PUBLIC AND HEALTH SECTOR LEGISLATION AMENDMENT (RIGHT OF RETURN) BILL 2018

Second Reading

Resumed from 12 September.

HON TJORN SIBMA (North Metropolitan) [2.58 pm]: What progress we are making with legislation today! I am the lead speaker for the Parliamentary Liberal Party on the Public and Health Sector Legislation Amendment (Right of Return) Bill 2018. At the outset, I indicate that the Parliamentary Liberal Party will support this bill, but in keeping with the practice and custom of this house, this bill will be scrutinised to a degree appropriate to the subject matter. I think it is a serious question, because the very listing of this bill should encourage us to think about the value we all place on a professional, effective, sustainable and apolitical public sector. A respected, skilled, responsible and accountable public sector is critical to governance in the state of Western Australia. It is integral to upholding public confidence and, indeed, the confidence of Parliament. It is a crucial institution, which any successful society relies on. This legislation provides us with the opportunity to reflect on the Western Australian public sector and to evaluate whether the legislation proposed by the government improves, undermines or is indifferent to the standing of the public sector in Western Australia. I draw some comfort from a sentiment that I believe is shared, in the main, by all members of this chamber and Parliament. The first paragraph of the second reading speech states —

> The Western Australian public sector is one of our most important assets, filled with capable and passionate people. Government has a responsibility to ensure that the sector has the ability to address the challenges of the modern world while continuing to meet community expectations regarding employment, fairness and cost.

It would be very difficult for any reasonable person to disagree with that assertion. Let us test whether this legislation lives up to its own rhetoric. This bill is quite simple. It proposes two things: to restrict the right of return to members of the senior executive service and the health executive service who are on initial contracts, and to reduce the maximum compensation payable to a person who ceases to be a member of those services. I will concentrate on the second aim first.

After the present government was sworn in and throughout 2017, the Premier expressed on a number of occasions—in public, in Parliament and, I believe, in the estimates committee hearings in the other place—his surprise and displeasure at the expense of having to compensate members of the senior executive service for whom the present government had no future need; that is, he was surprised, alarmed and disappointed to some degree at having to discharge the government's responsibility to fulfil the contractual rights held by those members of the senior executive service. I was concerned when those remarks were made because the Premier is no political neophyte. He is an experienced operator who had been a minister in a previous Labor government. I would have thought that he would have been aware—at least have the barest awareness—of the contractual arrangements of senior executive officers. I was surprised that he was surprised. I am not 100 per cent certain, but I understand that prior to the rollout of the voluntary targeted separation scheme, a figure approximating $30 million was paid out to a range of SES officers who, for presumably political reasons, had no future serving the McGowan government. The Premier was surprised and alarmed at having to go through the indignity of paying out those people. I assumed that the Premier would do something about that. On a number of occasions he indicated that he would look into the matter, but it was very unclear what exactly he was attempting to do or when he might do it.

Members might recall that in the last sitting week of last year, I gave notice of a private member's bill in an attempt to help the Premier out of this sticky conundrum. It was put to me that reshaping or recalibrating the scheme by which compensation packages were evaluated was a hard job. I had no doubt that it was hard but I wanted to interrogate how difficult it would be. If members are curious, my humble little bill, the Public and Health Sector Legislation Amendment (Executive Payout Compensation) Bill 2017, is on the notice paper. It will fall off the notice paper. The purpose of giving notice of that was to range-find to see how difficult it was to respond to a matter of urgency, as it was declared by the Premier. I have no intention of doing anything with that bill other than leaving it on the notice paper as a prompt to the government to see what it might do.

Somewhere along the way I thought that perhaps the Premier was comfortable with having to pay out that figure because, obviously, it must be worth it. If it were not, I imagine that those people would still be in government service. Perhaps they would not have the same responsibilities, but they would have some responsibility. It is my understanding through family and friends—indeed, my first job was as a federal public servant—that people should not just suddenly rise to the senior executive level. They build capacity, knowledge and professionalism over many decades. Although we can quantify the dollar amount paid out to people, I do not think that we can fairly calculate the loss of corporate knowledge. I think that is a significant shame. It is not just a loss of those people; it is a loss that is felt by the organisations they used to inhabit and by the public who rely on the services those organisations provide.

The Leader of the House directed some very surgical-like criticisms at the motion we discussed yesterday when she questioned whether that inquiry would be a good use of Parliament's resources. I am prompted to ask the same question about this legislation. We all agree on the importance of the public sector and that we should embark upon a process of continual improvement to ensure that it continues to deliver to need as it is felt now and need that we anticipate in the community over time. But let us put everything in perspective. The senior executive service cohort has been reduced from around 500 members to something over 350, or thereabouts. Of these, approximately 281—because the numbers fluctuate—are employed under the Public Sector Management Act or the Health Services Act and have a contractual right of return to the public sector. We are talking about 280 individuals out of a public sector that has an FTE profile of at least 110 000 people and a full headcount of probably closer to 130 000; therefore, the most generous proportion of the total public sector profile that they take up is about 0.003 per cent. That is what this house has been asked to consider: the impact of this 0.003 per cent cohort. Is that a good use of the house's time? I think that is highly debatable.

