STANDING COMMITTEE ON LEGISLATION

WORKFORCE REFORM BILL 2013

TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
THURSDAY, 6 FEBRUARY 2014

SESSION THREE

Members

Hon Robyn McSweeney (Chair)
Hon Sally Talbot (Deputy Chair)
Hon Donna Faragher
Hon Dave Grills
Hon Amber-Jade Sanderson

Hearing commenced at 11.44 am

Ms TONI WALKINGTON
General Secretary, Community and Public Sector Union/Civil Service Association, sworn and examined:

Ms CATHERINE CORBITT
Teacher Librarian, Iona Presentation College, sworn and examined:

Mr MARK FINNEGAN
Coordinator Member Services, Civil Service Association, sworn and examined:

The CHAIR: On behalf of the committee, I welcome you to the meeting. Before we begin, I must ask you to take either the oath or the affirmation.

[Witnesses took the oath or affirmation.]

The CHAIR: You will have signed a document entitled "Information for Witnesses". Have you read and understood that document?

The Witnesses: Yes.

The CHAIR: These proceedings are being recorded by Hansard. A transcript of your evidence will be provided to you. To assist the committee and Hansard, please quote the full title of any document you refer to during the course of this hearing for the record. Please be aware of the microphones and try to talk into them. Ensure that you do not cover them with papers or make noise near them. I remind you that your transcript will become a matter for the public record. If for some reason you wish to make a confidential statement during today's proceedings, you should request that the evidence be taken in closed session. If the committee grants your request, any public and media in attendance will be excluded from the hearing. Please note that until such time as the transcript of your public evidence is finalised, it should not be made public. I advise you that publication or disclosure of the uncorrected transcript of evidence may constitute a contempt of Parliament and may mean that the material published or disclosed is not subject to parliamentary privilege. Would you like to make an opening statement to the committee?

Ms Walkington: Yes, I would. Our contention is that the adoption of this bill would result in a significant change to the basis of wage negotiations and also to public sector employment arrangements. Those changes would be to the disadvantage of not only the employees, but also the quality of services provided to the Western Australian community. In particular, I want to draw the committee's attention to some matters that we outlined in paragraph 3 of our submission. We believe that considerations of employee and employer concerns will no longer be balanced equitably and fairly in terms of wages policy if the provisions of this bill become law. The considerations will be heavily weighted in favour of the government's fiscal strategy, and the consideration of productivity improvements by workers will no longer have any bearing on decisions determining wage outcomes. The message to state government employees—and what our members have reported to us—is that performance, improvement, productivity and innovation are no longer valued by the government. If the wages policy is simply CPI, these factors will no longer be considered to have value. That is the message they have received and that is the message that will be sent by Parliament to the state government workforce if this bill is made law.

We will submit several reports that we want the committee members to review. Those reports go into some detail about the consequences of job the cuts and funding cuts and the state government's fiscal policy and approach. These are extensive reports. We seek to submit those. The first report is from the Centre of Full Employment and Equity and is entitled "A Critical Appraisal of the Western Australian Budget 2012–13". It was written by Professor William Mitchell and its publication date is February 2013. Having read that report, we are particularly concerned that the government's fiscal policy and strategies are, in fact, doing the very opposite to the stated aim that the public sector be productive, that it offer quality services and that it place the state in a competitive and economic advantage situation for its community and society.

The second paper that we wish to table is entitled "CPSU/CSA Selective Summary: The Impact on Community Services of Staff and Service Reductions, Privatisation and Outsourcing of Public Services in Australia". It is a summary of a very comprehensive publication again by the Centre of Full Employment and Equity and was written by Professor William Mitchell, Dr Beth Cook and Dr Victor Quirk. We can also make available that comprehensive report in addition to the summary, if members of the committee wish to sight it.

