to an organisation because they were on individual agreements and had not been part of their negotiations in a group made hay while the sun shone. Had there been more of a collective agreement process during that time, I believe that employers would have been able to negotiate with employees, and employees would have seen that those negotiations delivered

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them fair wages and conditions and they would have had a commitment to stay in that workplace. Clearly not all employees would have done that because some people are individualists, but as a group or a community of workers that would have happened. This idea that somehow unions force up wages is not the case. Workers bargain for good wages and they do that collectively because it is their right to come together as workers. It is not the case that an employer should unilaterally say that this is the only way he will bargain with employees, and use an indicator that does not even illustrate what their costs of living are in terms of their wages and the necessity of their wages.

This bill is the act of an autocratic government and a leader whose style is to control all decisions—in this instance through deception—with little input from the people who will be affected. The Premier's style of dictating processes based on ideological preferences and biased judgement without recourse to the people he is supposed to represent reflects poor leadership that will in the end undermine the character of all in government and all of us in this Parliament.

Mr C.J. Barnett: The member is reading all that.

Ms J.M. FREEMAN: I am reading that out. That is what is so disappointing about this piece of legislation. I never criticise anyone else for reading. I still find speaking in this house confronting, which may be because of the hustle and tussle of Parliament. I thank the Premier for noting my comments, which probably shows that there is some reality to them.

Dr A.D. Buti: What about the number of ministers who read their answers?

Ms J.M. FREEMAN: I never criticise someone for reading, as that would be highly hypocritical of me. This legislation embodies the arrogance of a government that can no longer manage itself. As Standard and Poor's said, it cut the state's AAA rating because in its view there was limited political will to reduce state debt, as evidenced by the early revision of some budget revenue and expenditure measures. In preference to actually managing its budget process, and with senior management failing to deliver integrity in managing the budget process, this government has chosen to exert its will by the power of legislation over those in its employ. Those employees have the least power and it will cost those employees the most. Frankly, this legislation will impact those who least can afford it.

I always find it passing strange that the proponents of flexibility in the workplace, and therefore the push towards enterprise bargaining away from the centralised award wage systems, are those who then try to limit that bargaining process. We dealt with the same people in the 1990s. Conservatives like the Premier, having come from the Chamber of Commerce and Industry of Western Australia, know all too well the calls throughout the 1980s and the 1990s for an industrial system that would enable the parties to bargain wages and conditions in the workplace, because employers argued that the award system was too removed from the negotiations at the workplace level. The proponents were opposed to the industrial umpire determining these issues because the assertion was that those negotiations were better had in the workplace.

For those members who were not part of that process or discussion, I will provide some history. Enterprise bargaining agreements were first introduced in Australia under the Prices and Incomes Accord in 1991—not that long ago. They later became the centrepiece of the Australian industrial relations system when the accord was revised in 1993. This ended nearly a century of centralised wage fixing-based industrial relations. Yet, despite the calls for bargaining on the ground to give them flexibility and the calls from employers to do that with the workers, this government wants to constrain this. It wants to regulate, restrict and override it. That is not workplace flexibility. That is not market-based economics. That is not liberalism. Members should read some of the stuff that is around in America about industrial relations. Members opposite are not about liberalism. They are about whatever it takes to get what they want. If members opposite want to crush a bunch of low-paid workers because they want to contract them out and send them across to a private employer and not give them the security of ongoing employment, then they should just be honest about it.

Mr C.J. Barnett: That is not what we are doing. What are you reading from?

Ms J.M. FREEMAN: I have written notes. Would the Premier like them? I am happy to give him a copy of them. I am sorry; it does take a bit of my stream of consciousness —

Ms M.M. Quirk: You are not inviting the Premier's interjections are you, member?

Ms J.M. FREEMAN: No. The foundation of enterprise agreements is that when workers negotiate, as they rightly should to achieve an agreement between employers and themselves, they do that in good faith and the belief that it will prevail during the terms of the agreement. I have had occasions when workers did not feel that the enterprise bargaining agreement reflected what they agreed to. They can go back to the employer and argue

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that that was not part of the agreement and not quite what they meant, but the employer says, “No, no, no; that is exactly what the agreement said and this is how we are reading it.” The employee then goes to the WA Industrial Relations Commission and has an argument about the terms of the agreement, and often they will lose because the deal is that the employer and employee sit down and make the agreement, and they must stick to it. However, let us just go back one step. This is the system that the Liberal conservative community wanted. It wanted an enterprise bargaining system because of the flexibilities that it would give.

As outlined previously, proposed section 95B of the Workforce Reform Bill 2013 will override these good faith negotiations that ensured workers had security of employment, and clauses in enterprise bargaining agreements such as clause 11B.3 of the “WA Health – United Voice – Hospital Support Workers Industrial Agreement 2012”, which reads —

No employee will be required to accept alternative employment in the private sector.

And clause 11B.4, which states —

No employee will be required to accept a redundancy.

I trust that the government signed that agreement in good faith and that it will honour that agreement.

Just prior to the election, United Voice members agreed to this enterprise bargaining agreement with the state government to cover support staff in schools and hospitals. In that agreement the government agreed to no forced redundancy provisions. Members saw that as a major win, because job security is pivotal for them; it is core to their lives. When a person is a low-income worker, it is crucial to know that they can make commitments based on that ongoing financial security, that regularity and that capacity to know they can pay their mortgage or rent and educate their kids.

Mr D.C. Nalder: Do you reckon that changes under this bill?

Ms J.M. FREEMAN: I do, because I think the government intends to forcibly make redundant a bunch of workers through the education cuts to the education assistants —

Mr D.C. Nalder: Which state in this country has done that? We are the only ones without this legislation.

Ms J.M. FREEMAN: No, we are not the only state without this legislation. South Australia does not have forced redundancy legislation. Victoria, New South Wales and Queensland introduced it recently, but we are not the only state without it.

Mr D.C. Nalder interjected.

Ms J.M. FREEMAN: I am not taking interjections.

Point of Order

Mrs M.H. ROBERTS: The member for Mirrabooka has had to put up with incessant interjections from the Premier and now one of the other members is interjecting incessantly on her, and she does not wish to take these interjections. The Premier has attempted to bully and belittle her during this debate.

Several members interjected.

Mrs M.H. ROBERTS: It is the truth and members opposite know it. Apart from it being unruly for the member for Churchlands to interject on me while I am taking a point of order, I do not believe he was even in the chamber when the Premier was offending.

The ACTING SPEAKER (Ms L.L. Baker): Thank you, member for Midland. I agree that the member has indicated that she does not want to take interjections while she is on her feet, and I ask members to respect that. I understand what happened, but we now have a new ground rule for this member; right now, she will not take interjections.

Debate Resumed

Ms J.M. FREEMAN: The member for Girrawheen asked me that question. I have an aversion to being on my feet, and I acknowledge in this place that I am not the most confident speaker.

Mrs M.H. Roberts: But the member has given an excellent and well-prepared speech, and she should be proud of it.

Ms J.M. FREEMAN: I thank the member for Midland very much. I am capable of asking for protection when it is needed, and I will take some interjections, as long as they are respectful, considered and knowledgeable. In the case of a particular interjection from the member for Churchlands, it probably was not very knowledgeable, but let us move on.

Extract from *Hansard*

[ASSEMBLY — Thursday, 21 November 2013]

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[Member's time extended.]

Ms J.M. FREEMAN: I note a comment made by the member for Bassendean about the changes through proposed section 95B. It was a good point, so I will reiterate it. If the government made a state agreement with a mining company that allowed certain development, exploration or gaining of the resources of Western Australia, it would not come into this place and override that agreement, yet the government is giving itself the power, under the changes in this bill under proposed section 95B, to do that to workers who have entered into an enterprise bargaining agreement in terms of the redundancy, retraining and redeployment provisions. I want it put on the record—I think those workers who negotiated in good faith should have it put on the record—that it is not this government's intention to ever forcibly make redundant any of those workers who come under that agreement. I also think that the government should put its words into action. If it believes that no-one will be made redundant, it should make sure that that is the case. If that is the case, we have to wonder why these provisions are needed.

I am also concerned about the impact of this bill on the continuing and growing gender pay gap in Western Australia. In May 2013, Western Australians recorded a gender pay gap of 26.9 per cent. This means that, on average, for every dollar earned by a full-time male employee, full-time female employees earned 73.1 cents. The Premier would be aware of the recent Council of Australian Governments report into pay equity in Australia, and in particular that there is a growing gap in the average superannuation balance, with women having on average \$85 000 less in superannuation than men. This is a major issue. It is a major issue that we continue to ignore. This will become an increasingly difficult issue as our population ages. The people who are targeted by the changes and cuts to education appear to be the focus of this legislation. They appear to be the people who will bear the brunt of this legislation in terms of both the setting of pay increases in line with the limitations of government wages policy and redundancies, because it is my belief that they will predominantly be women. Again, I would like the government to give an undertaking that it will do a substantive equity review of this legislation. My concern is that there are serious substantive equity problems with this bill in terms of its impact on women. I believe that it will unfairly impact on women in the public sector. If the government were taking the gender pay gap seriously, it would do an audit before, and after, it put any of these provisions in place, to ensure that it is not those who can least afford it in our community—women who earn significantly less than males in our community and who have significantly less in superannuation—who will bear the brunt of it.

