

STANDING COMMITTEE ON LEGISLATION

WORKFORCE REFORM BILL 2013

**TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
THURSDAY, 6 FEBRUARY 2014**

SESSION FIVE

Members

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

Hearing commenced at 2.43 pm

Mr GEORGE TILBURY

President, WA Police Union, sworn and examined:

Mr PAUL HUNT

Secretary, WA Police Union, sworn and examined:

Mrs JANE BAKER

Research Officer, WA Police Union, 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 affirmation, and please state your full name, contact address and the capacity in which you appear before the committee.

[Witnesses took the oath.]

The CHAIR: You will have signed a document titled “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 that you refer to during the course of this hearing, for the record, and please be aware of the microphones and try to talk into them and 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 the material published or disclosed is not subject to parliamentary privilege.

Bearing in mind that the committee has already received and read your written submission, do you wish to make a brief opening statement?

Mr Tilbury: Yes, please. Firstly, I would like to thank the committee for the opportunity to appear before you today. The traditional approach to police employment regulation in Australia, certainly within Western Australia, has been simply to group police with other public sector workers, but then make exceptions based on the requirements of operational policing. The WA Police Union believes this approach does not fully recognise the uniqueness of police officers’ working conditions. As our written submission illustrates, these exceptions do not compensate police officers for the dangerous and difficult work they undertake. We seek an amendment to the proposed Workforce Reform Bill to make changes to the Industrial Relations Act in recognition of the unique working conditions and industrial rights of police officers when compared with other public sector workers. Our working conditions are unique and different to every other public sector employee, including other emergency services, in the following areas. Police officers are the only group that has restricted access to the Western Australian Industrial Relations Commission. As a result of

legislated restricted access there are no formal independent avenues to appeal decisions that arise from an officer's tenure, transfer or promotion. Police officers are the only group in the public sector who are agents of the crown. As such, our members are never off duty and there is a responsibility for them to uphold the law at all times, as well as a community expectation to intervene when needed whether on or off duty. Further, as agents of the crown, they are also subject to removal under the loss-of-confidence provisions in section 8 of the Police Act.

Unlike other state and federal police a member of WA Police is only covered by the Workers' Compensation and Injury Management Act if he or she suffers an injury on the job and dies as a result. Police officers are covered by WA occupational safety and health legislation; however, officers in WA are not able to use section 26 of the act to refuse to perform dangerous work when involved in covert or dangerous operations. This differs from other emergency service workers in WA and officers in every other police jurisdiction in Australia, who perform similar duties where they have the right to refuse dangerous work. Police officers who are employed under the Police Act and not the Public Sector Management Act are not only required to uphold the law at all times, but also are not afforded one of the basic means of defending their occupational interests, being the right to strike. For these reasons, police officers should not be subjected to the public sector wages policy and provisions need to be made in the event the Workforce Reform Bill is enacted. As the bill seeks to make amendments to the act, we propose that police are excluded from the bill or one of the two amendments referenced in our submission are included to reflect the unique and distinctive employment conditions of WA police officers.

The CHAIR: Thank you. Question 2: on the screen, you will see a copy of recommendation 39 of the 2009 Economic Audit Committee's final report, "Putting the Public First", which began in 2008, and called for submissions on its terms of reference. According to the final report, your organisation made a submission to the inquiry, is that correct? If yes, did your 2008 submission address the question of involuntary severance? If yes, can the committee have a copy of that 2008 submission? It is a long time ago.

Mr Tilbury: That is prior to me taking over as president of the union. I am not aware whether or not we did, but as police officers are employed under the Police Act, it is unlikely that that would affect my members.

The CHAIR: Thank you. Quite similar to question 2, on 17 May 2011, the then Treasurer tabled an updated progress on that economic audit report, as shown on the screen, and once again stated that the Public Sector Commission was implementing recommendation 39. Did your organisation ask the Public Sector Commission to accept a further submission about recommendation 39 of the 2009 EAC final report at that time or later? If yes, can we have a copy of that part of the submission? If you did not make a submission, why not?

Mr Tilbury: I am not aware. It is probably in a similar vein to the previous answer that I gave. However, I can take that on notice and, if there was a submission, I am certainly happy to provide it.

The CHAIR: Thank you. Question 4: Was your organisation consulted by either the government or the Public Sector Commission at the drafting stage of the bill? If yes, did you make any submissions? If yes, can we have a copy of that submission?

Mr Hunt: Madam Chair, when you said "the bill", do you mean the Workforce Reform Bill?