I am more than prepared to talk about public sector reform on any day of the week; it is one of my curious interests. But there are other avenues to interrogate. One might be how redeployee pools are utilised—effectively, where people are warehoused. I know that the Minister for Education and Training is doing something about that issue because a number of principals have told me that they no longer have the kind of hiring flexibility they enjoyed under the previous government within the framework of independent public schools.

One of the largest and most unremarked-upon liabilities in the entire public sector is the management of annual leave. Annual leave loadings are absolutely enormous, and I know that there is political agreement on that because the Premier has said that there is. I am thankful that the Parliamentary Secretary to the Minister for Health is nodding along because the bulk of that liability is carried by the health sector; it is enormous. The number of people throughout the health services who have more than two years' accumulated annual leave is cause for concern.

We can also reflect upon the much-lauded Langoulant review in which some interesting observations were made about the skills set and capability of the public sector. If we actually want to gear our public sector up to be flexible, innovative and efficient, there is probably a need for investment in its commercial skills sets. There is a range of opportunities for reform that would deliver efficiencies and real, tangible benefits to the public if we committed ourselves to them, but it does not appear to me that the Public and Health Sector Legislation Amendment (Right of Return) Bill 2018 really gets anywhere close to doing that.

I will return to that issue, but I want to concentrate the majority of my remarks on the first aim of this bill. I find it curious that the government is sending very mixed signals about which industrial rights for public sector workers it is prepared to defend and which ones it is prepared to jettison without any compensation. I do not think we can let that go unremarked upon. To be fair, I do not think it is easy for a Labor government, or any government, to defend the stripping of an industrial right embedded in law and expressed in the contracts of nearly 300 employees, while conferring the right of permanency to 13 000 other public sector workers, with the prospect of rolling that entitlement to permanency out to a potential 23 000. That is an inequity of treatment that is indefensible. It is inconsistent and wrong. We could argue about whether the right to return is an anachronism—we believe it is—but, in essence, this is about the process through which natural justice is conferred and contractual rights are respected, and arrangements can be transitioned to give effect to the desire to have a more responsive, flexible and modern senior public service. That it could be countenanced that these rights could be removed without any trade-off or compensation is, I think, deplorable. It is deeply problematic and it should be given deep and hard scrutiny by this chamber.

There is no dispute about the modernisation of instruments; the question for the house really is whether we should do that at the expense of existing and valid rights. I want to go somewhat into the arguments for reform as put by the government overall. The government proposes about five arguments. Not all of them are strong, nor are they necessarily compelling, but we will get to that later. The first argument is that this is, in essence, a modernising measure, and we agree with that. The Premier draws a comparison with the private sector. I think we need to be a little cautious about making private sector and public sector comparisons, because they are different, but if we want to apply private sector disciplines to public sector contracts, we must apply those disciplines equally across the entire public sector, and I have no doubt that the government has absolutely no appetite for that, so let us not countenance that as a sufficient argument.

Another argument proffered by the McGowan government is that this measure will ensure greater consistency with the ways in which respective senior executive services are treated across the broad sweep of Australian states and territories, and the commonwealth government. The commonwealth system is a little atypical, so let us concentrate on the situations as they apply in other states and territories. There is, effectively, a 50–50 split. Although this bill presents Western Australia as something of an outlier or oddity, it is an oddity only if Victoria, Queensland and Tasmania also are oddities. Four states and territories have either dispensed with the right of return or never had it, and the other four have retained it. This is not the government's strongest argument.

The third argument is, strangely, made on equity grounds. Many individuals who are well compensated and have significant organisational responsibilities do not enjoy the right of return. The kinds of occupations cited within the public sector are—to use an Americanism that we seem to have adopted uncritically—first responder–type uniformed operators in the police service and in the emergency services; clinicians in the health services; and senior executives in government trading enterprises. This comparison is probably a slightly more robust justification. But without also giving due consideration to the benefits that those employees enjoy under their respective legislative instruments, we are not necessarily getting the whole picture.

The fourth argument that the government proffers in order to compel us to support this legislation centres on flexibility. I find this a decent argument. It goes along the lines that effectively agencies are encumbered by having to keep positions vacant should an individual employed as a senior executive service officer elect to return to their agency at the level that they held prior to moving into the SES. I can understand that. That has implications on upskilling employees, workforce planning and the like. Whether it is as large an impediment as we have been led to believe, further interrogation is needed. I have some data that I will read into *Hansard* later that might shine a bit more light on this.