I am also concerned about the impact of this bill on the workers at the Government Employees Superannuation Board. Our ears should prick up here, because we are all covered by GESB; it is the superannuation provider for most of us, although some members have self-managed super funds—more fool them. I am concerned because the government is embarking on a process to privatise the administrative functions of GESB. The tender for the delivery of GESB's administration services closed in early September. It is the intention of the government to outsource the management of \$16.5 billion in members' funds. That will be made clear in the next couple of weeks. Some 200 GESB employees face the imminent prospect of a private provider employing a workforce just like them to deliver the core operations that they currently undertake. These employees process member contributions, insurance and the payment of members' benefits; communicate with members; run the information technology platforms that drive the business; and manage the accounts, government regulation and risk management. These employees face a pretty bleak Christmas, with uncertainty as to their future. Will the Workforce Reform Bill 2013 result in these 200 workers being classified as registered employees? We need to take into account that GESB is a trading organisation and that these workers cannot be redeployed easily into the public sector. These people have given long and good service to us in this place as well as to the public sector in general. Will the Workforce Reform Bill 2013 result in these 200 workers being forcibly redeployed to the private provider? Will they have no alternative but to go across to the private provider to provide the services that they currently provide? Will the Workforce Reform Bill 2013 result in these 200 workers forcibly being made redundant? These are questions to which we and the workers need answers, because they face a very bleak Christmas.

Before I talk about how we should value the public sector and how this piece of legislation does not do so, I want to talk about the impact of this legislation on injured workers. Injured workers are some of the most vulnerable people in our public sector. They often cannot return to their positions because of their injury. We have a no-fault workers compensation system; it is no fault of the worker and no fault of the employer. Our workers compensation system has effectively closed down the common law system, so if an employer did put a worker at risk or did not ensure a safe system of work, the worker has to have a pretty major disability from that workplace injury to be able to pursue the employer for negligence. These people have an uncertain future and uncertain health. They cannot return to their previous place of employment because of that. Their wages and conditions are covered by the workers compensation act, but only up to the prescribed amount, which peaks in the case of many

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public servants within a short time—five or six years. People in this situation need desperately to find something that will stabilise their lives. They were injured through no fault of their own and have no chance of pursuing negligence against their employer unless it is a very, very serious injury. The employer does not have to ensure that the employee is compensated for something that was its fault. Suddenly, such a person might be considered under this legislation to be someone who could be forcibly made redundant. Such a person cannot fit their job and is surplus to requirements. The employer wants to get rid of them and will wrap up the workers compensation at the same time. These workers may not want that to happen, but they will not be able to argue that in the Industrial Relations Commission—they will not be able to say that it was constructed in this way because the worker was a difficult case to handle because of their injury. Even though the injury may have been sustained in the workplace and even though prior to the injury that person may have worked hard and diligently, it will be constructed in this way. However, they will not be able to show that; they will not be able to go to the Industrial Relations Commission and say, “They have a responsibility to me. I was just doing my job.” It is a concern.

I want to finish by saying how much we should value the public sector. A lot of us work on an ongoing basis with many in the public sector. Those people, especially at the frontline, are brilliant workers. There are those at the hospitals who do the clerical work and those people in our education system who front classrooms of 20 or 30 kids. That would drive me insane; I lasted a day when I did a bit of childcare work at one stage. I want to talk about how we need to value those people. The government is introducing this legislation without having had proper consultation and discussion. Indeed, before it went to the election it did not provide reassurance that this would not happen. That is not valuing the public sector—the people who assist the government in delivering the objectives it wants to deliver to the community. The strength of delivering an ongoing stable public sector that comprises people who are committed to long-term service and corporate knowledge is absolutely important. Corporate knowledge has been lost from our public sector, which means that we have lost the historical capacity to better deliver services. When we lose a long-term public servant, his or her corporate knowledge has to be re-created. The government can argue that it is getting rid of all the red tape, but if it does not value people with corporate knowledge and a long-term capacity to understand how the public service can deliver to the public and the wellbeing of the community, it is failing the people who elected it. The problem with the public service as it is now is that we got rid of the golden handcuffs, which were the defined benefits superannuation, and moved to contribution superannuation. There are no great financial long-term reasons to stay in the public sector because there is no longer a worthwhile superannuation payment at the end of a person’s career. When the government got rid of that, people lost their view that a job in the public service was a good, long-term and stable choice for them and their family versus being in the private sector. If the government undermines public servants’ employment security, a job in the public sector becomes just like any other job. The government can say that those people work in the public sector because they are committed to the community; but people can be committed to their community while working for a mining company, which would probably give them a better long-term service redundancy if it was decided that they were no longer needed. The government has undermined the public sector, and that is a problem.

MR C.J. TALLENTIRE (Gosnells) [3.33 pm]: I rise to speak about the Workforce Reform Bill 2013. It is not easy to follow on from the member for Mirrabooka with her extensive knowledge of matters relating to industrial relations. I will at least recount a personal perspective and think back on my days in the public service, which I do with great fondness. Indeed, I recall the sense of pride that my co-workers and I had about serving the public of Western Australia. There was a real belief in that. Actually, I think that belief exists in this place. When one asks members in the chamber what it is that motivates them to be here, it is that notion of public service. This legislation deals with people who are employed under the Public Sector Management Act 1994. But that does not change the fact that we are talking about people who are motivated by the desire to make Western Australia better in all kinds of ways. Fundamentally, the role of a public servant is to administer legislation, to act as a regulator, to provide services and to do those many, many things that the market cannot deliver. I realise that the idea that the market cannot deliver is, for those opposite, sometimes a challenging concept, but it must be clear in our minds. There are many things for which the market does not have a solution and those are the things that the public sector does so well.

I am appalled that there has been a denigration of the public service in our society. That denigration, which is reinforced by pieces of legislation such as this, seeks to chip away at the psychology of public servants by chipping away at their wellbeing, by making their pay and conditions less satisfactory and by making them less sure about their lives. That is exactly what will happen with this legislation. The explanatory memorandum refers to a more flexible deployment arrangement, but having looked at its detail, I see that that means the involuntary severance of employees that can be based on the notional idea of being surplus to an agency’s requirements, which is what really concerns me about this legislation.

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When I looked at the second reading speech notes, I saw the introduction of a new public sector wages policy that will cap wages and conditions increases to projected growth in the consumer price index. That made me think about those situations in which it is necessary to retain skilled, competent and passionate public servants and of the potential of workers inevitably receiving offers that may mean being poached by other sectors. This legislation, which seeks to limit pay and conditions to projected growth in the CPI, could be highly counterproductive.

I said that I was going to talk a bit about my own experience. I recall being employed by the then Department of Environmental Protection in 1999 having just finished university studies as a mature-aged student. I got myself a degree in agribusiness and was recruited into the Department of Environmental Protection. At that time the department's recruiting methods were seen as a diversion from its normal recruitment process of taking those who had an environmental science background. However, there was a state of enlightenment in the public service at the time which, I acknowledge, was at the height of the Court government with Cheryl Edwardes as the Minister for the Environment. There was a view in the department that if it wanted to work on certain matters, it needed people with other skill sets. I was recruited into the area of land clearing. The department realised that it perhaps would be a good idea to have people who had some knowledge of the agricultural sector to work on land clearing cases. Being recruited into that department was one of my luckiest professional breaks. I felt so fortunate because of the people I was able to work with. I had wonderful mentors who were outstanding people. I refer to Ben Carr, who was working with me on notices of intent to clear native vegetation; Peter Curry, who was the level 8 manager to whom I reported; Charlie Nicholson, who I think might have been a level 7; Paul Vogel, who was the director of my division and is now chairman of the Environmental Protection Authority; Kim Taylor, who was director of the environmental impact assessment division to which I reported and who is now the general manager of the Office of the Environmental Protection Authority; Dr Bryan Jenkins, who was the CEO of the department at the time; and, Bernard Bowen, who was chairman of the EPA. Those wonderful people made it their job to administer the Environmental Protection Act 1986 and inform the community about the importance of our environmental assets. But they also had in their hearts the desire to share their knowledge with new recruits. I was recruited as a level 2-4 and being a graduate recruit enabled me to understand the public service ethos and learn a range of things about the environment that I would never have imagined learning. The education I had in the early days in the public service surpassed what I could possibly have got through university education had I decided to do a postgraduate course in environmental science. I do not think I would have received the same in-depth knowledge that I received thanks to people such as Dr Bryan Jenkins who, as chief executive officer, wanted everyone to be as passionate and as enthusiastic as possible about being good public servants and using their time in the agency to learn as much as they possibly could. That real public service ethos was all about learning and serving the people of Western Australia. People make the choice to go into the public service, and they make that choice for many reasons. Some people might, from time to time, be in some sort of transitory situation because the particular project they are working on comes to a conclusion, but they have so much knowledge that they can transfer to other parts of the agency or to graduate recruits. That knowledge is valuable. We cannot just say, "We can sack you now because the project has finished. If you don't want to go, it will be an involuntary severance." That will reduce the number of staff in, and the cost of, the public service. That is a very sad approach. That approach does not value the knowledge in an agency. That is the approach being taken with this legislation, especially with the insertion of proposed section 95B, which is titled "Inconsistent provisions, instruments and contracts". This amendment will enable people to be subject to involuntary dismissal. I think that is unfair. It is not the way to go about things.

There is a problem in Australian society with the attitude towards the public service. It is all very well to be the subject of humour and jocularly. That is fair enough. I think all professions—politicians more so than many others—cop that from time to time. But I am worried that the entrenchment of the anti-public service attitude is being bolstered by legislation such as this; indeed, legislation such as this legitimises the anti-public service sentiment in the community that we occasionally hear on talkback radio. We hear expressions of a derogatory nature about public servants. That is really unfortunate. It undermines the confidence in the public service. It is incumbent on us to ensure that the message from this place is that our public service is integral to the good functioning of society. It is essential that we have people in various regulatory and assessment roles to deliver services that, as I mentioned before, the marketplace just cannot deliver.

It is curious that we have this belief that the market can solve so much. I do not want to be disrespectful to those who have a master's degree in business administration, but I note that that is the main administrative qualification that people in Australia aspire towards. In some other western democracies, one of the highest qualifications people can get is a degree in public administration. For example, one of the most elite schools in France is the Ecole nationale d'administration.

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Dr A.D. Buti: I hope Hansard got that one!