The CHAIR: Yes, I do.

Mr Hunt: My understanding is that the organisation, predating the three of us here today, made submissions to what is colloquially known as the Amendola review and its subsequent call for extra information. The union certainly made submissions to that. I cannot recall what they were, but again, we can provide that information to you if you so desire.

The CHAIR: Were you consulted? If you made a submission, you probably were, so can you —

Hon SALLY TALBOT: No, they made submissions to the Amendola review.

The CHAIR: Were you consulted by either the government or the Public Sector Commission at the drafting stage of the Workplace Reform Bill?

Mr Hunt: Not to my knowledge, no.

The CHAIR: Question 5: 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 the screen. Clearly, the EAC's report suggested 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 response to the views expressed in that EAC final report of 2009?

Mr Tilbury: This particular issue does not affect our members as they are employed under the Police Act. So we have no views in relation to it.

Hon DONNA FARAGHER: Sorry, could I just ask a question in relation to that. I think, just given the fact that you come under a separate act, I am keen to get an understanding—obviously with respect to this bill, this deals with matters surrounding termination, involuntary and severance. What is the process from a police perspective if a position was to become redundant surplus—that is the term that has been used today? What is the process in terms of retraining and the like that occurs within the police force? I am just trying to get an understanding of how it operates within the police force as opposed to how it operates within other parts of the public service?

Mr Tilbury: That is a question that is probably best asked of WA Police or the commissioner, because we are not familiar with all of their processes in relation to that.

Hon DONNA FARAGHER: Sure, okay.

Hon AMBER-JADE SANDERSON: Just arising from that, what is the experience of your members, for example, in that process—the redeployment and retraining process within the force, if there is one?

Mr Tilbury: It depends what the situation is. Probably, the biggest feedback that we have from our members is when they are actually injured as a result of their duties. They then go through the rehabilitation process and generally, during that time, they are provided with an opportunity to work in a non-operational environment or in an administrative role at the various locations within the state.

Hon AMBER-JADE SANDERSON: Is the process functioning well, in your view?

Mr Tilbury: You have to take it on a case-by-case basis. If our members believe that they are being dealt with unfairly, then they will come to us, and that is when we will go to the agency and negotiate the best possible outcome.

Hon SALLY TALBOT: Let me just put a hypothetical to you to be absolutely clear about this. If somebody works as a child protection officer and they are made redundant, they can be redeployed to another section of the public service, is that not the case with the police officers? You will not be a redeployed police officer who ends up working for the Department of Local Government?

Mr Tilbury: No, that is correct. Once you are a police officer, you cannot be transferred effectively to another government agency.

Hon AMBER-JADE SANDERSON: Because you are an agent for the Crown?

Mr Tilbury: That is correct.

The CHAIR: Question 6: 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 Hunt: No, we have not identified any.

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

Mr Hunt: The thrust of our submission and in trying to get across our point that the police are unique, turns on the public sector wages policy, in a large part. We think the policy replaces a wages policy that provided for an area of negotiation between the employees and the employer, which could deliver on the long-held process of enterprise bargaining, where there is a dividend—for want of a better term—to the employees to improve productivity, to improve the efficiency of the business. The new wages policy removes all of that scope and arbitrarily sets a level irrespective of the merits of any claim, irrespective of any particular agenda, reform or productivity improvements that an agency itself may want to make. It cannot now, under that process, negotiate with its employees to achieve those things in a harmonious, good-faith process.

So the view of the union is that our members should always be afforded that opportunity. WA Police are going through a large reform program, which is the biggest that has ever been proposed, as I understand it. Those things would ordinarily be negotiated at an enterprise bargaining wage outcome arrangement. This year, we are entering a wage negotiation for our members, where all of these things are going to be on the table, but there is no opportunity to negotiate around those things given the way the policy is currently written. We say to incorporate the requirement for the industrial commission to consider the wages policy, really leaves no options for the employees. As outlined in our submission, police officers cannot withdraw their labour, so their hand is forced. If the government will not negotiate for something more than CPI, as Treasury forecast the CPI at that, then we are forced into arbitration. The outcome there could similarly be a lower outcome that our members would think that they deserve and we might argue for based on the merits of the claim.

Hon AMBER-JADE SANDERSON: Just on that, we have heard evidence today from other public sector unions that enshrining CPI, for example, as their wage increases, actually discourages innovation or productivity negotiations. Therefore, trade-offs, for example, for wage rises for productivity gains, what is your view on that?