The third publication that we will table is entitled "Death by a thousand cuts: How governments undermine their own productivity". This is by the Centre for Policy Development, published in August last year, and it was written by Kathy MacDermott and Christopher Stone. This publication canvasses the negative impacts on the state government workforce and the standard of service provided to Western Australians as a result of the current government's fiscal strategy. The reason why we wish the committee to appraise itself of the contents of this report is that we are concerned that placing into law a requirement that an industrial tribunal apply government fiscal policy and strategies will require the commission to be a substitute economic manager of the state. The commission would need to be cognisant of a range of perspectives and views around economic fiscal strategy way beyond what it currently appraises. The bill also places a requirement that it consider all perspectives of the fiscal strategy in detail and comprehensively, but our analysis of the current fiscal strategy is that it certainly—but is not limited to—disadvantages employees in the state government workforce. In terms of the tribunal's brief, we expect that the tribunal would make determinations based on a comprehensive review of the fiscal strategy. It also means that there will be probably little prospect of resolving enterprise bargaining and wages agreements through negotiation and bargaining, and we anticipate that there will be many matters, because the bill is not limited simply to wage outcomes; rather, it will determine public sector claims and industrial matters. We will see an increased level of referral to the industrial commission and increased lengthy resolution processes through that tribunal because of the need to address in detail the particular items under the bill. The considerations that the commission currently gives to the economic situation of the state, we believe, are sufficient and adequate to enable the commission to realise an outcome and make a determination that is fair and equitable to both employees and employers and, when required, addresses the needs of the state if the minister intervenes in any matters before the commission. We believe this bill will place such greater onus, regard and consideration of those particular elements on the industrial commission as to make the system almost unworkable; and, indeed, it will go against the objectives of the current system, which is a speedy resolution for disputes between employees and employers or the union as employee representatives. The bill requires the commission to form a view about the fiscal strategy of the state. I suggest that Parliament may want to consider the implications of having an industrial tribunal make those determinations based on their weighting or their decisions or determinations about the wisdom of a fiscal strategy.

We also want to make some observations in particular about the use of CPI projections. The current experience of wages bargaining with the government is one that we are involved in. We are currently negotiating an agreement that covers at least 40 000 workers of the state. We have asked for details about the method and how a projected CPI is set. We understand that the CPI for the

current year is adopted from the ABS statistics. Of course, the ABS provides comprehensive detail about the method of how it arrives at CPI and in fact offers a number of CPI indexes that use different measures. The wages policy asks us all to use a crystal ball to work out what is going it to happen with CPI in the future. We have asked for information about how that occurs, particularly for the current bargaining process we are in. We have been refused that information and we have been told that there are several considerations, but we have not been told what the weighting of those considerations is, what method is used to arrive at why it was those considerations and not other considerations. We have not been given any particular detail about what is in, what is out and how much each factor is weighted. We have been told that it will not be publicly available; it will not be available to us and it will not be publicly available. That indicates to us that this is not really good-faith bargaining. One of the premises on which we bargain and go to the bargaining table to try to reach agreement over future wage increases is that each party gives full and frank disclosure, that each party will be honest and up-front with each other and that we can walk away hopefully with an agreement that everyone can live with and, in this particular case, is in the interests of the continuing good operation of the public service. That will not happen if one party is deprived of information that is essential to know and to be able to inform the employees who will be covered by the agreement that what has been offered is fair and has been worked out on a fair basis; we have had the opportunity to assess and evaluate it, and we are confident that it is a deal that people should accept because it will be adequate for their needs into the future.

In terms of whether the CPI is a reasonable measure to set funding or wage determinations or wage settings, we refer the committee to one of the documents that we wish to table, which is a statement by the Premier made in January 2013 and entitled "Sustainable Funding and Contracting with the Not For Profit Sector—Next Stage of Implementation".

[12.00 noon]

In the forward document, the government talks about providing a 15 per cent across-the-board payment to all eligible state government contracts and the not-for-profit sector, and that this 15 per cent across-the-board payment was designed to address immediate sustainable issues, in particular, wage pressures facing the community sector. Accompanying that statement are a number of fact sheets. Fact sheet 1 talks about the indexation of funding to the not-for-profit sector. On page 2 of that fact sheet, it says that the non-government human services indexation policy and indexation rate is a composite of the CPI, at 20 per cent, and the wage price index at 80 per cent. So, only 20 per cent of that—but the wage price index is 80 per cent in recognition of the labour intensive nature of human services.

