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Statement to Legislative Council Standing Committee on Legislation inquiry into the Workforce Reform Bill 2013

By: UnionsWA Secretary Meredith Hammat

Date: 6 February 2014

Thanks to the Standing Committee for the opportunity to appear before you to outline our concerns regarding the proposed Workforce Reform Bill.

I would like to make a short statement that outlines the objections UnionsWA has to the Workforce Reform Bill. It is not my purpose to simply repeat what we have already said in our written submission, however there are some points I would like to expand upon – and answer questions afterwards.

UnionsWA is the governing peak body of the trade union movement in Western Australia. A number of our affiliates will be appearing before you to discuss the impact of this Bill upon their members. What I would like to put before you is the broad significance of this Bill to the workers represented by the WA union movement.

As stated in the UnionsWA written submission, we advocate that this Committee reject the Workforce Reform Bill in its entirety. Not simply because of its impact on public sector workers – which is bad enough, but also because of the damage it will do to public services for the people of WA, and for its corrosive effect on rights of workers in the community and private sectors.

By undermining the job security of public sector workers the Bill will endanger the sector's ability to attract and retain skilled and experienced staff, and wreck its capacity to deliver quality public services. We regard it as part of the broader attack on the public sector that includes privatisation, cut backs and under-funding threatening our public hospitals, schools, and other services.

By shrinking the workplace rights of public sector workers, resulting in those workers having fewer job security and collective bargaining rights than the private sector workforce. This will add to the pressure by employers to erode the job security of all Western Australians.

The Premier has claimed that the Bill is only about ensuring government has (and I quote) *'the ability to, as a last resort, pay out and retrench surplus employees who cannot - or will not - be redeployed to other jobs in the public sector'* (Barnett press release: 23 October 2013).

Frankly if this really is the purpose of the Bill, it really is bringing a sledge-hammer to crack a walnut.

As the public sector unions will inform you as they appear before this inquiry – there is no real evidence that the WA public sector has any kind of major problem with employees refusing redeployment.

Nevertheless the state government has decided not to let its self-inflicted budget crisis go to waste.

It could be seeking to maturely address WA's economic issues by (as we say in our submission) fully engaging with the public sector workforce through its unions to identify genuine measures that improve the productivity quality service delivery of the WA public sector.

Instead it is seeking to

- Re-write the legislation that safeguards the independence of the WA Industrial relations Commission
- Give itself unaccountable powers of regulation in areas such as redundancy – meaning state public sector workers will have fewer rights than private sector workers
- Trying to avoid its own good faith bargaining obligations by giving itself the power to override existing awards and agreements through retroactive legislation
- Legislating to force a real wage cut on public sector workers through its wages policy

None of this has anything to do with any existing redeployment or performance issues in the WA public sector workforce. This is why UnionsWA contends in its submission that the stated purposes of the Workforce Reform Bill, whether in the explanatory memorandum or the public commentary of the Premier and Treasurer, are not accurate – and indeed are greatly misleading.

ILO Conventions

We are concerned that the government will set the standard for bad employment practices in the community and private sectors.

This is because the Workforce Reform Bill as it stands undermines the rights of workers as set out in various International Labour Organisation ('ILO') conventions which have been ratified by Australia – in particular the standards of freedom of association and collective bargaining, termination of employment, and the spirit of social dialogue.

Article 8 of the ILO's Convention 158 on '*Termination of Employment*' states that

A worker who considers that his employment has been unjustifiably terminated shall be entitled to appeal against that termination to an impartial body, such as a court, labour tribunal, arbitration committee or arbitrator.

UnionsWA submits that the Bill's provisions giving the government of the day the power (in the amended Section 94 and new sections 95 and 96 of the PSM Act) to make regulations in relation to

- (a) redeployment and retraining; and*
- (b) redundancy.*

will run against the spirit of Convention 158. This is because the proposed section 95(6) goes onto say that

(6) The Industrial Commission does not have jurisdiction in respect of a section 94 decision if the employment of the employee concerned is terminated.

UnionsWA also submits that the Workforce Reform Bill also goes against the ILO's two fundamental conventions on the rights of workers to collectively bargain. These are

- Convention 87: *'Freedom of Association and Protection of the Right to Collectively Organise'*
- Convention 98: *'Right to Organise and Collectively Bargain'*

The Workforce Reform Bill's attempts to privilege the state government's wages policy in legislation (by amending Section 26 of the IR Act), limiting wage increases to no more than Treasury projections of Perth CPI. As we say in our written submission – this is effectively forcing public sector workers to negotiate a real wage cut.