The fifth argument—I think it is the best one and the government should just rely on it—is that perhaps this right of return has served its purpose. After the SES was composed, we needed a mechanism that encouraged a new cohort of senior officers out of their working or middle management levels into an SES level position, which did not carry with it the kinds of permanency or security of employment that they previously enjoyed. We needed a mechanism of inducement. That we have had these arrangements now for nearly a quarter of a century and that, generally speaking, the right of return has not been utilised at scale suggests perhaps we do not need it any longer. I think that is a better argument and is one that the government could rely on in the main.

I should say that we have benefited as an opposition from information provided by staff in the Premier's office. I applaud them for their help. At the briefing we received, I must say that I walked away with more questions than were answered. The advisers very generously offered the opportunity that, should I be curious, I could put further questions to them after I had received the benefit of those questions. Later I will seek leave to table this document. It is an important brief. I am led to believe that it has been prepared by staff at the Public Sector Commission. It comes by way of the Premier's office. I think it is also important to read in a number of these responses to the questions that I put. I will not read in the whole document; I will just concentrate on the more critical issues. I was attempting to establish how big a problem it is. How big an encumbrance is the election of right of return? What burden does it place on the public sector and on government resources? I asked for a table of the number of SES officers who actually exercised their contractual right of return under the Public Sector Management Act 1994 or the Health Services Act 2016 for each of the last five years. In addition, I asked whether there was any information from the relevant departments or agencies of the officers exercising that right to return. I found the answer illuminating. The answer goes like this —

- Prior to March 2017, records were not kept regarding the number of SES officers electing to exercise their right of return. However, anecdotal evidence indicates the number was in the vicinity of no more than 1 or 2 a year.

So perhaps one or two SES staff a year out of a total public sector of 110 000 and 130 000 were electing to utilise their right of return. That was just for staff employed under the Public Sector Management Act. The answer goes on to deal with the Health Services Act. It goes like this —

- Since the formal establishment of the Health Executive Service (health executives) on 11 December 2017, no health executive has elected to exercise a contractual right of return.

Not one. It goes on, and this is where there is a bit of a spike —

- In the period 11 March 2017 to 25 September 2018, —

Which is I think the date I asked the question —

> 55 SES officers exercised their right of return. Of this number 30 subsequently accepted a voluntary severance —

Presumably under the voluntary targeted separation scheme —

> and ceased employment. The table below details this number by agency and year exercised:

I will not go into that, other than to say that 25 senior executives elected to utilise their right of return in 2017 and another 30 have done so in 2018. Of that 55 collectively, 30 were paid out redundancies anyway by way of VTSS. We are getting closer to the number of 25 people. This document lists the departments and agencies that provided information. There are not many. The largest agency—these are amalgamated agencies, by the way—is the Department of Biodiversity, Conservation and Attractions, in which there have been six. The highest department

total was the Department of Education. That might just be an aberration. The majority of agencies are registering not even a full finger count on one hand. This right of return is barely exercised, if at all. When it has been exercised, it has occurred at the time of the change of government. Members might want to think about that.

I was also curious about what future liability the government was building up. I asked about the expiration of contractual terms across the entire cohort of people into the forward estimates. This is important to know. In 2018, the contracts of 266 people have expired under the Public Sector Management Act. Of those 266, 15 have their contract expiring this year, 51 expire in 2019, 65 expire in 2020, 66 expire in 2021, 27 expire in 2022, 39 expire in 2023, and three expire in 2024. Why do I bother to read that in? It is for this reason: in the main, it is exceptionally likely that the 27 SES contracts that expire in 2022, the 39 that expire in 2023 and the three that expire in 2024 are contracts entered into under the term of the current government. When these contracts were signed off last year and this year, behind the scenes, was the view that this right was just going to be stripped from under them? I think that is called negotiating in bad faith. It is completely indefensible. When it comes to staff employed under the Health Sector Management Act, there are even fewer. I will not even go through the process other than to say that the majority of those people also signed their contracts under the McGowan government at a time when the McGowan government knew it was planning to strip this right from them. It is taking away an industrial right, which we hear so much about on this side.

What are the benefits of doing this? I was interested in the cost. I posed the question —

> **Has any calculation been undertaken as to the costs of individuals exercising their right to return? If so, what are those costs?**

The answer was this —

- The cost is the employment cost associated with the position in which the individual is placed when they elect to exercise their right of return.

I was anticipating something like that, but this is more interesting —

- An accurate calculation of this cost is difficult to determine as it depends on a number of variables. However, should all 281 executives who retain a right of return exercise this right simultaneously and assuming that this was to a level 8 classification, the additional salary cost to government, including minimum superannuation contribution of 9.5%, would be approximately $44.5 million.