The 2012–13 indexation rate is 4.25 per cent, consistent with the composite Perth CPI and WPI rates published in 2012–13 midyear financial projection statement. Therefore, the state government itself is not applying the same policy to its workforce as it is to the workforce of the not-for-profit sector, nor to the indexing funding of that sector. Therefore, we would say the government's own view is that there is an alternate measure that is fairer and provides a better basis for funding.

We also wanted to just provide further submissions, or to extend on our submissions around the impact on regional services. The regional services we find are, by and large—for people living in the regions and working in the regions—showing a greater cost of living for our members than living in Perth. The government has identified and documented this as well through a publication, which we also wish to submit, that is, the regional price index 2013, published by the government of Western Australia Department of Regional Development. This document also forms a basis of an agreement called the district allowances agreement between government and a number of unions. That district allowance goes some way to meeting those cost differentials, not entirely, but some way to doing that. However, that district allowance has expired—the agreement has expired. We are currently in discussions with the government, and the government has made it clear that there is no guarantee that the district allowance agreement will continue to be adjusted using the regional price

index. Therefore, if there is no regional price index adjustment of the district allowance and the district allowance returns to the former basis on which it was adjusted, which was Perth's CPI, we will see the disparities continue to grow enormously. The wages policy of the government does not address this disparity. It does not make any provision for a differentiation or a different outcome for people who live and work in regional WA.

So our concern is that, by placing the wages policy consideration into the legislation, and the requirement of the tribunal to consider that, but then the policy not addressing differentiations in regional WA, this will see wage increases not meet the cost of living increases in regional WA. If we cast our mind back a number of years, that then resulted in differences of enormous amounts that led to, in the Kimberley, increases, when we finally resolved it, of some $12 000. You can see the sorts of impact that could occur.

To conclude, we also wanted to stress that the involuntary severance provisions are matters that are concerned with situations where a job is no longer required. There appears to have been considerable confusion over the meaning and effect of involuntary severance, and we want to stress that this ought not be a means to manage poor performance. Our concern is that, given our experience with the redeployment process and, at times, the lack of will of government departments to manage poor performance, they will use these provisions to simply declare a position surplus because there is not a high bar to do that, rather than go through a process of working with people to address skill gaps or attitudinal change. Our view is that there are sufficient provisions to manage poor performance. What is missing in that particular instance in some cases—because we are talking about an organisation, in effect, of really 140 000 people, so large organisations—is, from time to time, the willingness to actually do the one-to-one direct discussion with employees that is required, warranted and should be done.

We are concerned that the bill will provide the means by which we will see massive sackings occur, such as has happened in New South Wales and Queensland. Recently, there have been announced significant job cuts of some 500 in the Disability Services Commission. There are further unknown numbers but, we believe, there were significant job cuts in housing this year. There are also, of course, the job losses that will flow from the changes in the funding for public schools. We are concerned that there is the likelihood that people will find themselves out of employment if this bill is made law and those job losses are implemented.

The provisions of this bill are already having an impact on employment choices for people in the public service. What we wish to submit is the statutory declaration from one of our members, Ms Kathy Corbitt. Ms Corbitt was formerly an employee of the Department of Education. Additional to those job losses I have already talked about, and additional to the 1 100-plus of the most recent and voluntary severance package, she was one of nearly 500 employees in the Department of Education who were advised that their job was surplus. This occurred last year. Ms Corbitt's story is a common one amongst those 500 employees. On the face of it, whilst they were offered an option of voluntary severance or redeployment, this, in fact, was not in reality an option or choice, because with the Workforce Reform Bill looming, what people were advised was that you are better off taking the voluntary severance offered now rather than seeking redeployment. By being employed once the bill is enacted, you then will be given an inferior forced redundancy package. This has already occurred. Ms Corbitt's statutory declaration outlines the method in which that was communicated to her.

We also know that the current government's stated intention is to remove itself from service delivery, if possible, altogether; to become a contractor of services and a manager of contracts. We have got a number of documents that go to that, which we wish to submit, including those that I have outlined. Also, we have the reports that assess the merits of doing that. What we are concerned with is that whilst there is a public rationale for this bill, which is focusing on trying to remedy a problem that is minuscule in the scheme of things, there is a real intention to actually provide

mechanisms for which the government can then remove itself from service provision at large and substitute instead the contracting of not-for-profits or private providers. That concludes our statement.