Mr C.J. TALLENTIRE: I will check that it is right in the *Hansard* proof! It is a very elite establishment. If someone has gone through that school, it is a sign that they are on a route to a high-flying career. Within French culture, there is an anti-public service spirit at times; it is definitely there. But there is recognition that people with good qualifications are needed to be the top administrators and to head various organisations that are akin to our local governments, whereas in our Australian-Anglo world, we tend to think much more about MBAs as being the pathway to a career in the corporate world.

I now turn to the issue of the corporate world and what it can do. I am thinking of some of the works of John Ralston Saul, a man who acquired a PhD in economics and also has written several books. Indeed, one of his most interesting books is *The Unconscious Civilization*. In that book he refers at length to the corporatisation of the commercial world and also to aspects of government. He sees that as being counter to many principles that are held dear in our society. The corporatisation of an organisation, be it a public or private one, stifles creativity and freedom of speech and reduces the free flow of information. Ralston Saul goes into that in a great deal of detail in his book *The Unconscious Civilization*. It is an important point, because we need to consider how we make sure that our public service is not unnecessarily corporatised. It is curious that we in this place often talk about corporatised government trading enterprises such as the Water Corporation, Synergy and Verve Energy, which are government owned but tasked with making a profit for government. When it all becomes about the bottom line rather than delivering a service, that is the point at which we have problems. I will quote a comment that John Ralston Saul made about this reliance on the market. He pointed out at length that there are many things that the private market just will not deliver on. Of course, one big thing is the matter of externalities. We have heard this in debates in Australian civil society. A power station can make a great deal of profit from selling electricity, but it will not necessarily be held to account for the pollution it causes, its greenhouse gas emissions, the deterioration in local air quality or, indeed, something as mundane as dirty laundry resulting from the soot that comes out of a chimney. There must be other systems to deal with externalities. The marketplace, if left to its own devices, will not tackle those things. On the importance of not relying on the marketplace, Ralston Saul said —

To invoke the marketplace, as if calling upon the Holy Spirit, is to limit ourselves to the narrow and short-term interests of exclusion.

The point being made there is that we do need a strong public service that can either do a task or regulate a task.

I was intrigued by the comments made by the member for Churchlands. I grew up in the electorate of the member for Churchlands. I had the impression that he was saying that people from a middle-class background could not aspire to be a member of the Labor Party.

Mr S.K. L'Estrange: No.

Mr C.J. TALLENTIRE: He was not saying that. He was saying that it was difficult for a member of the Labor Party to look after or improve the quality of life of people who are, perhaps in his terms, working class.

Mr S.K. L'Estrange: No, I didn't say that. I actually said that I think more focus needs to be on looking after the working poor and less focus needs to be on those people who are professionals who are in jobs where the government is trying to create a situation that can enable the free-flowing labour market forces to apply. That's what I said.

Mr C.J. TALLENTIRE: I thank the member for Churchlands for that clarification. I note his use of the term "working poor".

Dr A.D. Buti: It is very American.

Mr C.J. TALLENTIRE: To my knowledge, that is an American term.

Mr S.K. L'Estrange: It is a social problem that we should confront, though.

Mr C.J. TALLENTIRE: Indeed. It is by putting people who are in lower paid jobs in difficult circumstances, and by forcing people into situations in which the only jobs they can get are those very low paid jobs, that we create that working poor situation and bring that American problem to Australia. That is why, member for Churchlands, I am a defender of things like award rates. That is why I do not want to see the corruption of our hospitality sector with all sorts of ideas about people being put on rates of pay and not getting penalty rates on weekends and things like that, because that, to me, would lead to the creation of a working poor situation. That would be absolutely wrong and it is something that I hope every member of this place wants to guard against. That is why, coming back to this legislation, I am so concerned that if we have people working as public

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servants, perhaps in the lower levels of the public service, already struggling to have the necessary information to convince a bank that they should be entitled to a mortgage and having difficulties getting the necessary loans, not only will they be in a situation in which they will have to struggle to get a decent size mortgage, but also they could also find that their contracts are terminated in the ways that are potentially open to the employer—the government—in proposed section 95B.

[Member's time extended.]

Mr C.J. TALLENTIRE: I have a real concern about the possibility that we will be creating an extra level of uncertainty for people, making their lives that much more difficult. They would also be vulnerable, through life's necessities, to having to go into the corporate world, because they have the skills and the knowledge. The corporate world would perhaps be prepared to pay a whole lot more for their skills. I know that fits in with a market philosophy whereby people say, "Oh, well, I can sell my skills set to those who can best pay me", but what a loss that is for the state. We then see the public service used as a training ground for the corporate world. We have seen that extensively through the resources boom. People who have skills in environmental assessment and in regulation perhaps cut their teeth in the Department of Mines and Petroleum. They are there for 18 months or two years, and then they are poached by a resources company. We then get the complaint from the resources sector that it is taking too long to get its approvals through; it is taking longer. The sector wants to know what is going on because the public service is not delivering on this. The really sad irony that I hear all too often in our society, but it is unrecognised, is that those who are constantly asking for a smaller, trimmed-down, cut-down government are the ones who ask why government is not delivering on something.

I will give an example in the federal sphere of the tragic deaths of, I think, four people who were involved in the roof insulation program that the Rudd government implemented. That was, of course, a tragedy. It should never have happened. But, let us face it; the building industry is one of the most outspoken when it comes to arguing against the sort of regulation that could have very well prevented those deaths, yet the media made very little of the absence of the necessary regulation that could have prevented those deaths when that whole issue was discussed, because the media was in a frenzy attacking the then government. Regulation is essential. It is a part of our society, and as our society grows and becomes more complex, we need to have people in positions to deliver good quality regulation. That is not to say that all regulation is necessary for eternity. That is why I applaud the various programs that are in place—I know we have one on the go here at the moment—to whittle away redundant legislation. Of course we have to do that, but let us start from the position that there is a need for good regulation in this place. When the Minister for Environment was in the chamber in question time, it was interesting that he attempted, I think, to explain this very point. He said he had made a cut to red tape by bringing in regulation. He paused at a point, unfortunately, because I think he might have been about to explain that there was perhaps a more effective way of delivering the type of regulation that is necessary for an aspect of his heritage portfolio. That was interesting.

I know I have mentioned this a couple of times this week, but it has been disappointing that the Minister for Environment has not been in the chamber. Yet again I find myself saying that. In the last couple of weeks, I have seen people who work in the environmental agencies attacked mercilessly. There was a case about some land clearing in the south west. The farmer who had been taken to court for that clearing got off. It was found that the use of satellite imagery did not prove adequately that this person had done the clearing. The toxic tone of the criticism of public servants who had worked on that case, I thought, was dreadful, and I did not hear a word of defence from the minister. That is something that we should see hear. When public servants are doing their jobs diligently and honouring the task they have of administering their legislation, I think it is incumbent on a minister to defend them when they are criticised by others in public. To stand back silently and let the criticism of those individuals take place, without any suggestion that there may have been some other problem, to me, is laziness, and it suggests that perhaps the minister is not really prepared to work with those people. The consequence is that those people will probably end up feeling demoralised and may then move on. It is incumbent on a minister in this place to defend the public servants who do so much to make it possible for those who are fortunate enough to be in a ministerial role to deliver on the responsibilities that they have.

I wanted to highlight another point that John Ralston Saul made about the public service ethic and the potential for that public service ethic to be corrupted by the notion of corporatism. That is around the idea that we all get into a managerial approach and that it is simply about managing. I think that has been a problem and it is something that we need to guard against in our public service. We must not let it simply become about managing for the sake of managing. The public service must be about delivering quality services and quality regulation and picking up on all those things that the marketplace cannot necessarily deliver on.

I am very proud of the time that I had in the public service, and I have expressed how much I appreciate the time I had there and how much I learnt. I think those opposite perhaps take their lead from organisations such as the

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Centre for Independent Studies. I gather it is a conservative-leaning, possibly right-wing organisation—not as right wing perhaps as the Institute of Public Affairs. Nevertheless, it is an organisation that constantly talks about the need for reduction in the size of government. I do not know what services it proposes to cut; it seems to keep that fairly general. It talks about the excesses of state and federal regulation, and it says that the best thing we can do is just get government out of the way so that small business can get on with things. I am referring to a paper that was published on the ABC's *The Drum* website of 21 November written by Simon Cowan. On the way in this morning I heard Simon Cowan talking to Paul Murray; he was criticising at length the role of the SBS and ABC TV stations and saying how terrible that a public broadcasting service is run by the public service and that they are unnecessary. I note that his article was published on ABC's *The Drum*. The hypocrisy of it is astounding. Organisations such as the Centre for Independent Studies push the mantra that smaller government is good. I do not believe that is the case. There is a role for good government and good public service, and good public service needs to be staffed with people who have the necessary skills, who are proud of what they do and are not undermined by the constant chatter of those who believe in smaller government. That sort of chatter undermines the confidence of our public service and our society.

In coming to a conclusion, I want to say that I fully support our public servants. I believe they deserve the very best conditions. They are a force in our society that helps a complex world work better. They make sure that we have the regulations in place that keep our growing population and society on track and working in a smart, efficient way. They are not at all about complicating our lives, as some people like to suggest. Regulation is necessary and the more complex our society becomes, the more we need good quality regulation. It is all about quality. Yes, there are times when regulation needs to be refined but, ultimately, we need regulation for a good society.