The financial justification for the Public and Health Sector Legislation Amendment (Right of Return) Bill 2018 is that if we strip this right, we are saving the liability of $44.5 billion. It is a scenario that would occur only if all 281 executives—the entire leadership of the entire public sector—decided en masse, on the same day, to implement their right of return. That is even though the long-run average, discounting the change of government, is one or two people a year across the entire sector who might do that. Frankly, that is a ridiculous proposition and no serious person could ever entertain it unless, somewhere, buried within the government is someone scheming to effectively decapitate the entire public sector management executive cohort. I do not think that is going to occur. However, that is the justification put to us.

As I said, I have absolutely no problem with giving effect to proper transitional arrangements that ensure the public sector is able to and capable of dealing with the challenges of the modern world. But when we do something like this, we need to be sensitive about the manner in which it is done. I am about to read in some correspondence I received from an ex–senior public servant who is well known to me and would be well known to everyone else, but I will withhold their name. I read it in only for this purpose: the government needs to be very cautious about morale within the sector, at the level of both the individuals and the organisation, because it has effects that cannot be calculated. After this contribution, I will also seek leave to table the document. It states —

> The value of the Western Australian Public Sector is being eroded and devalued in the most sinister way.
>
> Morale is way down, salary and wages will be virtually stagnant for the foreseeable future, there is little training, employees do not feel valued especially when Ministers are openly hostile to the Public Service as a whole. The Public Sector Unions remain ineffective and moribund.
>
> WA Public Sector workers are to carry the weight of so called budget repair as well as the cost of Metronet, currently estimated at $3.6 billion but likely to exceed $5 billion.
>
> The Senior Executive Service has proven to be an effective force for good public service for over two decades, leading, advising, doing and developing frontline services for the community and the Government of the day.
>
> The SES has been effective because it has been comprised of both career public servants and external appointees which has provided both the employer and SES employees with mutually-desired flexibility and capability.

> The Government has introduced Legislation to remove or avoid its long-term commitments to its SES employees. The main aim of the Bill is to amend Public Sector Acts and to prevent members of the Senior Executive Service returning to the Public Service. Once a SES contact is served there is no return to the general Public Service, there are no redundancy payments and there will be little career prospects for those ready and waiting to contribute to the community as a WA State Public Service.
>
> If this Bill is passed, a career public servant who for example has 30 years of permanent service and with the last four years in a SES role (along with mortgage and two children) must either give up their SES role and return to the Public Service or serve out the remaining year and be shown the door.
>
> There will be an exodus of capable and senior staff from the SES. Existing senior career paths for Public Sector employees will be diminished; future Governments will find the SES to be less able than it has been and a side effect will be that most SES members will be looking for new jobs well before their contract term is up which in turn will create undesirable metrics in executive turnover and loss of core knowledge.
>
> This suits a Labor Government. The Burke Government was highly effective in placing apparatchiks to the most Senior Levels of the Public Service. Clearing the decks of the current impartial SES will allow for a repeat of the past, leaving a future Government with a partisan senior executive group.
>
> The Bill requires close scrutiny and examination by Committee.

I do not agree with all those assessments, but I think the sentiment is pretty clear. It should ring alarm bells. Again, we have no problem with the prospect of modernising industrial instruments, but we hold to the traditional, proper and legal constraints that contracts should be observed and honoured. We are opposed, and the public sector is deeply opposed, to stripping these rights completely.

Before I deal with the amendments that have been moved by Hon Alison Xamon, I will focus very briefly on what I think a more significant issue of public sector performance and public sector management should be. I am prepared to work with the government to ensure that we have a well-functioning and capable public sector. Do members know why? It is because one day I hope to be in government and I want to inherit something worth inheriting.

Hon Alannah MacTiernan interjected.

Hon TJORN SIBMA: Time is on my side, member, so I am prepared to wait and do the work.

I draw members' attention, if their attention has not already been drawn, to a document that was tabled this morning. It is from the Western Australian Auditor General—the "Audit Results Report: Annual 2017–18 Financial Audits of State Government Entities." Truly, there are some matters of interest that should exercise all our minds and should certainly exercise the attention of the executive members of the government benches. I could have referred to anything, but as luck would have it, I opened the document to pages 22 and 23, which deal with the amalgamation of entities. At the outset, I said that this is the kind of bill that gives us reason to think about the public sector, what we want out of it and how we should cultivate it. I omitted to say that we should also consider this bill in the context of the government's general disposition and policy approach to the public sector. I will not go through the hit-and-miss parade of the government's performance in public sector management ad nauseam, but I will concentrate on one of the larger moves—that is, the very rushed amalgamation of agencies, which we always seem to refer to colloquially as machinery-of-government changes. There are always machinery-of-government changes, but I will concentrate on the machinery-of-government change that occurred in July last year. It has exercised the mind and the attention of the state's new Auditor General, and I am glad that it has.