The CHAIR: Did you want to table those four documents, plus the statutory declaration as public or private?

Ms Walkington: Public.

The CHAIR: Thank you. You have probably ranged over a lot of these questions, but I will ask them just the same. On the screen, there is a copy of recommendation 39 of the 2009 Economic Audit Committee's final report, "Putting the Public First". According to the final report, your organisation was consulted in the course of the inquiry; is that correct? If yes, did you make a submission in 2008? If yes, did your 2008 submission address the question of involuntary severance? If yes, can the committee have a copy of that part of your 2008 submission?

Ms Walkington: Yes, we did make a submission; and yes, we did address involuntary severance; and, yes, we will make a copy of that available.

The CHAIR: Thank you very much for that. Following on from that, on 17 May 2011 the then Treasurer tabled an updated progress of that report. Did your organisation ask the Public Sector Commission to accept a further submission about recommendation 39 at that time or later; and if yes, can the committee have a copy of that part of the submission? If your organisation did not seek to make a further submission, why not?

Ms Walkington: To the best of my recollection—I will need to check this and perhaps get back to you, if I may—we did not make a further submission. My recall was that there was not further submissions sought. However, having said that, we will confirm that is the case, just in case my recollection is somewhat hazy, which I think it may be.

The CHAIR: It was 2011!

Ms Walkington: Yes.

The CHAIR: Question 4 — sorry.

Hon SALLY TALBOT: You might want to just add in there that if the CPSU did make a further submission, could we have a copy of it.

Ms Walkington: Yes, of course.

The CHAIR: Was your organisation consulted by the government or the Public Sector Commission at the drafting stage of the bill? If yes, did you make any submissions; and if yes, can we have a copy of that submission?

Ms Walkington: We were not consulted in the drafting stage. We were advised that the bill would be introduced. I think we were advised on the evening prior to the introduction of the bill into Parliament. We then sought a meeting with the Premier in which we met with the Premier in July of last year. We also have met with representatives of the Department of Commerce and the Public Sector Commission on one occasion, but that is the extent. That all followed after the bill had been drafted.

The CHAIR: Thank you. Question: one of the things that your submission did not address was whether or not the current policy relating to redundancy, redeployment and termination is working. The 2009 Economic Audit Committee's final report made certain comments about the current policy, which are shown on screen. Clearly, that report suggests that the existing policy of permanency for public servants was deficient. Does your organisation have any views about permanency in public service employment as a policy choice? Does your organisation have any specific responses to the views expressed in that Economic Audit Committee's final report of 2009? Firstly, it was about permanency.

[12.15 pm]

Ms Walkington: I think there are a number of aspects that are fairly wide ranging in that question, so what I would like to do is to be able to provide a further written submission in response. I can make some preliminary remarks now, however, but I think it would be useful for us to expand in some detail on that question and do so in writing. However, having said that, I guess my first-blush response is that I think the Economic Audit Committee missed an opportunity in addressing how you would improve performance and effectiveness of the public service. One of the reports that we have tabled, "Death by a thousand cuts: How governments undermine their own productivity", goes into some matters that are important in how you address performance. There is also a considerable body of research that indicates that job insecurity is actually diametrically contradictory to improving performance, and that is why I wanted to take this away and provide you with a bit more written detail. So if you provide a secure workplace environment, you are going to get innovation and good performance. If you provide a high-risk workplace environment where job security is uncertain, you are unlikely to get innovation; it is going to be impeded by people's concern that making a mistake, which is often what innovation requires—there is a bit of trial and error in working out what works and what does not—will see them out of their job because of their insecurity. The premise on which the Economic Audit Committee addressed or approached this question about performance versus job security I think had a wrong basis to begin with. If you are going to be looking at performance, you actually want to improve the workplace for employees and you want to improve their security and their sense that they can innovate. In terms of permanency, a notion which is often advanced but which I have yet to see backed by evidence of any integrity, is that people in the public service approach their job, because they are permanent, without passion and without wanting to work hard. You know the sorts of jokes about what they do in the afternoon—they look out the window because they had their cup of tea in the morning or whatever. In my experience, that is definitely not the case. With public servants, their permanent appointment gives them an assurance of ongoing employment, which allows them to do things like get mortgages, allows them to get personal loans and car loans, and allows them to be able to make decisions and forward plan in their lives. That is not unlike anybody else, really, in a large organisation with ongoing employment. They will work—and they do work hard and are passionate and make great contributions because they are motivated by the work that they do and the service they provide in working with the community. The permanency allows them to be able to do that because they are free from concerns of job insecurity. This bill places job insecurity firmly focused within their considerations. Once this bill is enacted and a department wishes to restructure, that is going to be met with adverse reaction by employees because they are going to be concerned that this restructure is downsizing and they will be out of a job. At the moment they have some assurance that there will be some efforts applied to redeployment and to ensuring that they have continued work and that there will be efforts placed in that, but if this bill is enacted, that will not necessarily be the reaction of people. My colleague would like to add to that.

