POLICE AMENDMENT BILL 2002

Second Reading

Resumed from 13 November.

MR M.J. BIRNEY (Kalgoorlie) [12.49 pm]: We are dealing today with the Police Amendment Bill 2002, which refers to an often controversial section of the Police Act known as section 8. I am aware that views vary regarding how the powers in section 8 have been utilised in the past. It is the Opposition's view that section 8 should remain, albeit with a few changes. I think that one of the major recommendations of the Wood royal commission was to implement a section 8 type provision in the New South Wales legislation. However, a number of anomalies are attached to the use of section 8 in the Western Australian Police Act. It is the Opposition's view that the Bill before us goes some way towards addressing those anomalies and I am very pleased to offer our support for the Bill.

Section 8 allows the Commissioner of Police to dismiss a police officer for broad, wide-ranging reasons, provided that officer is a non-commissioned officer. Section 23 of the Police Act bestows similar powers on the police commissioner subject to certain conditions. It is fair to say that section 23 of the Police Act deals with a more specific breach of discipline, while section 8 allows the commissioner the unfettered right to dismiss a police officer in whom he has lost confidence. It is important for an employer of any major organisation, of which the Police Service is one, to have the right to dismiss a staff member whom he thinks is not performing as well as expected. In the private sector that power is implemented frequently, although the unfair dismissal legislation provides some redress. Police officers also have redress under those provisions; albeit through a fairly cumbersome process. However, a police officer has no avenue for appeal after being issued with a section 8 notice. I am pleased to see that this legislation goes some of the way towards bridging that gap between what was in the past an unfettered right of the police commissioner to dismiss police officers and the rights that police officers can rightly expect to have. Even though there is a unique relationship between the Government, the Commissioner of Police and members of the Police Service, regardless of how we look at it, police officers are employees of a major organisation and their rights should go some of the way towards the rights that employees have in the private sector.

Two basic transgressions can be committed by a police officer. The first is simply a breach of discipline. That breach would not be considered to be at the serious end of the scale and would not warrant the commissioner's issuing a section 8 notice to dismiss. Nonetheless, it would need to be dealt with. Generally that breach could be dealt with under section 23 of the Police Act, which has been working reasonably well to date. The other transgression is corrupt behaviour by a police officer. I guess that could then be broken down into two sections again: corrupt behaviour that can be proved and corrupt behaviour that cannot be proved. That has given rise to the birth of section 8. From time to time it is difficult to find a police officer guilty in a court, which has been proved historically, particularly given that many people who give evidence against a police officer might not be pillars of our society; they may have shady backgrounds or be criminals. The court should, quite rightly, discount some of the evidence given by those people against police officers, many of whom have a long and distinguished career in the Police Service. Nonetheless, from time to time certain circumstances arise in which it is fairly obvious that the police officer in question has committed a very serious breach of the Police Act, albeit, it is very difficult to prove. I refer to the transcript of a telephone conversation printed in *The West Australian* some months ago. I stand to be corrected, but my recollection of the events is that a police officer, who saw the need to make the telephone call from a public phone box, said something to the effect, "Get the A and give it to B and take it to C." I think it can be said, generally, that he was talking in code. From the outside looking in, it seems that that conversation was somewhat suspicious, although it could not be proved in a court of law that any corrupt behaviour was involved. It is important that the commissioner retain the right to pass judgment on whether police officers involved in that behaviour are the sort of officers he wants on his Police Force. However, it is important that the police commissioner does not have unfettered power to do that. If he sees the need to invoke section 8, it is important that he comply with due process, that the process itself is accountable and that the police officer who may be the recipient of a section 8 notice has some redress.

I understand that the genesis for this legislation arose in 1998 when there was a degree of industrial unrest in the Western Australia Police Service. At the time, the then Liberal Minister for Police, Kevin Prince, entered into an agreement with the Police Service, the Commissioner of Police and the Western Australian Police Union of Workers regarding an appeal process for officers who had been issued with a section 8 notice. That arrangement was an administrative arrangement; it was not written into legislation. To that end, it was a loose agreement between all the major stakeholders in the Police Service. I think that agreement was tested relatively recently in the Supreme Court. I understand that a police officer appealed a section 8 notice to the Western Australian Industrial Relations Commission, as he could do under the administrative arrangement. The finding of the Industrial Relations Commission was adverse. He then took his appeal to the Supreme Court where Justice

McKechnie commented to the effect that he could not see any legislative ability for the Industrial Relations Commission to pass judgment in any case. Regardless of whether the IRC had erred in its finding, Justice McKechnie at least indicated a grey area might be involved and that the IRC did not have legislative jurisdiction. It makes some sense because the arrangement was an agreement between the three parties and it was never written into legislation at the time, although it was designed as a temporary measure to see how things would progress. Hence the need now for legislative change to that administrative arrangement that has been in place since 1998.