DR A.D. BUTI (Armadale) [4.00 pm]: I also rise to contribute to the debate on the Workforce Reform Bill 2013. As I am sure all members know, the relationship between the employee and employer is one of the fundamental relationships in our society. Of course, in many respects, employment law governs that relationship. Other factors influence personal relationships between the parties but the actual workplace environment is structured around the laws that determine the obligations and the rights of the employer and employee. It is very important. In many respects, this legislation seeks to change the current relationship between the employer and the public servant—the employee—with the employer being the state government through its instrumentalities and departments. In his second reading speech the Premier mentions that the bill seeks to reform three statutes—the Industrial Relations Act 1979, the Public Sector Management Act 1994 and the Salaries and Allowances Act 1975. The Premier's second reading speech states —

First, it will make changes to the Industrial Relations Act 1979 by requiring the WA Industrial Relations Commission to take into specific account in its various considerations the government's applicable public sector wages policy statement, the financial position and fiscal strategy of the state, and the financial position of the relevant public sector entity.

As we know, the driving force for bringing this legislation before the house is the government's wish to change the state's finances. The government believes this bill will contribute to achieving that role. Of course, the government is embarrassed because it has lost its AAA credit rating. It is the first government to do so for a very long period. Of course, the government is looking for a quick fix. If it is not a quick fix, the government has been dishonest because, as we know, the Premier went to the election stating that public sector employees had job security. He said that again in this house after the election. Once the government lost its AAA rating, it talked about the workplace reform that it would implement in the public service.

The other pieces of legislation this bill will amend include, as I said, the Public Sector Management Act, which goes to the issues of redeployment and redundancy. We are looking here at not only voluntary redundancies but also involuntary redundancies. Earlier in this chamber there was an exchange between the member for Wambro and the Premier about whether involuntary redundancy meant sacking. The fact is it is termination of employment and that is not voluntary. Regardless of whether we call it sacking, it is definitely termination of employment. It is interesting that as well as amendments to the Public Sector Management Act around redundancy, the bill includes amendments to the appeals procedure. Although matters can be appealed to the WA Industrial Relations Commission, they cannot be appealed to the public service arbiter or the Railways Classification Board. The third piece of legislation to be amended is the Salaries and Allowances Act. As will the Industrial Relations Commission, the Salaries and Allowances Tribunal will have to consider the government's wages policy statement, the state financial position and the fiscal strategy.

For a long time the Industrial Relations Act has governed industrial relations in Western Australia. When I first commenced in the legal profession and was working in industrial relations, that was the principal act in the state

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sphere. The importance of the WA Industrial Relations Act lost some of its currency when the federal government encroached on states' rights and took greater power over industrial relations. I think in Victoria the Kennett government transferred all its powers over industrial relations to the commonwealth.

There was an interesting provision in the Industrial Relations Act when I started practising law in the early 1990s, which I think is section 29, that deals with unfair dismissal. It shows why legislation is so important. Any legislation brought before this house that deals with employment relationships must be scrutinised very carefully. The Labor Party is nervous about this bill because of the many regulations that will cover the operations of the Workplace Reform Bill. As we know, regulations have a subsidiary priority in this house and are not given the same level of scrutiny as primary legislation. Under, I think, section 29 of the Industrial Relations Act, a person wanting to make an unfair dismissal claim had to determine that they were unfairly dismissed. Unless they were able to argue forcefully and persuade the commission to reinstate them, they were not entitled to any monetary compensation. This applied to not only the public sector but also employment generally in Western Australia. If the commission determined that a person was unfairly dismissed, that was basically the end of the matter unless the employee could persuade the commission they should be reinstated. The problem was that most employees were very rarely reinstated. Why was that? Because, if an employee takes a case against their former employer in the Industrial Relations Commission, there is often bad blood as a result of that and the Industrial Relations Commission, more often than not, would determine that the relationship had broken down to the extent that it would not be feasible or viable to re-employ the employee, and as a result they were not entitled to compensation. That was an absurd situation that was rectified later. I am sure the government hoped this legislation would be able to be rushed through this chamber, but should we do that, we would be renegeing on our obligations to the many thousands of public sector employees and to the public, and I will talk about that a bit later because it was alluded to by the member for Gosnells. We would be renegeing on our obligations to the many thousands of public sector employees and the public service if we did not scrutinise this legislation to ensure it does not change the balance between the employer and employee to an extent that is unfair or that there would be a significant detrimental effect to the delivery of services to the public of Western Australia.

In his contribution the member for Bassendean talked about the issue relating to clause 14 of the Workforce Reform Bill, which relates to the amendment of the Public Sector Management Act through proposed section 95B, whereby this amendment, if passed, will override any industrial agreement in place. I was not in the chamber, but I was listening to the exchange between the Premier and the member for Bassendean in my office. I think the member for Bassendean was trying to elicit an answer from Premier about whether any existing agreements would be null and void as a result of this legislation. We know they would be, because the legislation overrules the common law, so it is quite obvious that that will be the case. I think the member for Bassendean made a very valid point. There are existing, current agreements negotiated in good faith between the union representing the employees and the government or its instrumentalities that now will be superseded as a result of this legislation. That is in respect to the issue of voluntary redundancies. I have never worked for United Voice, so I do not know the details of the enterprise bargaining agreements, but the member for Bassendean stated that in some of the enterprise bargaining agreements there was a provision stating there would be no involuntary redundancies. That would have been negotiated in good faith and an agreement would have been reached. In other words, that was a contractual agreement.

It is interesting that the member for Churchlands has just left the chamber for a short while, because in his contribution he was basically trying to become the new scholar and historian for the Labor Party and also offering some advice. He is a strong advocate and a champion of liberal philosophy, and of course the term liberal philosophy is often not appropriate in the Australian context, because it is really more of a conservative philosophy, but anyway I will leave that be. Within that philosophy, freedom of contract is sacrosanct. If there is no freedom of contract and there are no binding contracts, the whole private property system and the market system that we operate under would collapse, because legal contracts freely entered into can just be quashed at the whim of a new government initiative, which creates incredible uncertainty. Let us leave aside the issue of whether involuntary redundancies have merit or not in the public sector. If the government wished to uphold its free market tenets, which of course mean that freedom of contract is sacrosanct, it should not make this legislation retrospective, but that is what it is doing.

[Quorum formed.]

Dr A.D. BUTI: I am glad there are more government members in this place because they should listen to this.

Mr A. Krsticevic: Where are your members?

Dr A.D. BUTI: It is the government's bill, Mr Whip!

Mr Paul Papalia; Speaker; Ms Margaret Quirk; Acting Speaker; Ms Janine Freeman; Mrs Michelle Roberts; Mr Chris Tallentire; Dr Tony Buti; Mr Dean Nalder; Mr Bill Johnston; Mr Paul Miles; Ms Andrea Mitchell; Ms Rita Saffioti; Mr Colin Barnett; Mr John Day

Government members should listen to how this bill is contrary to the philosophies of a conservative or liberal political party. I am glad the member for Churchlands is back in the chamber. Clause 14 of this bill, which adds proposed section 95B to the Public Sector Management Act, as stated before, would appear to override any existing contractual agreements between employees and employers. There is no reason that changes could not be made to the bill for that to not be the case and that any existing industrial agreement entered into in good faith not be superseded by this piece of legislation. Surely the member for Churchlands, being a keen scholar of free markets and free enterprise, knows about the sanctity of the doctrine of freedom of contract, and would see it as quite dangerous that any contract freely entered into between two parties could be changed or abolished at the whim of any government. That surely must raise some concerns in the intelligent thinking of the member for Churchlands. That is what we have before us and it is of real concern. It is interesting that no-one in the government has expressed a concern about that.

Mr C.J. Barnett: All these compliments to the member for Churchlands. You realise that this a dastardly plot to undermine and destroy your career, member for Churchlands!

Dr A.D. BUTI: I think the Premier is the last person who should be talking about the member for Churchlands, because if I remember correctly, the Premier did not want him in this house.

Mr C.J. Barnett: No, that is not true.

Dr A.D. BUTI: I remember that the Premier said that another candidate, his preferred candidate, was the better candidate and he thought that that Liberal members of the branch had made a big mistake. I think the Premier was wrong, because I think the member for Churchlands —

Point of Order

Mr D.C. NALDER: I think there is a standing order that deals with sticking to subject of the bill—relevance.

Dr A.D. Buti: I was responding to an interjection.

The ACTING SPEAKER (Mr P. Abetz): There is a point of order. I encourage the member to stick to the content of the bill.

Debate Resumed

Dr A.D. BUTI: Mr Acting Speaker, I was replying to an interjection from the Premier.

Mr C.J. Barnett: You just have no humour, do you? Not a skerrick of humour.

Dr A.D. BUTI: That was humour too, Premier. My comment was humour as well.

Mr A. Krsticevic: Were you the first choice for Armadale?

Dr A.D. BUTI: I was actually.

Several members interjected.

The ACTING SPEAKER: Members, I am on my feet. Member for North West, when I am on my feet I expect silence.

Dr A.D. BUTI: Actually, there was another candidate who was the first choice, and the Leader of the Opposition supported me. So there you go, mate!

Mr V.A. Catania: How many times have you run for Armadale, member for Armadale?

Dr A.D. BUTI: Once.

The ACTING SPEAKER (Mr P. Abetz): Member for Armadale, I invite you to please —

Dr A.D. BUTI: I am not able to stack branches like the member for North West. That is why it took me a bit longer than it took him. Okay? So let us not go down that road.

The ACTING SPEAKER: Members! I am on my feet, member for Armadale.

Dr A.D. BUTI: Can you stop their interjections?

The ACTING SPEAKER: Member, I am on my feet. That means silence from everyone. Silence is golden. I would encourage the member for Armadale to please stick to the content of the bill. This is a second reading debate. It is not a reflection on the activities of other members to get into this house. Thank you.

Dr A.D. BUTI: As I have been trying to say, I actually hold the member for Churchlands in high regard. So I find it interesting that that brought on an interjection from the government.