Mr Finnegan: If I may, in relation to the concept of permanency, not every public servant is permanent. Indeed, if you consult the "State of the Sector Report", an annual document produced by the Public Sector Commission, you will find that between 20 and 25 per cent are not permanent. That is across the sector. If you go to particular departments, you will find that there is a significantly higher proportion of people who are not permanent. Those people are either casual or on fixed-term contracts. There are also many hidden thousands of employees in the public sector who are employed by labour hire firms. So the concept of permanency in the public sector, even currently, is dubious.

Hon AMBER-JADE SANDERSON: Has the number of people on temporary contracts increased over the years in your experience?

Mr Finnegan: There was a significant increase in the use of fixed-term contracts in the mid to late 1990s. That was pulled back, up to about 2005, 2006, 2007. There were indicators of it increasing

after that, but for the past 18 months to two years I think it has probably stabilised again. I am talking about averages and aggregates. If you go to particular departments, then the use of either labour-hire employees or non-permanent staff is considerable. I believe that Legal Aid has basically contracted out the whole of its call centre through a labour hire company.

The CHAIR: I am sure all of us, as well as the government, would agree with you that there are many wonderful, innovative public servants out there. Just on you wanting to give a written answer to question 5, I am sure that the committee agrees but we are on a very tight time frame. I will just ask Colin the sort of time frame in which we would expect that letter. It would need to be in by next week.

Ms Walkington: By the end of next week?

The CHAIR: No. We have to report to the house by 25 February, so as soon as you can get it up to us, we would appreciate it.

Ms Walkington: There was also another issue in relation to permanency. Permanent appointment of public servants is based on two fundamental bases. One is that public servants should be independent and should provide advice without fear or favour. That is why we have a notion of permanent employment; it is so that there cannot be political interference or other interference in that provision of advice, so that people feel that they can provide that advice. The other is that public servants often have statutory responsibilities because of the legislation that they administer. Often they are appointed and delegated through that legislation, so their permanent, ongoing employment as such is the mechanism by which we, as a public, can be assured that someone is appointed to acquit those statutory duties and has done so on the basis that they are independent in that role and that they have a permanent, ongoing relationship in that role and are vested and invested in that role. We would also like to expand on those particular points.

Hon SALLY TALBOT: This might be an appropriate point to ask you whether you have got any specific points to make about clause 13 of the bill, which is about registered employees and registrable employees. I wonder whether in responding to my question you might make reference to the situation you referred to with your colleague, who was advised to go down the redundancy path now rather than to wait.

The CHAIR: Yes, but who advised?

Hon SALLY TALBOT: That is what I am interested in knowing. What was the basis of that advice?

Ms Walkington: Would it then be appropriate for Ms Corbitt to outline how that process occurred?

Hon SALLY TALBOT: Do you have any comments specifically about clause 13 and registrable employees? Is that covered in the statement?

Ms Walkington: Not specifically, no.

The CHAIR: Because we are behind time —

Hon SALLY TALBOT: You have tabled the statement, so we can read that. I am sorry; I do not want to deny you an opportunity to elaborate on the statement, but if it is just reading the statement, the Chair is correct that we are running behind time. Is there anything relevant to that particular situation that relates to clause 13 of the bill? I just wonder whether you have given any thought to what happens to an employee who is registered under the terms of this bill.