A number of differences are contained in this legislation compared with the administrative arrangement made in 1998; albeit, it is fair to say that many of the items in this Bill are similar in nature to those contained in the administrative arrangement. However, a couple of differences are probably worth pointing out. The first is that under the administrative arrangement that has existed, as I said, since 1998, the appeal process to the IRC was undertaken in private. For whatever reason, the Government has now undertaken to ensure that that hearing of the IRC will be a public hearing for all to see and hear. That is a significant departure from the policy that has existed since 1998.

An interesting aspect of this legislation is that, for the first time, the police commissioner will have a set of criteria to follow before he can issue a police officer with a section 8 notice. Those criteria are fivefold. After the passage of this legislation, the police commissioner can issue a section 8 notice if he is concerned about the integrity or honesty of a police officer. He can also issue a section 8 notice if he believes that a police officer is incompetent, is not performing adequately or his conduct in general is not up to scratch. It is reasonable for the police commissioner to consider those five categories before issuing a section 8 notice. One would assume that, in the past, the police commissioner would have taken into account those five different categories before he issued a section 8 notice. It is necessary to legislate for that because, from time to time, legal action has been instigated as a result of a section 8 notice being issued.

Under the previous administrative arrangement, a police officer in receipt of a section 8 notice was not removed from the Police Force until his appeal had gone full circle. We saw an absurd situation whereby police officers who had been issued with a section 8 notice were still paid by the Police Service two years after the notice had been issued because they were still undertaking their appeal process. I am pleased that that anomaly will be addressed with the passage of this legislation. In future, after being issued with a section 8 notice, a police officer will continue to be paid for 28 days, after which time he or she can elect to resign from the Police Service or undertake an appeal. The resignation clause is interesting because it allows a police officer to make up his mind within a 21-day period whether he would like to resign and, furthermore, have the record reflect the fact that he had resigned and had not been dismissed.

I wonder what the implications will be further down the track for a future employer, such as a private security firm, who is considering employing a police officer whose record shows that he resigned from the Police Service. It may well be that the officer was to be dismissed for dishonest conduct or conduct not befitting a person of his office but he had opted to resign. I am not sure whether the private security firm should be told that the officer had resigned rather than be dismissed under dubious circumstances.

A provision in the legislation allows the minister to continue to pay a dismissed police officer for a further six months. The legislation refers to it as “extraordinary circumstances”. I have read that clause and the pages before and after it and I cannot find reference to what might constitute extraordinary circumstances. I foresee that that clause will cause the minister some problems and I am sure it will be the subject of legal action in the future. It is important, particularly during the consideration in detail stage, that the minister share with us her thoughts as to what she believes are extraordinary circumstances. A conflict could arise about what constitutes an extraordinary circumstance when an officer is issued with a section 8 notice and decides that, for whatever reason, in his view at least, he is undergoing extraordinary circumstances and so applies to the minister for an extra six months maintenance pay. I am interested in having the minister go on the public record and tell us what she considers to be an extraordinary circumstance in the event that somebody calls on the minister to ensure that a police officer is paid for that six-month period.

The legislation also provides that new evidence is to be tabled before the Industrial Relations Commission by the appellant and by the police commissioner. When I first read the legislation, I noted that the first clause said that, under certain circumstances, new evidence could be tabled. In my view, if new evidence were to come to light, regardless of the circumstances, the appellant should be able to table that new evidence and have it heard by the Industrial Relations Commission. My fears have been somewhat allayed because the legislation later mentions that if it was thought to be in the interest of justice, and a couple of other fancy phrases, that new evidence could be tabled. I would not like any serious impediments put in the way of the tabling of new evidence that might arise between the time the section 8 notice was issued and when the Industrial Relations Commission heard the case.

I note also that there has been some debate about whether the appeal to the IRC can be argued on the basis of the merit of the police commissioner's original decision or on the basis of the process undertaken by the police commissioner before he arrived at his decision. As I read the current legislation, the appeal can be argued on merit. To my mind, the legislation seems clear on that point. However, there would also appear to be an element of process involved. It is a grey area and I would like the minister to tell us whether it is her view that an appellant can argue his or her case in the IRC based on the merit of the police commissioner's argument or based on the process that the police commissioner undertook prior to arriving at his decision. I would like her to put her views on that matter on the public record during the consideration in detail stage. Various people have argued for both sides of that argument. It is important that the minister go on the public record and tell us her view.

Aboriginal aides will be covered by a section 8 notice, which I support. Previously, the Minister for Police had an unfettered power to remove Aboriginal aides. Aboriginal aides should not be treated differently with regard to removal. If they were to step out of line, they would be subject to a section 8 notice and all the provisions that go with that.

I am pleased that a review process is in place for the issuing of a section 8 notice. A review officer would review cases prior to their being presented to the police commissioner to ensure that all the information used during that process was ridgy-didge and that nobody had been gilding the lily. Far be it from me to suggest that from time to time an overzealous investigations officer might undertake those investigations. Far be it from me to suggest that from time to time vexatious complaints are laid against police officers. It is important to have what I refer to as semi-independent review officers who can undertake a review of cases before they are presented to the police commissioner. That will allow the commissioner to have a degree of confidence in the information presented to him and then in the decision he ultimately makes as a result of that information.