I quote from page 23 of the Auditor General's report. I will not quote the whole page, but I think we need to take note of this. This goes to how badly administered and poorly implemented this amalgamation was. The amalgamation was justified on the grounds of efficiency, effectiveness and value for money. I think the process was commenced and concluded before the Service Priority Review even got warmed up and before John Langoulant even took the cap off his pen. I think we are still awaiting the final report of the Service Priority Review on health—I imagine it will be sometime this month—although there has been an interim report. The government did not wait to consider the deliberations of these committees that it appointed at some expense. It knew what it was doing. It rushed ahead and some interesting problems resulted. I quote —

> An important financial reporting issue faced by 9 of the new departments in their first year of operation, has been a decrease in the value of land and buildings. This followed a revaluation by the Valuer General, and was mainly due to the current economic environment. Because the new departments did not have any asset revaluation reserve[1] they were required to treat the revaluation decrements as expenses in the statement of comprehensive income. This contributed, in some instances significantly, to financial results with lower surpluses or, in some instances deficits, for their first reporting period.

These are effectively accounting treatments. I am not going to make too much of this, but it goes to the very slapdash, poor and unprofessional political change that occurred; it was not the deliberative, professional, thorough, forensic change that should have occurred. The report continues and raises three points —

A number of significant issues were identified in relation to the restructuring, including:

- we qualified the audit opinion of the Department of Water and Environmental Regulation.

No doubt this issue will be raised at some other time, but this is the one that interests me the most —

- progress with amalgamating systems of the various constituent entities is slow, with most departments continuing to operate on several financial, human resource and administrative systems. This is impacting the realisation of cost savings that can be achieved by rationalising systems.

I think that is a pretty brutal but definitely honest evaluation of how well the MOG changes occurred. The whole logic was to merge systems to create efficiencies. Instead, the government has exacerbated the problem of siloing within the public service. A motion earlier today decried the government's poor performance in the delivery of services. Guess what? This does not help. The government has hobbled itself in its rush to achieve a headline. There will come a point, and I hope it is soon, when the government acts like a government and it will not just be party rule, masquerading as something a little more respectable. I hope that sound policy will be delivered and thought through and it will stop governing by press release. These MOG changes were designed to deliver only a sugar hit of superficial and insubstantial savings, with a 20 per cent reduction in the senior executive service cohort and a 25 per cent reduction in the number of agencies—not in the number of staff or functions. How the government got away with it beggars belief, but it did.

There is some justice. There is time to examine the government's performance, which has been proven to be absolutely poor—dreadful. Some agencies have a capacity, by virtue of their actual mission statement or their leadership, to deal quite well with structural dysfunction, because they do not have sensitive human interfaces. However, if someone is leading, for example, the Department of Communities, which is running multiple payroll, IT and records management systems, that, I am sorry to say, is an absolute recipe for catastrophe. We are not the only party in this chamber to have sounded the alarm at the potential for human catastrophe to emanate out of the Department of Communities. I hope that we never see it, but I suspect that it will happen, or that something has happened already that we are not aware of. If the government does not have appropriate systems to deal with its functions, there should be a resignation—not at the level of senior executive staff. I am talking about ministerial responsibility. That is absolutely where the responsibility should lie.

We have had 16 months go by since those MOG changes occurred. This report, dated November 2018, draws our attention to the fact that the government is running a dysfunctional set of agencies. To cite a colloquialism, someone needs to pull their finger out, and soon. However, the government's attention is diverted onto these things, dealing with the fat cats it so easily dismisses. This is a piece of virtue signalling. I do not know what purpose the government was attempting to achieve. There is some slim merit in it that we support, but this is not where the government's focus should be. This bill should not be exercising the time, the attention and the resources of this chamber. Like the government's freezing of public fat cat salaries last year, this is an exercise in political self-indulgence. That issue was not dealt with until the day after the Salaries and Allowances Tribunal froze those salaries anyway. What is the government seriously attempting to accomplish, if not the politicisation of the public service? The public service is not another avenue or channel to exercise party rule. It is an institution shepherded by government to deliver services to the community. The government needs to treat the public service and the people who serve in it with a great deal more respect and consideration than it has had the capacity to muster since it came into government.