Ms Walkington: I guess the difficulty in responding to that is because everything that would happen to somebody is actually in regulations and not in the bill itself, so we would be speculating as such. A budget support paper was published which outlined a particular process in very brief and very little detail, but we understand now, and have been advised, that that Treasury document may no longer reflect what the government wants to do with the regulations. We have been advised that

the government wishes to consult with us over the development of the regulations, but we had heard that some time ago and have not yet seen anything. How people will be treated, what will be done, what their rights and entitlements will be, what efforts will be put into finding them alternate employment and that type of thing, we do not know.

Hon SALLY TALBOT: What Treasury document are you referring to? Could you perhaps give us some details on that?

Ms Walkington: At the time of the budget the government released supporting documents that go with the budget. It is actually part of our submission; it is the public sector workforce reform fact sheet for the 2013–14 budget. The final paragraph of that is ironically named "Enhanced Redeployment Arrangements" and then talks about urgent legislation amendments to establish involuntary redundancy. That outlines a proposed process or level of payment but is still quite vague and not terribly specific. My colleague would like to add something.

Mr Finnegan: The document was a Treasury document. It proposed a new scheme where persons who were redeployees had a 12-week transition period, then a period of redeployment that was commensurate with their years of service up to a maximum of 40 weeks, and then after that involuntary retrenchment with no reference to any retrenchment payment at all. We wrote to both the Department of Commerce and the Public Sector Commission about that and about four months later we received a response from the Public Sector Commission advising that that particular proposal had now been reviewed and it was no longer the current position, and that if involuntary severance was introduced, some type of severance payment would still be paid but the quantum had yet to be stated.

The CHAIR: Has your organisation identified any technical drafting errors in the bill? For example, are all the section references correct as far as you know?

Mr Finnegan: There was only one matter, it was not so much a reference, but public servants in Western Australia when they go to the Industrial Relations Commission under a constituent authority it is a subsection of the Industrial Relations Commission and we did have some queries with the Department of Commerce and the Public Sector Commission whether the proposed bill had been drafted to acknowledge that particular avenue that public servants are required to use. They gave us some feedback on that. It was a technical question in relation to something called constituent authorities.

The CHAIR: Would you like to make any comments about the proposal to put the government public sector wages policy into the IRA—the Industrial Relations Act.

Ms Walkington: I guess other than to affirm our previous comments in the opening statement around the CPI.

Hon AMBER-JADE SANDERSON: I would like to clarify something, if that is alright. You talked about the NGHSSI. I think you talked about it as being a more reasonable approach. I just want to clarify the position of the CSA. Is it that you do not support the government wages policy being enshrined in legislation but if there is a government wages policy benchmark that the NGHSSI would be a more appropriate one?

[12.30 pm]

Ms Walkington: Yes.

The CHAIR: Would you like to make any comments about the proposal for the WAIRC to have to consider the financial position and fiscal strategy of the state?

Ms Walkington: Other than to affirm the statement made prior.

The CHAIR: The same again for the financial position of the public sector entity.

Ms Walkington: I guess what I would add to the opening statements around that is that the financial position of a public sector entity is often quite a complex situation and is impacted by government decisions and circumstances well beyond the control of that agency. For instance, if the Parliament adopts legislation around mandatory sentencing for aggravated assault we will actually see the need for a further prison to be built in this state and we will also need a second juvenile detention centre because the current capacity would just not be adequate. Those decisions then impact on the Department of Corrective Services' funding; how does an industrial commission take that into account? A government cannot. So when talking about the financial position of a public sector entity I think that it is so wide that not just a truck but several trucks would go through that. How do you assess that?

Hon DONNA FARAGHER: Perhaps I should have asked this just a touch before—I have not appeared before the Industrial Relations Commission—in terms of what they need to consider, you said in your opening statement when you referred to the CPI and the like and to metro WA and that it could have an effect in terms of employees in a regional context because it is not being applied appropriately. Can I ask—I know that the commission has a number of things that it can consider as part of a determination—are you saying that it would not be able to consider as part of a determination the fact that the majority of the employees within that particular department or agency are actually rural? Are you suggesting that it would not already take that into account? I am really seeking your advice in terms of what it may already do in those circumstances.