With the passage of this legislation, it will become statutory law that a police officer has an automatic right of appeal to the Industrial Relations Commission, which is good. I do not know why a police officer was denied that right in the first place, although I understand that a special employer-employee relationship exists between the police commissioner and the Police Service. It is fair to say that, in the past, that relationship has often been to the detriment of our hard-working police officers. The appellant will, of course, have to prove a number of matters in the Industrial Relations Commission. He must prove that the decision made by the commissioner was either harsh, oppressive or unfair. I am sure quite a degree of thought went into those three words before they were written into the legislation. In the main I support the use of those words. Why should police officers not have the right to appeal if the decision was harsh, oppressive or unfair? We do not always get it right. It may well be the case that information handed to the Commissioner of Police has been sullied at some stage of the process, for whatever reason, and is not entirely correct. The Bill contains a review officer clause, which is a good thing, because how can we ever have 100 per cent faith that the Commissioner of Police, despite his best intentions, has got the information right? With the passage of this legislation we will have a reasonably good balance between the two sides of the argument. I notice also that when the Industrial Relations Commission is hearing a section 8 notice it will comprise three members rather than just the one member that was previously the case for unfair dismissal cases. That reflects the special conditions under which police officers are employed in Western Australia.

The Bill provides for a review of the legislation after two years. A two-year review clause may present some problems, because if the legislation does not work or has some major anomalies, we will be required to use that flawed legislation until that two-year period has expired. For the life of me I cannot see too many flaws in the legislation at this stage. However, two years is a long time, and I am not entirely sure why that two-year review clause has been put in the Bill.

The other major plank of this piece of legislation involves what I talked about earlier, namely, breaches of discipline by certain police officers that may not be considered to be so serious that those officers should be removed from the Police Service but albeit need to be dealt with. In the past the maximum penalty available to the Police Service to be applied to an officer who had breached discipline was a financial penalty of $200. I note with interest that in this legislation that penalty will be increased to a maximum of three per cent of a police officer's annual wage. That can be a fairly significant penalty for what may be considered to be a minor breach of discipline. I hope that cool heads will prevail when these sorts of penalties are handed out and that the penalty will not reach the top of the scale unless a very serious breach of discipline has been committed.

Under the Police Act other forms of remedy or punishment are available to the Police Service for police officers who have committed a breach of discipline; namely, a reprimand, a fine to a maximum of $200, or a reduction in rank. It is a very serious matter, particularly for a police officer who has been employed by the service for many years and has achieved a certain rank, to be dropped down a peg or two. This should be thought about long and hard before it is implemented. Under section 23 of the Police Act a financial penalty can also be imposed. That financial penalty allows the Police Service to reduce the annual salary of a police officer if he or she is found

guilty of a breach of discipline. It is not entirely clear by just how much the salary can be reduced, but it appears that it can be reduced to the base rate that is payable for that rank. Therefore, a financial penalty is already available to the Police Service if a police officer has committed a breach of discipline. A police officer can also be suspended from duty, or be discharged or dismissed from the Police Service, and of course that is what we are talking about today.

Not many of us would put our lives on the line or would throw ourselves into a melee of 30 or 40 drunken people for a salary of $40 000 or $50 000 a year. It is absolutely vital that we as legislators take that into account before we start to impose harsh or oppressive penalties on police officers. However, that needs to be balanced against the public interest. Police officers are not particularly well paid, and in my view at least they have one of the most difficult jobs in Western Australia. The Bill proposes a maximum fine of three per cent of a police officer's annual wage. That would have a significant impact on a police officer. While I am not proposing that that clause be thrown out of the legislation, I am saying for the record that we need to think long and hard before we financially penalise a police officer for a breach of discipline.

I will now touch briefly on the police royal commission, because that goes to the topic of section 8 and dismissal from the Police Service. I said a long time ago that in my humble view we do not have systemic and endemic corruption in the Western Australia Police Service. That remains my view today. The Labor Party went to the last state election with a sort of "we want to look tough on crime" policy. Of course, one plank of that policy was to introduce a police royal commission. As I understand it, that was done as a result of a number of cases that had been given a public airing at the time. It seems to me that just about every case that has come before the police royal commission so far has more than likely already been dealt with by another investigatory organisation in this State. I am sure members know that other investigatory organisation to which I am referring but that cannot be named. Therefore, I have a serious concern that the police royal commission will not achieve a level of prosecution that will be commensurate with the $30 million or $40 million that the Government will ultimately spend on that royal commission. There can be only one judgment of whether the police royal commission has been successful; for that $40 million expenditure we would want the police royal commission to find systemic and endemic corruption in the Western Australia Police Service.