I will finish by making some observations about the first and only supplementary notice paper outlining proposed amendments to clauses 8 and 13 of this bill. It has a lot to recommend itself. I am happy to be convinced otherwise, but the Parliamentary Liberal Party looks pretty favourably on this, and do members know why? It is because it gets the government to where it wants to go in modernising this instrument. For all future contracts dispensing with that right of return—go for your life. It ensures that should those 281 people out of a public sector of over 110 000 people, in exceptionally rare circumstances, choose to exercise their right of return, they can until their contracts lapse. Is that so unreasonable? I do not think it is. I have reason to believe that the government does not believe it is all that unreasonable either. Even though they have not been tabled, I have been given a copy of very similar amendments that were drafted some time ago. Unless this is a mistake—my eye just caught the footer at the bottom of the document—it is draft 1 from 20 September 2018 at 2.41. I presume that it is 2.41 pm; it could have been early in the morning by someone working late. If the government is minded to preserve the rights as they exist in current instruments, then good. I will be interested to know whether the government will support Hon Alison Xamon's amendments. It has not moved its own; therefore, I assume that it is not disinclined to support them. If so, that would be a good thing. I look forward to the minister's reply.

The ACTING PRESIDENT (Hon Martin Aldridge): Member, you indicated during your speech that you were going to seek leave to table some documents. Do you still intend to do so?

Hon TJORN SIBMA: I seek leave to table two documents. Thank you for reminding me of my obligation and earlier commitment.

Leave granted. [See paper 2169.]

HON ALISON XAMON (North Metropolitan) [3.53 pm]: I rise as the lead speaker of the Greens on the Public and Health Sector Legislation Amendment (Right of Return) Bill 2018. This bill will make a number of changes to the employment of our public servants in the senior executive service, the SES. Their right of return will be changed in three ways. Firstly, they will be able to elect to include a right of return only in their first employment contract. They will no longer be able to elect to include it in subsequent employment contracts. Secondly, they will return to the department or the organisation that they are from, except for CEOs, who will go to the Public Sector Commission. I understand the second change is a fairly minor one that will not prevent them from transferring to another department or organisation, but simply ensures that someone has ultimate statutory responsibility for their employment rather than that person being left in limbo. Thirdly, the right of return will expire on the earliest day after the first contract of employment is terminated; or, if the term of appointment exceeds two years, two years after the person was first appointed; or, if the term of appointment does not exceed two years, the day after the end of the contract. For those who do not return, if they are entitled to compensation, this bill will reduce their compensation from being determined with reference to their entire remuneration to being determined with reference only to their salary component. The government has said that it estimates that this will save about 15 per cent per compensation payment.

The transitional provisions will apply to people who are currently on an SES contract and if people on their first contract elect the right of return, if the term does not exceed two years, their right of return will be preserved for that contract, and if the term exceeds two years but they have served less than two years, their right of return will expire after the later of six months or two years after their appointment started, unless the contract is terminated or expires earlier. If the term exceeds two years and they have already served two years or longer, their right of return will expire after six months, unless the contract is terminated or expires earlier. If elected, the right of return for people on a subsequent contract will expire after six months—again, unless the contract is terminated or expires earlier—and the bill's new provisions will apply unchanged to where they return to, and how any compensation entitlement is calculated. The bill's new provisions will also apply unchanged to calculate any existing compensation entitlement that has not yet been determined.

From the outset, I want to make it very clear that the Greens do not support employers unilaterally changing workers' existing employment arrangements to those workers' detriment. Insofar as this bill does exactly that, we vigorously oppose it. It is not okay, whether the employer is a fast-food place, non-government organisation, mining company, charity, local government, state government or a small business. It is not okay, whether that employee is a pink-collar worker, a blue-collar worker, a white-collar worker, a senior executive or even a teenage child who happens to be in their first job. The principle is the same. This is not a precedent that the Greens are prepared to agree to. The Greens are strongly of the view that employment contracts need to be honoured and that it is unacceptable to unilaterally deviate from contracts that have been entered into in good faith. To try to push this through Parliament is a particularly grubby way to do it. Our objection, of course, does not apply to future employment contracts that a potential SES officer is free to accept or reject as they wish. They will at least have some idea of what they are signing up to. In that regard, the Greens do not necessarily have a concern. By all means, put in future contracts that employees have to turn up wearing clown shoes, if they like, as long as a future employee has had the opportunity to make that assessment and weigh up the pros and cons, depending on the opportunities that may be available to them. They can then make an informed choice about whether that suits the circumstances of their lives with their families and, indeed, their desired career prospects at that point.

For future employment contracts, the Greens still hold a different concern, and that is whether what is going to be on offer for future SES officers will be good enough to attract and retain accomplished, professional and committed people of integrity. That is exactly what we should be doing with our public service. I stress the importance of ensuring that we retain senior executive service officers. I remind members that the government of the day is not permanent, and ministers of the day tend to be even less so. The public sector therefore becomes an extremely important repository of corporate knowledge for a new minister to tap into and rely on.