Mr Hunt: I would agree with that sentiment; it sets a predetermined outcome irrespective of what any party brings to the table.

The CHAIR: This has probably been answered, but I will give you an opportunity to comment. 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?

Mr Hunt: I think that the premise is that the commission always takes the capacity to pay into its considerations. To stipulate and dictate a particular policy that is developed by government but without consultation, without capacity to have that policy influenced to then give it some legislative standing within the act with the commission I think, again, offends those EBA-type principles that we have all become accustomed to.

The CHAIR: Question 9: would you like to make any comments about the proposal to require the WAIRC to consider the financial position of the public sector entity?

Mr Hunt: No.

The CHAIR: Would you like to make any additional comments about the proposal to limit the WAIRC's jurisdiction over involuntary separations to looking at whether the regulations and Commissioner's instructions were fairly applied and whether the appropriate termination benefits have been paid?

[3.00 pm]

Mr Hunt: I will reflect the comment of my president earlier; it does not affect our members, so it is no comment on that.

The CHAIR: The proposed involuntary separation under the bill can only be used after the existing redundancy and redeployment procedures have been followed. Given that those existing procedures are subject to appeal to the WAIRC, do you think you really need a right of appeal for involuntary separation; and, if so, why?

Mr Hunt: We probably could not comment on that.

Hon DONNA FARAGHER: Could I just ask again, just to assist us, I think you mentioned in your opening statement that currently as a result of the Police Act you do have some restrictions with respect to the WAIRC. Could you just go through those again from the perspective of the police?

Mr Tilbury: We referenced that in our submission on page 4 —

... an Arbitrator does not have “jurisdiction to inquire into or deal with, or to refer to the Commission in Court Session or the Full Bench, any matter relating to or arising from the transfer, reduction in rank or salary, suspension from duty, removal, discharge or dismissal under the Police Act 1892 of a police officer”.

Hon DONNA FARAGHER: Thank you. That is helpful in terms of the comparison.

The CHAIR: Do you have any comments about the regulation-making powers relating to involuntary separations being sub-delegated to the Public Sector Commission in the form of commission instructions?

Mr Hunt: No, Madam Chair.

The CHAIR: Do you have any comments about the regulation-making powers and Public Sector Commissioner’s instructions being extensive and perhaps overriding legislation, industrial instruments or contracts?

Mr Hunt: We could make a general statement but in terms of the specifics not applying to our members, it is not appropriate to express a view.

The CHAIR: Question 14: do you have any further comments about proposals to put the government public sector wages policy into the Salary and Allowances Tribunal?

Mr Hunt: That does touch on some of our members. The senior police ranks—assistant commissioners, deputy commissioner and the commissioner himself, indeed—have their remuneration determined under the Salary and Allowances Tribunal Act. Not that we enter into negotiations on their behalf or make submissions on their behalf, but that opportunity is available to them if they so desire. As that touches our members, we would say it is again inappropriate for the public sector wages policy to be applied to any of our members in determining their remunerated outcomes.

The CHAIR: Do you have any further comments about proposals to require the SAT to consider the financial position and fiscal strategy of the state?

Mr Hunt: No.

The CHAIR: That is the end of the questions that I have. Do any of the committee members have any other questions they would like to ask?

Hon SALLY TALBOT: I have a very general question. Given that you are in a quite exceptional position compared to other public service representatives, are you actually proposing amendments to the bill or are you proposing a different bill to address your concerns?

Mr Hunt: By our submission we acknowledged at the introduction that the greater part of the Workplace Reform Bill we do not comment on. We see the Workforce Reform Bill as proposed to make amendments to a number of legislative items and through that process we suggest that the

Workforce Reform Bill be amended for adjustments to the Industrial Relations Act that will assist our members in their employment.

The CHAIR: Because you consider yourself unique to every other government department.

Hon SALLY TALBOT: You are really using it as a vehicle to achieve a different set of objects for your members.

Mr Hunt: Yes.

Hon SALLY TALBOT: You are not suggesting amendments that would be available necessarily to the whole of the public sector but amendments specifically affecting the situation of police officers.

Mr Tilbury: Because of our unique position?

Hon SALLY TALBOT: Yes.

Mr Tilbury: Yes.

Mr Hunt: The Industrial Relations Act already prescribes some exclusive arrangements based on that separate identity between the general public sector employee and this is a further consideration of dealing with those people.

The CHAIR: The committee would like to thank you for coming in and we appreciate your time. This session is now closed.

Hearing concluded at 3.05 pm