I am happy to say on the record today that I do not think that will be the case. In fact, I do not think the police royal commission will be responsible for a whole swag of successful prosecutions. I say that in the light of the fact that most of the cases that have come before the police royal commission to date have been investigated in the past and not enough evidence has been gathered to progress those cases. It may well be the case that some of the people who have appeared before the police royal commission and some of the people who have appeared before that unnamed investigatory body are guilty. However, if the evidence clearly is not there, we must accept that they are not guilty. It may also be the case, however, that when certain conduct that has been undertaken by police officers is made public in the royal commission, in the eyes of the Commissioner of Police that is conduct unbefitting a police officer, and he needs to retain the right to say that he does not think that person is a suitable employee. However, the greater question that remains is that we have a Government in power today that will probably spend $30 million or $40 million on the police royal commission. I am very concerned that that police royal commission will not uncover systemic and endemic corruption in the Police Service; and that can be the only gauge as to whether the police royal commission is successful.

I again offer the support of the Liberal Opposition for the Police Amendment Bill 2002. In concluding, I acknowledge Mike Dean, the President of the Western Australian Police Union, and his band of merry men, who are sitting in the public gallery today. If members look at the record, they will note that I am no fan of unions. To that end I have spoken until I am blue in the face about some of the transgressions of unions. There are at least two unions, possibly more, that at all times conduct themselves in an apolitical fashion and in the best interests of their members - the Federated Engine Drivers and Firemen's Association and the Western Australian Police Union of Workers. I congratulate them for their apolitical approach to the business before them. With those few words, I offer the Minister for Police the support of the Opposition for this legislation.

MR R.C. KUCERA (Yokine - Minister for Health) [1.19 pm]: I did not intend to speak on this legislation but I will speak briefly on the spirit of the legislation, as opposed to the substance of it. In a previous life I served under nine Commissioners of Police. Eight of those police commissioners used section 8 notices very wisely, very compassionately and in most instances with no need for an appeal provision such as is included in this Bill. However, I commend the Minister for Police and the Police Union for the way in which they have worked together to ensure that the provision in this legislation confers the same rights, privileges and compassion that are extended to other workers. Although the Commissioner of Police has the power - and correctly has that power - the provision will ensure that there will also be a fetter on him to ensure that the normal rights that any worker enjoys are adhered to.

I worked under one particular Commissioner of Police whose application of section 8 notices brought the issue to a head. As a result of that commissioner's decision, the Police Union quite correctly brought this issue to where it is today.

Mr J.H.D. Day: Are you prepared to say to whom you are referring?

Mrs M.H. Roberts: You can work it out.

Mr J.H.D. Day: Of course I can work it out.

Mr R.C. KUCERA: I do not think the member for Darling Range can say too much about his role as Minister for Police.

I applaud the spirit of the legislation, I applaud the support that the spokesperson for the Liberal Opposition has given to the legislation and I applaud the cooperation that has brought about the legislation. Every police officer deserves to be properly dealt with. Indeed, the use of section 8 to deal with the competence of officers to carry out their roles must have a similar appeal provision to that of other industrial arrangements in other parts of the work force; it is as simple as that. I commend the legislation. I also congratulate very strongly the minister for having the courage to bring into the Parliament this kind of legislation. A police minister under the previous Government should have brought it in and it should have been dealt with when previous Commissioners of Police highlighted these issues.

Mrs M.H. Roberts: About two years before the previous Government lost office it promised to do it within 12 months.

Mr R.C. KUCERA: Exactly. I also congratulate the current Commissioner of Police for having the courage to work with the Western Australian Police Union of Workers and the minister to ensure the legislation reflects the proper application of this issue. The issue of a section 8 notice is a difficult decision for a commissioned officer to make when there is corruption within a police service; it is an extremely difficult decision for a Commissioner of Police. However, there must be a fetter and safeguards on these provisions to ensure that a commissioner will use sections of the Police Act properly. I commend the Bill to the House.

MR J.H.D. DAY (Darling Range) [1.23 pm]: I rise to make a few brief comments on the Bill. As the member for Kalgoorlie said, the Opposition is supporting the legislation. In his comments he went into rather more detail than I intend to on various aspects of the Bill. However, it is worth noting that the legislation to a large extent formalises a procedure that was established around four years ago in late 1997 and 1998, following various concerns that were expressed about the operation of the power under section 8 of the Police Act. The origin of the legislation goes back about five years or so.

I was interested to hear the comments of the Minister for Health, who alluded to a Commissioner of Police without expressly saying who it was. I am surprised that he did not have the courage to place on record the name of the Commissioner of Police to whom he was referring who used his office to issue section 8 notices to a number of police officers. I was Minister for Police for the first half of 1998 and was very much involved in that issue at that time. The Commissioner of Police, of course, was Robert Falconer, who was the Commissioner of Police in this State from mid 1994 to mid 1999. From my observations, both when I was Minister for Police and subsequently when Kevin Prince took over as Minister for Police, it is not true that the power under section 8 of the Act was in any way used frivolously, lightly or without some very strong information being provided to the then commissioner.

Mr J.R. Quigley: But even if it was wrong, sometimes he was given wrong information and acted upon it.