The "Special Inquiry into Government Programs and Projects, Final Report, Volume 1 — February 2018", which is an instrument of this government, put it this way on page 77 —

> The achievements of ministers so often depend upon the support of a team of public servants who time and again turn ministerial vision into reality, who prepare the plans and budget documents in line with strategic intent, and who are behind virtually every briefing which equips each minister to navigate his or her portfolio in a highly competent manner.

When we talk about the importance of senior public servants, we need to ensure that they are able to give frank and fearless advice. We recognise that that is an extremely important part of their role. I emphasise that in addition to that, they need to give fully informed advice, and for that to happen, quite simply, they cannot all be newbies. We need to start respecting particularly those senior public servants who have been around for a very long time

and who have learnt the system extraordinarily well. Ministers and government cannot do sound, evidence-based work if that evidence has been forgotten or lost, not without wasting time and taxpayer money doing the same work and, indeed, making the same mistakes over and again.

The "2017 State of the sectors, Sustaining public trust through change" report refers to the role of senior executives in the public service. I will quote the following, which can be found on page 35 —

> Only senior leaders can rise above the details of the business, recognise emerging patterns, make connections, and identify points of maximum leverage for action.

Page 39 of the same report reads —

> Leadership 'bench strength' has never been more important in light of the structural and policy changes around SES officers currently being experienced in the public sector.
>
> …
>
> Striking the right balance between competing priorities is critical. Leaders also need to remain vigilant about the subtleties of workplace culture, employee engagement and accountability during these times to ensure the overall 'good health' of the workforce during change.

Performing those functions necessitates detailed corporate knowledge and an understanding of corporate history. Again going back to the Langoulant report on the importance of the role of directors general and chief executives, it reads —

> The Directors General and Chief Executives have a relatively greater coherence in approach to issues and reasonable levels of mutual respect. This group is vitally important to the successful development and implementation of the government's agenda and efforts to build the group as a high performing body must be given priority.

We must attract and, just as importantly, retain capable and committed people as SES officers or, quite simply, the Western Australian public will suffer.

Going back to the "2017 State of the sectors" report, it reads —

> As leadership is aspirational for many public officers, leadership roles must be valued and be seen as valuable in developing strong sectors and communities.

The Greens remain very concerned that even without the Public and Health Sector Legislation Amendment (Right of Return) Bill 2018, which, I think, will make matters even worse, SES officers are not being attracted, managed and retained in the way that they should be if they perform well. The Langoulant report included a quite telling quote from one particular director general, who was named in the report. I will not name that DG in Parliament today. Members can look at page 78 of the report. The director general said —

> … If I was to say to my younger self, If you're interested in public policy, I wouldn't stay in government. I'd go somewhere else and advise back into government …

That is deeply concerning and something of which all members should be mindful.

The final report of the Service Priority Review, which is called "Working Together, One Public Sector Delivering For WA", considered the issue of SES officers. Chapter 5.1.2 made a number of very important points and noted that SES officers —

> … are generally considered to be highly professional and hardworking —

I know quite a number of SES officers who work incredibly long hours, a bit like me —

> and tend to possess strong technical expertise within specific agency or policy areas.

It noted that nevertheless they are not being used as envisaged under the Public Sector Management Act 1994, which envisaged SES officers being deployed within and between agencies to promote efficiency in the sector generally, as well as in individual agencies. It noted that the reasons they are not being used as they should be included that SES officers are so valued that agency heads do not want to let them go; that career progression is considered more likely if the officer stays at the same agency; and that the establishment of SES officer positions are based on technical and specialist skills rather than generic and transferable skills. The report also noted the disparate classification levels between agencies for similar roles and said that it is not clear whether current arrangements are delivering the best outcomes for attracting, retaining, managing and removing SES officers. The report further noted the significant differences between Australian jurisdictions as to the nature of their employment and what is offered to them, including issues with their terms and ongoing employment. There are also differences with the right of return.

The Service Priority Review report also said that it is not clear—this is a particularly pertinent point—what effect reducing the number of SES officers, removing their right of return and reducing their termination payment would

have on the structure, composition and culture in the long term. Some of that work should have been done before contemplating the sorts of measures that are in front of us today. It also said that being an SES officer should be an aspirational career goal, providing rewarding and varied careers for high-performing public sector leaders. It states that the Public Sector Commissioner is in a position to lead a revision of arrangements to support agency heads in attracting, retaining and developing the best SES leaders, ensure that the SES is truly mobile and set clear SES performance expectations and assessments. The report noted that Western Australia should, as a matter of urgency, overhaul our SES arrangements to become a stable, mobile and high-performing leadership group. Recommendation 13 contains three suggested actions, the third of which is to —

> Revise arrangements for the senior executive service to retain and develop a mobile and high performing leadership group.