Mr Paul Papalia; Speaker; Ms Margaret Quirk; Acting Speaker; Ms Janine Freeman; Mrs Michelle Roberts; Mr Chris Tallentire; Dr Tony Buti; Mr Dean Nalder; Mr Bill Johnston; Mr Paul Miles; Ms Andrea Mitchell; Ms Rita Saffioti; Mr Colin Barnett; Mr John Day

The member for Churchlands mentioned the issue of the working poor that was taken up by the member for Gosnells, and he said that the Labor Party should be more concerned with the interests and conditions of the working poor than the professional class—I assume that was what he was saying, or words to that effect —

Mr S.K. L'Estrange: No. I was saying it in the context that with this public sector reform, what we are trying to achieve is to get professionals into the job where they are most needed. In all of your party's energy and effort in trying to grab headlines in and around that, you are turning your back on the group of people that your party was founded on looking after. You seem to have turned your back on them. That was my point.

Dr A.D. BUTI: Right. But has the member ever thought that if we do not have a very efficient public service that has enough workers to deal with the demands that are placed on them, that may disadvantage the working poor? In Armadale, for instance, the workers in the Department for Child Protection and Family Support are so overworked that every Friday, probably at about this time, a number of kids will be at the doorstep of the department, with nowhere to go and not enough workers to assist them to find a place. So it is not as easy as the member makes out.

Mr S.K. L'Estrange: From the premise of your argument, you are actually agreeing with what I am saying. I am saying that if there is a need for more people to work in certain areas, then surely we would want to have more people work in those areas than in areas in which there is no need.

Dr A.D. BUTI: But I would wonder how this piece of legislation will result in a significant influx of child protection workers in Armadale. This legislation talks about trying to reduce the size of the public sector. The Premier talked in his second reading speech about the structural challenges facing the state's finances. He talked also about how the Industrial Relations Commission has to consider the public sector wages policy, the financial position and fiscal strategy of the state, and the financial position of the relevant public sector entity. This bill is about trying to reduce the government's overall financial outlay on the public sector. The government would not be seeking to include in the Public Sector Management Act, for the first time, a provision for involuntary redundancies if it did not intend to reduce the size of the public sector. That is what will happen.

[Member's time extended.]

Dr A.D. BUTI: It goes without saying that if this bill is passed in its current form, the government and its agencies will be given greater powers to reduce the size of the workforce. I am not necessarily saying that the government will slash thousands and thousands of jobs, although that could happen. But there will be a reduction. I will not sure how that will improve service delivery to the people who need it. But, in any case, I do not think the member for Churchlands' argument is valid. Parties change, and people evolve. Many of the working poor have become the professional class.

Mr S.K. L'Estrange: That is exactly where your point is lost, because there is a working poor that does need to be represented.

Dr A.D. BUTI: And they are—by the Labor Party.

Mr S.K. L'Estrange: Rubbish!

Dr A.D. BUTI: Just because we represent the working poor does not mean that we cannot also represent the professional class. I am sure even the member would argue that he represents the working poor.

Mr S.K. L'Estrange: I would argue that on the basis of sound economic management, if we create an economy that creates more jobs, we will help everybody in the community in the long run.

Dr A.D. BUTI: Therefore, it is a bit simplistic to say that we cannot represent more than one sector of society—it is possible to do that.

I will now get back to the bill and the issue of redundancies. It is interesting that the amendments proposed to the Public Sector Management Act will enable involuntary redundancies. In the end, involuntary redundancies are forced terminations, because, obviously, if a redundancy is not voluntary, it is forced. When I started my legal career, I worked in employment law. The member for Churchlands has argued that at times the balance has swung more towards unions and employees than it has to employers. However, if we look at the history of law, the law has generally protected the wealthy more than it has protected the poor. The fact is that the industrial relations legislation has tried to change that. There may be arguments that at certain times in history, the balance has swung too much in a certain way. When the Keating government brought in its industrial relations legislation in 1993, the unfair dismissal provisions in that legislation swang too much the other way in the sense of the obligations imposed on employers and the compensation packages. But changes were then made to that

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legislation. There will always be amendments to try to get the balance right. My concern is that this bill will provide for involuntary redundancies in the public sector workforce that will allow an appeal to the Industrial Relations Commission but not to any of the other bodies to which industrial matters can be appealed at the moment in the public sector. However, we do not know the details about issues such as redeployment, because that will be in the regulations.

A person's employment is a very important issue. If someone has a job and then does not have a job, they will become the working poor very quickly, unless they find another job. In an ideal world, the free market ideology is that labour follows the need. But, as we know, not everyone can find employment. Many economists argue that there should be a four to five per cent unemployment rate anyway, because that is best for the free market economy. So there will be people who are made redundant who will become the working poor pretty quickly. There is no doubt that one of the prime intentions of this legislation is to reduce the size of the public sector workforce. That is because if this legislation does not reduce the size of the public sector workforce and thereby the public sector wages bill, it will be very difficult for the government to claw back the state's AAA credit rating. We all remember that not long after it had been announced that the state had lost its AAA credit rating, the Treasurer stood in this chamber and talked about how it was necessary to bring in this piece of legislation and how it would help improve the state's finances and claw back our AAA credit rating. Surely that is code for a reduction in the wages bill of the government when it comes to public sector employees. There are two ways in which the government can reduce its wages bill. The first is by keeping wages down. That is part of the government's wages policy. I understand that. The other is by reducing the number of employees. If that is not the case and the government is not trying to reduce the number of employees, why would it have voluntary redundancies?

The problem with the issue of voluntary redundancy is the fear that it creates in the workplace. Sometimes fear can be an incentive to improve performance; I understand that. But often fear acts in a negative manner and performance is not improved at all. We do not know what criteria will be utilised for involuntary redundancies. How will we determine that? Ten people might be working in an area that the agency decides is now superfluous to requirements and that it needs only five of those 10 employees. What criteria will be used to determine which five should be made redundant? We have no idea—none at all. Performance should not be the criteria because performance is not correlated to redundancy. Redundancy deals with the fact that that position is no longer needed, not that that position is no longer being performed properly; that is a different issue.

So what criteria do we use? One of the traditional criteria used is the "last on, first off" criterion, whereby if a person is on last, he is first off, but that has its own problem. In the famous High Court case of *Australian Iron and Steel Pty Ltd v Banovic* (1989), the problem with the "last on, first off" criterion was that it was considered to be contrary to the equal opportunity legislation of the state or the Sex Discrimination Act 1984. When people sought a job with Australian Iron and Steel, for whatever reason women were placed on a waiting list while the men were generally not placed on a waiting list and got a job straightaway. Of course, more women were employed at a later stage when the company decided that it would engage in a round of redundancies and, as a result, more women than men were made redundant. Banovic took the case to the High Court that this was contrary to equal opportunity legislation and was successful. It will be interesting to hear from the Premier in consideration in detail and the third reading stage about what criteria government agencies will use to determine who is forced into redundancy. It should not be performance because that is an issue of performance and not about the job not being needed. That is why this legislation must be scrutinised very carefully. It should not be rushed through this place, with the government being annoyed because members on this side wish to debate the legislation, because this is an incredibly important piece of legislation.

Mr C.J. Barnett: What is being rushed?

Dr A.D. BUTI: We will ensure that it is not rushed. It is incredibly important that this piece of legislation is properly scrutinised. The danger is that so much detail has been left unanswered and will be governed by regulations that will not receive the same level of scrutiny that the legislation will receive. I repeat: the driving force of this legislation is the instant reaction by the government to deal with the loss of its AAA rating. That is its real incentive. It thought it might be able to embarrass or wedge the opposition on it, but we stand here to properly scrutinise this piece of legislation because it is important for not only the public sector employees, but also those who rely on the delivery of services by the public service.

MS M.M. QUIRK (Girrawheen) [4.34 pm]: Many considered remarks have been made today on the import of this bill, and I concur with what my colleagues have already said. I pick up the point made by the member for Willagee that there is an underlying premise with this legislation that somehow our public sector workers are inferior, time-serving and unprofessional, that the government should have carte blanche to say when they are no

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longer required and there should be little scrutiny when the government wants to make someone involuntarily redundant. I have worked in the public sector at state and commonwealth levels and I have enjoyed working with a number of colleagues who I consider highly professional and who, in many cases, had more knowledge and professionalism than their corporate counterparts.

This idea that public servants are in some way not up to scratch really underlies the philosophy of this legislation, which is really unfortunate. In this regard there is some support for that proposition if we look at “The Liberals’ Public Sector Management Policy”, which was brought out for the election. I notice it is printed and authorised by B. Morton of 640 Murray Street in West Perth. I do not know whether the member for Swan Hills has seen it. I recently obtained it off the internet so I assume that it was released with or without the knowledge of the member for Swan Hills. The policy summary says in part —

Ethical and accountable government has been returned, employees have been respected and fairly treated, and the productivity of the public service improved.

This is under the first term of the Barnett government. It later continues —

The Liberals will continue to ensure that the public’s legitimate expectation of a world-class public sector will be met.

The inference is clearly that it currently is not a world-class public sector, and that this is the means by which the government intends to make it world-class, whatever that means. The policy states that if re-elected, the Barnett government will —

- Retain a cap on the size of the public sector while tight financial circumstances continue to face the State

I find that interesting because that was said before it was made public that the AAA credit rating was at risk, and yet that is the line that is now being used: we are in tight fiscal times. One wonders whether this is a clue to the fact that the government had a good inkling that it would lose that credit rating prior to it being made public. The policy states that the government will also commit to —

- Maintain a wages policy that provides public sector employees with fair and reasonable remuneration and benefits and safe working conditions

We will go into that in some detail, I suspect, in the consideration in detail stage. It continues —

- Continue to invest in its workforce through the provision of appropriate training and skills development opportunities

In my experience, when times get tight, training is usually the first thing to go. We know that public servants who may wish to improve their skills and expertise in a particular area and do so in their own time at TAFE, will now be facing increased fees and charges for that. The policy goes on to state —

The Liberal-led Government has worked hard to restore and maintain the professionalism, independence and integrity of Western Australia’s public sector; and to ensure the delivery of quality services to the people of Western Australia.