Mr J.H.D. DAY: And in that situation there should be an opportunity to elucidate the fact that it was wrong information and appropriate corrective action taken. However, it is perhaps a mistake to presume that that would not have occurred. The Minister for Police must finally sign off a notice issued under section 8. I would hope that no person acting in the office of the Minister for Police would simply rubber stamp a recommendation from the Commissioner of Police. Why would there be that check and balance if it were simply a rubber stamping process? There is no way that I as Minister for Police would have automatically accepted advice for the issue of a section 8 notice without reading the relevant information and making a judgment on a fair and reasonable basis on whether I thought a recommendation should be made.

Mr J.R. Quigley: Did you ever during that review knock back the commissioner's recommendation because the Supreme Court found that the commissioner had acted illegally? I do not know whether you as minister had picked up on that and refused to sign them.

Mr J.H.D. DAY: No, I do not believe the Supreme Court said that the commissioner was acting illegally.

Mr J.R. Quigley: He was acting on ultra vires information.

Mr J.H.D. DAY: The commissioner was acting on the basis of conclusions that were drawn by the Anti-Corruption Commission and which the Supreme Court said the Anti-Corruption Commission did not have the power to find as conclusions. It did not reject the information that was provided. However, to answer the question by the member for Innaloo, I did not reject the advice of the Commissioner of Police because it did not get to a stage at which I had to make a decision to sign off on a section 8 notice to any of the officers affected at the time.

Mrs C.L. Edwardes: The present Bill still provides that a section 8 notice must go to the minister for approval.

Mr R.C. Kucera: The key issue is that an appeal provision will be enshrined in law.

Mr J.H.D. DAY: I will get to that and the history of it. However, it appears to be acknowledged that the Minister for Police had then - and under these new provisions will have now - the final responsibility of signing off on section 8 notices. It must also be acknowledged that the power under section 8 of the Police Act has been used on a number of occasions in the past in a completely non-contentious manner and when, to my knowledge, no concern has been expressed by the Police Union or in a wider arena. I recall signing off on a section 8 notice and dismissal for an officer who had been involved in inappropriate photographing of a young woman in a country town in Western Australia in which nudity and so on were involved. I recall signing off on that notice and there was no doubt that that was the appropriate action to take. Therefore, by no means has the section 8 power always been contentious or used inappropriately. As I said earlier, over the past five years, or the past decade, for that matter, I am not aware of the process having been started irresponsibly or inappropriately, based on the information that, to my understanding, was available to the then Commissioner of Police or, for that matter, to the current Commissioner of Police.

Whether the information that is provided is based on good evidence, good investigation and so on is perhaps another matter in some cases. In the controversies of late 1997 and the first half of 1998, it was always my view that if the officers who were then affected had a good story to tell, they should do so. I remember making that comment in this very building to the president of the Western Australian Police Union. I must say that I am pleased, in personal terms, that the majority of the officers who were served with section 8 notices in December 1997 - I make it clear that I am relying on my memory in all this, but I think I am correct in identifying the right group of people - are now back in the Western Australia Police Service as fully serving and functioning officers of the service and doing a very good job, I am sure. It was always my view, expressed both publicly and privately, that if officers had a good story to tell and if they had a good defence to whatever they were accused of, they should tell their story and make their defence clear. Their readmission to the Police Service as fully functioning officers would then have had complete support from me, as the then Minister for Police.

That is some of the history. To add to the historical perspective, I indicate that following the concerns that were expressed, primarily through the Police Union, Mr Michael Codd, the former head of the Department of the Prime Minister and Cabinet, was appointed by the coalition Government to conduct a review of the whole section 8 power and process. Following his review, recommendations were made to allow a form of review by the Western Australian Industrial Relations Commission. Of course, the Police Union sought to have the WAIRC involved in this whole process. From memory, the recommendations of Mr Codd were not that a full review or appeal should be conducted by the Industrial Relations Commission on the basis of all the merits of the case, but that a review should be conducted to ensure that the decision that was made by the Commissioner of Police was not harsh, oppressive or unfair. I think I am right in saying that those words are reflected in the legislation currently before the House. What we are debating today has been carried through, to a large extent, from the actions that were initiated in early 1998 following the concerns that were expressed.

One of the most important points about this whole issue is that, on the one hand, a very important balance needs to be achieved between the rights of police officers and the extremely important job they do in protecting the community from some very vicious and vile people in our society. As the member for Kalgoorlie has said and no doubt many others will say in this debate, and as I certainly said, as Minister for Police, and I am sure all Ministers for Police have said, police officers perform a very difficult job in the community and they are subject to attack, both physical and legal. Police who are doing their job properly, fairly and honestly should be given very strong support by all members of Parliament and the Government in doing that job. They should be given quick access to legal representation when that is appropriate. Certainly, much was done when we were in government to try to speed up that process of providing legal support when officers needed it and when it was justified. They should be given access to appropriate compensation when that is appropriate, and legal protection in doing their job when they are doing it fairly and honestly.