Similarly the proposed amendments in sections 95A and B of the PSM Act – which state that the as yet unknown regulations will prevail 'over any industrial instrument' – also undercut internationally recognised collective bargaining rights.

The ILO's Committee on Freedom of Association - the tripartite body responsible for examining complaints on the above Conventions – has argued that

State bodies should refrain from intervening to alter the content of freely concluded collective agreements.

It has also stated that

The public authorities should promote free collective bargaining and not prevent the application of freely concluded collective agreements, particularly when these authorities are acting as employers or have assumed responsibility for the application of agreements by countersigning them.

Interference with the content of existing agreements, and the politically inspired limitation of what can be included in them, are violations of the principles of free collective agreement making and good faith bargaining.

This is why UnionsWA argues that the negative outcomes of the Workforce Reform Bill extend beyond the WA public sector. If state governments are so free to overturn accepted standards of good conduct regarding their own workforces – what protections will remain for workers in the private and community sectors?

Gender Pay Gaps

UnionsWA would also like to call the committee's attention to the potential impact of the Workforce Reform Bill on WA's gender pay gap. We are particularly concerned with the attempt to privilege the state government's wages policy in legislation.

As members will be aware – WA has had the largest gender pay gap of any all Australian states (26.6% compared to 17.5% nationally in May 2013).

It is tempting to explain the large WA gender wage gap as a mining affect. This, however, would be too simplistic. Whilst mining is a significant sector in WA (accounting for around 8% of total State employment compared to 2% nationally), there are other larger sectors within the State. Health care and social assistance, for example, accounts for around 11% of all WA employment followed by construction and retail trade (both around 10%).

According to the latest WA 'State of the Sector' Report for 2013, the proportion of women in the state public sector over the last 10 years has increased from 63.8% to 71.7%. Women comprise a much greater proportion of the public sector workforce than that of the broader WA workforce (43.5%).

The 'State of the Sector' Report also shows us that positions at lower salary levels tend to be predominately occupied by women. For example: 95.8% of 'education aides' are women while 97.3% of 'engineering managers' are men.

It is not my intention here to go over previous arguments about the historical undervaluing of women's work.

However I will point out that in the current Section 6 of the Industrial Relations Act, the list of the 'principle objects of the Act' includes

(ac) to promote equal remuneration for men and women for work of equal value;

Also section 50A on rates of pay says that when making the state wage order the Commission must consider the need to

3(a)(vii) provide equal remuneration for men and women for work of equal or comparable value;

The state government's wages policy – particularly if it is privileged in legislation – is likely to make the gender pay gap worse not better.

It arguably also runs contrary to the above mentioned objects of the existing Industrial Relations Act.

Improving the performance of the public sector

In describing the proposed Bill, the Premier has said that

'While there is a short-term cost to the Government, in the longer term these measures will introduce efficiencies and long-term savings to the public sector.'

UnionsWA disputes that the Workforce Reform Bill has anything to do with a better operating public sector.

We have previously stated that a government that is serious about a better performing public sector would sit down with its own workforce find out ways in which service delivery can be improved.

And it turns out that the compilers of the 'State of the Sector' Report have already gone partway there in the 'Annual Agency Survey'. For the 2013 report they surveyed public sector bodies on what constituted their principle 'workforce risks'.

In the responses 'retrenching and redeploying surplus employees' was nowhere to be found. Instead the principle nominated risks were

- Addressing capability gaps due to a changing operating environment (51%)
- Loss of corporate knowledge or talent due to retirement (45%)
- Recruiting and retaining appropriately skilled staff (41%)

The Workforce Reform Bill does nothing to address any of these risks – which go to the heart of any serious project to improve the performance of public sector service delivery.

Instead the Bill arguably makes these risks worse – by making the public service a less fair and secure place to work it will become harder to attract and retain skilled staff, and therefore address capability gaps. The Premier’s ‘short-term costs’ will have long term consequences, and public service delivery in WA will be the poorer for them.

Conclusion

UnionsWA recommends that this Committee reject the Workforce Reform Bill in its entirety because of

- its impact on the rights of public sector workers
- its corrosive effect on workplace rights of workers in the community and private sectors, and
- the damage it will do to public services for the people of WA

Thank you for the opportunity to present these concerns to the Committee.