It would appear that this piece of legislation is indulgent—I agree with the previous speaker—and it seems to fly in the face of all that considered thinking.

The recently tabled independent review of the Public Sector Commission made some further points. It confirmed the need for an efficient, mobile, high-performing state executive service. It identified that for this to happen, conditions and arrangements for the SES needed harmonising. It also identified that CEOs do not feel well enough supported in their employment or performance development. That should be of concern to everybody. The review strongly supported the intent of the service priority review to create one public sector working together to achieve big, bold initiatives. I reiterate that one public sector working together can hardly be achieved in the absence of corporate knowledge.

Traditionally, the public sector attracts and retains people who could otherwise earn more in the private sector by offering them non-monetary benefits, particularly job security and workplace flexibility, yet, the government is taking away one of those very attractions for some of our best and brightest. Currently, SES officers are offered contracts of up to five years, with the option of returning to a non-SES role afterwards. If after that first contract they get a further contract, they can again elect the option of returning to a non-SES role afterwards. I note that most SES officers elect to have a right of return. When I was briefed on this bill in early October, the figures I was given indicated that 281 out of the 405 current SES officers, so 69 per cent, had made that election. I note that precise figures of how many SES officers take up that option in the end apparently have only been kept for a very short time, I believe since March 2017. I understand from the briefing that the voluntary scheme in September 2017 was targeted at 49 SES officers who had a right of return and 21 of them, so 43 per cent, chose to exercise that right and return. The 28 officers, or 57 per cent, who chose to accept severance did so with the act providing for compensation to be calculated taking all remuneration into account. I note that perhaps fewer of them would have accepted severance if this bill had amended the act, because it would have made the severance pay based on only the salary component of their remuneration and therefore about 15 per cent less.

This bill is a big double whammy for SES officers. The Greens are not persuaded on the information provided to us that the bill leaves enough incentive to attract and especially to retain SES officers of the high quality that Western Australians deserve. We cannot see why anyone would want to stay in the SES longer than the right of return lasts—that is, two years at the most. I cannot see how this is a good outcome for a strong public service. In fact, the outcome strikes us as being strongly counterproductive to WA having a properly functioning SES. There are very good policy reasons for having a properly functioning SES and for having a cohort of very senior, capable and nimble public servants who move between departments and agencies and who have the potential to break down those silos and improve efficiencies. Page 17 of the 2017 "State of the sectors" report, which I have already referred to, states —

> With fewer people in the SES and other senior leadership positions across the sector, the medium-to-long term strategy will be around redefining and flattening organisational structures.
>
> Flat structures are typically intended to break down barriers and improve 'lateral' communication and networking across different parts and elements of the organisation … Over the longer term, public sector agencies will be required to consider how to break down organisational silos in an effort to streamline processes, reduce duplication, more effectively share information and data and ultimately deliver better services to the community. It is anticipated this will take some time to fully achieve.

Page 24 of that same report refers to Ernst and Young's 2016 assessment of the public sector's recruitment performance, and that identified six key themes, one of which was dealing with the silo effect. The report states —

> … the sector would benefit from better knowledge sharing to avoid duplication and promote better sector-wide outcomes.

The Langoulant report also identified a need for effort to be put into breaking down silos and for central agencies to work together to ensure that directors general and CEOs are able to provide frank and fearless advice to their ministers. The Greens believe that this bill is completely inconsistent with those aims.

I would also like to draw members' attention to the relationship between this bill and the subject matter of the non-government business motion moved last week, on 1 November. I foreshadowed this point on that day. That day One Nation moved a motion about reforms needed in the interests of good, transparent and democratic government, and as part of that motion it called for a two-year blackout period for public servants joining private operations that stand to benefit from insider knowledge. I remind members that the Green supported that. As I said then, it is gravely concerning when senior public servants are able to benefit commercially from the knowledge and trust placed in them as public servants and use it for their own personal benefit once they leave. If this bill passes, SES officers of two years or more stand to lose their permanency, and as a result they are going to have to look for work elsewhere, most notably in the private sector. Again, as I said during that debate, if we are going to be serious, as we should be, about maintaining the integrity of our public service and limiting public servants' ability to go to the private sector and benefit there, we are going to have to protect their permanency and this bill does not do that. I note that the Community and Public Sector Union–Civil Service Association of WA opposes this bill on the basis that the removal of job security leaves public sector leaders vulnerable to losing both the right of return and adequate compensation if they have to supply inconvenient advice. For that reason, and many others, the Greens will oppose this legislation.

Debate interrupted, pursuant to standing orders.

[Continued on page 8042.]

Sitting suspended from 4.15 to 4.30 pm