On the other hand, there is the need for the community to have confidence in police officers and people who are entrusted with a large amount of power over people in our society. It is the case that police have substantial powers of arrest, the ability to question and detain people, and an important role in society in all those respects. Those powers are significant. They are, of course, necessary and appropriate for the protection of the

community. However, they can be abused, and, quite clearly, they have been abused in the past in some cases in which police have acted corruptly or perhaps acted overzealously or inappropriately. When an officer makes a genuine and honest mistake, that should be excused in most circumstances. Maybe counselling and all that sort of thing should be provided. However, police should be backed up when they are doing their job honestly. When the power is abused, as clearly has been the case in more distant times in this State's history, as well as in much more recent times, as we have seen from some of the material that has been put before the Royal Commission Into Whether There Has Been Any Corrupt or Criminal Conduct by Western Australian Police Officers, the employer of police - that is, the Commissioner of Police - should have the ability to take effective action in the more extreme circumstances to remove the officer from the Police Service. Police officers are entrusted with substantial powers, and the community must have confidence that those powers will be used appropriately by police officers who are doing their job decently and honestly.

That is the important balance that needs to be achieved. Hopefully, that balance is reflected in the legislation before us today. I understand that there is to be a review of this legislation after two years of operation. I believe that is important, because there needs to be an examination after it has been in practice for two years or so to ensure that the appropriate balance between those two aspects is being achieved. As a result of the need to achieve that balance, two other important points must be recognised. One is that police are not the same as employees in positions of what might be called more normal employment in the community. That was recognised in the Wood royal commission in New South Wales. I believe that the Western Australian Government, in setting up the royal commission in this State, to a large extent drew on the experiences of the Wood royal commission in New South Wales. Our view in government also was that a lot could be learnt from the royal commission in New South Wales. However, we had doubts then, and still do to some extent, about what more would be achieved by the royal commission that has been established in this State. I guess one benefit is that a number of issues are coming into the public arena, which, for various reasons, were not in the public arena previously.

I have digressed to some extent. The comment was made in the report of the Wood royal commission that -

> It is not appropriate to simply transpose appeal procedures designed to accommodate the review of dismissal decisions in general employment, which do not depend on the retention of the Commissioner's confidence in an employee vested with far-reaching powers, nor follow a carefully constructed internal mechanism designed to ensure the fairness and correctness of the original decision.

That is a very important comment from the Wood royal commission, and it sums up the point that needs to be understood by people in considering these issues; that is, police officers are not the same as other employees who have the right of appeal to the Industrial Relations Commission in dismissal issues, when the whole merits of their case can be considered. It is not appropriate for all the merits of a dismissal procedure against a police officer to be reviewed and reconsidered by the Industrial Relations Commission. The Commissioner of Police must carry out his job fairly and honestly, but he must also use his powers when an officer has clearly been acting inappropriately, brought into discredit the reputation of the Police Service and lowered the confidence the public has in it.

The second point that must be appreciated, which was also reflected in the report of the Wood Royal Commission into the New South Wales Police Service, is that the test to be a police officer is higher than that required to obtain a conviction beyond reasonable doubt in a court of law in a criminal prosecution. In other words, the test required to obtain a successful prosecution, or a conviction, in a court of law on a criminal issue should not simply be the test that should be applied to determine whether an officer can remain in the Police Service or a person can enter the Police Service. That must be recognised because without a higher level of test of what is appropriate behaviour for a police officer, the public would not have the confidence that the Police Service is made up of honest men and women.

The comments made by the Minister for Health were unfortunate and impugned the actions of then Commissioner Falconer who, as I said earlier, was acting honestly and appropriately given the sort of information provided by the Anti-Corruption Commission and the police internal investigators. In 1998 there was much debate about whether section 8 notices were appropriately served. The Minister for Health has just nailed his colours to the mast by saying, in effect at least - I will need to read *Hansard* to see exactly what he said - that he did not believe that section 8 notices were appropriately served. I draw members' attention to papers Nos 1525 and 1526 that I tabled in June 1998 in this Chamber in relation to two individuals who were then officers of the Police Service. They were working in an environment in which it was suggested that section 8 notices were not appropriately served or the powers not appropriately used. It is not necessary for me to outline the history behind those papers, but it is instructive for members and others who have an interest in these sorts of issues to read the information contained in those tabled papers. They are quite revealing because they are summaries of an investigation that was undertaken by a joint task force involving officers of the Australian Federal Police and the Western Australia Police Service with extensive reference to officers of the National

Crime Authority. The investigation concerned some officers who were seconded from the WA Police Service to the National Crime Authority. Members who have an interest in these matters and their history should research it by referring to those tabled papers, which are quite instructive.

The Opposition supports this legislation but it is important to recognise that there must be a balance in all of this. The review to be conducted after the operation of the legislation over a two-year period will be important.

MR J.R. QUIGLEY (Innaloo) [1.44 pm]: I support the Bill. For 20 years I have appeared for and assisted members of the Western Australian Police Union of Workers in responding to section 8 notices. In those 20 years I never experienced a minister saying, "I reject my commissioner's recommendation to dismiss", which is why I interjected before. If a subordinate officer reports to the police commissioner that he has grave doubts about a person's integrity and that that person should be dismissed, and the commissioner then recommends that to the minister, who conducts an independent review, naturally the minister would feel that it would be a vote of no confidence to force the commissioner to retain within his ranks an officer on whom the commissioner has already made an adverse judgment. It would be a very brave minister who would say, "I do not care what the commissioner says, that person will be kept in the ranks of the Police Service and he will bat on." I have never experienced that situation.