Again, implicit in that is that at some time in the past public servants were not professional and lacked integrity. I find that somewhat offensive. This next point is an interesting one, and my colleague the member for Armadale made some reference to this —

It is important to recognise the significance of the public sector workforce in Western Australia. It is the State’s biggest employer, with almost 150,000 employees in 126 agencies at more than 1,800 work locations, providing a huge range of vital services across the entire breadth of this enormous State. —

I suppose we should be grateful that those services are classed as vital —

More than 22 per cent of the public sector workforce is more than 55 years of age, and women comprise 69.2 per cent of that workforce, considerably higher than the 45.5 per cent of women in the total Western Australian workforce.

Any scheme to impose large-scale voluntary redundancies will disproportionately impact on both women and persons over the age of 55. It seems to me that we should have an undertaking from the government that there will not be undue pressure on these people, and certainly not on the over-55s. In the private sector there is some level of discrimination against people over the age of 45, frankly, as to whether they could be employed. In some ways the public sector at least acknowledges that the corporate knowledge that those people have is valuable. I suspect that there may well be a tendency to say, “Well, you’re 55; you had a good run,” and to ease people out.

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The other statistic I found interesting in this policy was that almost a quarter—24 per cent—of the public sector workforce is located in regional Western Australia. Again, will these provisions have a disproportionate impact on service delivery in the regions? In this regard I note that no-one in the National Party has bothered to speak on this bill. That is very unfortunate when the core of the public sector workforce is working in the regions. I saw a press release the other day from the government that said how much success it had had in the regions using Department for Child Protection and Family Support officers to enter into parenting agreements with parents, and that this had significantly reduced, by something like 61 per cent, the need for those children to go into state care. That is a fantastic result. We know that child protection workers in the regions do it particularly hard with limited resources, having to travel large distances and deal with some very challenging cases. I pay tribute to those public servants in the regions who do this incredibly important work. As I said, when it suits the government it will put out a press release about them, but the rest of the time it will expose them to working in very difficult conditions.

The Liberal Party policy also states —

A re-elected Liberal Government will continue to deliver prudent and responsible management of the Western Australian public sector

The next part of the policy is headed “A Responsible Employer”. Maybe the subtitle should be “An irresponsible Treasurer who drags Western Australia down, with the state losing its AAA credit rating”. It states —

If re-elected, the Liberals will:

- Maintain a wages policy that provides public sector employees with fair and reasonable remuneration and benefits and safe working conditions
- Continue to invest in its workforce through the provision of appropriate training ...
- Increase access to employment opportunities for Aboriginal people, those with disabilities and other groups under-represented in the workforce.

I note a press release by the Premier on Saturday that talked about making the police force more diverse. Certainly those categories are highly underrepresented at present. What was significant about that press release, certainly in relation to those from culturally and linguistically diverse backgrounds, was that no target was set. The policy continues —

The Liberal-led Government has implemented a responsible and fair wages policy that has resulted in the successful negotiation of significant pay increases for teachers, nurses and police officers to make them among the highest paid in Australia in these professions. In addition, more than 50 separate wage agreements have been negotiated and registered under this Government, delivering real wage increases to all public sector employees with minimal industrial action or disruption to the provision of services to the community.

Implicit in that statement is that public servants, but for bowing to the reason and negotiation skills of the government, are strike happy and will take industrial action at the drop of a hat. The bottom line is that if the government talks about sticking to wages policy, it should remember the instance before the election involving the nurses; that was not negotiated but rather imposed through political expediency. Although we all respect nurses, believe they should be paid well and know that we have trouble attracting nurses in Western Australia, it could be argued that it was political expediency that gave them a wages outcome above the odds.

The last page of this policy states that in terms of the government’s record, it had —

- Restored the community’s faith in the standing of Government and the public sector through improved governance arrangements

We have a minister who berated the Public Sector Commissioner into dropping certain terms of inquiry into allegations of workplace bullying. That, apparently, is restoring the faith of the community in the standing of government and the public sector! The policy also said that the government had —

- Effectively managed the size and growth of the WA public sector

The government is now telling us that that is not the case and that there will be a need for voluntary redundancies. It also stated that the government had —

- Negotiated improved wages and conditions for public sector workers with minimal industrial action, while also securing more effective and productive working arrangements.

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There was certainly very little in terms of productivity gains in the case I mentioned. I should mention that in relation to police, in the last two negotiations they have been told, “It’s the GFC. Times are hard. You better go easy. We’ll make up for it the next time.” The next time they were duded as well. The lesson there is to take one negotiation at a time and to not take the government on trust.

The third issue I want to mention is the language used in this debate. Some will be familiar with the Australian writer and former speechwriter to Paul Keating, Don Watson, and his term “weasel words”. In the context of this debate, and certainly in the public discourse that has been entered into in this debate, all those hot button words—words like flexibility, productivity and efficiency—have been used. They are all weasel words that in fact disguise the true intent of the government.

I found a very good article written by Ged Kearney in November 2010 shortly after she became president of the Australian Council of Trade Unions. It is headed “How weasel words erode your working rights” and states in part —

When it comes to the economy—‘productivity and flexibility’ are two more benign, if somewhat bland, words that have been abused so horribly it is now tough to remember what they originally meant.

...

Because when it comes to the way Australians work, productivity and flexibility’ have come to be terms that cause justified anxiety.

Unfortunately for many workers their experience of “productivity” and “flexibility” in the workplace has translated as “insecurity”—temporary work and volatile income.

It is not a tough equation to get your head around: higher labour productivity will be encouraged when workers feel they will share fairly in the rewards of growth.

At the moment that is just not happening. We have seen productivity rise faster than wages, resulting in real unit labour costs hitting an all-time low of more than 17 per cent below what they were during the mid-1980s.

The article goes on to say —

... collective bargaining as a friend to productivity, instead of an enemy.

The reasoning is simple: only a group of employees can offer real and meaningful productivity gains to an employer in exchange for a fair share of the reward.

A single employee can cut no such bargain. It has now been proven that fragmenting and isolating individual workers and cutting them off from unions does not lift productivity.

Now to that other poor, abused term: flexibility. On its face, no one should have any opposition to increasing workplace flexibility—who wants to work in rigid, inflexible ways?

But the term has been co-opted by some employer groups and businesses to simply mean “flexibility to lower wages and conditions”.

If we are going to talk about flexibility, it should not be at the expense of rights, fairness and proper workplace protections. Nor should it be a code word for more outsourcing, more use of labour hire companies, more casual work.

Flexibility is a two-way street. Workers also need flexibility, so they can balance their job with their commitments outside of work. Getting this balance right will open the door to better productivity.

...

Of course all working Australians want workplaces that allow them to get more out their working day and have more freedom in how they structure their working life. If these are the definitions of ‘productivity’ and ‘flexibility’ we are all for it.

She concludes —

Words matter—their meaning matter—and if we want to have a decent debate about the Australian workplace we need to agree on the definitions first.

In my inaugural speech in this place, I quoted an unusual source; I quoted Adam Smith, the author of *An Inquiry into the Nature and Causes of the Wealth of Nations* and a bit of a pin-up boy for the neoconservatives. However, I did that in the context that even someone such as Adam Smith says that there is a place for

Extract from Hansard

[ASSEMBLY — Thursday, 21 November 2013]

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Mr Paul Papalia; Speaker; Ms Margaret Quirk; Acting Speaker; Ms Janine Freeman; Mrs Michelle Roberts; Mr Chris Tallentire; Dr Tony Buti; Mr Dean Nalder; Mr Bill Johnston; Mr Paul Miles; Ms Andrea Mitchell; Ms Rita Saffioti; Mr Colin Barnett; Mr John Day

government and a place for the public service, and that there are certain areas of market failure where only the public sector can deliver effectively. This is why I think this bill is somewhat misguided.

[Member's time extended.]

Ms M.M. QUIRK: It acts on the premise that the public sector and the private sector are readily interchangeable, and that simply is not the case.

In today's *The West Australian* there is an article headed "Speech therapy demand soars" by Angela Pownall. It makes the point —

The number of WA children with speech and language problems is soaring, with a 15 per cent jump in demand for publicly funded speech therapy in Perth over the past three years.

Almost 7000 children are waiting to be assessed after being referred for speech therapy as increasing demand puts huge pressure on the State's speech therapy services.

To give the government credit, it has employed 19 more speech pathologists in the metropolitan area, bringing down the average waiting time from 19 months to nine months. But, as we all know and as professional speech pathologists say, early intervention is crucial to prevent speech and language difficulty becoming more complex later in a child's life and affecting their education and socialisation. Of course, we also know that delayed speech and language can go on to cause literacy issues. The long waits for public sector speech therapy—this is a case in which time is of the essence—mean that many families are using the private system and paying as much as \$90 for a 30-minute session. This is a case in which the families who can afford it are going to the private sector, but those who cannot, and whose children already have the deck stacked against them, have to wait months or even years for their children to see a speech pathologist, and therefore delaying their whole learning. As we know, the more investment that is made in kids early in their lives, the fewer costs there are to the state down the track. I think Adam Smith would agree that that is a case in which it is in the interests of the state and the community for the government sector to continue to operate. I have been in government and I have been a minister. It is hard to deliver services at the appropriate level and with the high expectations of the community, but it is not necessarily easier to privatise and get the private sector to deliver services of a similar standard, with the same duty of care and with the same level of control over those services. I counsel those who might be of a mind to support this bill to think long and hard about that particular issue.

We have heard today the concerns of a number of speakers about proposed section 96A, which will limit the Western Australian Industrial Relations Commission's right of review for those who are made involuntarily redundant and confine the jurisdiction of the industrial commission to review whether an employee has been allowed the benefits of pay to which they are entitled under the regulations. The commission will not have the jurisdiction to reinstate or otherwise compensate the employee. No natural justice will be provided to the employee.