Ms Walkington: The traditional way of doing that is through a separate instrument that addresses allowances specific to sites. That is how the industrial commission has addressed that issue in the past. The concern here is that the wages policy requirement does not just apply to the general wages bargaining; it applies to any determination of the commission in relation to a public sector entity. So that determination includes things like the district allowance. It has to apply government wages policy of the Perth CPI in its forecast to a determination around district allowance is well.

Hon DONNA FARAGHER: But could it not as a part of that determination, as separate or otherwise, because it is a consideration—it is not bound to it—that it can still take those sorts of matters into account; the regional perspective?

Mr Finnegan: The proposed bill is quite clear, notwithstanding that the Industrial Relations Commission already has to be cognisant of the national economic situation, state economic situation and the position of the employer, it now has to be cognisant of these matters that the bill is trying to insert. It is a legislative version of a three-line whip. It is a pretty significant statement. Technically the Industrial Relations Commission could wander outside the government wages policy, but it would be a very brave Industrial Relations Commission. We have been advised that if the Industrial Relations Commission brings down a decision outside of the policy and the government thinks that not enough weight was given to its stated position it will appeal. It will appeal it to the Supreme Court, to say that the Industrial Relations Commission did not take enough notice of the government wages policy. So it would be a very brave Industrial Relations Commission—even if it took that decision, it would be appealed.

The CHAIR: Given that we have six questions left and we have run out of time and you gave a very wide-ranging opening comment, I will just quickly look; is there anything from questions 10 to 16 that you would like to comment on that you have not already commented on?

Ms Walkington: Just perhaps the nature of appeals. The explanatory memorandum to the bill is very clear that any appeals that may be provided for by regulation will be only on process, not on the substantive merits of the case, not on the substantive fairness or reasonableness of the decision. Whilst government departments have contended that the regulations may provide for a wider appeal basis; we have no evidence that they will. If we look to what the current processes are in terms of breach of commissioner's instructions or standards or any public sector authority instrument; those appeals and breaches are only on the basis of process, they are not on substantive. For these

regulations to address substantive matters would be going against the current position and trend of the Public Sector Commission's processes. We are concerned that the ambiguity at the moment means that the regulations will not provide for a substantive appeal—only for process.

The CHAIR: Anything in those questions from 10 to 16 that you feel you would like to write in with the that other question, I am quite happy for you to do that because I have cut you, simply because of the time that we have.

Hon SALLY TALBOT: One quick thing—you may want to include this in your written response—about other jurisdictions. I assume that you would have done some sort of survey about what is going on in other states. Is it your view that we are just being brought into line with other states? Are there elements of the more recent legislation in other states that you think could be productively incorporated into what we are doing here? I am particularly interested in the role of the Public Sector Commission, which of course is quite different in WA to anywhere else in the commonwealth, where you essentially have the Public Sector Commissioner as the rule setter and the arbiter.

Mr Finnegan: I am in a position to give an answer to some of that. Certainly, the New South Wales and Queensland legislation is similar to the proposed bill. We have attached to our submission, which is in the attachments, evidence that South Australia and the Northern Territory do not use involuntary redundancy. The legislation that appears to provide the possibility for it but those particular governments—one a state government and one a territory government—entered into negotiations with employees in something called an industrial agreement—an enterprise bargaining agreement—in which the preference for voluntary redundancy is what that government operates under. The enterprise bargaining agreements are attached to our documentation. In at least two jurisdictions that we have come across, involuntary redundancy is not operated.

Ms Walkington: In terms of the powers of the Public Sector Commissioner, they are indeed greater than any other public sector commission–type role in other states, or even in the federal public service. In terms of the potential for an appeal from "Caesar to Caesar", we did raise that, not necessarily in this process with the Premier and other stakeholders, but we did raise it when the office and functions of the Public Sector Commissioner were amended by a previous bill in 2009. In that process we raised concern about the appeal process for the public sector breaches of the commission and the commissioner's instructions and procedures and that type of thing were appealable only to the Public Sector Commissioner.

The CHAIR: The committee would like to thank you for your time today. This session is now closed.

Hearing concluded at 12.41 pm