Ms S.E. Walker interjected.

Mr J.R. QUIGLEY: I hear an echo from deep inside a Neanderthal cave. There she goes again!

That situation never arose during my experience. I never saw a minister override the police commissioner on an important decision. The matter then turned upon the quality of the advice -

Mr J.H.D. Day: Can you give an example of a section 8 power being used to its full extent when it was inappropriate?

Mr J.R. QUIGLEY: Yes, I can. One case involved a Constable Ball, who disseminated the birth date of a friend's partner because he wanted to send him a birthday card. He was dismissed because of breach of security. Some famous cases have involved the hierarchy of the Police Force who disseminated information but did not have section 8 powers. Therefore, to be dismissed for handing out a birth date to send a birthday card was very harsh indeed. However, I cannot think of ministers of either complexion who have said, "I will reject this commissioner's recommendation and the officer will hold rank." It all seems to be predicated on the quality and accuracy of the factual matrix behind the advice. As members know, when people present facts they can have a biased perspective; therefore, there must be review.

I do not want to speak for long, but I will take up the point made by the previous speaker that commissioners in the past did not exercise this power wantonly or without due regard. I reject that comment. The most incompetent person to hold the office of Commissioner of Police was the previous commissioner. I refer to when he went on Howard Sattler's program on 6PR and made reference to a serving detective sergeant - he is in the gallery at the moment - who has been praised by the opposition speakers so far as being one of the original six. This commissioner pronounced to Perth - it was heard by this man and his family - that he was corrupt, he would never be allowed back into the Police Force and that Commissioner Falconer would see to this. Therefore, to turn that grave injustice around, the matter had to be litigated in the Supreme Court because there was no hope of an industrial appeal. As it turned out, Falconer was totally wrong because he relied upon faulty advice given to him by the investigating agency - the Anti-Corruption Commission. He was not aware of this at the time, but before he considered the advice and received submissions from the men, he went on Howard Sattler's program saying that all the men were going to be sacked and they would never be allowed back into his Police Force. I am pleased that the previous speaker acknowledged that one of those men - I will not name him but he is present in the Chamber today - is now a valued member of the council of the Western Australian Police Union and a highly regarded honest officer who did not have the facility of these amendments. I refer to this matter raised by the Minister for Police and the previous speaker because it was one of the grave injustices that inspired me to enter public life. The Police Union had 4 500 workers engaged on a daily basis in what the member for Kalgoorlie called "a dangerous profession" and against whom allegations were made all the time by criminals with vested interests. These workers stood to be dismissed from their lifetime career on the basis of a criminal who would, in many cases, be untested under cross-examination because there had been an internal investigation; a report would be put to the commissioner and a commissioner's recommendation then made to the minister. That could be the end of a man's life, and nearly was in the case of the drug squad six. It was all based on a factual error -

Mr J.H.D. Day: Are you referring to the conclusions that the Anti-Corruption Commission drew?

Mr J.R. QUIGLEY: That is right. It proceeded on a factual error. It is clear that it was up the pole and wrong. When this matter was brought to this place, the minister - not the honourable member for Darling Range, but the former member for Albany - stood by his Commissioner of Police and said that these officers had to be dismissed for lack of confidence, and that his Government would stand by the commissioner, even if he were

wrong. I remember the day nearly two years ago when the Governor of Western Australia delivered his speech in the Chamber of the Legislative Council and forecast that this legislation would be introduced during this session of Parliament. That was a great relief to me and to the 4 500 police officers of Western Australia. The previous Government used to talk about the Wood royal commission, and said that police officers could be sacked for lack of confidence because of its findings. It is true that Justice Wood brought out an interim report, but by the time he came to the final report, a full right of appeal had been provided in New South Wales. The same appeal provision is being introduced in Western Australia through this Bill. For many years police officers in New South Wales, as in other jurisdictions, have had a right of industrial appeal.

I congratulate the Premier and his police minister for bringing forward this legislation in a timely fashion to give industrial rights to all honest police who work in Western Australia. However, therein lies the tricky question - all honest police. Everyone talks about all honest police except the one per cent. There are officers who, from time to time, do the wrong thing. I could name two; they have already been publicly named. Clince and Kendall shot a fellow officer in the commission of a crime. Of course, there must be the ability to move swiftly, so section 8 is retained. However, issues of human rights, industrial rights and families' rights to a safety net are involved, and require this matter to be reviewed in public. Those who bring allegations about police officers should be subject to cross-examination, and the truthfulness or otherwise of their allegations should be properly tested. Those allegations should not go forward just on reports, many of which police officers never get to see. I commend the Government and the Minister for Police for introducing this legislation.