There is another issue that comes up from time to time. There should be a provision so that if a person is deemed to be surplus to requirements, the service is no longer required to be delivered and they should be made redundant, there is a freeze on filling that position with a consultant or private contractor within a certain amount of time. That would really test the bone fides of this provision. It is the case that if the government wants to be rid of a particular function, it gets rid of it and then six or 12 months later, lo and behold, a consultant ends up doing the same job, and quite often it is the same person who was made redundant in the public sector.

They are my concerns. It is a worry that the regulations that will tease out some of these issues have not even been contemplated or drafted yet. I think the passage of this bill may well have been made easier if we were at least aware of the content of those regulations prior to the bill being debated. This might be a case of the Liberal Party's promise being in part met, but it will be to the detriment of many hardworking public servants who in many cases have given up the opportunity of earning more money to serve the community.

MR W.J. JOHNSTON (Cannington) [4.56 pm]: I want to participate in this debate. It is interesting that the longer I am involved in politics, industrial relations and the other things that I have been involved in, the more often I see contradictions. The Workforce Reform Bill 2013 is a reflection of those contradictions. When I was a union official in the late 1980s and early 1990s, the Liberal Party and its cheer squad used to always talk about wanting common law to apply more and more to employment. Then, under the Howard government's WorkChoices, it fought hard to keep the common law out of workplaces. The same thing is happening here. The government is coming up with detailed and complex regulations to regulate employment relationships without having an overriding system or philosophy to underpin what it is doing, so there is this constant jarring between what the government says it is trying to achieve and what its legislation provides.

Mr Paul Papalia; Speaker; Ms Margaret Quirk; Acting Speaker; Ms Janine Freeman; Mrs Michelle Roberts; Mr Chris Tallentire; Dr Tony Buti; Mr Dean Nalder; Mr Bill Johnston; Mr Paul Miles; Ms Andrea Mitchell; Ms Rita Saffioti; Mr Colin Barnett; Mr John Day

I want to look particularly at clause 13 of the bill, which proposes to amend section 94 of the Public Sector Management Act and under which this process of registered employees will be created. Proposed section 94(1A) states —

In this section —

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

registrable employee means —

- (a) an employee who is surplus to the requirements of a department or organisation; or
- (b) an employee whose office, post or position has been abolished; or
- (c) an employee in a category prescribed by the regulations.

The government is attempting to create a right that does not apply at common law. This is a right that goes beyond the rights of a private sector employer. A private sector employer does not have the right to arbitrarily terminate a person's employment just because the employer decides that the person needs to be terminated. The employer must have a reason to terminate a person. It is true that we could say that employers have an absolute right under Western Australian law to terminate employees. However, that has obviously been well understood to be limited by the obligation for that termination to not be harsh, unjust or unreasonable, which is different from the federal legislation's unfair dismissal procedures but is nonetheless well understood in industrial practice. Of course, it is a standard very, very similar to the common law standards that apply in Australia regarding termination of employment that have been built up over a long time by the former industrial commissions in the federal jurisdiction and in the various state jurisdictions. I particularly note some of the decisions that came out of the New South Wales commission in the 1970s and 1980s that are often used as precedents for the unfair dismissal arrangements that apply in Australia, and, indeed, common law provisions from other countries around the world—even the common law unfair dismissal provisions that apply in the United States. Years ago I met a Malaysian union official, and he made the interesting observation to me that whilst it was always hard in Malaysia to unionise a workforce, once the workforce was unionised, the courts never had any trouble adhering to the obligations provided by the rights that apply under international standards.

What we are doing here is creating a right for the government of Western Australia that no employer in Western Australia has. That is an interesting position for the government to put itself in, because the government in its rhetoric says, "All we're trying to do is apply the standards that might apply in industry generally", but when we read the bill, we see that that is not what is happening. When we go into consideration in detail, I will be interested to see why the government is trying to create that arrangement. I also note that the government often argues that there are hundreds of people in the public sector that it cannot get rid of. Apparently, they are so unable to do their job that the government needs to change the law to deal with those people. I make the observation that if there is a discipline problem, that has nothing to do with redundancy. Redundancy is about making excess employees leave the company or leave the business; it is not about disciplinary matters. There is a very long established arrangement for handling disciplinary matters, and it is also well known in the public sector. On page 27 of the Public Sector Commission's "State of the sector report 2013", which was tabled in the Parliament just five hours ago, there is a table headed "Types of breaches of ethical codes in entities, 2012/13". It has a whole list of issues that the commission has investigated. It says that there were 1 234 investigations, and it was found that there had been breaches in 479. Thirty-nine per cent of investigations led to findings of breach of those ethical codes. Members will see on page 67 of this document, under the heading "Substandard performance", that the commission reports as follows —

At the time of the 2013 AAS, 54 out of 138 863 employees in the public sector were identified as being subject to a substandard performance process (nine public sector bodies did not have this information available). Recordkeeping issues aside, this suggests poor performance is not common in the public sector. However, around one-quarter of respondents to the 2012 and 2013 EPS —

That being the employees' survey —

believed their supervisor does not appropriately manage poor performance.

Fifty-four out of 138 863 employees, according to the government of Western Australia, were identified as having a substandard performance. If the government cannot manage 54 people out of 138 863, I do not think the government needs to change the law; I think it needs to, as I have suggested before, get a mirror, because surely the only reason it has trouble managing that amount of poor performance is the quality of the ministers that it has leading the agencies in this state.

Extract from Hansard

[ASSEMBLY — Thursday, 21 November 2013]

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Mr Paul Papalia; Speaker; Ms Margaret Quirk; Acting Speaker; Ms Janine Freeman; Mrs Michelle Roberts; Mr Chris Tallentire; Dr Tony Buti; Mr Dean Nalder; Mr Bill Johnston; Mr Paul Miles; Ms Andrea Mitchell; Ms Rita Saffioti; Mr Colin Barnett; Mr John Day

On page 81 of the report, it is interesting that the profile of occupations in the public sector shows that 7.8 per cent of employees in the public sector in 2013 are described as “Managers”, compared with 11.6 per cent of the WA total workforce. That means that the public sector in Western Australia, according to this government report, has a lower level of managers than in the overall workforce. Given that about 15 or 20 per cent of the workforce will be the public sector, when we compare it with the private sector workforce, it means that there is an even greater discrepancy between the number of managers in the public sector and the number in the private sector. It is interesting, too, that 47.9 per cent of the public sector in Western Australia are listed under the occupation of “professionals”, so nearly half the public sector in Western Australia are in professional occupations, compared with just 19.9 per cent of the total workforce. One can imagine that some of the management issues in managing professionals will be very different from those in managing other areas of employment.

This table goes on to point out that technicians and trades workers represent only 4.4 per cent of public sector employees in Western Australia, compared with 17.9 per cent in the overall workforce. Community and personal service workers represent 17.1 per cent, compared with 9.5 per cent for the overall workforce. Clerical and administrative workers represent 18.4 per cent, compared with 13.9 per cent in the overall workforce. Interestingly enough, the sales workers represent 0.5 per cent of public sector employees—I would be interested to know where they are employed—compared with 8.9 per cent of the general workforce. Machinery operators and drivers represent 0.7 per cent of the public sector workforce, compared with 8.3 per cent of the overall workforce, and labourers represent 3.3 per cent of public sector employees, compared with 9.9 per cent of the overall workforce.

Interestingly enough, although some people in the community might have the view that public servants are—if I can use this indelicate term—“shiny bums”, we can see that fewer than one out of five public sector workers in the WA public service are clerical and administrative workers. I make the point that I was a clerical worker in the federal public service, so I do not mean any disrespect to my fellow workers; I am just saying that that is the way in which some people outside the public service often refer to public servants. When I was a public servant I know that people would refer to me in that way, but I make the point that in Western Australia those clerical workers are a small minority of the workforce. Fewer than one in five of the workers in the public sector in Western Australia come under that category. What are the management issues in running the public service? It is about managing community and personal service workers, it is about managing professionals, and it is also about managing those clerical workers. But it is interesting that nearly half are professional people, and I think there is a very different issue when it comes to managing those people.

The table on page 84 shows the diversity of the workforce in the public sector. Sadly, it does not have comparisons with the general workforce. However, in 2013, three per cent of the state’s public sector employees were Indigenous Australians, 12.4 per cent were people from culturally diverse backgrounds, 2.6 per cent were people with disabilities and 29.2 per cent of State Emergency Service workers were women. There is a table for “Women in management”, and the terms “tier one”, “tier two” and “tier three” are used. I do not know from this table what is meant by each of those definitions, but I am sure that an interested reader could easily find out. Tier 1 is 26.2 per cent, tier 2 is 35.4 per cent, and tier 3 is 42 per cent. It points out that the percentage of workers under the age of 25 is 5.1 per cent; but, interestingly, the percentage of mature workers—being people described as 45 years and over, so apparently, Mr Acting Speaker (Mr P. Abetz), both you and I are mature workers—is 51.9 per cent. An interesting profile on page 88 compares the age profile of the public sector in Western Australia to the general workforce. Very few young people work in the public sector, which will be an increasing problem in managing the workforce as we go forward, as indicated by more than half the employees being aged over 45 years. A table on page 89 shows the distribution across salary levels and gives an equity index. The distribution across salary levels is an interesting issue, because this table shows us that there are still great problems in matching what we would expect as an outcome for each of those groups across their salary levels, compared with what is being achieved. A huge number of people in Western Australia are employed by the government. The public service has 138 863 employees, which is a very large number of people.