MR R.A. AINSWORTH (Roe) [1.52 pm]: I indicate the support of the National Party for this legislation. There has been a move away from the position in which police officers who were caught up in section 8 issues basically had most of their rights as normal, ordinary citizens taken away from them. They had limited rights of judicial review and no statutory rights of appeal on decisions made under section 8. That was modified to some extent by the previous Government to at least afford a right of appeal to the Western Australian Industrial Relations Commission. The National Party supports the move by the Government to take that interim measure of the previous Government one step further, by striking a balance between the legitimate right of the public to have confidence in the Police Service and the protection of the interests of serving officers. If police officers are found to have been unfairly treated under section 8, either deliberately or otherwise, this legislation will give them fair rights of appeal and compensation. It strikes a balance between the requirement for public confidence in the force and the ability to act swiftly when there has been a breach of the code of conduct by an officer or officers, and protecting officers from the fairly harsh conditions that previously applied under section 8. It is good to see that that balance has been struck.

The National Party has held discussions with the Western Australian Police Union over time on a range of issues, and this is one issue that has always been at the fore. The Police Union has provided advice and legal input on the framing of this legislation and is happy with the outcome. This Bill will remove a disincentive for people to become police officers. The publicity that surrounded cases in which section 8 had been used over the past few years certainly deterred people from becoming police officers, not because they were inherently likely to breach the regulations of the Police Force but because of the mere chance that something, somewhere along the line of their careers, could occur that could result in their being unjustly charged or a claim being made that they had acted in a wrongful manner. Under the existing legislation, there is no real right of appeal if a charge is sanctioned under section 8. It certainly would be enough to make me think twice about becoming a police officer, because, by and large, the normal rights of a citizen of this country are removed once one becomes an officer of the Police Force. That is something with which most right-thinking people would not agree. However, there need to be strong sanctions for police officers who breach the rules and the law, because they are in a somewhat privileged position in terms of the responsibility and powers that their office gives them. With that great responsibility comes the added responsibility of acting in an honest way. As the previous speaker mentioned, there have been cases, as there are in any profession, in which a small minority have not adhered to the rules, and it is appropriate that strong measures are in place to deal with those matters. At the same time, the rights of officers generally, and particularly those who are innocent but are accused of breaching the regulations, must be protected. This legislation strikes a good balance between the right of the public to have absolute confidence in the Police Force and the rights of serving officers to be protected.

MS S.E. WALKER (Nedlands) [1.56 pm]: This Bill concerns the integrity of the Police Force and how to restore or maintain public confidence in the Police Service in Western Australia. I put on record my confidence generally in the Police Force and in the police officers with whom I worked during my time as a crown prosecutor. I think the member for Darling Range said that they are paid a pittance for working long hours. The officers I have come across have been totally dedicated to their job, and would go far beyond the call of duty to assist victims of crime through the process. I say that at the outset.

I will raise some questions during the consideration in detail stage on the working of the provisions, particularly on how current section 8, which is proposed to become section 8(1), will work in with proposed subsection (2),

which will give power to the Commissioner of Police. In the minister's second reading speech, she referred to the Wood royal commission in New South Wales. The minister said that the provisions of this Bill are consistent with a need identified by Justice Wood following that commission. I have looked at the Wood royal commission's recommendations. I have gone as far as obtaining some *Hansard* from the New South Wales Parliament on the introduction of the Bill that gave the police commissioner the statutory authority to remove from the Police Service any officer in whom he ceased to have confidence. In the second reading speech of the Police Legislation Further Amendment Bill 1996, the minister in charge of the Bill, Mr Egan, said -

> This bill marks another milestone in the Government's support for the Royal Commission into the New South Wales Police Service . . .

Perhaps the advisers to the Minister for Police will be able to tell me during consideration in detail whether the New South Wales legislation provides the minister with the right of veto on the removal of officers by the Commissioner of Police. The second reading speech of the New South Wales Bill continued -

> This bill will provide the commissioner with the statutory authority to remove from the Police Service any officer in whom he ceases to have confidence. This sends a clear message to police whose dedication is less than total: shape up or ship out! This power is the cornerstone on which the new Police Service will be built. It signals the end of the road for both the corrupt and the non performers, and a new beginning for the dedicated, hard working and honest. The vast majority of police are of course hard working and honest. They are constantly let down by the corrupt and incompetent.

I would go so far as to say that the police are being let down by the Government, because, prior to the election, the Premier gave a commitment that he would root out corruption in the Police Service by pursuing particular inquiries, such as the Argyle Diamond affair, the Red Emperor affair and the Mallard affair. However, the Premier has changed his mind. Suddenly he does not have the resources to properly investigate police corruption in this State. The Royal Commission Into Whether There Has Been Any Corrupt or Criminal Conduct by Western Australian Police Officers is only nibbling away at the edges.

Several government members interjected.

Ms S.E. WALKER: Instead of making jibes, government members should stand up and, on behalf of their electorates, speak out about corruption in the Police Service and about the Royal Commission Into Whether There Has Been Any Corrupt or Criminal Conduct by Western Australian Police Officers in this State and broken promises.

Debate interrupted, pursuant to standing orders.

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