The government has not only made its case to support the changes in the Workforce Reform Bill 2013, but also denied the case in the lead-up to the election. We heard all the promises, and the government gave the undertaking in the lead-up to the election, that it would not make public servants compulsorily redundant, but after the election it came up and told us that it is a test for the opposition. I wonder why it is a test for the opposition in 2013 but was not a test for the government in 2012. If it is such a test for the opposition, why was it not an election commitment by the government in 2012? If the government was so proud of its plans for public sector workforce reform, why did it not run to the people of Western Australia and promise them that at the time of the election? We know the answer to that: the Liberal–National government probably would not have been re-

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elected had it told 138 000 public sector employees that it had this plan for them waiting on the other side. That is why all the representative bodies and trade unions that represent the workers in this industry are opposed to this legislation—every single one of them.

[Member's time extended.]

Mr W.J. JOHNSTON: That is why it was very disappointing for the Minister for Police to mislead the house the other day when she said police officers would not be included in the Workforce Reform Bill 2013. The WA Police Union of Workers had obviously let the opposition know that it was very concerned by the fact that the police are covered by the provisions of this bill.

Mr C.J. Barnett: Not by the amendments to the Public Sector Management Act.

Mr W.J. JOHNSTON: Sorry, Premier—what was that?

Mr C.J. Barnett: You accused the police minister in her absence of misleading the house; that is not correct.

Mr W.J. JOHNSTON: She did. What she said was wrong. The fact that she is not in the chamber does not change the fact that she did not get it right on Tuesday. She said that the Workforce Reform Bill does not apply to police and it does.

Mr C.J. Barnett: No, the bill, the amendment to the Public Sector Management Act, does not —

Mr W.J. JOHNSTON: I am not talking about that. The Premier is the one splitting hairs, not me. The Minister for Police was asked whether the Workforce Reform Bill 2013 applied to the police force.

Mr C.J. Barnett: That was one of your lower moments last week.

Mr W.J. JOHNSTON: It was this week. It was not a low point, Premier. I do not understand. This is one of the government's problems: the government thinks that the Parliament does not matter. Parliament matters. It is important that ministers tell the truth to this house. Of course, every single person gets things wrong. It is like the Premier calling the Barrow Island agreement to be exactly the same as a corrupt act. That was wrong.

Mr C.J. Barnett: I didn't say that.

Mr W.J. JOHNSTON: Yes, you did. I read that into *Hansard* a dozen times already, Premier. As I say, if X equals two and X equals Y, then Y equals two. The Premier said that the agreement to Argyle Diamonds was a corrupt act. He also said that Barrow Island is exactly the same.

Mr C.J. Barnett: It was last week's debate and both *The West Australian* and *The Australian*, to a grudging degree, corrected it.

Mr W.J. JOHNSTON: No, they did not. There is no correction in either newspaper at all.

Mr C.J. Barnett: Yes, there is.

Mr W.J. JOHNSTON: No, there is not. Premier, that is just not true.

Mr C.J. Barnett: Yes, read *The Australian* in particular. They listened to the Labor Party and the Labor Party was wrong.

Point of Order

Mr P.T. MILES: On a point of order of relevance, the member is coming off the bill that we are talking about. I ask you, Mr Acting Speaker, to bring him back to the bill at hand.

Mr W.J. JOHNSTON: I was simply responding to the interjections of the Premier. I was happy to stay on the terms of the bill, but the Premier raised these extraneous issues and I responded. You could hardly expect me to do anything else.

The ACTING SPEAKER (Mr P. Abetz): I ask you to continue your speech.

Debate Resumed

Mr W.J. JOHNSTON: We know that ministers have an obligation to this house. It does not matter what they want the truth to be; there is the truth. They can get things wrong; everybody gets things wrong and that is part of being human. However, when ministers get things wrong, they are obligated to return to the house and correct the record. That is part of the Westminster tradition that we are here to uphold. I do not understand why the government does not want to uphold the Westminster tradition. The late former Premier of Queensland Joh Bjelke-Petersen was asked in a royal commission in Queensland what was meant by "the separation of powers"

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and he could not answer, which was interesting because he had been given a knighthood for upholding the Westminster tradition. There are obligations on people in this chamber, which include the obligation to correct the record when they get it wrong.

Mr C.J. Barnett: Let us hope you do it next time.

Mr W.J. JOHNSTON: If the Premier tells me when I was wrong, I will correct the record. If the Premier thinks that I have done something wrong, refer me to the Standing Committee on Procedure and Privileges. Go ahead; do it. I will happily vote in favour of that resolution.

Mr C.J. Barnett: That is not my style.

Mr W.J. JOHNSTON: He did it to me once. If he has a problem with anything I say, he should do it again. He cannot say it is not his style because that is what he did; he engineered a question in question time and then referred me to the Procedure and Privileges Committee. We all know what happened. The Premier cannot rewrite history.

Point of Order

Ms A.R. MITCHELL: I refer to standing order 94 and ask the member to bring the debate back to relevance to this bill.

Ms R. SAFFIOTI: I am hearing the Premier interject quite a bit. If the Premier wishes to interject, the member for Cannington can take those interjections, and that is what is happening.

The ACTING SPEAKER: There is no point of order, but I urge the member for Cannington to try to focus his attention on the bill and I encourage the Premier to desist from interjecting.

Debate Resumed

Mr W.J. JOHNSTON: Excellent ruling. I am very pleased by your learned and wise counsel, Mr Acting Speaker.

If the government genuinely wanted reform in the public sector in Western Australia, there is so much that could be done that the government is not doing. This second reading debate is our opportunity to talk about missed opportunities, and one of those is local government reform. Sadly, this government is missing its opportunity to reform local government.

Point of Order

Mr C.J. BARNETT: I am happy to debate local government, but it has absolutely nothing to do with the Workplace Reform Bill. Clearly the member has run out of any content, so we have had nine minutes of waffle. I will stay quiet, he can finish his waffle and then we can go home.

Mrs M.H. ROBERTS: Clearly, there are public servants across a wide range of government agencies. If the Premier listened to what the member for Cannington was saying, he would realise what the comments were.

The ACTING SPEAKER: Member for Cannington, I urge you to adhere to the focus of the bill. My understanding is—I could be wrong—that local government employees are not deemed to be public servants, so I do not see the relevance of it, and I urge you to stick to the focus of the bill.

Debate Resumed

Mr W.J. JOHNSTON: Thank you very much, Mr Acting Speaker, once again, for wise and learned counsel. I raised local government reform because this is another missed opportunity for the government. The government comes into this place and asks us to reform one part of the public sector in Western Australia and ignore another part. I am saying this is a missed opportunity in which the government could have implemented genuine local government reform. It could have picked up the issues raised in the Public Accounts Committee's fourth report in the thirty-seventh Parliament, which contained extensive recommendations for local government reform. The government could have sought to reform the number of departments. It could have used this opportunity to reduce the number of bureaucracies competing for oxygen and regulatory creep. We could have sought to implement change in the way the public sector deals with the private sector. We could have sought to implement a proper and thorough process to ensure that any future privatisations or outsourcing arrangements adhered to proper procedures. One of our difficulties, raised quite rightly by the member for Girrawheen, another former public servant, a person with extensive experience of administrative matters, was the interrelationship between government and outsourcing. That could have been dealt with through reform, but the government chose not to do any of those things. The government could have committed to the 2008 election commitment to provide tax cuts to Western Australian businesses following a recommendation of the Economic Audit Committee, which

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was never done. Any of those public sector reforms could have been sought, but the government did not choose them. It chose the one in front of us today whereby it is trying to create a right for itself that does not apply to anyone else.

I wonder why this bill will limit the capacity of the Industrial Relations Commission to look at what the government does. What is it about the Industrial Relations Commission that the government does not trust? Why does it want to exclude the right for public sector employees to have its decisions reviewed by the Industrial Relations Commission? It will allow only a technical analysis of the procedures but not an analysis on the basis of fairness. Does the government intend to be deliberately unfair? If the government is going to be fair, it should be no problem allowing its decisions to be reviewed by an independent umpire. That is why we have such a long tradition in Australia of allowing the industrial umpire to review management decisions. It will have a right that does not apply to small or large businesses. It seems strange that the government wants to do that. I will ask in consideration in detail how this provision will mesh with section 44 of the Industrial Relations Act 1979 and what will be the capacity for matters to be dealt with through that provision. We will have to tease that out when we get to consideration in detail. We will deal with a whole range of issues.

I caution the government. I remember giving evidence in 1996 at a senate committee looking at the first wave of the Howard government industrial relations reforms. I was representing the Shop Distributive and Allied Employees' Association as an industrial officer. The union had made a submission and I was there to give evidence on the submission. I made my submission and took some cross-examination. One of the questions I was asked was what percentage of retail employees were on individual contracts. Senator Winston Crane, I think it was, wanted to ask what percentage of people in the retail industry were on salary packages, but he did not have a full understanding of the industrial relations system and I would not have expected him to. That is not a criticism; it is a statement. Even lawyers with years of experience but not in the industrial system often have problems dealing with industrial law. The answer to the question was 100 per cent, and that is the answer I gave. That was not the answer he wanted because he did not know what the question should have been. When we deal with this Workforce Reform Bill, one of the problems for the government is that it has not asked the right questions. We will look at that when we get into consideration in detail. There are deep weaknesses in this legislation because the government does not have the fundamentals of the bill right. We will look at that further. It is not the answer we are looking for; it is the question. Sadly, the government does not have that right.

This bill, rightly, is occupying the opposition's time. We are opposed to it; it is bad law and it is based on the political lie of the 2013 election by the Liberal Party, because Liberal Party members did not tell the people of Western Australia that they would introduce it. They did not tell the 138 000 public sector employees they wanted to create capacity for the government to act in a way that no private sector employer is allowed to act. It is not as though the government wants to even out the field; it wants to go past private sector employers and create some other rights that ordinary employers do not have in this state. Liberal Party members were so ashamed of the need for this legislation that they were not even prepared to tell anyone about it at the time of the 2013 election. It is without merit and that is why it is opposed.

Debate adjourned on motion by **Mr J.H.D. Day (Leader of the House)**.

House adjourned at 5.27 pm
